

DIARY NOTES

Know for yourself

The Sinister Ways of Chhattisgarh Police

*Events of the Third Phase of Dr. Binayak Sen's Trial &
Incidents Preceding Ajay TG's Bail*

By Kavita Srivastava,

*Secretary, National PUCL
& (General Secretary), PUCL Rajasthan*

*Since Dr. Sen's trial is disproving the prosecution's case the police is openly trying to fabricate evidence both inside and outside the court.
The police even tried to use Ajay's TG legitimate release against Dr. Sen, hence the events of both the cases have been written together*

The third phase of the trial of Dr. Binayak Sen case began on the 29th of July and lasted till July 31st. The key witnesses, the material witnesses had already deposed in the first two phases of the trial and some were tendered off. The subsequent witnesses were to be mostly seizure witnesses or police and jail personnel. Since most of the 20 witnesses who had deposed in the first two rounds of the trial had in no way confirmed the police case, the prosecution in an act of desperation had filed an application of recalling three of the witnesses who had deposed in the second phase between the 1st of July and the 4th of July. This was slated for argument in the course of these three days.

This was also the period when it became clear that charge sheet was not being filed in the Ajay TG case and that statutory bail was imminent however, we were suddenly filled with the hope that perhaps the case itself would be closed as Ajay had not committed any criminal act and hence there was no evidence to that effect.

29th July. 2008

No hearing happened as a senior member of the bar had passed away. Before we reached the Court, Dr. Binayak Sen, Pijush Guha and Narayan Sanyal had been already taken away to the jail. We were very disappointed that we had missed him.

Earlier in the day along with Dipankar Sen (Binayak Sen's brother) and his friends we met the Chattisgarh DG police. The conversation centred around Dr. Sen. Towards the end I asked him about the release of Ajay TG and he told me that as promised he had gone and met Ajay TG in Durg Jail and there seemed to be little

doubt that Ajay had any kind of Maoist involvement and thus the case would close eventually. He stated that a few statements had to be taken in order to close the case.

That evening Mahendra Dubey who is the advocate for both Ajay TG and Binayak was called by one Government Official in connection with the closure report that had to be presented in the Ajay TG case. I also decided to accompany him. When we reached the place the friendly officer immediately told us that since the seniors had planned to file a closure report in Ajay case, they were keen that Ajay give a statement which could be the basis of filing the report.

When we read the two page statement we were both shocked to learn that the contents of the letter had sentences against Ilina, Binayak and the PUCL. Sentences which made Ilina and Binayak appear very undemocratic and arbitrary and an ambiguous statement about PUCL being with Maoists. Supposedly it was a statement speaking about his association with the PUCL and Binayak and Ilina and how the camera had been borrowed by him to make a film on Laurie Baker, the incident which happened in 2004 when his camera was taken away and the subsequent events that followed it.

We knew that this was no innocent act and that making Ajay sign a statement with such references against Binayak, Ilina and the PUCL, could be used as evidence against the Sen's and the PUCL at a later stage. It just exposed the murkiness of how police functions. Not only was the police still after Binayak and the PUCL but somewhere they were after Ilina. Even in the court they brought up Ilina's reference too frequently. Now it was being tried through Ajay.

Our lawyer firmly stated that there was no need for an "accused" to sign any statement as in any case there was no meaning of a statement taken by the police of an accused in custody and secondly because Ajay was in judicial custody in any case the Police would have to apply for it in the court.

He also emphasised that Final Reports on cases do not happen with a statement of the accused denying his involvement in the crime act but they close because of lack of evidence, a call which the police needs to take.

The official agreed to everything that we said and then revealed that Ajay's entire case was made from above and given to a middle ranking police official on the 5th of May to file and arrest the man without delay. He also added that the official argued vehemently that he felt that there was no case against Ajay and he was not interested in fixing anybody. According to this official if ever there ought to have been a case against Ajay then he should have been booked January 2008 when the letter about the camera had been obtained from the house of Gudsa Husendi (the spoke person of the CPI (Maoists)), lodging the case five months later made no sense. What angered the official when he spoke to us was that now that the top officials wanted the case closed they were making that same middle ranking official who would face the brunt of the court of law in case Ajay would decide on legal action against the Chhattisgarh police for his baseless arrest.

We left the place with a sinister feeling that there was much more up the sleeves of the police than what we were being told. The Chhattisgarh police could not be

trusted at all. The process of closure of the case was being done with great manipulation and with a desire to use Ajay against Binayak, Iina and the PUCL.

What worried us most was the Chhattisgarh State's desire to continue to harass Dr. Binayak Sen, despite the fact that they had put him in prison for over fifteen months on baseless charges, they had not had their fill. Now even the release of Ajay TG was being converted into an exercise of further fixing Dr. Binayak Sen and the PUCL.

30th July, 2008

Tampering of evidence : Seziure packet containing "incriminating evidence" obtained from the house of Dr. Binayak Sen has an extra document.

In the morning we were at the trial court in Raipur and it seemed that the witness to be examined was an inconsequential witness. Shyam Sundar Rao was involved in the body search prior and after the search of the residence of Dr. Binayak Sen. But hardly were we ten minutes into his chief examination that the Special Public prosecutor (SPP) read out the existence of a letter written by the Maoists politburo to Dr Binayak Sen. This caught the attention of all of us in the court room who knew by heart the list of documents that were seized by the police from the house. Mahendra our lawyer who was keeping track of the items being produced doubly checked the seizure memo which had no such letter and then vehemently objected that a new document had been introduced.

The SPP first defended his stance but when the judge also said that there were only ten items, put it on the indecipherable handwriting of the charge sheet. He insisted with the court that the Investigation Officer BBS Rajput be called so that he could get him to read his writing. Our lawyer objected to this and the Court also agreed that there was no need of any assistance.

Then came our lawyer's turn for cross-examination. He placed each document and cross examined Rao for his signature. Each seizure document had the signature of Dr. Binayak Sen, the Investigation Officer (IO) BBS Rajput and the two search witnesses but this eleventh document had no signature of Dr. Binayak Sen or the other witness. It only had the signatures of Shyam Sundar Rao and the IO. Dr. Binayak Sen's signature was conspicuously missing.

Interestingly, the letter which they had slipped in was a computer typed letter with no signature of the sender also.

The cross examination brought on record all these facts but could not go beyond raising doubts on how the packet could have been reopened after it was sealed in Binayak's house on the 15th of May. The IO would have to be made accountable about the tampering whenever he would come for his witness statement. Important questions got raised about where the tampering happened, was it in the police store room or in the court store room?

The entire court room was stunned by this act of the Chhattisgarh police who dared to tamper with sealed evidence in a case like that of Binayak Sen which was under everybody's glare. The court room that day had the presence of Dr. Abhay Shukla, a member of the NHRC core group who had been sent on a reconnaissance visit to

examine whether Dr. Sen's trial needed monitoring. It left no room of doubt as to how the police must be regularly doctoring evidence in cases of the poor and fixing them.

It also brought back memories of another incident of tampering of evidence which was brought to light on the day when the first witness deposed. Supposedly an "independent witness" who signed the seizure memos after the arrest of Pijush Guha on the 6th of May evening. (In reality Pijush was arrested on the 1st of May). In the court room the Prosecution and the witness continuously talked about the existence of a black and blue bag on the shoulder of Pijush Guha which the police claimed had seized and was in the seizure memo. A sealed trunk was brought in and opened in front of the judge by a court employee and much to the amazement of the Judge, the other lawyers, the accused and observers present in the court, the trunk was empty. The police tried to cover up that too.

31st July

Arguments for the case : Ajay TG's remand hearing was fixed for this date. Dr. Binayak Sen's trial had a crucial witness that day who never came and others too did not make it on time. So before the court closed for the day's hearing, the Judicial Officer Mr. Saluja decided to hear the arguments on the "recall of witnesses" application placed by the Prosecution. They were keen to recall (i) Deepak Choubey, the relative of the landlord where Narayan Sanyal lived along with Amita Srivastava (ii) Prakash Magaria the landlord, (iii) Veena Shivpuri the Principal of the school where Amita Srivastava had worked.

The argument presented by them was that since Venna Shivpuri was unable to recognise Amita in a group photograph, during her deposition in court, the Prosecution wanted her identification done on the basis of a "larger" photo. All this was important for a just decision of the case.

Lawyers Mahendra Dubey for Dr. Sen, Mr.Kinger for Narayan Sanyal and Amit for Pijush Guha, all three vehemently argued that Amita Srivastava was not a relevant person for this case, she was not even made an accused in the case therefore proving or disproving her identity did not help the case. Citations from various judgements were provided to back their argument.

Judicial Officer Saluja decided to withhold the order. We were free for the afternoon from Dr. Sen's trial and quickly embarked on our journey to Durg as Ajay was to be produced. We also wanted to understand whether Mahendra Dubey's insistence that Ajay would sign no statement would have got the police to give up their plan.

Remand Hearing of Ajay TG

When we reached Durg Court an impressive team of three lawyers consisting of Sudha Bharadwaj, Bose Thomas and Dilip Ingley were already present. The happiest was Aman the son of Ajay and Shobha who could not believe that he could actually get a glimpse of his father who was in the lock up in the Court. He was clucking away happily. A couple of kind policemen earlier in the day had also let the father and son hug each and other. Three young women in great dignity stood in one corner of the corridor and later when we were introduced we were told that they

were from the Basti where Drksakshi ran its Bal Angan. Shobha, her brother and a few other friends were all waiting for us.

Ajay was brought in for the hearing. An entourage of about fifteen of us followed Ajay, the police and the lawyers through the corridors of the Court, up the steps to the court room in one corner. Of course as expected the reader and the clerk tried to tell all of us to stay out of the court room, we insisted and since it was a short business of merely being produced in court and taking Ajay's signature, we tried to tell them that they should let us stay. But for them it was the remand hearing of a "naxalite prisoner" so every outsider was suspect including family and friends. We stood outside knowing that it would be over in a few minutes.

The police took the next date as the 2nd of August. The police kept telling us that since they would be filing the Final Report they just needed a couple of more days. So it was not just statutory bail which would become Ajay's right two days later but he would also be vindicated that he was wrongly arrested. The stipulated 90 days period in which the police must file a charge sheet or else the Court could grant bail to the accused was also the 2nd of August.

It was in the course of this meeting with Ajay that he told his lawyers that the previous evening on the 30th of July the SP of Durg Mr Kabra had come to meet him in Jail and wanted him to sign on a statement which had a sentence / sentences against the PUCL. When Ajay refused to sign on the statement the SP turned round and made a bizzare statement, "that we will do a case against you on the basis of the evidence that we have from the films that your wife Shobha went and gave the DG police". Incidentally the DG police had asked for Ajay's films from Shobha when we met him on the 3rd of July, which she had gone and given to him a few days later.

Ajay refused to succumb. Here was another Ajay that we encountered. An extremely upright person who said " che mahine ya ek saal rah jaonga par kisse ke meharbani par bahar nahi aaonga". (I will stay for another six months or a year in Jail but I do not want to be released because of anybody's mercy). Upfront he resisted police pressure.

Why was Ajay being made to sign a statement? In any case as our lawyers explained the statement of the accused had no meaning. And if the police had no evidence then that was sufficient to file a closure report. Then why was this statement being made into an issue that the SP made a journey to Jail to meet Ajay so that he could convince him despite Ajay's own opinion and that of his lawyer's which was otherwise? Was it that they were so desperate that since there was no evidence against Dr.Sen that they were now trying to create new evidence? We have frequently been told that a supplementary charge sheet will be filed at some stage, was this part of the process of doctoring more evidence against him.

It was pouring that afternoon that I was unable to meet the SP whom I had thought I would meet and instead we returned to Raipur.

Our journey back with Damini, Rami and another, the three women from Drksakshi who had come to court to express solidarity with Ajay, was very interesting. We all sang songs and they talked about the Bal Angan and recited the rhymes that these children are taught there/ It was in the course of their conversation in the car that

these women told us that the police really harassed them. The police came several times to their Basti and tried to enquire whether Ajay had taken them into the forests areas of Chhattisgarh, whether they been taught by Ajay to make calls of wild animals and that of dogs and cats. They asked whether he had ever brought weapons into the Basti. (Trying to still not forgive him for the tool kit that by mistake went with him in his bag during the Dr. Binayak Sen court hearing on the 29th of April). They said that the only weapon he carried was a nail cutter when he came to the Basti and would just put children on his lap and clip their nails lovingly. The police kept asking for the keys of the Bal Angan which they refused and told the police that "we will not give it to you as you may plant some evidence against Ajay and us". Even today they had come on the quiet so that the police informers in the basti would not misinform the police about why they were stepping out of the Basti.

They said that the police had tried to vitiate the good will that they had in the basti and tried to tell their families that they must not associate with Ajay and Shobha anymore. They were heart broken that Ajay who had stepped out to do good for the poor was in jail. No way would did they want the Bal Angan to close down. It had become intgeral to their lives and of their children.

Ist August, 2008

I took an appointment with the DG police and lodged a protest in writing regarding Ajay being forced to sign a statement that had things against Ilina, Binayak and the PUCL. The DG police told me that statement was basically a summary version of his meeting with Ajay on the 19th of July which he had taped. He said that the statement that had been scripted was the summary of the two hour conversation that they had had. It was jerky as the police had pulled out the questions and just summarised the reply. He said that it could be edited according to our wishes.

So basically the message that was being given to us was that whatever the police was getting Ajay to sign on was on tape. If there were these sentences that we may have had objection to then they were there as he said it. We did not succumb to that pressure knowing that any statement could be pulled out of context with the meaning completely changing in the process. We had deep faith in Ajay's commitment and honesty towards the PUCL and Ilina and Binayak.

When we argued that there was no need for an accused to sign any statement, then why was Ajay being pressurised. We were given several arguments but we were not convinced by their answers especially as there was no legal requirement for Ajay to do so. In any case we communicated to the DG that Ajay would not sign anything. The meeting ended very cordially although there was a complete disagreement. But before it closed the DG gave us ample hint that the police would be bringing in a supplementary charge sheet against Dr. Sen.

Post Script:

Ajay finally got statutory bail on the 5th of August. Even on that day the SHO of Supela police station came with a statement for Ajay to sign. When Ajay refused, the man didnot give up, he said he could come to them and sign it any time he wished.

It is almost a month now neither has a closure report been filed nor has he got his computer cum editing machine back. We are being assured that the case will be closed and that the computer will be returned but only words, words and more words. .

Is Ajay being taught a lesson as he refused to comply by the wishes of the police and sooner or later they will charge sheet him. Or is it that they want to keep up their pressure on Ajay and keep him dangling between freedom and fear.

It is clear that the police is desperate in the Binayak Sen case and thus even in a case which is under the glare of the media and observers from other organisations, the police did not hesitate to tamper evidence. Simultaneously using the carrot and the stick with Ajay, that the case will be closed only if he signs statements against the Sen's and the PUCL, shows how insidious the Chhattisgarh police can get.

Bringing up Ilina Sen's name every now and then although she is neither an accused or a witness in the case against Dr. Binayak Sen shows the attitude of vindictiveness in the police force.

Getting Ajay to sign a statement with an ambiguous statement about the PUCL's link's with Maoists is again a part of the design of the police to discredit PUCL.

The threat of a supplementary charge sheet against Dr Sen, shows that the Chhattisgarh police does not want Dr Sen to be free man.

I delayed writing this up as I was also not sure whether making all this public would add to the victimisation of Dr. Binayak Sen, Ilina, Ajay and other members of the PUCL. I am glad that both Rajendra Sail, Ilina and other friends felt that I should write this up and let the world know.

Kavita Srivastava
Secretary, National PUCL
& (General Secretary), PUCL Rajasthan

Address for Correspondence :

76, Shanti Niketan Colony,
Kisan Marg,
Barkat Nagar, Jaipur-302015
Tel. 0141-2594131
mobile: 9351562965

