



# **REPORT**

**Regarding the facts and circumstances**

**Relating to the death of  
Shri Deen Dayal Upadhyaya**

**By**

**Honourable Mr. Justice Y. V. Chandrachud**

**(Commission of Inquiry)**



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**PART I**  
**(Chapters I to II)**

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## CHAPTER I

### INTRODUCTION

1. Shri Deen Dayal Upadhyaya, who was elected as the President of the Bharatiya Jan Sangh in December 1967, died during a train journey on the night between the 10th and 11th February 1968.

2. The death occurred in mysterious circumstances and therefore some members of the Parliament asked, during the course of obituary references on the 12th, that the investigation of the matter be entrusted to the Central Bureau of Investigation. The C.B.I. put up two young men—Bharat Lal Dom and Ram Awadh—for trial before the Special Sessions Judge, Varanasi. By his judgment of June 9, 1969, the learned Judge held that Shri Upadhyaya died a homicidal death but he acquitted both the accused of the charge of murder as well as of the charge that they had committed theft after making preparations for causing death. However, he convicted Bharat Lal under Section 379 of the Penal Code for committing theft of Shri Upadhyaya's belongings and sentenced him to a term of four years. Bharat has filed an appeal against his conviction and sentence, which is pending in the High Court of Allahabad.

3. The learned Judge observed in his judgment that the prosecution was unable to prove its case "mainly because of paucity of evidence", that "there have also been deficiencies here and there during the investigation", that as a criminal Court, his function was merely to decide whether the evidence was sufficient to prove the charges against the accused, that he could not in the very nature of things conduct a probe into the truth of the matter, that the prosecution was unable to offer a satisfactory explanation of some circumstances, that there was no "concrete data" before him to show that the murder was committed for a political motive and that "the offence of murder not having been proved against the accused, the problem of truth about the murder still remains".

4. On June 22, 1969, over seventy members of the Parliament made a written demand that a Judicial Commission be appointed to conduct a further inquiry into the matter so that persons who had committed the murder of Shri Upadhyaya could be brought to book. On August 4, 1969, the Chief Minister of U.P. announced in the State Assembly that the State Government had decided not to file an appeal against the decision of the Special Judge. On August 5, 1969, the Union Home Minister made a statement in the Lok Sabha that the Government had decided to appoint a Commission of Inquiry as desired by some members.

5. Accordingly, the Government of India issued the following notification on October 23, 1969:—

“No. 31/13/69-Pol.1(A)  
Government of India,  
Ministry of Home Affairs.

New Delhi-1, the 23rd October 1969.

### NOTIFICATION

S.O. WHEREAS the trial conducted by the Special Sessions Judge, Varanasi, in the case relating to the death of Shri Deen Dayal Upadhyaya has resulted in the acquittal of the two accused persons on the charge of murder of Shri Deen Dayal Upadhyaya;

AND WHEREAS the learned Sessions Judge has opined that the problem of finding the truth about the death still remains;

AND WHEREAS there has been a persistent demand from the public for a further inquiry to ascertain the truth;

AND WHEREAS the Central Government is of opinion that it is necessary to appoint a Commission of Inquiry for the purpose of making an inquiry into a definite matter of public importance, namely, the death of Shri Deen Dayal Upadhyaya in suspicious circumstances;

NOW, THEREFORE, in exercise of the powers conferred by section 3 of the Commissions of Inquiry Act, 1952 (60 of 1952), the Central Government hereby appoints a Commission of Inquiry consisting of Shri Justice Y. V. Chandrachud, Judge of the Bombay High Court, as sole member.

2. The Commission shall inquire into all the facts and circumstances relating to the death of Shri Deen Dayal Upadhyaya and make its report to the Central Government. The Commission will be expected to complete its inquiry and make its report by the 30th April 1970.

3. The Central Government is of opinion that, having regard to the nature of the inquiry to be made and other circumstances of the case, all the provisions of sub-section (2), sub-section (3), sub-section (4) and sub-section (5) of section 5 of the Commissions of Inquiry Act, 1952 (60 of 1952), should be made applicable to the said Commission and the Central Government hereby directs under sub-section (1) of the said section 5 that all the provisions aforesaid shall apply to the said Commission.

Sd/-T. C. A. SRINIVASAVARADAN,  
*Joint Secretary to the Government of India.*”

6. The time for submitting the report was extended first upto August 31, 1970 and then upto October 31, 1970. The large mass of evidence before the Commission made these extensions necessary.

7. On November 17, 1969 the Commission issued a notification inviting "all persons acquainted with the subject-matter of the Inquiry to furnish to the Commission statements regarding all the facts and circumstances relating to the death of Shri Deen Dayal Upadhyaya". Every such statement was to be supported by an affidavit and was required to be sent so as to reach the Commission before December 31, 1969. The notification was published in fourteen newspapers of Agra, Allahabad, Kanpur, Lucknow, New Delhi and Varanasi.

8. On a written request made by Shri Nanaji Deshmukh, Treasurer of the Jan Sangh, the date for submitting statements was extended upto January 31, 1970. The Central Bureau of Investigation filed a sworn written representation to explain its point of view. The Jan Sangh also filed a written representation through its Treasurer in support of its case. In all, 59 affidavits were received by the Commission. Details in regard to those affidavits appear in Annexure I to this report.

9. The Commission interviewed Shri Nanaji Deshmukh and the C.B.I. officials at Delhi. The Commission went to Varanasi on the 9th February and at 11-30 A.M. it inspected the spot of occurrence in the Mughalsarai Railway Yard, in the presence of parties and their Counsel. At 5-30 P.M. a meeting was held to decide upon the procedure to be followed before the Commission. The parties explained their respective cases briefly and agreed that evidence should begin on the 9th March at Varanasi. It was further agreed that evidence recorded in the Sessions Court should be treated as evidence before the Commission, with liberty to either side to recall any witness for further examination-in-chief or for further cross-examination.

10. A list of the important witnesses examined in the Sessions Court is at Annexure II. A list of the important documents produced in the Sessions Court is at Annexure III.

11. On the night of the 9th February, the Commission inspected the spot of occurrence once again. It was suggested by the parties that the incident leading to the death of Shri Upadhyaya had taken place at night and therefore it would be necessary to inspect the spot at night. A complete demonstration of shunting operation was shown on this occasion, efforts having been made to reproduce events and conditions approximating as nearly as possible to those of the eventful night. The importance of shunting operations consists in the fact that the bogie in which Shri Upadhyaya was travelling was detached from the train at Mughalsarai and was attached to another train bound for Patna. The dead body of Shri Upadhyaya was found in the Mughalsarai Railway Yard, near a traction pole, by which the shunting engine had to pass and re-pass several times.

12. Two sittings were held at Varanasi for recording evidence: from 9th to 12th March and 18th to 27th March 1970. During this

period, the Jan Sangh examined 44 witnesses. The Commission and the Counsel visited the site once again in March.

13. Two sittings were held at Delhi: from 9th April to 13th April and from 24th April to 30th April 1970. During this period, the Jan Sangh examined seven witnesses while the C.B.I. examined ten witnesses.

14. The next sitting of the Commission was held in Bombay from the 22nd June. The C.B.I. examined thirteen more witnesses and closed its case on the 30th June.

15. A list of witnesses examined before the Commission is at Annexure IV. A list of documents produced before the Commission is at Annexure V.

16. Shri C. D. Seth, Counsel for the Jan Sangh, commenced his arguments on the 30th June and concluded them on the 7th July. Shri Bipin Behari Lall, Counsel for the C.B.I., commenced his arguments on the 7th July and concluded them on the 22nd. Shri M. C. Bhandare, Counsel for the Commission, commenced his submissions on the 22nd and completed them on the 27th July.

17. Shri Seth took ill in Bombay and therefore he could not make his reply before the 19th August. He commenced his reply on the 19th and finished it on the 21st August. Shri Lall gave a reply to the submissions made by Shri Bhandare.



## CHAPTER II

### SCOPE OF THE REFERENCE

1. Unnatural deaths commonly give rise to three alternative inferences: that the death was accidental, suicidal or homicidal. Shri Upadhyaya's death occurred in circumstances which are wholly incompatible with the first two inferences. Accident can be ruled out in reference to events immediately antecedent and subsequent to the death. Suicide is inconceivable. The mood of the moment, the purpose of the journey and the equable temper of Shri Upadhyaya render it impossible that he put an end to his own life. Murder remains the sole alternative to pursue, not only because accident and suicide can be reasonably excluded but because the contemporaneous span of events leaves no doubt that Shri Upadhyaya was murdered. Later, I will turn to those events for their proper appreciation but it is relevant that right from the time that the dead body lying near the traction pole was identified as being of Shri Upadhyaya, all concerned were clear that the death was homicidal. It is significant that in the Sessions Court no one ever suggested that the death might be accidental or suicidal. Normally, a Judge trying a charge of murder considers whether the prosecution has proved that death was homicidal. Here it was unnecessary because it was undisputed that death was homicidal. Such a concession is recorded by the learned Sessions Judge in paragraph 50 of his judgment. It was not suggested before me either that death was due to accident or suicide.

2. Thus it was common ground at all stages that Shri Upadhyaya was murdered. The difference in the rival versions is that according to the Central Bureau of Investigation the murder was committed by common thieves for small gain. It was conceived and executed on the spur of the moment. According to the other current of opinion, the murder was pre-planned and was committed for political motives.

3. Bharat Lal and Ram Awadh are jail birds. Their acquittal of the charge of murder led to the popular belief that after all the murder was not committed just by common thieves. True, that the learned Sessions Judge has indicated in his judgment (para 195) that "the failure of the charge regarding murder in this case does not in any sense imply that the theory of the accused having been killers is false or that it was a political crime". He has also observed (para 194) that the charge of murder failed because of "paucity of evidence" and that there was no warrant for the criticism that "the investigating agency in this case deliberately and purposely avoided the political origin of the crime, set up a false theory of a chance murder by thieves and pinned the same on two scapegoats". He however proceeded to say (para 195) that "a criminal trial is not a probe or inquiry into the truth about the occurrence", that the sole question before him was "whether the evidence on record establishes

the guilt of the accused", that a Court of law cannot, by reason of the rules of evidence which apply to Court proceedings, look at data "which may be highly pertinent and conducive to a persuasion of the ascertainable truth" and that "the offence of murder not having been proved against the accused, the problem of truth about the murder still remains".

4. This Commission has been appointed to tackle this "problem of truth about the murder". It is a different problem—problems of truth are often fraught with difficulties.

5. After reciting that the "learned Sessions Judge has opined that the problem of finding the truth about the death still remains", the notification regarding the appointment of the Commission refers to the death of Shri Upadhyaya in "suspicious circumstances" and says that the Commission "shall inquire into all the facts and circumstances relating to the death of Shri Deen Dayal Upadhyaya".

6. The notification advisedly does not ask the Commission to inquire into the "murder" of Shri Upadhyaya for that would have excluded the inquiry whether it is at all a case of murder. The cause of death was an open issue before me, regardless of who said what in the Sessions Court. Parties, however, stuck broadly to the contentions raised in the Sessions Court. The Central Bureau of Investigation contended before me that the murder was committed by petty thieves for mercenary motives. The Jan Sangh said that the murder was pre-planned and was perpetrated for political motives. Almost the only point on which the two sides agreed was that Shri Upadhyaya was murdered.

7. Thus, though I am not precluded from considering whether the death of Shri Upadhyaya could be accidental or suicidal, it is unnecessary to do so as that is nobody's case and as those possibilities can be safely ruled out. I must therefore start with the hypothesis that Shri Upadhyaya died a homicidal death and proceed to inquire into the facts and circumstances relating to his murder.

8. It is necessary to say a word about the essential distinction between the scope of the Sessions trial and the scope of the inquiry before me. Firstly, the question with which the Sessions Court was primarily concerned was whether the prosecution had established beyond a reasonable doubt that the two particular accused—Bharat Lal and Ram Awadh—had committed the offences of which they were charged, namely, murder, theft and theft after making preparation for causing death. I am not directly concerned with the question whether the two accused committed the murder, though, if I find that the murder has been committed by common thieves, it would be a good ground for supposing that the two accused might be connected with the murder. They are common thieves.

9. Secondly, motive for the murder was a matter of secondary importance in the Sessions Court. Motive is not a *sine qua non* for proof of an offence and therefore the prosecution is never obliged to establish the motive behind a crime. The limited relevance of

motive in the criminal Court is that (i) absence of motive is a factor to be taken into consideration in determining the guilt of the accused and that (ii) motives can supply a clue to the intention.

10. On the other hand, motive for the murder of Shri Upadhyaya is the central theme of the task before me. Parties are not arrayed here as 'Prosecutor' and 'Accused'. In fact, no one in particular is accused before me of having killed Shri Upadhyaya, though it is alleged that a conspiracy was hatched by certain persons to commit the murder. If I find that the motive for the murder was political, I shall have answered a large number of incidental questions. Such a finding will necessarily imply that the murder was not committed by petty thieves for motives of gain and that the Central Bureau of Investigation wrongly believed that the murder was committed by Bharat and Ram Awadh. Thus, proof of motive will furnish a clue to the suspicious circumstances surrounding the murder. What is more, if I find that the murder was committed for political ends, the fact that I cannot fix the persons who made politics a handmaid of crime will not introduce any infirmity in my finding on the central issue of motive. It is sufficient for my purpose to find, if that be true, that political opponents are at the back of Shri Upadhyaya's death. I need not labour to identify them by their names. That, I consider, to be a natural limitation of any inquiry like the present. I cannot investigate whether 'A' or 'B' has committed the murder. I have not the means at my disposal to determine individual guilt. I can however certainly find whether the crime is committed by petty thieves or whether it is an offspring of a conspiracy hatched by political opponents.

11. The third point of distinction is procedural. The learned Sessions Judge felt handicapped that by reason of the provisions of the Evidence Act, he could not look at data "which may be highly pertinent and conducive to a persuasion of the ascertainable truth". I suffer from no such restriction, for the rules of evidence do not strictly apply to the proceedings before me. I must however confess that though I do not suffer from the handicap from which the Sessions Judge suffered, I suffer from an inconvenience from which he was immune. I have to grapple with quite a mass of irrelevant and hearsay evidence which makes it difficult to separate the grain from the chaff. I could not reject that evidence on the ground of its inadmissibility under the Evidence Act but that does not mean that I must accept it as good evidence. Evidence may be admissible and yet it may not be acceptable. That is not an uncommon phenomenon.

12. The scope of this inquiry is wider than the scope of the Sessions Trial. I must determine why the murder was committed—a question that has wider ramifications than the question before the Sessions Court, namely, whether the accused before it were guilty of the crime imputed to them. It was enough for the Sessions Court to hold that the offence of murder was not brought home to the accused beyond a reasonable doubt and that Bharat alone was guilty of simple theft. Any further inquiry was uncalled for. That is why the learned Judge observed that "a criminal trial is not a probe or inquiry into the truth about occurrence". My inquiry is what a

criminal trial cannot be—I can conduct a probe into the real truth. Bharat and Ram Awadh may or may not be guilty. For me that is beside the point. My task is to find why the murder was committed, whosoever might have committed it. This task will of course become easier if the hand of a political group can be seen behind the crime. Likewise, the task will be lightened if it appears that the murder was accompanied by a simple theft.

13. This approach will eliminate a possible conflict of jurisdiction between the Commission and the Court. The order of acquittal in favour of Ram Awadh and the acquittal of Bharat of the charges under Sections 302 and 382 of the Penal Code have become final. Bharat's appeal against his conviction and sentence under Section 379 is pending in the Allahabad High Court. Fortunately, my inquiry covers a different field and I hope that nothing that I say will embarrass Their Lordships of the Allahabad High Court while hearing Bharat's appeal. I will take care to steer clear of that course, subject of course to the basic requirements of the inquiry into the facts and circumstances relating to the murder of Shri Upadhyaya.

**PART II**  
**(Chapters III to VII)**

## CHAPTER III

### THE FATEFUL JOURNEY

1. Before dealing with the questions that arise before me, it is necessary to mention the salient facts.

(i) *The man that was Upadhyaya*

2. Normally, while inquiring into a murder, it is beside the point to consider what was the status or the stature of the victim and what political philosophy he professed. It becomes relevant here to refer to the political persuasions of Shri Upadhyaya, for his political beliefs and the zealous efforts he made to put them into practice are alleged to have led to his murder.

3. Born in a middle-class family in 1916, Shri Deen Dayal Upadhyaya joined the Rashtriya Swayamsevaka Sangh in 1937, after a brilliant academic career. In 1951, when the Bharatiya Jan Sangh was founded, he became a Secretary of its U.P. branch. In 1952, when the annual session of the Jan Sangh was held at Kanpur, he became the General Secretary of the Jan Sangh—a post which he held for fifteen years. On December 28, 1967 he was elected in the Calicut Session as the President of the Jan Sangh.

4. Though a student of mathematics, Shri Upadhyaya had varied scholarly interests. He wrote books and delivered lectures on subjects ranging from 'Economics' to 'Electioneering'. He edited two newspapers—'Panchajanya' and 'Swadesh'—and a monthly called 'Rashtradharma'. He is the author of a book on 'Chandragupta Maurya' and of a Hindi biography of Shri Shankaracharya. His collected writings and speeches have been published in books like 'Rashtra Chintan', 'Political Diary' and 'Integral Humanism'. He had founded a publishing company called 'Rashtradharma Prakashan Ltd.' Lucknow.

5. Shri Upadhyaya was a voracious reader and while travelling he would always carry a 'jhola' containing books on varied subjects. He was carrying such a cloth bag on the fateful journey. The bag and the books remain untraced.

6. He was so devoted to the cause of his party that Dr. Shyama Prasad Mukerji, the Founder-President of the Jan Sangh, had said that if he could secure the help of two more 'Deen Dayals', he would be able to alter the political picture of the country. It is said that Shri Upadhyaya used to collect information about persons engaged in anti-national activities and keep it in a secret file. He was carrying a file with him on the particular journey. What the file contained is a matter of conjecture but it has not been traced.

7. Usually clad in a Dhoti, a Kurta and a jacket, he used to carry a woollen shawl in winter. Such a shawl was found on his dead body, covering his face almost completely. He was of medium height, had thick moustaches and mostly wore spectacles. He disliked intense cold. He used to read and write till late in the night and was a late riser. He never took alcoholic drinks and did not even care for tea. He was a bachelor.

8. Glowing tributes were paid to his memory in the Lok Sabha on February 12, 1968, though he was not a member of the Parliament. The Speaker described him as "a selfless and dedicated worker", the Prime Minister described him as "a man of firm ideals", Shri Ranga said that he had a "powerful personality", Shri Hiren Mukerjee called him "a front rank figure in the political life of the country" who was marked for "his simplicity and the utter dedication with which he had espoused the cause that he had taken up", Shri S. M. Joshi said that he was struck by Shri Upadhyaya's "straightforwardness and simplicity". Shri Nath Pai said that he was "a valiant fighter on this very vital front of revolution, that of nationalists", Shri N. C. Chatterjee said that he was struck by Shri Upadhyaya's "wonderful organising effort and his quiet and unostentatious manner of working", Shri Prakash Vir Shastri said that Shri Upadhyaya was "the real brain of the Jan Sangh" and that it was evident from his speech at the Calicut Session that he was striving to show a new path not only to the Jan Sangh but to the whole nation, while Shri J. B. Kripalani said that he was "simple in his habits, sincere in his outlook" and that "though he belonged to a party, he had a catholic outlook". Shri Atal Behari Vajpayee, who succeeded Shri Upadhyaya as the President of the Jan Sangh said that Shri Upadhyaya was the architect of Jan Sangh victories in both the Houses, that the credit for building up the party must go to him and that he was a man of "simple living and high thinking" who had dedicated his life to the cause of his motherland.

9. In a condolence meeting which was held on the Ramlila Maidan, Delhi, on the 13th evening, speaker after speaker, including Shri Morarjee Desai the then Deputy Prime Minister and Shri Y. B. Chavan the then Home Minister, paid glittering tributes to the memory of Shri Upadhyaya. It was said that he had a "many-splendoured personality", that his life was "an open book", that he had "godly qualities", that he was an "Ajatashatru", that he had "an implicit faith in the unity and oneness of the country", that he was an "ideal Indian", that he was "a living embodiment of Indian culture" and that he had "built bridges of understanding".

10. Such was the stature of the man, such were the ways of his life and such the impact of his personality.

(ii) *The Patna-bound journey*

11. After the Calicut Session was over, Shri Upadhyaya travelled from place to place, visiting Mysore and Bombay on way back. He left Bombay by train on January 7, 1968 and reached Lucknow on the 9th. Then he went to Kanpur, Delhi, Bhopal, Nagpur and

Bareilly, eventually reaching Lucknow on February 6, 1968. At Lucknow he stayed with Smt. Lata Khanna, a Jan Sangh worker. With her used to live her sister Smt. Sarla Rani.

12. On the 7th, Shri Ashwini Kumar, Organising Secretary of the Bihar Jan Sangh, met Shri Upadhyaya and invited him to the meeting of "Bihar Pradeshik Karya Samiti" which was to be held in Patna on the 10th and 11th. Shri Upadhyaya was unable to give a firm reply as his presence was likely to be needed in Delhi. Ashwini Kumar then went back to Patna and repeated his request on phone on the 10th morning. Shri Upadhyaya accepted the invitation saying that he would come by the Sealdah Express if he could get a reservation or else by the Punjab Mail.

13. Unfortunately, he did not get a berth on the Pathankot-Sealdah Express. He asked Harischandra, the Office Secretary, to buy for him a ticket to Patna. Harischandra sent Uma Shankar, the typist, to do the needful and at 9.45 A.M. a reserved berth was allotted to Shri Upadhyaya.

14. Shri Upadhyaya's berth was reserved in the 'A' cabin of a composite First-cum-Third Class bogie, bearing No. 1935. The bogie is commonly known as the "F C T bogie". It is normally attached to the Pathankot-Sealdah Express at Lucknow, is detached at Mughalsarai and is re-attached there to the Toofan Express. This process involves shunting operations in the Mughalsarai Yard. Normally, the Patna bound FCT bogie is at the rearmost of the Sealdah Express, which facilitates its detachment and re-attachment. On the 10th, it was wrongly marshalled third from the rear, necessitating six more shunting operations than would be required if it was marshalled last. Instead of attaching a fresh Patna bogie at Lucknow, the bogie which was to be detached at Lucknow was converted into a Patna bogie and that bogie was third from the rear.

15. In Railway parlance, the Sealdah Express which runs between Pathankot and Sealdah, is called '52 Down' on the journey between Pathankot and Mughalsarai. After Mughalsarai till Sealdah, it is called '18 Down'. The Toofan Express which runs between Delhi and Howrah is called '8 Down'. The Sealdah Express takes the grand chord route *via* Dhanbad while the Toofan Express goes to Howrah *via* Patna. Passengers travelling from Lucknow to Patna by the Sealdah Express are therefore booked in the FCT bogie.

16. The FCT bogie has a First-Class compartment consisting of three Cabins: 'A', 'B' and 'C'. A corridor runs along these cabins. The train touches the various stations on way, sometimes on the corridor side and sometimes on the cabin side. There are two toilet blocks in the First-Class compartment, a European style block on the 'C' side and an Indian style block on the 'A' side.

17. Shri Upadhyaya's berth was reserved in the 'A' Cabin of the F. C. T. bogie. The only other reservation in this four-berthed cabin was in the name of one M. P. Singh, an Assistant Geologist in the 'Geological Survey of India'. The 'B' Cabin which was a two-berthed coupe, was unreserved. In the remaining cabin of the First Class—



the four-berthed 'C' Cabin—one berth was reserved in the name of 'Major S. L. Sharma'. Thus, out of ten berths in the three cabins, only three were reserved. The 'C' Cabin was towards the engine.

18. Shri Gauri Shankar Rai, a Member of the U. P. Legislative Council, who wanted to go to Ballia, held an unreserved ticket and occupied the lower berth in the middle cabin, that is, the 'B' Cabin. After placing his bedding on the berth he went to meet a friend who was travelling by the same train. When Shri Rai came back, he found to his chagrin that his bedding was not in the 'B' Cabin. On inquiries he learnt that the bedding was removed to the 'C' Cabin, because Shri Upadhyaya wanted to travel by the 'B' Cabin instead of the 'A' Cabin where his berth was reserved. It suited Shri Upadhyaya's convenience because he did not like to travel in a compartment which was directly on the wheels, as the 'A' Cabin was. Shri Gauri Shankar Rai reconciled himself to the position and travelled in the 'C' Cabin.

19. Shri Rai did not mind the change because the explanation came from Shri Pitambar Das who was then a senior Member of the U.P. Legislative Council. Shri Pitambar Das, a Jan Sangh member, had gone to the station to see off Shri Upadhyaya. So had Shri Ram Prakash, the U.P. Deputy Chief Minister. The 'Samyukta Vidhayak Dal' Ministry was then in power in U.P. and Jan Sangh was one of the constituent units of the Dal. Shri Ram Prakash joined the State Cabinet as a Jan Sangh member.

20. The S. V. D. Ministry fell on the 17th February 1968 but Shri Charan Singh, the Chief Minister, continued in office as a care-taker till the 25th, on which date the Presidential Rule was promulgated in U.P.

21. Shri Pitambar Das introduced Shri Gauri Shankar Rai to Shri Upadhyaya. Whether Shri M. P. Singh was also introduced to Shri Upadhyaya is a matter of dispute.

22. Another passenger also travelled by the 'C' Cabin along with Shri Rai. One Subedar Sidh Singh, who was then attached to the 'Driver and Maintenance' Course at Faizabad obtained a ticket on a military warrant at 6 p.m. and caught the Sealdah Express. He found that a berth was available in the 'C' Cabin and he therefore occupied it. He was dressed in a military uniform.

23. What happened to the reservation of 'Major S. L. Sharma' is one of the fierce points of controversy. A person by the name of Surendra Mohan Sharma, aged 30, holding the rank of an Acting Major, was in command of the Field Battery Regiment at Namkom, near Ranchi. After his marriage in Delhi on the 17th January, he went to Lucknow on the 8th February. On the 10th at 2.20 p.m., he secured a reservation on the Sealdah Express by phoning the R.T.O's office. On reaching the station in the evening, he found that his name was wrongly shown in the reservation chart as 'Major S. L. Sharma', against a lower berth in the 'C' Cabin of the F.C.T. bogie. The number of his ticket was also wrongly shown as 06171, the correct number being 06172. Major S. M. Sharma says that he then

travelled by the direct Train Service Coach and not by the F.C.T. bogie. Padam Singh, the Coach Attendant of the Service Coach heaped error on error by mentioning his name in the Reservation Chart of the coach wrongly as 'Maj. S. N. Sharma'. That entry was made against an upper berth in the 'A' Cabin. The service coach had seven First Class Cabins and was fifth from the front.

24. On the 10th, B. D. Kamal, the Travelling Ticket Examiner, was in charge of the Sealdah Express from Lucknow to Mughalsarai. He performed the duties of the Conductor on the particular journey. After obtaining a copy of the reservation chart at the Charbagh Railway Station, he claims to have gone to the F.C.T. bogie to check up the passengers. He went first to the 'C' Cabin which was unlighted and inquired laconically of the person standing therein: "Major Saheb?". That person, who was in civilian dress, replied: "Yes". He then found that Shri Upadhyaya had occupied a berth in the 'B' Cabin. M. P. Singh asked Kamal to wake him up at Varanasi. Kamal's claim that he checked up the passengers in the F.C.T. bogie is challenged by the C.B.I.

25. The Pathankot-Sealdah Express arrived at the Charbagh Station, Lucknow, at about 6.25 P.M. and departed at 7 P.M. Subedar Sidh Singh got out at Faizabad where the train arrived at 9.26 P.M. Shri Upadhyaya had got down on the platform, probably for a stroll, and while getting in again he had a brief conversation with Shri Gauri Shankar Rai.

26. The train reached Shahganj at 11.25 P.M. where Shri Rai got out. He held a ticket for Ballia via Varanasi and would have normally travelled as far as Varanasi. But he was told by a co-passenger at Lucknow that it was more convenient to go to Ballia via Shahganj. He, therefore, got down at Shahganj. He however got down from the wrong side as the Ballia train was standing on that side and as no coolie was available. He and that co-passenger—Shri Srivastava, a Sub-Divisional Magistrate—travelled together from Shahganj to Ballia by a connecting train.

27. After Shahganj, therefore, the only First Class Passengers in the F.C.T. bogie were M. P. Singh in the 'A' Cabin and Shri Upadhyaya in the 'B' Cabin, both being bound for Patna.

28. The train reached Jaunpur at 12.27 A.M., when K. L. Shukla, Private Secretary to the Raja of Jaunpur delivered to Shri Upadhyaya a note written by the Raja. The Raja of Jaunpur, Shri Yadvendra Dutt Dubey, was a leading member of the Jan Sangh. The note concerned an allegation that a Jan Sangh candidate had lost the election to an Assembly seat as the Raja did not support him.

29. The train reached Varanasi at about 1.12 A.M. with the platform on the corridor side of the compartment. As the train reaches Varanasi, the mystery deepens. M. P. Singh had a lot of luggage and had therefore booked the bulk of it in the brake van. He was anxious that the luggage should be transhipped at Mughalsarai from the brake van of the Sealdah Express to the brake van of the Toofan Express to which the F.C.T. bogie was to be attached at Mughalsarai.

He had therefore given instructions at Lucknow to a Railway employee that he should be woken up at Varanasi. Varanasi to Mughalsarai is but half an hour's run, the only station in between being Kashi where the train has a scheduled halt of five minutes.

30. M. P. Singh claims to have woken up on his own at Varanasi. As he came out of his cabin, he saw a person standing in the corridor of the compartment. That person was middle aged and had a woollen shawl on. In a short while, Conductor Kamal came to the compartment and asked M. P. Singh as to who had given instructions for being woken up at Varanasi. M. P. Singh said he had given the instructions. But then the person in the corridor interjected to say that he had informed that he wanted to get down at Mughalsarai. M. P. Singh said: "Well, you may be the person". M. P. Singh is equally divided in his mind whether or not the person was Shri Upadhyaya.

31. M. P. Singh then went to the bathroom towards the side of the 'A' Cabin, tried twice or thrice to open it but did not succeed. He then used the European Style bath-room towards the side of the 'C' Cabin. He came out of the bath-room, had a cup of tea, returned to his cabin, closed the door of the cabin and kept sitting on his berth till the train arrived at Mughalsarai.

32. According to Conductor Kamal, he woke up M. P. Singh at Varanasi by knocking on the door of his cabin with a key. After he talked to M. P. Singh, he saw a person coming out of the 'B' Cabin. Kamal asked him to open the door of the compartment saying that a passenger in 'C' Cabin who had to alight at Mughalsarai was also to be woken up. The person however told Kamal that the passenger in 'C' Cabin had got down at Shahganj. Kamal verified for himself that there was no one in the 'C' Cabin. Kamal is unable to say whether the person who came out of the 'B' Cabin was Shri Upadhyaya. He could only say that the person was lean, that he had on him a slate coloured shawl, that he had put on white clothes and that he was wearing a Dhoti.

33. The train left Varanasi at about 1.40 A.M. and after stopping at Kashi for about 5 minutes, it steamed into Mughalsarai at about 2.10 A.M. But very definitely, Shri Upadhyaya was not in the train—not the living Shri Upadhyaya at any rate.

## CHAPTER IV

### THE STRANGE STORY OF MUGHALSARAI

1. What happened at Mughalsarai is in parts stranger than fiction. Many men at Mughalsarai behaved in a strikingly uncommon manner. What they did is contrary to one's expectations of normal human behaviour in comparable situations. Similarly, some of the events at Mughalsarai are woven in an uncommon pattern. When normal expectations about men and events are belied, suspicion begins together. There is no end to such suspicious circumstances here. There is almost a cloud of them that is apt to befog the real issue. Fortunately, by careful scrutiny it is possible to clear the vision and to offer a rational explanation of what once seemed strange.

(i) *The impostor who hoodwinked M. P. Singh.*

2. So, the train entered the Mughalsarai Station at about 2·10 A.M. with the platform on the cabin side. Admittedly, Shri Upadhyaya was not in his cabin. Admittedly, Shri Upadhyaya was not alive either. His bedding, the attache case and the other belongings were lying in the 'B' Cabin, apparently uncared for.

3. M. P. Singh wanted to ensure the transshipment of his luggage from the brake-van of the Sealdah Express to the brake-van of the Toofan Express, at Mughalsarai. He was therefore up and awake from Varanasi. After the Sealdah Express entered the Mughalsarai Station, he went to the 'A' side bath-room which he had found jammed at Varanasi. This time he could open it. He took a wash and came out of the compartment from the door near the 'C' Cabin. While passing by the 'B' Cabin he saw that it was empty. A bedding was lying spread on the lower berth and a file was lying on the side table. Neither in the bath-room nor anywhere else in the compartment did he see anything unusual. He saw no blood-stains.

4. He went to the parcel office, gave instructions for the transfer of his luggage and returned to the F.C.T. bogie within about seven minutes. The bogie had not yet been detached. As he entered the compartment by the 'C' side door, he saw a young man standing in the corridor, looking towards the 'B' Cabin. The person was "20 or 22 years of age, was dark in complexion, had small bright eyes and prominent cheek-bones"

5. The following conversation ensued between the two:

M. P. Singh: What is the matter?

The Stranger (pointing to the 'B' Cabin): Where has he gone?

M. P. Singh: Who?

The Stranger (again pointing to the 'B' Cabin): My father was there.

M. P. Singh: He might have got down.

6. The stranger then entered the 'B' cabin, placed the file on the bedding, rolled the bedding and brought it out on the platform. As he kept the bedding on a wooden bench, it got unrolled. He rolled it again and called some one, asking him to take the bedding outside the station. M. P. Singh then got into his cabin and fell asleep as quickly and soundly as he did between Lucknow and Varanasi. The F.C.T. bogie was thereafter detached from the Sealdah Express and was attached to the Toofan Express but he was overcome by sleep as soon as he got into his cabin. He does not know when the Toofan Express left Mughalsarai.

7. M. P. Singh identified the young man as Bharat Lal, both in the committing Court and in the Sessions Court. However, in the identification parade held on March 11, 1968, he had failed to pick out Bharat Lal as being the very same man.

8. M. P. Singh was truly hoodwinked, for having known that Shri Upadhyaya was travelling in 'B' Cabin, it is strange that he believed that the riff-raff boy was Shri Upadhyaya's son. But then he is not the only one who has contributed to the strange story of Mughalsarai.

(ii) *Traction Pole No. 1276*

9. Since it is alleged by one side and denied by the other that Shri Upadhyaya, after being pushed out of the compartment, dashed against a traction pole, it is necessary to know the position of that pole in relation to the other landmarks of the Mughalsarai Station.

10. Mughalsarai is one of the busiest Railway junctions. It is said that it handles the largest goods traffic in India, perhaps in Asia. The large volume of goods traffic brought in its trail a large volume of Railway thefts. Receivers of stolen property flourish on these thefts.

11. Though the Mughalsarai Station has many platforms and an extensive yard, we are concerned primarily with platform Nos. 1 and 2 and an area of a little over a furlong on the western side of the station.

12. The east-bound Pathankot-Sealdah Express (52-Down) was received on platform No. 1 of the Mughalsarai Station at about 2-10 A.M. on the 11th. The track by which it entered the station is called line No. 9 or 'Banares Down Line'. This line is to the north of the main station building. After the train reaches Mughalsarai, it is designated as '18 Down'.

13. The Toofan Express (8-Down) also east-bound, was received on platform No. 2 at about 2-50 A.M. The track by which it entered

the station is called line No. 10. This line is to the south of the main station building.

14. Platform Nos. 1 and 2 are about 80 feet apart, to the north and south respectively of the main building. Platform No. 2 runs along the whole southern side of the station building. Platform No. 1 begins from where the 'Parcel Siding' ends. The parcel siding which is to the north of the Station building is about 200 feet long and is to the west of platform No. 1. There is a by-pass to the parcel siding from line No. 9. On the particular night, three bogies were waiting in the parcel siding for being attached to the Sealdah Express—two being bound for Dhanbad and one for Bhubaneshwar.

15. To the south of line No. 9, that is the Banares Down Line, is a track called 'Buffer Line' or 'Water Column Line'. Line No. 10 by which the Toofan Express came is to the south of the Buffer Line. In other words, the Buffer Line occupies a portion between Line 9 and 10. The Buffer Line leads to what is known as 'Down Slip Siding' or 'O.C. Siding'. By 'O.C. Siding' is meant 'Officers' Carriage Siding'. The platform of the O.C. Siding—platform No. 7—is about 140 feet long. The O.C. Siding serves an important purpose in that a bogie which is required to be detached from one train and attached to another train can, if necessary, be kept there after the detachment and to await the attachment. The F.C.T. bogie was thus kept in the O.C. Siding for about 25 minutes—after its detachment from the Sealdah Express and before its attachment to the Toofan Express. There is an electric pole about ten yards to the west of platform No. 7.

16. If the east-bound trains, like Sealdah Express or Toofan Express, enter the Mughalsarai Station by line No. 9 or line No. 10, they have to pass by an electric traction pole, No. 1276. This pole is to the south of line No. 9 by which the Sealdah Express came and to the north of line No. 10 by which the Toofan Express came. Every east-bound train received on platform No. 1, like the Sealdah Express, has to come by line No. 9. Likewise every east-bound train received on platform No. 2, like the Toofan Express, has to come by line No. 10. The traction pole is 748 feet away from the western end of platform No. 1. It is 4 feet away from the southern rail of line No. 9. It is about 20 feet high.

17. To the north-east of the traction pole is an electrical steel junction-box, measuring 2'×2'. It is 10" high above the ground level. The southern face of this box is almost in line with the northern face of the traction pole. In simpler language, the junction-box is roughly between line No. 9 and the traction pole.

18. An iron strip, a foot and quarter to the west of the junction-box, runs between the traction pole and the southern rail of line No. 9. It is rivetted on one side to that rail and on the other to the traction pole. When I inspected the site in February and March 1970, the iron strip was partly buried under the ballast. It was above the ballast, over a distance of about 28" from the southern rail of line No. 9. It lay covered by the ballast over a distance of about 15" thereafter. It emerged again at a distance of about 7" from the pole.

That was also how the strip lay when the learned Sessions Judge inspected the site on March 31, 1969. Nearer the pole, the arm of the strip rivetted to the pole made an 'L' shaped angle with the open portion of the strip.

19. To the south-east of the traction pole is the 'West Central Cabin. To be exact, the north-east corner of the Cabin is 105' from the traction pole while the north-west corner is 61' from the pole. Roughly, the cabin is at an average distance of 80' from the traction pole. There is a tower light in the same line as the "West Central Cabin" to its west. The light is 73' odd away from the traction pole.

20. The Sealdah Express was 1022' long. The distance between the engine and the F.C.T. bogie, which was third from last, was 803'. The traction pole being 748' from the western end of platform No. 1, the engine had already steamed into the station when the F.C.T. bogie was near the traction pole. Platform No. 1 is 1145' long.

### (iii) *The Shunting Operations*

21. It is necessary to describe, with some particularity, the shunting operations performed at Mughalsarai, because a dead body, later identified as of Shri Upadhyaya, was discovered near the traction pole during those operations. The precise stage of the shunting operations at which the body was first seen has a material bearing on (a) the existence of a conspiracy to commit the murder, (b) the manner in which the murder was committed, (c) the place where the murder was committed, and (d) the thorny question whether the murder was committed elsewhere and the body laid near the traction pole while the shunting was in progress.

22. The Sealdah Express arrived on platform No. 1 at about 2.10 A.M. The F.C.T. bogie had to be detached from it for being attached to the Toofan Express. The Toofan Express was still to arrive, but naturally, the shunting operations did not await its arrival. The first part of the operations—the detachment of the F.C.T. bogie from the Sealdah Express—could in any event be finished before the arrival of the Toofan Express.

23. The shunting operations began at about 2.20 A.M., four persons being directly in charge thereof: Abdul Gafoor the driver of the shunting engine, Drigpal and Shobnath the shunting porters and Kishori Misra the shunting Jamadar who was the head of the team. Ram Surat was the fireman. The shunting porters operate from the ground by showing hand-signals. The shunting Jamadar is on the engine along with the driver and the fireman. He is also called the 'gunner'. The shunting engine is called the 'Pilot'.

24. It is necessary to know what precisely was the extent of the work which the shunting team was required to do on the particular night. I will then describe the steps that had to be taken to complete the job.

25. F.C.T. bogie No. 1935 came to be wrongly marshalled third from the rear. It should have been marshalled last. Were it so marshalled, it could have been detached from the Sealdah Express without involving any other bogie in the shunting operations. The F.C.T. bogie could not on this occasion be detached without detaching the last two bogies along with it. The last two bogies had therefore to be detached from the Sealdah Express and again attached to it. The Guard's Van (TLR 5443) was at the rear while a Dhanbad bogie, 'CT 4337', was second last.

26. When the Sealdah Express arrived at Mughalsarai, three bogies were standing in the Parcel Siding for being attached to that train. These bogies had therefore to be shunted. The last of these three (ZFT 791) was destined for Bhubhaneshwar. The other two (GT 9536 and ZFT 788) were destined for Dhanbad.

27. These three bogies could not be attached straightaway to the Sealdah Express, for that would have meant a repetition of the mistake committed earlier in the marshalling of the F.C.T. bogie to that train. The two Dhanbad bogies of this unit of three bogies had to be placed next after the Dhanbad bogie (GT 4337) of the Sealdah Express. That would bring the three Dhanbad bogies together so as to facilitate their detachment at Dhanbad. Next after these three bogies would come the Bhubhaneshwar bogie. The Guard's Van (TLR 5443) would bring up the rear.

28. During the shunting operations, the pilot has, of necessity, to cross over from one line to another. In this case, in order to complete the shunting, the pilot had to make use of three different lines,—line No. 9, line No. 10 and the buffer line (also known as the Water Column Line).

29. The cross-over from line No. 10 to the buffer line is arranged by the operation of a hand-point located near the eastern end of the cross-over. The cross-over to the parcel siding is arranged by the operation of another hand-point. These points are generally operated by a 2nd grade leverman. On the particular occasion, these points were adjusted by Leverman Ramdas. The cross-over from the buffer line to line No. 9 is however arranged from the West Central Cabin. A 1st grade leverman called Ishwar Dayal was on duty in that cabin on the particular night.

30. When the Sealdah Express arrived on platform No. 1 by line No. 9, the pilot was standing in readiness, in the Railway siding called 'Suja Siding'. On the instructions of the East Cabin, the pilot, together with the shunting team, moved westwards along platform No. 2, that is line No. 10, in order to commence the shunting operations. On the way, Shobnath got down from the engine near the Pay Office and went to platform No. 1 for disengaging the last three bogies of the Sealdah Express. The pilot then came as far westwards as the West Central Cabin.

31. When the pilot was standing near the West Central Cabin, Leverman Ramdas gave clearance to it for going on to the buffer line, by operating a hand-point near the cabin. But an idle shunting



engine driven by the Haradwar was blocking its way. After Haradwar cleared off by going further west, the pilot moved further on the buffer line. Another point was then adjusted so as to put the pilot from the buffer line to line No. 9. The pilot accordingly switched on to line No. 9. The stage was now set for the movement of the pilot eastwards. Drigpal was showing the hand-signal from the ground as the pilot was due to move to platform No. 1 by line No. 9, for detaching the last three bogies from the Sealdah Express.

32. For completing the shunting of the Sealdah Express (18-Down) and the Toofan Express (8-Down), the pilot had to undertake fourteen operations.

33. In the first of these operations, the pilot came from the Suja Siding in the east, went westwards by line No. 10 and crossed over to the buffer line. In the second operation, the pilot crossed over to line No. 9 and headed eastwards for platform No. 1.

34. In the second operation, the pilot went past traction pole No. 1276 while going by line No. 9 to platform No. 1. In the first operation also the pilot had crossed the traction pole. That was when it came by line No. 10 and crossed over to the buffer line. But that was a little distance away from the traction pole. While going to platform No. 1 by line No. 9, the pilot went past the traction pole very closely. There was then no track and no obstruction of any sort between the pilot and the pole. The pilot passed the pole on its south, that is, the pilot was to the south of the pole. The Sealdah Express, it may be recalled, went past the traction pole while entering the Mughalsarai Station, with the pole to its south.

35. In the third operation, the pilot brought with it the last three bogies of the Sealdah Express and receded from line No. 9 to the Buffer Line after crossing the traction pole. This time also, the pilot went past the pole as closely as it did during the second operation.

36. In the fourth operation, the pilot went eastwards by the Buffer Line to the 'O.C. Siding', with all the three bogies and left the F.C.T. bogie at that siding. It had to go past the traction pole, closely by its south.

37. In the fifth operation, after leaving the F.C.T. bogie at the 'O.C. Siding', the pilot went westwards on the buffer line with the two remaining bogies. It crossed the traction pole exactly as it did during the fourth operation.

38. The net five operations—Nos. 6 to 10—were occupied by (i) the shunting of the two remaining bogies of the Sealdah Express—Guard's Van No. TLR 5443 and Dhanbad bogie No. GT 4337 and (ii) the shunting of the three bogies waiting in the parcel siding for being attached to the Sealdah Express—Bhubhaneshwar bogie No. ZFT 791 and the two Dhanbad bogies Nos. GT 9536 and ZFT 788. Five operations became necessary as the bogies had to be marshalled according to their destination. It was only in the sixth operation

that the pilot went past the traction pole with the two bogies of the Sealdah Express. In operations Nos. 7 to 10, it was not necessary for the pilot to cross the pole.

39. The position at the end of the tenth operation was that the pilot had attached the three parcel-siding bogies and had re-attached the Guard's Van and bogie No. GT 4337 to the Sealdah Express. The Guard's Van was marshalled last, next was the Bhubhaneshwar bogie and the three next bogies were the ones destined for Dhanbad.

40. That completed the shunting of the Sealdah Express. These ten operations took between 20 and 25 minutes. Roughly, therefore, the shunting of the Sealdah Express was over between 2-40 A.M. and 2-45 A.M. The train left Mughalsarai at 2-55 A.M.

41. The Toofan Express arrived at 2-50 A.M. on platform No. 2, by line No. 10. The F.C.T. bogie which was kept at the O.C. Siding had now to be attached to it.

42. In the eleventh operation the pilot went back from platform No. 1 to the buffer line, crossing the traction pole. In the twelfth operation, the pilot went to the O.C. Siding by the buffer line, crossing the pole and picked up the F.C.T. bogie. In the thirteenth operation, the pilot together with the F.C.T. bogie went back by the buffer line, crossing the pole. In the final, that is the 14th operation, the pilot crossed over to line No. 10 and attached the F.C.T. bogie to the Toofan Express, which was standing on platform No. 2. These four operations took roughly five to seven minutes. The Toofan Express left Mughalsarai at 3-14 A.M.

43. If the F.C.T. bogie was properly marshalled at the rearmost of the Sealdah Express, only eight operations would have been required to detach it from that train and to attach it to the Toofan Express. As a result of the wrong marshalling, 6 more operations became necessary. These 6 operations took ten minutes. The shunting therefore took ten minutes more than it would have normally taken. The overall time taken by the shunting operations was about 30 or 35 minutes instead of the normal 20 or 25 minutes.

44. An analysis of the fourteen operations reveals:

- (i) That the traction pole (No. 1276) was always to the north of the pilot.
- (ii) That the pilot crossed the traction pole quite closely during the 1st operation.
- (iii) That the pilot passed by the traction pole very closely on nine occasions, that is, during operations 2 to 6 and 11 to 14.
- (iv) That in operations 9 and 10, the pilot came close to the traction pole but did not cross it, and
- (v) That the F.C.T. bogie (No. 1935) was lying at the O.C. Siding solitarily for about 25 minutes, between the beginning of the 5th operation and the conclusion of the 12th.

45. I should have liked to avoid such a copious reference to so drab a procedure as shunting but that was not possible. The dead body having been discovered during the shunting operations and members of the shunting team having made conflicting statements as to when they first saw the body, the shunting procedure has assumed great significance. The truthfulness of the shunting team can best be tested in the light of the shunting procedure. In some measure, the validity of the Jan Sangh allegation that the murder of Shri Upadhyaya was committed in the F.C.T. compartment and the dead body was kept near the traction pole later, presumably during the shunting operations, can also be judged in the background of the movements of the pilot and its team.

(iv) *Discovery of a dead body*

46. Whether the dead body was discovered during the earlier part or the later part of shunting operations is a matter of serious dispute. It being common ground, however, that the dead body was discovered during the shunting, the members of the shunting team are in the best position to say when the body was seen first.

47. Drigpal the shunting porter, Kishori Misra the shunting Jamadar and Abdul Gafoor the driver of the pilot stated in the Sessions Court with one voice that the body was seen first during the 2nd of the fourteen operations. After Haradwar's engine which was blocking the way cleared off, Drigpal signalled the pilot to move eastwards, towards platform No. 1 where the Sealdah Express was standing. Drigpal ensured that the points were set for the pilot to cross over from the buffer line to line No. 9 which leads to platform No. 1. Drigpal was walking on the south of the pilot, a little ahead of it, showing his hand-signal to it. The pilot was moving eastwards slowly. Drigpal, however, crossed over and went to the north of the pilot, when traction pole No. 1276 was just six paces away to the east. He caught the handle of the engine door and just as he was getting in by the northern door, he saw a dead body lying near the traction pole. The body was lying to the north of the pole. Drigpal saw it from a distance of 6 or 7 paces.

48. Drigpal told Kishori Misra, who was the head of the shunting team, that a dead body was lying near the traction pole. Kishori Misra and Abdul Gafoor saw the body for themselves, without getting down from the engine. Kishori Misra then shouted to the Cabinman that the 'Saheb', that is the Assistant Station Master, be informed that a dead body was lying there. It was then 2-15 or 2-20 A.M.

49. The pilot, thereafter, went to platform No. 1 where B. N. Prasad, the Assistant Station Master, was on duty. When he demanded of Kishori Misra why the pilot was late, the latter told him that the delay was caused because Haradwar's engine had blocked the pilot and because a dead body was lying on the way. The A.S.M. told him to go ahead with the shunting, lest explanation might have to be offered about the delay and added that he would make the necessary arrangements. During the rest of the shunting,

the body continued to be near the traction pole. None went near it—either to see what had happened or to ascertain whether the person was living or dead.

50. That is the version of Drigpal and Kishori Misra in the Sessions Court. Rbdul Gafoor and A.S.M. Prasad supported it—the former by saying that he saw the dead body when he heard Drigpal tell Kishori Misra about it and the latter by saying that when the pilot came to platform No. 1 for detaching the F.C.T. bogie, Kishori Misra mentioned as one of the causes of delay that a dead body was lying on way. But the A.S.M. denied in the Session Court that he had gone to see the dead body at about 3-15 a.m., on receiving the phone message from the Cabin that a body was lying near the pole.

51. Ramdas, the leverman who adjusted the hand-points, also supported these witnesses in the Sessions Court. He said that while the pilot was going to platform No. 1 for fetching the F.C.T. bogie, Kishori Misra shouted from the engine that a person was lying near the pole and that the 'Saheb' be informed about it. He indicated that he saw the body from a distance after he went to the Cabin but never went near it.

52. But then these are strange men. They had given out a wholly different story to the U.P.C.I.D. soon after the incident. And when they were recalled in the Sessions Court specifically for being confronted with their earlier statements, each of them denied that any statement was at all made to the U.P.C.I.D. They said that their statements were recorded by the C.B.I. for the first time! That is clearly false.

53. The U.P.C.I.D. had in fact verified or recorded their statements—those of Kishori Misra, Abdul Gafoor and A.S.M. Prasad on February 12, 1968, that of Ramdas on 13th and that of Drigpal on the 14th. Kishori Misra and A.S.M. Prasad were interrogated by S.I. Fateh Bahadur Singh of the Government Railway Police on the 12th morning. Their statements were verified in the evening by D.S.P. Tewari of the U.P.C.I.D.

54. Drigpal had then stated that he saw a dead body near the traction pole for the first time when, after finishing the shunting of the Sealdah Express, the pilot was taking the F.C.T. bogie from the O.C. Siding to platform No. 2 for attaching it to the Toofan Express. That would be some time after 2-50 a.m., because the Toofan Express arrived at Mughalsarai at 2-50 a.m. He had further stated that he went near the body and shouted to Kishori Misra that a man was lying dead.

55. Kishori Misra's stand before S.I. Fateh Bahadur Singh and the U.P.C.I.D. was similar, though he did not pin-point the stage of shunting when Drigpal told him of the dead body. He said that Drigpal saw the body and mentioned it, after the shunting of the Sealdah Express was completed.

56. Abdul Gafoor, the driver, had wholly denied any knowledge of the dead body during the shunting. He told the U.P.C.I.D. that

at about 4-30 A.M. Kishori Misra was sent for by the A.S.M. and that on his return, Kishori Misra told him that an unidentified body was lying near the station.

57. A.S.M. Prasad had stated before S.I. Fateh Bahadur Singh and the C.I.D. that after the Toofan Express departed at 3-14 A.M. he came to know on phone from the West Central Cabin that a dead body was lying near the cabin, on the down line and that he and Ramdas leverman had gone to the traction pole to see the body.

58. Ramdas had stated before the C.I.D. that Kishori Misra and Drigpal disclosed when the shunting operations were over that a person was lying dead near the pole and asked that the A.S.M. should be informed about it. Ramdas had further stated that he and A.S.M. Prasad had gone near the dead body immediately after the A.S.M. was apprised on phone that a dead body was lying near the pole.

59. Thus, these important witnesses have made conflicting statements. The conflict does not exist in the sense that the evidence of one or more of them is irreconcilable with the evidence of others. The conflict is that whereas they had all indicated before the U.P.C.I.D. that the dead body was noticed at about 2-50 A.M., they indicated in the Sessions Court, one and all, that the body was first seen at about 2-20 A.M. They did not on either occasion mention in so many words the time of the night when the body was seen but they referred to the dead body in relation to a particular stage of the shunting operations.

60. At this stage, therefore, I will only say that the dead body was first noticed during the course of shunting by Drigpal. He saw it, told Kishori Misra about it and he also saw it. They saw the body some time between 2-20 A.M. and 2-55 A.M.

(v) *The position of the body*

61. There is refreshing unanimity as to the position in which the body was lying and its condition.

62. Drigpal, who noticed the body first, saw it from a distance of 6 or 7 paces. He says that it was lying on its back, with the head towards east and legs towards the west. It was lying to the north of the traction pole but quite close to it. The person was clad in a white Dhoti and a darkish cloth was wrapped round his body. The face was covered with that cloth and could not be seen.

63. Kishori Misra peeped out of the engine and saw the body when his attention was drawn to it by Drigpal. He says that he did not look at the body carefully but he saw that it was lying straight quite near the pole, with the head towards east and legs towards the west. The face and head were covered with a *chaddar*.

64. Abdul Gafoor had a fleeting look at the dead body. He could only say that the body was lying on its back, near the traction pole.

65. That is the description given by the three members of the shunting team, who were the first to see the dead body. As one of them went near the body, they are unable to furnish further details.

66. Substantially similar, though even less complete, details were given at one time by B. N. Prasad, the Assistant Station Master, and Leverman Ramdas but they disowned before the C.B.I. what they had admitted before the U.P. C.I.D.

67. When A.S.M. Prasad was interrogated on the 12th, first by S. L. Fateh Bahadur Singh and then in the evening by the U.P. C.I.D. he told them that after the Toofan Express left Mughalsarai at 3.14 A.M., he went to his room and at 3.15 A.M., Ishwar Dayal, the leverman, told him on phone that a person was lying dead near the cabin towards the down line. He therefore went to the spot with a First Aid Box. He asked leverman Ramdas to accompany him who took with him a lamp. He saw that a person was lying with his head towards the east and legs towards the west, the face being covered with a *chaddar*. He removed the *chaddar* and felt the body but found that the person was dead. All this was disowned by A. S. M. Prasad, so much so that in the Sessions Court he denied having made any statement at all before S. I. Fateh Bahadur Singh or the U.P. C.I.D.

68. The C.B.I. recorded B. N. Prasad's statement on March 29, 1968 when he made many changes in his story. He told the C.B.I.: (i) that Kishori Misra had told him about the dead body when the pilot had gone to platform No. 1 for picking up the F.C.T. bogie; (ii) that he went to his room five or seven minutes after the Toofan Express left Mughalsarai when he found that a 'Number-Taker', called Nageshwar Singh was talking to the West Central Cabin about a dead body and that he took the receiver and asked the person at the other end as to what the matter was about. At the other end was Leverman Ramdas, who said that a person was lying dead near the cabin and requested that the necessary arrangements should be made and (iii) that he told Ramdas that he and others should watch the dead body and that he himself would give information about the dead body. A. S. M. Prasad stuck to this statement in the Sessions Court, denying that he had gone to see the body after receiving information in that behalf.

69. Leverman Ramdas has adopted the same pattern. On February 13, 1968, he told the U.P. C.I.D. that after the shunting of Sealdah Express was over, Kishori Misra and Drigpal told him while the pilot was going back that a person was lying dead near the pole and that the A.S.M. should be informed about it. Ramdas told the C.I.D. that he passed on the information to Ishwar Dayal who in turn passed on the information to the A. S. M. on phone and that he had gone to see the dead body along with the A. S. M.

70. He however told the C.B.I. on April 1, 1968, that when the pilot was going to platform No. 1 for picking the F.C.T. bogie, Kishori Misra shouted to the Cabinman that a dead body was lying  
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near the track and that a little after 3-10 A.M. he conveyed the information to the A. S. M. on phone when the latter said that he would inform the G. R. P.

71. Unfortunately, therefore, no useful assistance can be obtained from A. S. M. Prasad and Leverman Ramdas. Whether they saw the dead body is itself doubtful.

72. But one thing is certain; and that is that A. S. M. Prasad sent a copy (K-36) of a Memo to the Government Railway Police through his peon Kashinath Jaiswal, stating:

“One man found lying almost dead near West Centre Cabin as reported by W/Centre Cabin Leverman at 3/15 Hrs. Please attend and do needful.”

73. The memo (ka-34) was prepared at 3-25 A.M. and its copy was received by Constable Sachchu Lal of the G. R. P. Thana at 3-35 A.M. The A. S. M's Office and the G.R.P. Thana are situated on the same platform, namely, platform No. 2. Prabhu Singh Bhati, the Station House Officer, who is the centre of a sharp controversy, was on sick leave since the 10th afternoon and therefore Sachchu Lal sent a constable, Rameshwar Tiwari, to call Sub-Inspector Fateh Bahadur Singh who, being the “Day Officer”, was in charge of emergencies and off-beat matters. Sachchu Lal also asked Rameshwar Tiwari to call two other constables, Mahomed Zahoor and Gafoor. In the meanwhile, Sachchu Lal claims to have sent Constable Ram Prasad who was on platform duty to keep a watch on the dead body.

74. Rameshwar Tiwari contacted S. I. Fateh Bahadur Singh at his quarters but the latter seems to have instructed Tiwari to take Zahoor and Gafoor with him, saying that he would go to the spot of occurrence directly. The two constables Zahoor and Gafoor went to the G.R.P. Thana where at 3-45 A.M. they were asked by Sachchu Lal to proceed to the spot. S. I. Fateh Bahadur Singh reached the spot within about 15 minutes thereafter. The dead body was thus seen by him and the three Constables, Ram Prasad, Zahoor and Gafoor, say, between 3-40 A.M. and 4 A.M.

75. Ram Prasad who would be the first among them to reach the dead body has given a very detailed description of the position and condition of the body. This is what he says:

“As I went near the dead body, I found that it was lying towards the north of the electric pole and to the south of the railway line coming from Benaras and going to platform No. 1, that is, it was lying between the traction pole and the line which goes to platform No. 1. The head of the dead body was towards the east and the legs were towards the west. There is one junction-box in the north-east corner of the electric pole at a distance of one cubit. The dead body was lying at a distance of about 9” towards the west from the junction-box.”

"The head of the dead body was covered with a cloth. All the same, some portion of the right eye and of the nose was visible and was shining. This could be seen by taking a glimpse from the northern side but not from the western or southern side. The head of the dead body was facing the sky and was slightly inclined towards the north. The body was lying fully stretched but the left foot was found resting on the right foot near the ankle joint. The left hand was bent near the elbow and was resting on the abdomen. The right hand which was also bent near the elbow was slightly inclined towards the body and had come out of the shoulder line. The palm was facing upwards but the fingers were bent as in the case of a half-closed fist. The palm of the left hand was facing downwards. The fingers of the left hand were somewhat bent. There was a *Chaddar* under the head of the body, the front corner of which covered the face of the body. If one tried to take a glimpse from the northern side, one could have a view of a portion of the nose, right eye and the head through the fold of the *Chaddar*. This *Chaddar* had fully covered the shoulders."

"I had seen the dead body from a close range after lighting a match-stick. In the right fist of the dead body there was a five-rupee note, while a wrist watch was found on the left wrist of the deceased. The head of the deceased was to the west of the electric pole at a distance of about 9 inches. The deceased was wearing a dhoti and had put on socks and shoes."

"The right hand was seen resting at a distance of 8 to 12 fingers from the head. The condition of the fist clinching the five rupee note was such that the note could be easily taken out. It could even be taken out without opening the fingers. It was only when I lighted a match-stick that I came to know that it was a five rupee currency note. The wrist watch was on the inner side of the wrist, while the wrist watch belt was seen on the outer side of the left wrist. I cannot however say whether it was a leather belt or a metal belt."

"I am unable to say whether the portion of the ground on which the dead body lay was covered with grass or stones. There were however small stones around and near the body. On both the sides of the legs, I could see ballast at a distance of about one cubit from the dead body. There was however no ballast towards the west in the line of the legs. The right hand was resting on the ground. The ballast was at a distance of about 9" from the right hand. The head was also resting on the ground. The ballast was found spread out towards the south beyond the electric pole. There was however no trace of any stones in the straight line of the body towards the east. The left ankle was at a distance of 1½ cubits towards the west from the north-west corner of the electric pole. The left arm was a little towards the north of the electric pole in a straight line, but I will not be able to say how much."



"I lighted a match-stick and saw the dead body by standing towards north near the head but I had not touched the dead body. At that time, the right eye was open. The head was not completely inclined towards the right side; it was slightly tilted towards the right. I did not however notice whether the neck was twisted." When I saw the dead body I did not find the forearms and the hands covered with a *Chaddar*."

76. Ram Prasad says that he remained near the dead body for about 15 or 20 minutes. He left when Constables, Zahoor and Gafoor, arrived at the spot. He did platform duty till 6 A.M. and thereafter he went to the G. R. P. Thana. He did not, however, make any entry at the Thana that he had seen the body, much less about its position or condition. His statement was recorded for the first time on the 17th April by Inspector Puri of the C.B.I.

77. Constable Mohammad Zahoor was near the dead body from about 3-45 A.M. till about 10 A.M. except for a brief while when at about 6-30 A.M. he had gone to the A.S.M's Office along with Dr. B. R. Chakravarty, the Assistant Medical Officer. Zahoor says that when he and Constable Gafoor went to the spot, the dead body was lying to the north of the traction pole. Immediately after they went to the spot, Constable Ram Prasad left and within 15 or 20 minutes S. I. Fateh Bahadur Singh arrived. Finding that the doctor had not yet come Fateh Bahadur left, apparently to fetch him.

78. It may be recalled that A. S. M. Prasad had sent a memo to the G.R.P. at about 3-25 A.M., stating: "One man found almost lying dead near West Centre Cabin.....Please attend and do needful." He had prepared a copy of this memo for being sent to the Assistant Medical Officer but he did not send it for the flimsy reason that only one peon was available and that peon had taken a copy of the memo to the G. R. P.

79. A. S. M. Prasad says that after sending the memo to the G.R.P. at 3-25 A.M. he attended to a few trains and then phoned Dr. Chakravarty at his house at about 4-20 A.M., informing him about the discovery of the body. On being told by Prasad that the person appeared to be dead, Dr. Chakravarty asked to be contacted after the G. R. P. Officer had arrived, so that he could go to the spot. Prasad says that on receiving a phone from S. I. Fateh Bahadur Singh at about 5-30 A.M. that he had come to the Thana, he phoned Dr. Chakravarty, who arrived at about 5-55 A.M. He gave a copy of the memo to Dr. Chakravarty. Fateh Bahadur and Dr. Chakravarty then went to the spot. Dr. Chakravarty returned to Prasad's Office within half an hour and wrote a memo (Ka-35) at 6-35 A.M., certifying that the person was dead and directing that post-mortem examination be performed.

80. Dr. Chakravarty says that the dead body was lying to the north of the traction pole, slightly oblique in relation to the pole, the face being covered with a *Chaddar*. On removing the *Chaddar*, he saw a gaping wound on the right parietal region. The head was

about 10" away from the junction-box, while the feet were "inclined towards the cabin-side". The head was towards north-east and the legs towards south-west.

81. Dr. Chakravarty had made his initials on the original memo in token of having received its copy and he had put the time of receipt as "5.55 A.M.". Later on when the dead body was identified as that of Shri Upadhyaya, Dr. Chakravarty altered the time to "3.55 A.M.".

82. Dr. Chakravarty explained this alteration by saying first that the memo was prepared by the A.S.M. at 3.25 A.M. and it would have gone against the A.S.M. if it appeared that he delivered the memo at 5.55 A.M. In other words, the alteration was made to protect the A.S.M. from a possible charge of negligence. When, however, Dr. Chakravarty's attention was drawn to the statement which he had made to the C.B.I. on April 8, 1968, he admitted that he made the alteration to protect himself, as the memo asking him "to attend and do needful" was drawn at 3.25 A.M., whereas he had gone to the A.S.M.'s Office at 5.55 A.M. Thus, even the Medical Officer has contributed his mite to the mysteries of this mafter.

83. S. I. Fateh Bahadur Singh went to the traction pole at about 4 A.M. when he saw the dead body lying between the traction pole and the Benaras Down Line, with its head towards the east and the legs towards west. The head was about a span away from the junction-box, to its west. The right hand was bent near the elbow, in the right palm was a five rupee note. The left hand, bent near the elbow, was resting on the abdomen with the palm facing downwards. There was a watch on one of the wrists. The left leg was resting across the right leg and the body was lying fully stretched. The head was inclined owards the right. There were shoes and socks on the feet. The face was covered with a *Chaddar*.

84. So, this is what Drigpal the Shunting-Porter, Kishori Misra the Shunting Jamadar, Abdul Gafoor the Shunter, Constable Ram Prasad, Constable Mohammad Zahoor, S. I. Fateh Bahadur Singh and Dr. B. R. Chakravarty have to say about the position of the dead body.

85. Thus runs the strange story of Mughalsarai.

## CHAPTER V

### FATEH BAHADUR SINGH INVESTIGATES

1. Fateh Bahadur Singh is an inexperienced Officer of moderate intelligence. After passing the High School Examination, he started his career as a Constable in 1956, became a Head Constable in 1966 and was selected as a Sub-Inspector in 1967. He stumbled into the instant case as an investigating officer as he happened to be the "Day Officer" of the G.R.P. Thana, and as Prabhu Singh Bhati, the Station Officer, was on sick leave. He was in charge of the investigation for just thirteen hours but even during that brief period he has left imprints of his inexperience on the case.

2. On receiving the message sent by Constable Sachchu Lal through Constable Rameshwar Tiwari, he went to the spot at about 4 A.M. He waited for the doctor to arrive but since he did not come, he went to the G.R.P. Thana at about 5.30 A.M. There he collected a camera, a coffin and the material for drawing a *panchayatnama*. He contacted the A.S.M. who in turn called the doctor. He and Dr. Chakravarty then went together to the spot at about 6 A.M. Dr. Chakravarty stayed there for about half an hour but Fateh Bahadur continued to remain near the dead body till about 10 A.M.

3. He gave instructions to Constables Mohammad Zahoor and Gafoor at about 6.45 A.M. to inspect the place over a distance of about a furlong in order to see if there were blood-stains. No blood-stains were, however, noticed in the vicinity of the traction pole.

4. After the day-break, at about 7.30 A.M., he took a photograph (Ka-29) of the dead body, in which the raised position of the right hand and the peculiar placement of the fingers of the right palm are brought out clearly. One can even see a part of the currency note protruding out of the semi-clinched fist, from an opening between the palm and the small finger. The photograph, however, is not of the whole body but of the portion from the head to a little above the knees.

5. Fateh Bahadur showed some resourcefulness in taking the photograph of the dead body but he neutralised its efficacy by disturbing the position of the body before photographing it. He thought that a photograph is but an aid to identification. He overlooked that though that is its primary purpose, a photograph, properly conceived, can serve as an aid to other important considerations like the position of the body. The position of the body could furnish a clue to the mode of murder.

6. Fateh Bahadur removed the *Chaddar* from the face, pulled the dead body a little to the east, kept the head on the junction-box, gave support to the body by placing a stone near the waist, placed

the *Chaddar* under the head and took the photograph. While the body was being arranged for the photograph, some blood dripped on the ground from the *Chaddar*.

7. It must be conceded that Fateh Bahadur is not a bad photographer. But his investigation lacks imagination. Had he not altered the original position of the body, one would have had documentary evidence to show how the body was lying. For that, one is now driven to rely on the oral word of witnesses whose veracity is not entirely unquestionable. Some of them, like the members of the shunting team have made different statements at different times. Some like Dr. Chakravarty have tampered with the record. Some like Constable Ram Prasad were contacted by the C.B.I. as late as 17th April. Fortunately, the evidence of these witnesses on the position of the body is uniform and consistent.

8. After taking the photograph, Fateh Bahadur removed the currency note from the right palm and asked Constable Zahoor to remove the clothes and the other articles from the dead body. The deceased was found wearing a *Khaddar banyan*, a grey sleeveless woollen sweater, then a full-sleeved white cotton sweater and on top a full-sleeved chocolate coloured woollen sweater. He was wearing a Dhoti and had put on socks and shoes. He had a wrist watch on his left wrist on which was inscribed the name "Nana Deshmukh". Under the *banyan* was a sacred thread to which was attached a key. While the clothes were being removed, a little blood fell from the clothes and the head injury on the ballast. Apart from this blood and the blood which trickled when the body was being arranged for the photograph, no blood at all was seen near about the traction pole.

9. In the inner pocket of the *banyan* were found four currency notes of five rupee each, one currency note of one rupee and two tickets—one, a First Class journey ticket from Lucknow to Patna and the other a reservation ticket for 52 Down, bearing No. 47546.

(ii) *Dead body identified.*

10. At about 8.45 A.M. Sub-Inspector Jagannath Singh of the G.R.P. was asked by Fateh Bahadur to ascertain in what name the particular reservation was made from Lucknow. As the Lucknow line was defective and the Patna line was engaged, Jagannath Singh went to the Control Office from where the Operator spoke on the direct Lucknow line. It was about 9.40 A.M. when the Operator told Jagannath Singh that the particular reservation was made by 52 Down in the name of "Pandit Deen Dayal Upadhyaya, President, Bharatiya Jan Sangh". Jagannath Singh then ascertained that the Reservation Slip mentioned the Telephone Number of the passenger as "23509". He therefore instructed the Operator to phone that number and say that a dead body on which the particular tickets were found was discovered in the Mughalsarai Yard. The Operator gave that information at 10.10 A.M.

11. S. I. Jagannath Singh went back to the G.R.P. Thana and asked a Head Constable to call the local Jan Sangh workers.

12. In a short while, Fateh Bahadur went back to the G.R.P. Thana with the dead body. At about 10·20 A.M., Shri Ram Prakash, the then Deputy Chief Minister U.P., phoned the Mughalsarai Railway Protection Force Office from Lucknow and gave certain instructions to Jagannath Singh. Surprisingly, the G.R.P. Thana had then no phone of its own.

13. At about 10·30 A.M., Vishwanath Prasad Agarwal, a Jan Sangh Office bearer, went to the G.R.P. Thana in pursuance of a message given by Banmali Bhattacharya, a Railway employee, and identified the dead body as that of Shri Deen Dayal Upadhyaya. The sad news spread like wild fire and soon a large crowd collected near the G.R.P. Thana on platform No. 2.

(iii) *The Inquest Report*

14. Fateh Bahadur claims that he had started writing the Inquest Report at the spot itself and indeed so promptly that he had written out the details regarding the condition of the body even before disturbing the body for the purpose of photographing it. He stitched the dhoti, which was on the dead body, around it and took the body to the Thana at about 10·15 A.M. At about 10·30 A.M., the Assistant Station Master was asked to instruct the onward Railway Station to detain the F.C.T. bogie and to take charge of the unclaimed luggage, if any, in the First Class Compartment.

15. The Inquest Report (Ka-40) is drawn in the printed form and purports to have been completed at 10·45 A.M. The place of inquest is shown as 'Pole No. 1276', while the first informant is stated to be the Assistant Station Master's peon. The cause of death is stated to be unknown.

16. The inquest report mentions that the dead body was lying near pole No. 1276 to the south of the Banaras Down Line and north of the Buffer line, near the lid of the "Trunk Repeat" (that is, the junction-box), that the face was covered with a *Chaddar*, that there was a five rupee note in the hand, that there was a watch on the left wrist, that the head was tilted towards the right, that the left foot was on the right foot and that there were socks and shoes on the feet.

17. After referring to the fact that the dead body was photographed, the inquest report proceeds to describe the injuries which were found on the body. It says that there was a deep wound on the right side of the head, that there were confusions and abrasions on the whole of the back, that blood was flowing from the right ear and from a wound on the head, that there was a blue mark above the right eye, that the right arm appeared to be fractured between the elbow and the shoulder, that both the ankles were fractured, that the right eye was open and that the left eye was closed.

18. Fateh Bahadur has further mentioned in the inquest report that no marks of blood were found near about the place where the body was lying, that no marks of trampling on the ballast were noticeable and that it was not certain as to how the injuries were caused.

19. The inquest report concludes with a reference to the identification of the dead body by Vishwanath Agarwal and the fact that a large number of people had come to see the body.

20. The important points to be noticed about the inquest report are:

- (1) That the time when death was reported or when the inquest proceedings commenced is not mentioned therein.
- (2) That the precise location of the body qua the traction pole, in the sense whether the head was to the north, west or south, is not clearly indicated therein.
- (3) That, originally, it was stated in the report that the head was lying on the junction-box ("Dhakhan par sar para hua"), but this has been altered to read that the head was lying near the junction-box ("Dhakkan ke pas sar para hua").
- (4) That though the inquest report purports to have been completed by 10.45 A.M., this cannot be accurate because the fact that a large number of people had gathered to see the dead body and that Fateh Bahadur left for Varanasi in order to have the post mortem examination performed there, could only be mentioned later.

21. The learned Sessions Judge was obviously perturbed by these features and, therefore, thought that by reason of these infirmities"....the value of the inquest report as an authentic contemporaneous record of the first observations and impressions of the S.I. and the Panchas is considerably impaired".

*(iv) Ancillary steps taken by Fateh Bahadur*

22. Fateh Bahadur claims to have prepared a sketch of the injuries (Ka-256) near the pole itself. At about 11 A.M. he handed over the articles recovered from the person of the deceased to the Head Moharrir and then went back to the traction pole. He attached a part of the ballast pebbles and the earth on which blood had fallen, first when the body was arranged for the photograph and then when the clothes were removed from the body. He then prepared a rough site plan (Ka-258) in which the head is shown as almost touching the western end of the junction-box. He returned to the G.R.P. Thana at about 12 noon where he was working till about 3 P.M., except for yet another visit to the traction pole along with the District Magistrate, the Superintendent of Police and the Deputy Inspector General of Police.

23. At 11.42 A.M. a telegram (Ka-55) was received from Mokamah G.R.P. stating that a leather suit-case containing clothes and documents, "probably belonging to Pt. Deen Dayal Upadhyaya, M.P., was found lying in the I Class compartment of 8 Down". At 3 P.M. another telegram was received to the same effect. At 10.50 P.M. a third telegram (Ka-59) was received containing a full description of the

contents of the suit-case and mentioning that it was found under the lower berth. The suit-case contained various articles of personal use, a motor driving licence and the pass-port issued in favour of Shri Upadhyaya.

24. Finally, Fateh Bahadur sent a memo to the Station Superintendent, Mughalsarai, asking him to take steps to have the F.C.T. bogie sealed, and a telegram to the Station Superintendent, Howrah, asking him to get the names and addresses of the passengers travelling in the F.C.T. bogie.

25. By 3 P.M. a large crowd had collected near the G.R.P. Thana. At about 3 P.M. Fateh Bahadur Singh and Constables Zahoor and Gafoor placed the body on a truck and took it to Varanasi for the post mortem examination. A Magistrate and an Additional Superintendent of Police accompanied the dead body.

#### (v) *Autopsy*

26. The autopsy was conducted by Dr. S. M. Patankar, Additional Civil Surgeon, Varanasi, at about 5.50 P.M. The autopsy was slightly delayed, because at 11.30 A.M. Shri Ram Prakash, the Deputy Chief Minister, had given telephonic instructions to Dr. Murli Manohar Joshi, a Joint Secretary of the U.P. Jan Sangh at Allahabad, that he should immediately proceed to Varanasi and that the post mortem examination should be deferred until his (Shri Ram Prakash's) arrival. Dr. M. M. Joshi reached Varanasi by car at about 4 P.M. and on his way he came across the truck near the Grand Trunk Road, Varanasi. He followed the truck to the mortuary. Shri Ram Prakash arrived at the mortuary at about 5.30 P.M. and the post mortem began at 5.50 P.M. Several Jan Sangh workers, including some of the prominent leaders of the party, like Shri Atal Behari Vajpayee (now the President of the Jan Sangh), Shri Balraj Madhok (an Ex-President of the Jan Sangh) and Shri Jagdish Mathur were present at the mortuary.

27. A group photo was taken at the mortuary in which some of these persons can be seen standing near the dead body. Two more photographs were taken at the instance of the Deputy Chief Minister by one K. M. Bhatiya of the Goras Studio, Varanasi. The enlargements of these photographs are Exs. Ka-30 and Ka-31. In Ka-30 Shri Upadhyaya can be seen lying on the post mortem table. The right ear is bleeding and the feet are awkwardly bent near the ankles owing to the fractures. In Ka-31 the back has been raised slightly so that the wound on the head and the contusion on the right side of the upper back can be seen.

28. There is a sharp controversy before me whether one more photograph of the injuries was taken. Dr. M. M. Joshi says that not two but three photographs of the injuries were taken at the mortuary—one of the head injury and the injury on the right shoulder, another of the injuries on the back and the third of the injuries on the right buttock. The Deputy Chief Minister has also stated in

his evidence that three photographs were taken of the injuries. I have before me only the group photo (Ex. 55) and the two photographs Ka-30 and Ka-31.

29. The post mortem report (Ka-1) mentions that *rigor mortis* was present in the neck and limbs, the right eye was ecchymosed, the left eye was hazy and that there was bleeding from the right ear, the right nostril and the mouth. The left ear and the left nostril were normal.

30. Dr. Patankar has mentioned that he found the following injuries on the body:

- (1) Vertical lacerated wound 7 cms.×1 cm.×bone deep on right side of head commencing at 5 cms. above the right ear (2¼×2/5").
- (2) Contusion with abrasion 20 cms.×8 cms. on right shoulder blade and right shoulder back part (8"×3").
- (3) Contusion with abrasion 18 cms.×7 cms. on right side of lower part of back of chest and right loin (7"×2¾").
- (4) Abrasion 4 cms.×1 cm. on middle of left shoulder blade.
- (5) Multiple abrasions in an area of 7 cms.×5 cms. in between the shoulder blades.
- (6) Abrasion 10 cms.×3 cms. on middle of back.
- (7) Contusion with abrasion 16 cms.×8 cms. on right buttock.
- (8) Abrasion 3 cms.×2 cms. on back of left shoulder.
- (9) Simple fracture of lower ends of tibia and fibula left.
- (10) Simple fracture of lower ends of tibia and fibula right.
- (11) Abrasion 2 cms.×1 cm. on outer side of right ankle.

31. Injuries Nos. 2 and 3 were, according to Dr. Patankar, caused by a blunt weapon and injuries Nos. 4 to 8 and 11 by friction. As there were no contusion marks around injuries Nos. 9 and 10 on the legs, Dr. Patankar concluded that the fractures were a result of indirect injury.

32. On an internal examination of the dead body, Dr. Patankar found:

- (1) An area of contusion 11 cms.×9 cms. on the right temple around injury No. 1.
- (2) A similar area of contusion 9 cms.×8 cms. on the occipital region.
- (3) Comminuted depressed fracture of the right parietal and the right temporal bones.
- (4) Depressed fracture of the right side of the sphenoid bone.



- (5) Laceration of the dura below the depressed fracture and extensive subdural haemorrhage on the right side of the brain below injury No. 1.
- (6) Congestion of the brain and fracture of the middle and anterior fossa of the skull on the right side.
- (7) Fracture of seven ribs from the 3rd to the 9th.
- (8) Puncture of the pleura on the right side below the fracture of 4th and 5th ribs.
- (9) Presence of ten ounces of blood in the right pleural cavity, and
- (10) Laceration of the middle part of the right lung.

33. Dr. Patankar opined that death was caused by shock and haemorrhage following injuries to the skull and lungs.

34. About a month later, that is, on 9th of March 1968 Dr. Patankar prepared from memory a diagram (Ka-77/1) showing the fracture of the legs. A rough sketch (Ka-78) of the injuries and the other fractures was prepared by him even later, partly from memory and partly on the basis of the post mortem report. These diagrams were drawn by him, as he says, to indicate the approximate site of the injuries to the Investigating Officers.

*(vi) Back to Mughalsarai*

35. Fateh Bahadur Singh returned to Varanasi at about 10.55 p.m. and made an entry (Ka-14) in the General Diary, recapitulating the events of the day. The time when he reached the body first is again not specifically mentioned in this entry. Further, departing from an observation in the inquest report, Fateh Bahadur has mentioned in the diary that, before taking the photograph of the dead body, the head was lifted and placed on the junction-box.

36. Soon thereafter the Head Moharrir registered an offence under Section 302 of the Indian Penal Code. After registration of the offence, Fateh Bahadur remained in charge of the investigation for about thirteen hours only. On the morning of the 12th, he interrogated B. N. Prasad the Assistant Station Master, Kishori Misra the Shunting Jamadar and Ishwar Dayal, the Leverman of the West Central Cabin. At about 12.15 p.m. on the 12th the investigation was taken over by the U.P. C.I.D.

## CHAPTER VI

### INVESTIGATION BY THE C.I.D. AND THE C.B.I.

1. Shri D. K. Tewari, D.S.P., who was working as the Sector Officer of the U.P.C.I.D. at Varanasi, had reached Mughalsarai along with two Inspectors on the evening of the 11th itself, because as soon as the identity of the deceased was established it was commonly anticipated that the investigation may be entrusted to the C.I.D. But the investigation was formally taken over by D.S.P. Tewari at 12.15 P.M. on the 12th.

2. He re-interrogated B. N. Prasad, Kishori Mishra and Ishwar Dayal and verified the statements made by them on the 12th morning before Fateh Bahadur Singh. The stand of the shunting team at that stage was that they had first noticed the dead body after the shunting of 52 Down was completed, that is, at about 2.50 A.M.

3. D.S.P. Tewari then recorded the statement of an important witness, B. D. Kamal, who had functioned as the Conductor-Guard of the Sealdah Express from Lucknow to Mughalsarai. Yadav, the Conductor-Guard of the train from Mughalsarai to Madhupur, was also interrogated. He produced a relief memo in which he had noted that the reservation chart of the F.C.T. bogie had not been received by him at Mughalsarai when he took charge of the train from Conductor Kamal and that an unclaimed leather suit-case had been made over to the G.R.P. at Mokamah. The reservation chart of the F.C.T. bogie has remained untraced.

4. One more person was interrogated on the 12th at Mughalsarai and that was Abdul Gafoor, the driver of the shunting pilot. At about 4 P.M. information was received that the F.C.T. bogie was sealed at Howrah.

5. D.S.P. Tewari had learnt from the Deputy Chief Minister on the evening of the 11th itself that Shri Gauri Shankar Rai, an M.L.C. of Lucknow, had travelled by the F.C.T. bogie along with Shri Upadhyaya. Inspector Tripathi contacted Shri Gauri Shankar Rai at Ballia at about 9 P.M. on the 12th and recorded his statement. Shri Rai said (1) that a petty military officer had travelled with him in the 'C' Cabin of the First Class Compartment of the F.C.T. bogie and had got down at Faizabad, (2) that he had seen Shri Upadhyaya at Faizabad and (3) that he had himself got down at Shahganj and had proceeded to Ballia from there. On the previous day, Conductor B. D. Kamal had stated (1) that a person in civilian dress was standing in the 'C' Cabin at Lucknow and had acknowledged being "Major Sharma", (2) that this person was not found in the 'C' Cabin at Varanasi, and (3) that when he (that is Kamal) inquired of Shri Upadhyaya at Varanasi in regard to that person, Shri Upadhyaya said that he had got down at Shahganj. It is thus that suspicion began to gather round the activities of Major Sharma.

6. On the 13th, D.S.P. Tewari interrogated Ram Surat, the Fireman of the shunting pilot and Ramdas, the Junior Leverman of the West Central Cabin. He also recorded the statement of S.I. Fateh Bahadur Singh. On the night between the 13th and 14th, the F.C.T. bogie which was sealed at Howrah arrived at Mughalsarai.

7. On the 13th night, D.S.P. Tewari left for Rakhamines in an effort to trace M. P. Singh. He reached there by a circuitous route on the 15th morning and recorded the statement of Singh at 2 P.M. Singh says therein:

- (1) That at Varanasi, he found that the door of the lavatory near the 'A' Cabin was jammed,
- (2) That the man in the corridor at Varanasi was clean-shaven and was not Shri Deen Dayal Upadhyaya,
- (3) That the stranger told Conductor Kamal that he had also given instructions that he wanted to get down at Mughalsarai, and
- (4) That he, that is Singh, saw the bedding in "B" Cabin being removed at Mughalsarai by a young man who, on being questioned, said that it belonged to his father.

D.S.P. Tewari came back to Varanasi along with M. P. Singh on the night between the 16th and 17th.

8. From the 14th to 16th, that is, during the period when D.S.P. Tewari was away, investigation was more or less of a routine kind. But a matter of consequence which happened on the 14th was that the Home Minister announced in the Parliament that "at the request of Chief Minister, Uttar Pradesh, it has now been decided to entrust the investigation to the Central Bureau of Investigation....." The Home Minister explained that the U.P. Police Officers had already started the investigation and that they and the C.B.I. Officers "will be a single team for investigation". Accordingly, a team of Investigators from the C.B.I. headed by Shri John Lobo D.I.G. and Shri J. P. Sharma, S.P. reached Varanasi on the 15th. They formally took over investigation from the U.P.C.I.D. on the 18th when the Central Government issued a notification with the consent of the U.P. Government, extending the jurisdiction of the Delhi Special Establishment to the State of U.P., for the investigation of the offence in regard to the death of Shri Upadhyaya.

9. Nothing of note happened on the 15th. On the 16th, a list of the belongings of Shri Upadhyaya given by Smt. Sarla Rani was received. On the evening of the 16th, Inspector Yadav accompanied by the C.B.I. Officers took charge of a towel, a bouquet of flowers and a piece of flannel from a place which is about four furlongs from the Malviya bridge. It was suspected that these articles bore blood-stains. On the same day, Inspector Pandey interrogated Bhola Rauth Bharati, the sweeper who had first located the suit-case under the berth while cleaning the 'B' Cabin at Patna.

10. The night of the 16th and 17th of February provided an important clue to the Investigating Officers. Inspector Baijnath Singh of Kotwali, Varanasi, who was instructed to assist the investigation, interrogated one Mati Bahadur, a night Chowkidar, in the Mughalsarai Bazar at about 11 P.M. Mati Bahadur claimed that he had seen two persons carrying a bedding on a rickshaw to the house of one Lalta Kalwar *alias* Lalta Vaish, a notorious receiver of stolen property at Mughalsarai, after the Sealdah Express had left Mughalsarai on the particular night. Mati Bahadur thought that Jogender Singh, a notorious railway thief, was one of those two persons. Immediately after contacting Mati Bahadur, Inspector Baijnath Singh raided the house of Lalta Kalwar along with Inspector S. S. Upadhyaya. From there they recovered a hold-all, a Kambal, a Chaddar, a Gadda and a coverless pillow. The recovery memo in respect of these articles is Ka-89. Lalta was put under arrest. Jogender Singh was found not to bear any connection with the offence.

11. On the 17th, D.S.P. Tewari sent Inspector Yadav to fetch Shri Gauri Shankar Rai from Ballia. He then went to Mughalsarai and asked M. P. Singh to re-enact his movements on platform No. 1 on the night of occurrence so as to ascertain the time-lag between his leaving the compartment for the Luggage Office and his return to the compartment, when he saw the bedding being taken away. These movements took about 7 minutes. In the evening, Lalta Kalwar produced a towel and a pillow cover from a washing line in the Court-yard of his house. The recovery memo in respect of these two articles is Ka-90.

12. On the 18th, the investigation was formally taken over by the C.B.I. The C.B.I. Officers, headed by D.I.G. John Lobo and J. P. Sharma, the Superintendent of Police, had set up their headquarters in the Circuit House after reaching Varanasi on the 15th evening. D.S.P. Kapoor was in charge of the investigation for four days from the 18th, pending the arrival of D.S.P. Baijal who was appointed as the Chief Investigating Officer.

13. On the 18th, D.S.P. Kapoor inspected the site in the presence of the officers of the G.R.P. and the C.I.D. He directed Inspector Singh to interrogate Lalta Kalwar and it was during that interrogation that the name of Bharat Lal came to light as a close associate of Lalta Kalwar. Before this, that is, on the 17th the name of Ram Awadh had transpired during the investigation as being another associate of Lalta Kalwar.

14. On the 19th, Subedar Sidh Singh, "the petty military officer", who had travelled in the 'C' Cabin with Shri Gauri Shankar Rai from Lucknow to Faizabad, was interrogated by Inspector Bholan Das at Faizabad. This interrogation did not resolve the mystery surrounding Major Sharma.

15. On the 20th, efforts were made to trace Ram Awadh. The statement of K. L. Shukla, Secretary to the Raja of Jaunpur was also recorded on that day. That statement showed that Shri Upadhyaya was alive at Jaunpur in any case.

16. On the 21st, Naik Har Govind Pandey of the R.T.O.'s Office at Lucknow was interrogated. He stated that a seat for Major "S. L. Sharma" was reserved over a telephone on the 10th of February. The Officer who asked for a reservation on phone wanted a berth from Lucknow to Gomoh but as that was not available, a seat was booked for him in the F.C.T. bogie upto Mughalsarai. This was a basic disclosure which furnished a clue to the movements of Major Sharma.

17. On the 26th, the Director of the C.B.I. issued an order saying that Shri M. P. Singh, D.I.G. will be associated with the investigation of the case. Accordingly, D.I.G. Singh reached Varanasi on the 27th and participated in the further investigation.

18. On the night between the 28th and 29th of February, Inspector Puri arrested Ram Awadh at Bhadaun Dhal near Kashi Railway Station and took him to the Circuit House, Varanasi at about 2 A.M. Ram Awadh's interrogation tended to implicate Bharat Lal in the case. On the 29th Kapil, a nephew of Lalta Kalwar, was interrogated. He stated that Ram Awadh and Bharat Lal had taken the bedding to Lalta Kalwar's house on the night between the 10th and 11th of February. At about 10-15 P.M. on the 29th, Inspector Baijnath Singh of the Kotwali arrested Bharat Lal near Harischandra Ghat, Varanasi.

19. On the next day, that is, the 1st of March, Bharat led the Police to three egg and fish dealers, near Dasaswamedh Ghat, called Moti, Bhallu and Abdul Aziz. The waist-coat of the deceased was recovered from the person of Moti, while the coat, muffler and the Kurta of the deceased were recovered from the houses of Bhallu and Aziz in Nawab Ganj. The recovery memos in respect of these articles are Ka-13 to Ka-15. On the same day, the statement of Padam Singh, the Coach-Attendant of the "Through First Class Coach" of the Sealdah Express was recorded.

20. On the night of the 2nd, Inspector Baijnath Singh took a search of the house of one Munni Domin and recovered a canvas bag, a cap, a chappal, a tooth-brush and tooth-powder under the recovery memo Ka-7. Except for the canvas bag, these articles have been identified as belonging to Shri Upadhyaya. Radhey Shyam, who is Munni's son and Manik, the brother of Bharat Lal, were present in Munni's house at the time of the search and they were also arrested.

21. On the 2nd, Bharat made a statement to the C.B.I. admitting that he and Ram Awadh had entered the train at Kashi. But he put the entire blame on Ram Awadh by saying that it was he who pushed a passenger out of the train.

22. In pursuance of the statement of Naik Har Govind Pandey, Inspector Jha reached Gomoh on the 29th of February and on the 3rd of March he recorded the statement of Major Surendra Mohan Sharma who was attached to 131 Battery, Ranchi. Major Sharma stated that he had booked a seat on phone but as his name was wrongly mentioned as "Major S. L. Sharma" and as the number of his ticket was wrongly shown as "06171" instead of 06172, he did not

travel by the F.C.T. coach. Instead he travelled by the Train Service Coach of which Padam Singh was the Coach-Attendant.

23. On the 3rd, D.S.P. Baijal came to know after interrogating Bharat that a pair of spectacles was given by Bharat to one Indo Domin. Baijal went to Indo's house which is quite near Munni's when she offered to produce two lenses and a spectacle frame from under the water near the bank of the Ganges. These articles, which have also been identified as belonging to Shri Upadhyaya, were recovered under the memo Ka-99.

24. On the 6th of March, identification proceedings were held in the presence of a Magistrate for identifying the various articles, which were seized as stated above. Smt. Lata Khanna and her sister Smt. Sarala Rani with whom Shri Upadhyaya used to stay in Lucknow, and Shri Nanaji Deshmukh identified the various articles as belonging to Shri Upadhyaya. Only the canvas bag was not properly identified.

25. On the 7th March, Bharat made a confessional statement to the C.B.I. stating that he and Ram Awadh had entered the I Class compartment of the F.C.T. bogie at Kashi, that Ram Awadh stole a *Jhola* from the 'B' Cabin when the passenger had gone to the lavatory, that the passenger detected the theft after he came out of the lavatory, that the passenger then threatened them that he would hand them over to the Police, that while the passenger was standing near the door of the I Class compartment he and Ram Awadh pushed him out and that when the train reached Mughalsarai Station they committed theft of the belongings of the passenger.

26. On the 11th of March, an identification parade was held in the jail for identifying Bharat and Ram Awadh. M. P. Singh failed to identify them. On the same day, Munni made a statement before Inspector Sukh Deo Singh saying that Bharat had made a confession to her earlier that he had pushed a person out of a Calcutta bound train and had taken his belongings.

27. On the 13th of March, Dwarika, a co-prisoner of Bharat and Ram Awadh sent an application through the Jail Authorities that on the 11th after the identification parade was over, Bharat had made a certain disclosure to him. In pursuance of this application Shri Tyagi, a Magistrate, recorded Dwarika's statement under Section 164 of the Criminal Procedure Code, on the 16th. Dwarika has stated therein that Bharat had told him that Ram Awadh first hit Shri Upadhyaya with a rod and then pushed him out of the train.

28. On the 25th of March, the statement of Shri Parasnath Srivastava, an Assistant Jailor, was recorded. He stated that Bharat had told him on that day that he and Ram Awadh had pushed Shri Upadhyaya out of the train and had stolen his belongings.

29. On the 25th and the 31st of March respectively, the statements of Lalu and Nanhku, two rickshaw-pullers of Kashi, were recorded.  
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They stated that on the particular night they were standing with their rickshaws at or near the Kashi Railway Station and had seen Bharat and Ram Awadh together.

30. On the 6th April, the statement of Sharda, a rickshaw-puller of Mughalsarai, was recorded, wherein he stated that Bharat and Ram Awadh took the bedding by his rickshaw to the house of Lalta Kalwar. On the 8th, the statement of Bhaiya Lal, another rickshaw-puller, was recorded to corroborate Sharda. On the 17th of April, Gur Prasad, an employee of a Tea-stall at the Kashi Railway Station, was interrogated. He said that Bharat and Ram Awadh took tea at his stall and rushed to catch the Sealdah Express on the particular night.

31. In the light of this data, the C.B.I. Officers re-interrogated the members of the shunting team and B. N. Prasad, the Assistant Station Master. Haradwar, whose engine was said to have blocked the shunting pilot, was interrogated on the 23rd of March, B. N. Prasad on the 29th, Drigpal and Kishori Misra on the 30th and Abdul Gafoor and Ramdas on the 1st of April. B. N. Prasad and Ramdas were further interrogated on the 9th and 10th of April respectively. Ishwar Dayal was interrogated on the 10th April.

32. The statement of Constable Ram Prasad was recorded for the first time on the 17th April.

33. Thus, the crux of the investigation conducted by the C.I.D. and the C.B.I. consisted in the recovery of articles stolen from the 'B' Cabin of the F.C.T. bogie by which Shri Upadhyaya was travelling. These recoveries were made between the 16th of February and the 3rd of March 1968. The two accused Ram Awadh and Bharat were arrested on the 29th of February, the former at Kashi and the latter at Varanasi. During the investigation, the investigating officers obtained evidence in regard to three extra-judicial confessions made by Bharat to Munni, Dwarika and Parasnath Srivastava respectively. The C.B.I. also recorded two statements of Bharat, one dated the 2nd of March being self-exculpatory and the other dated the 7th of March being in the nature of a confession. These two statements were, of course, not admissible in the Sessions Court, being mere statements made to the Police during the course of investigation. But as the proceedings before me are not hide-bound by the rules of evidence, these statements have been taken on the record.

34. During the course of investigation D.I.G. Lobo made an interim report on the 20th March and a final report on the 29th April 1968 to the Director, C.B.I. These reports were prepared by him in consultation with D.I.G. Singh. It is on the basis of the data referred to above and on the basis of expert opinion that the C.B.I. filed the charge-sheet against Bharat Lal and Ram Awadh on the 4th of May 1968. I must now turn to the expert evidence.

## CHAPTER VII

### EXPERT EVIDENCE

1. The investigating officers took the aid of a number of Medico-legal Experts and Forensic Experts in an attempt to seek confirmation of the conclusion which they had reached. Their conclusion was that Shri Upadhyaya was pushed out of the train, that he dashed against the traction pole and died an instantaneous death.

2. The first of such experts is, of course, Dr. Patankar who conducted the post mortem examination on the evening of the 11th of February 1968. The post mortem report is Ex. Ka-1.

3. Then comes Dr. I. Bhushan Rao, Director of Medical and Health Services to the Government of Andhra Pradesh, who spent two days in Varanasi, the 5th and 6th of March. He studied the inquest report, the post mortem report, the photographs, the shape and position of the traction pole and he inspected the F.C.T. bogie and the clothes of the deceased. He also held discussions with Dr. Patankar and the investigating officers. He submitted his report Ka-77 on the 23rd of March. The main points emerging from that report are:

- (1) That the death was caused instantaneously.
- (2) That the firm gripping of the currency note in the right hand was a typical case of cadaveric spasm showing that the note was gripped in the particular manner at the moment of sudden death.
- (3) That the head injury, complementary injuries Nos. 5 and 6 and injuries Nos. 2, 3 and 7 which are in the nature of imprint abrasions covering the region between the right shoulder and the buttock, could only have been caused by a long weapon having a considerable width.
- (4) That the pattern of these injuries and the fact that injuries Nos. 1, 5 and 6 are preliminary to injuries Nos. 2, 3 and 7 show that the body dashed against the western face of the traction pole with great force.
- (5) That the absence of blood-stains inside the bogie rules out the possibility of an attack in the bogie.
- (6) That the absence of external marks on the seat of leg fractures shows that those injuries also were not caused in the compartment, and
- (7) That the typical fractures of the leg bones were caused by a fall from a moving train, the feet falling on the ground at an angle.



4. A team of experts consisting of Dr. S. N. Garg, Director of Forensic Science Laboratory, Hyderabad, Shri Mukerji, Vice-Principal of the Central Detective Training School, Calcutta and Shri P. N. Mehra, an Instructor in that School reached Varanasi on the evening of the 12th February and was there till the 15th. They visited Mughalsarai on 13th, 14th and 15th along with the Scientific Section Experts of the U.P.C.I.D. Their report is Ka-65 dated 15th February 1968. They examined the F.C.T. bogie which on being sealed at Howrah had reached Moghalsarai on the night between the 13th and 14th. No trace of blood could be found inside the bogie. They did not find any blood stains on the suit-case either, which was received in the meanwhile from Mokamah G.R.P. Dr. Garg, however, found some oily substance in the corridor of the bogie near the Attendant's seat which is near the lavatory on the side of the 'A' Cabin. The team took certain measurements and found that the traction pole was 28" from the floor of the bogie and 19½" from the edge of the handle bars. They took photographs (Ka-41 to 49) showing the traction pole, the junction-box, the Banaras Down Line, a dummy lying in the position of Shri Upadhyaya as shown by S.I. Fateh Bahadur Singh and the abraded areas on the heels of the shoes worn by the deceased.

5. Shri Bhattacharya, Assistant Director, Central Forensic Science Laboratory, was called to Varanasi after the recovery of the bedding and the pillow cover. He reached Varanasi on the 22nd of February and inspected the articles which were seized from Lalta Kalwar on the 16th and 17th February. These articles were then lying in the custody of Shri N. K. Sharma, a Magistrate. Shri Bhattacharya tested the articles for the presence of blood by applying the Benzidine test and found that there was no blood on any article, except that there was a tiny speck of blood in a corner of the pillow. He was not in a position to test the articles by the application of the Spectroscopic test, because fibres from the stains had to be examined for such a test and the Magistrate would not allow Shri Bhattacharya to remove any part of the stains. Shri Bhattacharya's report is Ka-52 dated the 22nd February 1968.

6. The last team of Forensic Experts was headed by Dr. N. K. Sen, Director of West Bengal Forensic Science Laboratory, Calcutta, who was accompanied by Dr. S. Chowdhary and Shri Majumdar. This team arrived at Varanasi on the 11th of March and stayed there till the 13th. They found a blackish impression along the length of the shawl and another faint blackish impression almost parallel to it. At Ka-126 is a photograph of these impressions. They further found that the two full-sleeved sweaters and the banyan which were on the person of the deceased had characteristic blood-stains on the right shoulder region suggesting that the blood had dripped from above and had soaked inwards. The blood-stains appear vividly in photographs Ka-122 to Ka-125. The stain on the full-sleeved woollen pull-over, which was the outermost garment worn by the deceased apart from the shawl, begins about 13½ cms. from the mid back line of the pullover and is about 19 cms. long.

7. Dr. Sen's team also found two areas bearing fresh marks of abrasions on the outer surface of the right shoe, of which the photo-

graphs are Ka-127 and Ka-128. They examined the Dhoti of the deceased, the pillow and the pillow cover and found a small stain on the pillow only which Dr. Bhattacharya had also found earlier.

8. On the 11th and 12th, Dr. Sen's team inspected the site and dug up places around the traction pole in an attempt to locate possible blood-stains but could find none. They obtained control impressions from the surface of the traction pole, collected superficial scrapings from the pole, examined the bogie and found a chance finger print on the outer surface of a window glass. The specimens collected by this team were examined in the West Bengal Forensic Science Laboratory. Dr. Chowdhary tested the articles for blood, while two others, Dr. N. Das and Shri Basak, did the physical examination. Dr. Ghosh did the biological examination. Dr. Sen, Dr. Chowdhary and Dr. N. Das submitted a joint report Ka-120 on the 16th of May 1968. The detailed blood examination report of Dr. Chowdhary himself is Ka-131 dated the 22nd of May. The consolidated Sectional reports of Dr. Ghosh, Dr. N. Das and Shri Basak are dated the 29th of July and are respectively Ka-133, Ka-133(a) and Ka-133(b).

9. The report of Shri Basak says that the greasy substance collected from near the Attendant's seat by Dr. Garg's team showed light orange coloured fluorescence under ultra violet light but no such fluorescence was observed on the woollen shawl. It must be stated that Inspector Mukerji who had sealed the bogie at Calcutta has stated that spots of undiluted phenyl were noticed near the Attendant's seat. As admitted by Shri Bhattacharya, phenyl is one of the substances which can destroy blood marks. The substance however does not appear to have been tested from this angle.

10. The team of Dr. Sen found no blood on any of the belongings of the deceased, except a small speck on the pillow. That was stated to be a stain caused by direct contact and not by soaking. The dust collected from the abrasion marks on the shoes was found to consist of minute fragments of ballast, identical to the ballast near the traction pole. The blackish impressions on the woollen shawl were found on microscopic and spectroscopic examination to have the same ingredients as were present in the dust collected from near the traction pole.

11. The position of blood-stains on the two full-sleeved sweaters and the banyan coupled with the absence of blood-stains on the sleeveless woollen sweater showed, according to this team of experts, that the head of the deceased was inclined to the right side and that the blood dripping from the ear fell directly on the outermost garment, that is, the full-sleeved woollen sweater. The blood soaked through the other garments successively, except the sleeveless sweater which was outside the range of soaking.

12. Dr. A. B. Roychowdhary, the Serologist, has stated in his reports Ka-295 and Ka-296 dated the 13th May 1968 that the blood on the clothes of the deceased, the blood on the bottom of the left shoe and the small speck of blood on the pillow belonged to the 'B' group to which the blood of the deceased belonged.

13. Two more experts were consulted on the "dynamics" of the matter. They are Shri K. P. Singh, Professor of Mathematics at the Banaras Hindu University and Shri Chellam. They opined that for a body to fall from a running train and dash against the traction pole in a near vertical position, an outside push would be necessary.

14. Evidence in regard to the opinion of these experts was led in the Sessions trial. Before me the Jan Sangh led the evidence of a Medico-legal Expert called Dr. R. N. Kataria, a well-known Surgeon of Delhi. His opinion is almost diametrically opposite to that of Dr. Bhushan Rao. Dr. Kataria says that he had seen the injuries and had examined some of them on the evening of the 11th February when the dead body of Shri Upadhyaya was brought to Delhi. According to him,

- (1) Death could not have been instantaneous and at least one hour must have elapsed between the time when the injuries were caused and the time when death occurred.
- (2) That the injuries could not have been caused in the course of a single transaction.
- (3) That some of the injuries could have been caused inside the compartment.
- (4) That the right fore-arm was not held against gravity but was resting on the junction-box, and
- (5) That the contusions on the occipital region were ante-mortem and not post-mortem.

15. The C.B.I. further examined Dr. Bhushan Rao before me in order to meet the points made out by Dr. Kataria.

16. The opinion given by this imposing array of experts would afford considerable assistance in ascertaining the cause of death and the manner in which the murder of Shri Upadhyaya was committed.

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**PART III**  
**(Chapters VIII to IX)**

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## CHAPTER VIII

### SESSIONS TRIAL

1. Bharat Lal and Ram Awadh were tried by Shri Murli Dhar, the learned Special Sessions Judge, Varanasi, in Sessions trial No. 74 of 1968. They were charged under Section 302 read with Section 34 of the Indian Penal Code for causing the death of Shri Upadhyaya in pursuance of their common intention. They were also charged under Sections 379 and 382 of the Penal Code for committing theft of Shri Upadhyaya's belonging and for committing theft after making preparations for causing death in order to the committing of the theft.

2. The defence of the accused was one of outright denial. They denied that, as alleged by the prosecution, they boarded the Sealdah Express at Kashi, that they pushed Shri Upadhyaya from the train, that they committed theft of his articles or that any of the articles were given or sold by them to Lalta Kalwar, Moti, Bhallu, Abdul Aziz, Munni and Indo. They denied their previous association. They contended that the Police had made scape-goats of them as they were habitual thieves. Bharat denied that he had made extra-judicial confessions to Munni, Dwarika or Parasnath Srivastava.

3. The prosecution examined 128 witnesses in the Sessions Court. Five witnesses, namely, B. D. Kamal the Conductor-Guard, Nageshwar Singh the Number-Taker at the Mughalsarai Railway Station, Shri Nanaji Deshmukh who was then the All-India Secretary of the Jan Sangh, Dwarika the co-prisoner to whom Bharat was alleged to have made an extra-judicial confession and Mati Bahadur the night-watchman at Mughalsarai Bazar were examined as Court witnesses. The prosecution tendered 299 exhibits while 94 exhibits were tendered by the Defence. 18 documents were taken on the record as Court exhibits.

4. The learned Judge divided the witnesses in sixteen groups. I would like to re-formulate the groups and mention the more important witnesses examined in the Sessions Court.

(i) *Witnesses regarding finalisation of Shri Upadhyaya's Programme.*

(1) Ashwini Kumar P.W. 75, (2) Harischandra P.W. 23 and (3) Shri Nanaji Deshmukh C.W. 3.

(ii) *Departure from Lucknow, the articles taken by Shri Upadhyaya on the journey and his personal habits.*

(1) Smt. Sarla Rani P.W. 22, (2) Harischandra P.W. 23, (3) Smt. Lata Khanna P.W. 76 and (4) Shri Nanaji Deshmukh C.W. 3.

(iii) *Co-travellers of Shri Upadhyaya.*

(1) Shri Gauri Shankar Rai P.W. 28, (2) Subedar Sidh Singh P.W. 29 and (3) M. P. Singh P.W. 31.

(iv) *Other witnesses regarding journey from Lucknow to Varanasi.*

(1) B. D. Kamal C.W. 1, (2) K. L. Shukla P.W. 27, (3) Padam Singh P.W. 90 and (4) Major Surendra Mohan Sharma P.W. 91.

(v) *Discovery of the body.*

(1) Drigpal P.W. 4, (2) Kishori Misra P.W. 5, (3) Abdul Gafoor P.W. 6, (4) Haradwar P.W. 7, (5) Leverman Ramdas P.W. 8, (6) B. N. Prasad P.W. 9 and (7) Nageshwar Singh C.W. 2.

(vi) *Police Officers who were the first to know of the occurrence.*

(1) Sachchulal P.W. 11, (2) Ram Prasad P.W. 12, (3) Zahoor P.W. 14, (4) S. I. Jagannath Singh P.W. 18 and (5) S. I. Fateh Bahadur Singh P.W. 118.

(vii) *Identity of the body.*

Vishwanath Prasad Agarwal P.W. 16.

(viii) *Recoveries and seizures.*

(1) Abdul Aziz P.W. 43, (2) Bhallu P.W. 44, (3) Moti P.W. 45, (4) Manik P.W. 97, (5) Munni P.W. 98, (6) Radhey Shyam P.W. 99 and (7) Indo P.W. 50.

(ix) *Extra-judicial confessions.*

(1) Parasnath Srivastava P.W. 58, (2) Munni P.W. 98 and (3) Dwarika C.W. 4.

(x) *Witnesses regarding the journey from Mughalsarai to Howrah.*

(1) Kalika Prasad Safaiwalla P.W. 128, (2) Bhola Bharati P.W. 38, (3) S. R. Kundu P.W. 36 and (4) Vajay Deo P.W. 37.

(xi) *Medical evidence and Expert witnesses.*

(1) Dr. B. R. Chakravarty P.W. 13, (2) Dr. S. M. Patankar P.W. 33, (3) Dr. Bhushan Rao P.W. 32, (4) Dr. S. N. Garg P.W. 21, (5) Shri Bhattacharya P.W. 19, (6) Dr. S. Chowdhary P.W. 72, (7) Shri T. N. Majumdar P.W. 81, (8) Dr. N. Das P.W. 74, (9) Dr. D. N. Chellam P.W. 24 and (10) Dr. K. P. Singh P.W. 30.

(xii) *Investigating Officers.*

(1) S. I. Fateh Bahadur Singh P.W. 118, (2) S. I. Jagannath Singh P.W. 18, (3) D. S. Tewari P.W. 123, (4) Inspector Baijnath Singh

P.W. 124, (5) D.S.P. Baijal P.W. 127, (6) D.S.P. Kapoor P.W. 115, (7) D.S.P. Badri Sharma P.W. 122 and (8) Inspector Puri P.W. 121.

5. The more important documents produced in the Sessions Court are listed in Annexure III to this report.

6. The findings of the learned Judge can be briefly summarised as follows:

(1) That Major S. M. Sharma travelled by the Sealdah Express but he travelled by the through First Class bogie of which Padam Singh was the Coach-Attendant and not by the F.C.T. bogie by which Shri Upalhyaya was travelling.

(1A) The booking in the name of "Major S. L. Sharma" was not in any way a part of a conspiracy to commit the murder of Shri Upadhyaya. The seat was wrongly reserved in the name of "Major S. L. Sharma", though Major Surendra Mohan Sharma had told Naik Har Govind Pandey, R. T. O's Clerk at Lucknow, to book the seat in the name of "Major S. M. Sharma". Major S. M. Sharma had nothing to do with the death of Shri Upadhyaya. (Paragraph 66 to 68 of the Judgment).

(2) The evidence of B. D. Kamal, the Conductor-Guard that he had checked the passengers travelling in the First Class Compartment of the F. C. T. bogie at Lucknow and that a person in civilian clothes, who was standing in the 'C' Cabin, had confirmed that he was Major Sharma really means that Kamal assumed that either Shri Gauri Shankar Rai or Subedar Sidh Singh was the passenger in whose name the particular reservation stood. "After all if there was a man who intended to use the reservation at some point *en route*, but had no mind to travel on the berth from Lucknow, he is unlikely to have invited attention to himself by standing in a dark cabin and admitting that he was Major S. L. Sharma." (Paragraphs 62 to 64).

(3) The evidence of Kanhaiya Lal Shukla, Secretary to the Raja of Jaunpur, shows that Shri Upadhyaya was alive till Jaunpur. (Paragraph 65).

(4) Kamal's version regarding the presence of a stranger in the corridor of the First Class Compartment of the F. C. T. bogie at Varanasi, is consistent both with the stranger being Shri Upadhyaya himself and with the stranger being a clever imposter who had been shadowing the compartment since Shahganj. Kamal had however neither identified the stranger nor had he given an adequate description for identifying the stranger. Kamal's evidence did not therefore prove that the stranger in the corridor was Shri Upadhyaya. On the other hand, M. P. Singh's version was inconsistent with the stranger being Shri Upadhyaya. Therefore, the evidence did not prove that Shri Upadhyaya was alive at Varanasi. (Paragraphs 71 to 73).

(4A) However, ".....this finding does not necessarily imply that there was a stranger in the compartment at Varanasi. All that can be said is that on the material on record there is fair likelihood of

this being so" and therefore, one could only say that it is not positively proved that Shri Upadhyaya was alive at Varanasi. "Further, a reasonable doubt arises that there was an unidentified stranger in the compartment at Varanasi and the jamming of the 'A' side lavatory door was also suspicious." (Paragraph 74).

(5) It was quite possible for an outsider, who knew that Shri Gauri Shankar Rai had detrained at Shahganj, to get into the compartment at Shahganj, Jaunpur or Zafarabad and remain in the compartment till the train reached Varanasi. Such a person could have avoided detection at Jaunpur by concealing himself in the dark 'C' Cabin or in one of the two lavatories. (Paragraph 73).

(6) The evidence of Lalu, Nanhku and Gur Prasad could not be relied upon for the purpose of holding that Bharat and Ram Awadh were at the Kashi Railway Station on the night of the occurrence. There was therefore no evidence to prove the presence of the accused at the Kashi Railway Station on the night between the 10th and 11th of February 1968. (Paragraphs 76 to 86).

(7) The prosecution version that the two accused had boarded the train at Kashi could not however be discarded for the mere reason that no one could have had an opportunity to enter the compartment. Railway thieves would know how to open a compartment which is bolted from inside. In the alternative, the door by which K. L. Shukla left the compartment at Jaunpur after seeing Shri Upadhyaya, or the door by which Kamal left the compartment at Varanasi, might have been left open. Perhaps, even the door by which Shri Gauri Shankar Rai left the compartment at Shahganj may have continued unbolted from inside. (Paragraph 75).

(8) Though Shri Upadhyaya's bedding was removed from the 'B' Cabin by a person in the presence of M. P. Singh, there was no evidence to show that Bharat was the person who had removed the bedding. M. P. Singh had failed to identify Bharat in the identification parade held on 11th March 1968. (Paragraphs 87 to 90).

(9) There was clear evidence to show that Bharat and Ram Awadh were jail-birds and were friendly with each other. (Paragraphs 53 to 56).

(10) There was equally clear evidence to establish Ram Awadh's association and intimacy with Lalta Kalwar. The evidence showed that the former used to live with the latter. (Paragraphs 92 to 93).

(11) No reliance could be placed on Sharada and Bhaiya Lal, the rickshaw-pullers, for their statements were recorded for the first time on the 6th and 8th April 1968 respectively. The late emergence of these witnesses without a satisfactory explanation made their evidence suspect. It could not, therefore, be concluded that Bharat and Ram Awadh had transported the bedding of Shri Upadhyaya from Mughalsarai Railway Station to Lalta Kalwar's house, in Sharada's rickshaw. The evidence of Mati Bahadur did not also prove that fact. (Paragraphs 94 to 106).



(12) The bedding and the other articles, like Chaddar, Kambal, Gadda, Razai and the pillow, were recovered from the house of Lalta Kalwar on the night between the 16th and 17th February 1968. On the 17th, Lalta Kalwar produced a towel and a pillow cover. These articles were identified by Smt. Lata Khanna, Smt. Sarala Rani and Shri Nanaji Deshmukh as belonging to Shri Upadhyaya. (The evidence in regard to the recoveries of these articles went unchallenged in the Sessions Court.) (Paragraphs 107 to 109).

(13) The evidence of Abdul Aziz, Bhallu and Moti shows that Bharat had sold articles like a woollen coat, a woollen Kurta and a woollen muffler to them on or about the 11th February. Shri UPadhyaya was carrying these articles with him when he left Lucknow on the 10th evening by the Sealdah Express. (Paragraphs 116 to 123).

(14) The evidence of Radhey, Munni and Manik shows that the canvas bag, a cap, a chappal, a tooth-brush and tooth-powder were passed on by Bharat to Munni. These articles, with the exception of the canvas bag, were identified as belonging to Shri Upadhyaya. (Paragraphs 124 to 134).

(15) The evidence of Indo shows that Bharat had given a pair of spectacles to her. The spectacles were identified as belonging to Shri Upadhyaya. (Paragraphs 135 to 137).

(16) Nanaji Deshmukh's evidence that Shri Upadhyaya used to carry two chaddars in the bedding could not be accepted as proof of the fact that one of the chaddars was missing. Neither Smt. Lata Khanna nor Smt. Sarala Rani, who had given a list of the articles taken by Shri Upadhyaya on the particular journey, had mentioned that there were two chaddars in the bedding. One chaddar was recovered from Lalta Kalwar's house and that was the only chaddar contained in the bedding. (Paragraph 164).

(17) Parasnath Srivastava, the Assistant Jailor, could not be regarded as a dependable or truthful witness. His evidence therefore could not be accepted to show that Bharat had made an extra-judicial confession to him on the 25th of March 1968. That confession is "tailored to suit the prosecution version". (Paragraphs 170 to 172 and 176 to 182).

(17A) The fact that the prosecution did not rely on the extra-judicial confession alleged to have been made by Bharat to Dwarika, a co-prisoner, on the 11th of March 1968 complicated the issue. The confession could not be discarded on the ground that it was not made at all but it was not safe to rely on the confession as it was not corroborated. The confession, being exculpatory, could not be used against Ram Awadh in any event. (Paragraphs 173 to 175 and 183 to 186).

(17B) The extra-judicial confession made by Bharat to Munni on or about the 11th of February is not established on the evidence. Munni had disclosed as late as the 11th of March that the particular confession was made to her by Bharat. However, the evidence of Munni and Radhey could be accepted to the extent to which they said that while passing on the articles Bharat had stated that he

had stolen the articles from a Calcutta bound train. (Paragraphs 187 to 190).

(18) Drigpal, Kishori Misra, Abdul Gafoor, Leverman Ramdas and B. N. Prasad had made different statements at different times and therefore it could not be held on the basis of their evidence that the dead body was seen first during the first stage of the shunting, at about 2.20 A.M. "The utmost that can be said is," that the dead body was discovered "some time between 2.20 and 2.50 and either during the first step or during the fourth or 5th step" of shunting. (Paragraphs 138 to 140).

(19) Regarding the position in which the body was found, "... there was no way of undoing the initial bungling by Railway staff and Fateh Bahadur Singh who failed to keep an accurate and precise record of the condition of the body". (Paragraph 165).

(19A) The fact that the body was seen lying straight on its back with the legs fully stretched and the fact that the face was covered by a Chaddar created "a very strong doubt that the body had been tampered with before discovery and was not in a condition which could have come about naturally following the alleged impact with the pole". (Paragraph 144).

(19B) "...Considered in isolation, the fact that the body had been interfered with would undoubtedly open" several theoretical possibilities, but it was unlikely that after the body was ejected from the running train, it was brought from somewhere else and placed near the traction pole for the purpose of confounding the investigation. The proper inference therefore is that the body was ejected from the train near the traction pole "and the interference was of a limited kind, viz., straightening up of the body and covering the face with a Chaddar." (Paragraph 145).

(20) The five rupee note must have been held in a firm grip. Constable Ram Prasad had seen the body in a cursory fashion in the light of match sticks and one could not take his evidence too literally when he says that the currency note could have been taken out easily from the right hand of the deceased. The evidence of S.I. Fateh Bahadur Singh showed that the currency note could not be removed easily. Dr. Bhushan Rao's evidence establishes that it was a case of cadaveric rigidity and therefore, the note must have been held firmly in the right hand at the moment of death. (Paragraph 146).

(20A) The investigating officers were questioned specifically as to why the deceased could have been carrying the five rupee note at the particular time, but they had to admit that during the course of investigation no particular theory came to light. "That this prominent point remained, or could be left, unsolved is rather intriguing." (Paragraph 191).

(20B) The suggestion made on behalf of the prosecution that the deceased had taken out the note for buying something or perhaps for sending a telegram to Patna was a "purely speculative hypothesis".

Considering the nature and habits of Shri Upadhyaya, this suggestion was "not at all plausible". (Paragraph 191).

(21) As regards the injuries, it was unfortunate that during the autopsy "precise and detailed data regarding shape and locations of the injuries" was not collected. It was surprising that neither Dr. Patankar nor any other authorities thought of having all the injuries photographed in details. (Paragraph 165).

(21A) The injuries or, at any rate, some of them were caused by a fall from the moving train involving a violent impact with the traction pole. (Paragraph 157).

(21B) The fracture of as many as 7 ribs and the indirect bilateral fractures of both the leg bones strongly suggest that the cause of the injuries was a fall from the train. (Paragraph 158).

(21C) The relatively low shunting speed of 3 to 4 miles per hour would militate against the injuries having been caused during the course of shunting (Paragraph 158).

(21D) The leg fractures above the ankle joints involving inverted position of the right leg and everted position of the left leg coupled with the abrasions on the corresponding side of the shoes which contained ballast particles and further coupled with the absence of any direct external injuries would show clearly that the leg fractures were caused by a fall from the train. (Paragraph 158).

(21E) The contusions on the back which are in the nature of "imprint abrasions" and the leg fractures show that the deceased fell from a running train involving an impact of the back with a broad object having a straight edge. (Paragraph 158).

(21F) "The crucial point" in favour of the conclusion that the injuries were caused by an impact with the pole is the absence of any plausible alternative explanation of injuries Nos. 2, 3 and 7. The Defence itself was unable to suggest how and with what weapon these injuries could be caused inside the bogie. Excluding some of the other possible sources of these injuries, the only hypothesis left in the field is that the deceased struck against the traction pole after being thrown out from the running train, "with the rider that this finding is in the zone of probabilities only and cannot have the degree of certitude required for proof in a criminal case. The reason for this absence of certitude is the absence of precise and adequate medico-legal and forensic data which would lead to clear-cut and firm conclusions." (Paragraph 158).

(21G) As regards the head injury, notwithstanding the opinion of Dr. Bhushan Rao, it is difficult to hold that the head injury could not have been caused inside the compartment. The mention of a rod-blow in the extra-judicial confession deposed to by Dwarika and in Bharat's confessional statement to the Police dated the 7th of March 1968 furnish a tangible basis for supposing that the head injury was caused in the compartment. The up-lifted posture of the right hand firmly gripping the note "may well have been a defensive posture to

ward off a coming blow on the right of the head". It is not possible to be dogmatic that the back injuries could not have been caused within a few minutes of the death occurring as a result of the head injury. "I am, therefore, unable to exclude the likelihood of instantaneous death resulting from the head injury inside the train and the impact with the traction pole occurring later." Books on Medical Jurisprudence show that, howsoever serious the head injuries may be, they are not instantaneously fatal and in many cases volitional acts are possible after serious head injuries. (Paragraph 161).

(21H) The absence of blood in the compartment cannot be regarded as conclusive on the question whether the head injury could have been caused inside the compartment. The bogie went as far as Calcutta before it was sealed and it was cleaned up at a number of places. Blood-stains might have been wiped or washed in that process. (Paragraph 163).

(21I) The blood-stain on the pillow-case, the blood-stains on the instep of the left shoe and the extensively washed stains, though not proved to be of blood, on the pillow cover and the towel, point in the direction of some injury having been caused inside the compartment. Lalta Kalwar showed an "intriguing urgency" to have the pillow cover and the towel washed. This arouses one's "suspicion and curiosity", because Shri Upadhyaya could not have carried such dirty clothes with him. However, one has at the same time to concede the possibility that the origin of blood, if any, in the compartment may be unconnected with injury No. 1. (Paragraph 163).

(21J) "..... the net result of expert testimony regarding the manner and cause of death is that it shows a high degree of probability that the occurrence involved the pushing of the victim from the running train in the vicinity of the traction pole and a fall involving impact of his back with the pole resulting in the back and leg injuries. It is, however, not possible to say that the head injury was also caused by the traction pole impact." (Paragraph 165).

(22) There are several disturbing features of the case and many flaws in the investigation:

- (a) There was no adequate explanation regarding M. P. Singh's evidence about the presence of a stranger in the compartment at Varanasi,
- (b) No explanation was also offered as to why the deceased was carrying the five rupee note at the particular time,
- (c) It was not shown how the garments on the person of the deceased came to be stained in the shoulder region,
- (d) It is difficult to understand why, if thieves had committed the murder, they waited for about 7 or 8 minutes after the train reached the Mughalsarai Station, for removing the bedding, and
- (e) Lastly, why Lalta Kalwar had the stains on the pillow cover and the towel washed from Mitia Dhoabin so urgently also remained unexplained.

“What is somewhat surprising is that the prosecution has not even suggested any cogent explanation on these points.” (Paragraph 19).

(23) The Railway Authorities and the Government Railway Police were negligent and callous in the early stages of the incident. B. N. Prasad, the Assistant Station Master, did not go to the body immediately, which is “simply atrocious”. S. I. Fateh Bahadur Singh was obviously negligent in attending to the dead body. “The enormity of his careless approach is shown by the fact that even after medical examination at 6-35 admittedly no attempt was made till about 8-45 A.M. . . . . to locate the identity of the deceased. . . .” His other fault lay in disturbing the body before taking a photograph. (Paragraph 194).

(24) There is no substance in the allegation that Shri Upadhyaya was murdered because some political rivals wanted to seize his files in which he is said to have been keeping information regarding anti-national activities. The allegation that the files contained such information was “too nebulous”. (Paragraph 192).

(24A) There is equally no substance in the contention that the murder of Shri Upadhyaya had a communal aspect. The sixteen letters containing threats which were produced by Shri Nanaji Deshmukh were mere “fulmination of some perverse and mischievous individual hostile to R.S.S. and Jan Sangh. Crackpots and psychotics who indulge in threatening, abusive and obscene letters are a common feature. . . . I am unable to regard the failure of the investigating agency to attach much importance to these letters. . . . as a short-coming”. (Paragraph 192).

(25) There was no warrant for the criticism made by the defence that the Investigating Agency “deliberately and purposely avoided the political origin of the crime, set up a false theory of a chance murder by thieves and pinned the same on two scapegoats”. (Paragraph 194).

(25A) “. . . unexplained dealings with the belongings of the deceased can be nothing more than a ground for suspicion, but the law is clear that suspicion is not proof. . . .”. (Paragraph 193).

(25B) “. . . The prosecution has not been able to prove this case mainly because of paucity of evidence. There have also been deficiencies here and there during the investigation. . . . But a story supported by meagre or poor legal evidence and a false story are two different things. I should like to state pointedly that on the material before me I have not found any basis for suspecting that the investigating agency did not bonafide believe the accused to be the culprits or that it has deliberately tried to prop up a false story or intentionally avoided the theory of political murder.” (Paragraph 194).

(25C) However, “the offence of murder not having been proved against the accused, the problem of truth about the murder still remains”. But “the failure of the charge regarding murder in this case does not in any sense imply that the theory of the accused

having been the killers is false or that it was a political crime....the possibility of the prosecution story being actually substantially true remains quite real". (Paragraph 195).

7. Consistently with these findings, the learned Sessions Judge, by his judgment of the 9th June 1969, acquitted Ram Awadh of all the charges. Bharat was also acquitted of the charges levelled against him, except the one under Section 379 of the Penal Code. The acquittal in favour of Ram Awadh has become final as it was not challenged, but Bharat's appeal against his conviction for theft is pending in the High Court of Allahabad.

## CHAPTER IX

### THE SHAPE OF THE PRESENT PROCEEDINGS

1. In pursuance of a notification issued by the Commission calling for sworn information, 58 affidavits were filed before me in support of the case of the Bharatiya Jan Sangh. The Central Bureau of Investigation filed one affidavit which has been sworn by D.S.P. Baijal, who was the Chief Investigating Officer.

2. The Jan Sangh examined 51 witnesses before me, 43 being from out of those who had filed affidavits. The remaining 8 had not filed any affidavit before me. The C.B.I. examined 23 witnesses before me. The Jan Sangh has filed 32 documents while the C.B.I. has filed 72 documents before me. They have been duly exhibited.

3. The case of the Jan Sangh is:

- (a) That Shri Upadhyaya was murdered for political reasons. It is alleged that he used to collect information regarding anti-national activities and he used to keep that information in a file and some diaries. The fact that the file and the diaries have not been traced is said to support the case that Shri Upadhyaya was not murdered by mere thieves.
- (b) That certain Muslim Organisations had held Shri Upadhyaya responsible for the communal riots at Meerut. It was openly declared that Jan Sangh leaders had to be eliminated. Some Communists, it is said, were willing to lend a helping hand to the communalists.
- (c) That ever since the Calicut Session, which was held in December 1967, Shri Upadhyaya was being shadowed by suspicious characters. Ultimately, the Communists and communalists joined hands and took the help of Major Surendra Mohan Sharma for perpetrating the murder of Shri Upadhyaya. Major Sharma is the son-in-law of V. N. Sharma who in turn is said to be closely connected with Dr. Faridi, the President of "Majlis Mushawarat".
- (d) That Major Sharma travelled by the I Class compartment of the F.C.T. bogie from Lucknow so that he could wait for an opportune moment to execute the conspiracy. At the other end, namely, at Mughalsarai, the Communists had taken the necessary steps to further the object of the conspiracy. It was as a part of this scheme that Prabhu Singh Bhati of the G.R.P. Mughalsarai, had gone on leave on the 10th afternoon, feigning sickness.
- (e) That known communists, like Prabhu Singh Bhati, Ramdas the Ticket Collector, Pranav Kumar *alias* Dada Ghosh,

Satyanarayan Tiwari, Munne Lal Gupta and Dr. Shivtahal Mehta were moving about in a suspicious manner round about the time of the murder.

- (f) That Shri Upadhyaya was murdered in the running train after the train had left Zafarabad at 12.41 A.M. Strange sounds coming from the I Class compartment were heard by persons travelling in the Third Class compartment of the F.C.T. bogie after the train had left Zafarabad.
- (g) That the deceased must have been struck on the right side of his head while entering the 'B' Cabin with the right side towards the corridor. Thereafter he must have been thrown on the berth, with some one sitting on his chest and some one on his legs.
- (h) That Shri Upadhyaya must have been then carried to the lavatory near the 'A' Cabin and held in a position in which the blood from injury No. 1 would fall directly on his right shoulder.
- (i) That the grey chaddar which Shri Upadhyaya was carrying could not be recovered by the Police because the murderers might have destroyed it as it was blood-stained. The pillow-cover and the towel were produced by Lalta Kalwar on the 17th February 1968 but the stains were washed.
- (j) That the blood-stains in the I Class compartment must have been washed by the conspirators; or else the stains might have got washed or wiped out in the normal course when the bogie might have been cleaned or washed after Mughalsarai.
- (k) That when the train reached Varanasi, the deceased must have been still in the 'A' Cabin side lavatory. That is why M. P. Singh found that he could not open it. While going to the 'C' cabin side lavatory, M. P. Singh found a clean-shaven stranger in the corridor near the 'B' Cabin and that stranger could only be "Major Sharma".
- (l) That, as the murder was preplanned, the news of Shri Upadhyaya's death had spread in Varanasi even before the dead body was identified by Vishwanath Prasad Agarwal. The conspirators gloated over their success and spread the news immediately on coming to know that the purpose of the conspiracy was fulfilled.
- (m) That when the suspicion fell on Communists, some of them like Dr. Shivtahal Mehta, Munnelal Gupta and Satyanarayan Tiwari absconded.
- (n) That the murder was committed in the running train and the dead body was subsequently placed near the traction pole in order to simulate an accident. That is why the body was discovered by members of the shunting team not



at the commencement of the shunting, as stated by them in the Sessions Court, but at the end of the first stage of shunting, that is, at about 2.50 A.M. as stated by them on 12th February before the U.P. Police, and

- (o) That the C.B.I. manipulated the discovery of articles belonging to Shri Upadhyaya and concocted evidence to show that the recoveries were made from Lalta Kalwar and others. The bedding, it is alleged, was recovered from a pit near the Railway Club and not from the house of Lalta Kalwar. By resorting to this expedient, the C.B.I. could make scapegoats of two notorious railway thieves, Bharat and Ram Awadh.

4. The C.B.I. stuck to the case made out by them in the Sessions Court. They reiterated that the murder was committed by the two accused and that it is impossible that it was committed for political reasons. The C.B.I. relied upon the recoveries and seizures of several articles belonging to Shri Upadhyaya in support of their case that he was done to death by common thieves.

5. The witnesses examined by the Jan Sangh may be grouped as follows:

(i) *Witnesses examined to show that the murder was politically motivated:*

- |   |   |
|---|---|
| <p>(a) (1) Shri Nanaji Deshmukh (Jan Sangh Witness No. 51) and<br/>(2) Kailashpati Misra (JS. W. 42)</p>  | } According to them, Shri Upadhyaya used to collect information against anti-nationals and keep that information in a file or a diary.  |
| <p>(b) (1) Mahesh Datta (JS. W. 46) and<br/>(2) Shivraj Bahadur (JS. W. 30)</p>   | } They say that in certain meetings, it was openly stated that Shri Upadhyaya was responsible for the communal riots at Meerut and therefore it was necessary to eliminate Jan Sangh leaders. |
| <p>(c) Sardar Jagjitsingh (JS. W. 31)</p>   | } He says that V. N. Sharma, the father-in-law of Major S.M. Sharma and Dr. Faridi are friends.   |
| <p>(d) (1) Amarchand Shubh (JS. W. 45)<br/>(2) J.T. Wadhvani (JS. W. 48)<br/>(3) V. J. Bhagwat (J.S. W. 49)<br/>(4) Rajveer Sinha (JS. W. 26)<br/>(5) Kartar Singh Lalchandra (JS. W. 44)<br/>(6) Gyan Chand Agarwal (JS. W. 16)<br/>(7) Ramakant Shukla (JS. W. 17)<br/>(8) Ravi Shankar Trivedi (JS. W. 22) and<br/>(9) Uma Shankar (JS. W. 20)</p> | } They say that unknown persons were shadowing Shri Upadhyaya from the 22nd December 1967 when the Calicut Session was held till the 10th of February 1968.                                   |

- (e) (1) Ram Murat (J.S. W. 43)  
 (2) Jhamar Singh (J.S. W. 25)  
 (3) Triveni Prasad (J.S. W. 15) and  
 (4) Ramesh Singh (J.S. W. 18)
- f) Pratap Rai (J.S. W. 27)
- (g) (1) Daya Bahen (J.S. W. 4) and  
 (2) Shriprakash (J.S. W. 5)
- (h) Dayaram Sinha (J.S. W. 32)
- (i) Shri Nanaji Deshmukh (J.S. W. 51)
- (ii) (1) Shri Ram Prakash, the then Deputy Chief Minister, U.P. (J.S. W. 37) and  
 (2) Shri Pitambar Das, the Vice-President of the Jan Sangh (J.S. W. 21)
- (iii)(a) (1) Rama Shankar (J.S. W. 10) and  
 (2) Rameshchandra (J.S. W. 11)
- (b) Ramacharya Pandey
- (iv) (1) Devdatta Tiwari (J.S. W. 1)  
 (2) Madan Lal Bajpai (J.S. W. 35) and  
 (3) Laxmi Shankar Shukla (J.S. W. 36)
- (v) Prabhu Narayan Upadhyaya (J.S. W. 33)
- (vi) (1) Ved Prakash Agarwal (J.S. W. 28) and  
 (2) Raj Narayan Agarwal (J.S. W. 29)
- They describe the suspicious movements of Ramdas the Ticket Collector, Munne-lal Gupta, Prabhu Singh Bhati, Pranav Kumar Ghosh, Satyanarayan Tewari and Dr. Shivtahal Mehta.
- He says that Prabhu Singh Bhati, while being posted at Bareilly, used to abuse Shri Upadhyaya particularly and the Jan Sangh generally and was friendly with the Left Communists.
- They say that Ramdas the Ticket Collector and Pranav Kumar Ghosh had left Lucknow by the Punjab Mail on the 10th afternoon.
- He says that Dr. Shivtahal Mehta was not to be seen anywhere for over a month after the murder of Shri Upadhyaya.
- He had handed over a statement to Shri John Lobo during the course of investigation. That was a statement made by one Prabhu Dayal saying that at about 5 A.M. on the 11th February 1968 he came to know from S.N. Tewari the Assistant Train Examiner at Akbarpur that Pandit Deen Dayal was murdered.
- They say that M.P. Singh was introduced to Shri Upadhyaya on the platform of the Lucknow Railway Station.
- They say that while travelling by the III Class compartment of the F.C.T. bogie they heard strange noises coming from the I Class compartment, after Sealdah Express had left Zafarabad.
- He says that Rama Shankar and Rameshchandra had disclosed that fact to him.
- They say that the stranger in the I Class compartment at Varanasi was not Shri Upadhyaya.
- He says that he saw Shri Gauri Shankar Rai getting down at Buxar from the Toofan Mail on the morning of the 11th.
- They say that Sidh Singh got down at Faizabad not from the F.C.T. bogie but from another bogie.

- (vii) (1) Chhote Lal (JS W. 2)  
(2) Satyanarayan Prasad (J.S. W. 3)  
and  
(3) Lachhu Ram (JS. W. 8)
- (viii) (1) Sukhanandan Prasad (JS. W. 39)  
and  
(2) Raghubar Prasad (JS. W. 40)
- (ix) Babban Singh (JS. W. 12)
- (x) (1) Kashinath Pandey (JS. W. 23)  
and  
(2) Bholanath Gupta (JS. W. 24)
- (xi) (1) Shri Ram Prakash, the then  
Deputy Chief Minister, U. P.  
(JS. W. 37)  
(2) Dr. M. M. Joshi (JS.W.19) and  
(3) Shri Ramacharya Pandey  
(JS. W.50)
- (xii) (1) Bishambar Nath (JS.W.13)  
(2) Panchanan Srivastava (JS.W.14)  
and  
(3) Laxman Singh Chturvedi  
(JS.W.24)
- (xiii) Ramacharya Pandey (J.S.W.50)
- (xiv) Dr. R. N. Kataria (JS.W.47)  
and
- (xv) (1) Kalpanath Gupta (JS.W.38) and  
(2) Lalta Vaishya @ Lalta Kalwar  
(JS.W.41)
6. The witnesses examined by the Central Bureau of Investigation may be grouped as follows:
- (i) (1) R. P. Shukla (C.B.I. Witness  
No. 2).  
(2) Amarnath Hanuman Prasad  
(CBI.W.3).  
(3) P. L. Babbar (CBI.W.4) and  
(4) G. J. Bijani (CBI.W.6)

They say that when the dead body was seen first, its head was on the junction-box.

They say that the five rupee note was held by the deceased loosely and not in a firm grip.

He says that he and Vishwanath Prasad Agarwal inspected the area near about the traction pole but could not find blood-marks anywhere.

They say that the identity of the dead body was known even before Vishwanath Prasad Agarwal had identified it.

They say that three, and not two, photographs of the injuries were taken before the commencement of the post-mortem examination.

They say that Guards were posted at M.P. Singh's house in Paper Mill Colony, Lucknow, after the 28th February 1968.

He has produced a personal diary (Ex. 40) containing a record of the data collected by him between the 6th February and 10th March, 1968 regarding facts and circumstances leading to the death of Shri Upadhyaya.

He has given his opinion regarding the injuries on the person of Shri Upadhyaya, his opinion being contrary to that of Dr. Bhushan Rao.

They say that the C.B.I. Officers tortured several persons during the course of investigation.

They have given evidence in rebuttal of the allegation that Shri Upadhyaya's movements were being watched by some persons.

- (ii) (1) Radhey Shyam Sharma, S.S.P. (CBI.W.23) and  
(2) Shri John Lobo, D.I.G., (CBI.W.21). } They have given evidence in rebuttal of the allegation that certain information was furnished to them during the course of investigation which was either not pursued or was suppressed by them.
- (iii) (a) (1) Shaukat Ali (CBI.W.5) } His evidence shows that from 1st February till 10th February, no I Class ticket was issued for the journey from Lucknow to Buxar, so that Shri Gauri Shankar Rai could not have travelled from Lucknow to Buxar.
- (b) (1) D. P. Srivastava (CBI. W.7) } He says that Shri G. S. Rai got down at Shahganj and travelled with him from Shahganj to Ballia.
- (iv) (1) S. N. P. Sinha, Additional S. P., Varanasi (CBI. W.17) and  
(2) Radhey Shyam Sharma, S.S.P., Varanasi (CBI.W.23) } They refute the allegation that letters containing a certain type of information were received by them.
- (v) (1) B. N. Mehrotra (CBI.W.1) and  
(2) Daljeet Singh of the Armed Constabulary, U.P. (CBI.W.20) } They say that no Guards were posted at the house of M. P. Singh.
- (vi) (1) Kalika Prasad Tripathi (CBI.W.19). } He rebuts the evidence led by the Jan Sangh in support of its case that the news regarding the death of Shri Upadhyaya had spread even before the dead body was identified by Vishwanath Prasad Agarwal.
- vii) (1) Badri Sharma D.S.P., C.B.I. (C.B.I.W.16)  
(2) Shri John Lobo, DIG, CBI. (CBI.W.21)  
(3) Baccha Rai, a Railway employee (CBI.W.13) and  
(4) Barahu Singh, a Railway employee (CBI.W.14) } They have given evidence to refute the Jan Sangh case in regard to the Akbarpur incident in which Prabhu Dayal and Satyanarayan Tewari had figured.
- (viii) (1) M. A. Khan, Inspector. C.B.I. (CBI.W.9) } In his report Ex. 73 he had cleared off P. S. Bhati.
- (ix) (1) K. B. Vishwanath Nair, a Traffic Officer of the I.A.C. (CBI.W.8) } He rebuts the evidence of Shri Nanaji Deshmukh that he had left Delhi for Bombay on the 9th February.
- (x) (1) Om Prakash Chnatwal of Lucknow Telephone Exchange (CBI.W.12) } He was examined to show that Shri Nanaji Deshmukh could not have given any instructions on telephone to Shri Ramacharya Pandey on the 11th February to collect the relevant data in regard to the death of Shri Upadhyaya.
- (xi) (1) Dr. Bhushan Rao (CBI.W.10) } He reiterated and amplified what he had stated in the Sessions Court.
- (xii) (1) Dr. Shivtahal Mehta (CBI.W.15) } He was specifically involved by the Jan Sangh witnesses as being concerned with the murder of Shri Upadhyaya. He denies the several allegations made against him.

- (xiii) (1) Prabhu Singh Bhati of the  
C.R.P. Mughalsarai (C.B.I.W.18) } He, like Dr. Shivtahal Mehta, refutes  
allegations of his involvement in the  
murder of Shri Upadhyaya.
- (xiv) (1) Jagdeesh Vasty (C.B.I.W.11) } He produced a file regarding an inquiry  
held into the conduct of Dr. R. N.  
Kataria by the Irwin Hospital to which  
he was attached as an Honorary.

and

- (xv) (1) M. P. Tandon, Deputy Regis-  
trar, Allahabad High Court. } He says that the affidavit of Dr. M. M. Joshi  
(C.B.I. W.22) } could not have been sworn on 1st  
February, 1969.

7. On a request made by Counsel for the C.B.I., the evidence of D.I.G. John Lobo in regard to the two reports dated the 20th March and the 29th April 1968 made by him to the Director, C.B.I., was taken *in camera*.

8. It is on the basis of this evidence and the evidence led in the Sessions Court that I have to ascertain the facts and circumstances relating to the death of Shri Deen Dayal Upadhyaya.

**PART IV**  
**(Chapters X to XVI)**

## CHAPTER X

### THE MUCH-MALIGNED MAJOR

1. Major Surendra Mohan Sharma, 30, is a key figure in the controversy, because the allegation of the Jan Sangh is that either he or a person masquerading as Major Sharma travelled by the I Class compartment of the F.C.T. bogie and participated in the murder of Shri Upadhyaya. I will begin my assessment of the case with a consideration of this question.

2. In 1968, Major S. M. Sharma was the Commander of a Field Battery Regiment at Namkom, near Ranchi. On January 14, 1968, he proceeded on a month's leave. He obtained a First Class return soldier's ticket (No. 06172) Ex-Namkom to Delhi on the basis of a military warrant issued by his regiment. The issuance of the ticket is proved by Julius Turkey, A.S.M. Namkom.

3. Major Sharma was married in Delhi on the 17th January to the daughter of one V. N. Sharma who is the Branch Manager of 'Cipla' Company, at Lucknow. The branch office is situated in the house of Dr. Faridi, President of an organisation called 'Majlis Mushawwarat'.

4. Major Sharma left Delhi on the 7th February and reached Lucknow on the 8th. He could have extended his stay at Lucknow till the 11th for he had to join his regiment on the 14th but he decided to leave on the 10th.

5. He says that he phoned the R.T.O.'s Office on the 10th morning for reservation by the Sealdah Express upto Gomoh, where one has to change for taking the connecting train to Ranchi. Though he was assured that there would be no difficulty in getting the reservation, he phoned again at about 1.30 P.M. This time, Naik Har Govind Pandey of the R.T.O.'s Office told him after checking the Reservation Register that the military quota was full but that he would try to get a reservation from the general quota. The military quota consisted of 2 berths in the Train Service Coach. Pandey asked Major Sharma to contact him in the evening for confirmation of the reservation.

6. Pandey says that he then went to the Reservation Office and filled up a reservation slip for a berth from Lucknow to Gomoh. The Reservation Clerk told him that no berth was available in the Gomoh bogie but that he could give a berth in the F.C.T. bogie as far as Mughalsarai. Pandey then prepared a fresh reservation slip (Ka-71) in which he mentioned the rank of the passenger as "Maj.", his name as "S. L. Sharma", and his ticket number as "06171". The name should have been written as "S. M. Sharma" and the correct number of the ticket was "06172". The ticket number was mentioned by Pandey in the column "Warrant/Ticket No.", after striking

out the word "Warrant". The reservation slip was initialled by Pandey, "for R.T.O."

7. Dressed in civilian clothes, Major S. M. Sharma reached the station about 15 minutes before the train was due to leave. He says that he asked a Railway employee who was on the platform as to where he could find his berth. The employee consulted a chart and told him that a berth was reserved for him in the 'C' Cabin of the F.C.T. bogie. Major Sharma however found that the name was mentioned in the chart as "Maj. S. L. Sharma". His father-in-law who along with others had come to see him off said that it might be a spelling mistake. Major Sharma therefore compared the number of the ticket but even that could not tally. He says that he, therefore, inquired if a berth was available elsewhere. On being told that one was available in the Train Service Coach, he went to that coach where Padam Singh, the Coach-Attendant, accommodated him in the 'A' Cabin and noted his name in his reservation chart, Ka-177. Padam Singh however mentioned the name as "Maj. S. N. Sharma".

8. Thus Major Surendra Mohan Sharma having with him ticket No. 06172 was described by Naik Pandey as "Maj. S. L. Sharma" having ticket No. 06171 and by Padam Singh as "Maj. S. N. Sharma". These mis-descriptions are the principal foundation of the argument regarding the involvement of Major S. M. Sharma.

9. Major Sharma says that he travelled by the Train Service Coach (No. 1730) as far as Gomoh and reached his regiment late on the 11th. He left for regimental exercises on the 12th and returned on the 28th. His statement was recorded by Inspector Jha of the C.B.I. on the 3rd March at Ranchi.

10. Now the first question which arises on this evidence is whether Major S. M. Sharma travelled by the Sealdah Express on the 10th February and if so, whether he travelled by the Train Service Coach (No. 1730). Frankly, I am unable to see any good reason for disbelieving Major Sharma on any part of his narrative. It is indisputable that he had taken a month's leave from the 14th January, that he had obtained a return ticket (No. 06172) on a military warrant, from Namkom to Delhi and that he got married on the 17th at Delhi. The fact that he travelled by the Sealdah Express by Coach No. 1730 is borne out by Padam Singh's reservation chart, though his name was wrongly shown therein as "Maj. S. N. Sharma". I have no doubt that Padam Singh made an inadvertent error in showing the name as "S. N. Sharma" instead of showing it as "S. M. Sharma". There is a close phonetic similarity between the letters 'M' and 'N' and such errors are by no means uncommon. Conductors and Coach-Attendants have to attend to a large number of requests of a varied kind from a variety of persons. In the very nature of things they have but a short time within which to solve the difficulties of the passengers. Besides, what is important for a Coach-Attendant like Padam Singh is to make an entry in the reservation chart showing that a particular berth was utilised during a particular journey. In the hurry of the moment, persons in the position of Padam Singh are known not to pay sufficient attention to what for their purposes are mere trifles. Whether the passenger to whom a



berth is allotted is "S. M." or "S. N." or "S. L." Sharma is a matter of little or no consequence to them. Such indifference or carelessness cannot of course be encouraged but that is a simple fact of life to which one cannot shut one's eyes.

11. I would give no importance to Padam Singh's description that the Major Sharma who travelled by Coach No. 1730 was clean-shaven. In fact, Major S. M. Sharma had thin moustaches but Padam Singh is making a mistake once again. His conduct does not show that he was particularly careful or observant and therefore it is difficult to believe that he had noted the description of Major S. M. Sharma with any particularity. He had no reason to do so. The seven cabins in his coach were almost fully occupied and it would not be easy for him to remember who had and who did not have moustaches. Whether the passenger whom he had accommodated in his coach was clean-shaven or not was a matter of no moment to him. It was to him as unimportant as whether his correct names was "S. M." or "S. L." Sharma. That Padam Singh was not uncommonly careful or methodical can be seen from the fact that he did not even enter the number of Major Sharma's ticket in the reservation chart, though he was required to do so.

12. If Major Sharma joined his regimental exercises on the 12th—and that is not challenged—he must have reached Ranchi on the 11th and that could only be if he left Lucknow on the 10th. He held a return ticket from Namkom to Delhi and was on one month's leave from the 14th January.

13. A question which comes to mind immediately is: Why should Major S. M. Sharma tell a lie that he travelled by the Train Service Coach? Is it at all possible that he was connected with the murder of Shri Upadhyaya?

14. He was a freshly married young man and it puts quite some strain on one's credulity to accept that, for no reason, he joined the conspiracy to commit Shri Upadhyaya's murder and actually participated in the act of murder within three weeks of his marriage. He is supposed to have lent his assistance at the instance of his father-in-law, V. N. Sharma, who asked him to undertake the mission because of his own friendship with Dr. Faridi. So, Dr. Faridi, alleged to harbour communal hostility towards Shri Upadhyaya, requisitioned the services of V. N. Sharma who in turn agreed to sacrifice his son-in-law, and in that process the future of his daughter, in a murderous venture. To crown this absurd sequence, Major Sharma's wife, father-in-law and 2 brothers-in-law had gone to see him off at the Station. Secrecy is the badge of conspiracy but Major Sharma seems to have thrown it to the winds. He had an open air about him to the extent that while on a mission of this magnitude he is supposed to have travelled in his own name with a slight modification in his initials. I think this is all too thin to be stretched further.

15. That disposes of one aspect of the matter, namely, whether Major S. M. Sharma was a party to the conspiracy and whether he travelled by Coach No. 1730, of which Padam Singh was the Attendant.

16. I am clearly of the view that Major Surendra Mohan Sharma travelled by the Train Service Coach (No. 1730), which necessarily implies that he did not travel by the F.C.T. bogie (No. 1935). Further, that he was not even remotely connected or concerned with Shri Upadhyaya's murder. In noting down his name as "S. L. Sharma" and the number of his ticket as 06171, Naik Har Govind Pandey committed a careless error, which in the context of the various circumstances mentioned above has no particular significance. Pandey was new to his work as he was posted to the R.T.O.'s office in January 1968 for the first time. It is sad that such casual errors can prove costly to the public.

17. Another and a more important aspect of the matter still survives and that is whether someone else masqueraded as Major Sharma and travelled by the I Class compartment of the F.C.T. bogie.

18. On this issue, the balance of probabilities is against the view that anything of the sort could have happened. A pretender feigning to be Major Sharma would not court the risk of borrowing his initials and his ticket number so closely, especially, when the real Major Sharma was travelling by the same train. But then B. D. Kamal has something to say on this point, which it is urged, may tilt the balance.

19. Kamal, a Travelling Ticket Examiner, worked as a Conductor on the Sealdah Express from Lucknow to Mughalsarai on the 10th February 1968. He was examined in the Sessions Court as a Court witness. He says that before the train left Lucknow, he entered the I Class compartment of the F.C.T. bogie to check the passengers on the basis of a reservation chart. He went to the 'C' Cabin first wherein, he says, a man, 45 or 50 years of age, dressed in white civilian clothes was standing. The cabin was unlighted. Kamal asked the man: "Major Saheb?" and that man replied: "Yes". Kamal then checked the passengers in the 'B' and 'A' Cabins, namely, Shri Upadhyaya and M. P. Singh respectively. He says that he made tick-marks in his reservation chart against the three names and handed over the chart to the A.S.M.'s Office at Mughalsarai.

20. This evidence, even if it is taken at its face value, does not by itself show that someone, pretending to be Major Sharma, travelled by the F.C.T. bogie from Lucknow to Mughalsarai. But it would show that a person falsely claiming to be Major Sharma was standing in the 'C' Cabin, at Lucknow, somewhat suspiciously.

21. It is however difficult to accept Kamal's claim that he checked the passengers in the three cabins of the F.C.T. bogie. The best evidence of that fact would be the reservation chart of the F.C.T. bogie on which Kamal is supposed to have made tick-marks in token of his having checked the passengers. That chart could never be traced. It could not be found in the A.S.M.'s Office and Yadav, the Conductor of the train from Mughalsarai onwards, says that he never received it.

22. On the other hand, we have the chart (Ka-73) of Reservation Ticket Collector Shiv Bachan Singh, who was on reservation duty

on the platform. In that chart, Shiv Bachan has made tick-marks against the I Class passengers who had reservations in the F.C.T. bogie. He has thus made tick-marks against the names of M. P. Singh, "Major S. L. Sharma" and Shri Upadhyaya. He has even shown in the chart that Shri Upadhyaya who held a reserved berth in the 'A' Cabin has shifted to 'B' Cabin. It is clear from this chart that Shiv Bachan had checked the passengers. That is as it should be, because even according to Kamal, it is the duty of the Reservation T.C. to check the passengers in the F.C.T. bogie and to accommodate passengers in that bogie, if there is any vacancy. Kamal has further admitted that Shiv Bachan had told him expressly that he had checked the passengers in the F.C.T. bogie and that Shri Upadhyaya wanted to shift to the 'B' Cabin. It seems difficult to hold that after this assurance, Kamal re-checked the passengers.

23. That he did not check the I Class passengers in the F.C.T. bogie is clear from his admission that he did not notice either Subedar Sidh Singh or Shri Gauri Shankar Rai in the 'C' Cabin. Kamal says that immediately after he came out of the F.C.T. bogie, it was time for the train to leave and he had to rush to get in the Train Service Coach. At that stage, it is impossible that Sidh Singh and Shri Rai were not in the 'C' Cabin.

24. In fact, Kamal does not appear to have gone anywhere near the F.C.T. bogie. Shri Ram Prakash the Deputy Chief Minister, Shri Pitambar Das, Harishandra and others had gone to the Station to see Shri Upadhyaya off and they were all standing in a group in front of the 'B' Cabin. Kamal says that he saw no one on the platform nearabout the 'B' Cabin.

25. Kamal admits that he did not check the tickets of the I Class passengers in the F.C.T. bogie at Lucknow and further that after the train left Lucknow, he never went to the F.C.T. bogie, though he used to get down at almost every intermediate station. He does not know if any one got down from the F.C.T. bogie at Faizabad and Shahganj. That shows that he was not concerned with the passengers travelling by the F.C.T. bogie or with the possible accommodation available therein. Therefore, he could not have possibly checked the passengers at Lucknow.

26. After Kamal went to the Train Service Coach, Padam Singh the Coach-Attendant gave him the reservation chart (Ka-177) of that coach. Kamal admits that it was his duty to check the passengers travelling by that coach but that he did not do so. He had over half an hour at his disposal to do so, for he travelled by that coach from Lucknow to Barabanki. If he did not do what was his plain duty to do in regard to the checking of passengers in the Train Service Coach, it is not likely that he did his duty in regard to the checking of passengers in the F. C. T. bogie.

27. Apart from the merits of Kamal's evidence regarding the presence of the pretender in the 'C' Cabin, it seems unlikely that if

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the person had got into the Cabin for a nefarious purpose, he would own up being "Major Saheb". It involved the risk that the Conductor may want to check his ticket. The false claim would in that event be exposed on the very threshold. The impostor would have rather disowned being the 'Major Saheb' and got into some other compartment in order to wait for a more propitious opportunity to get back into the I Class compartment during the journey. Conspirators are never so raw as to allow such slips to nip the conspiracy in the bud.

28. The evidence of Subedar Sidh Singh and Shri Gauri Shankar Rai shows that they travelled by the 'C' Cabin, the former upto Faizabad and the latter upto Shahganj. Apart from them, there was no other passenger in the 'C' Cabin, not at any rate till Shahganj.

29. The Jan Sangh has examined two witnesses—Ved Prakash Agarwal and Raj Narayan Agarwal—to show that Sidh Singh did not travel by the F. C. T. bogie, but I am unable to accept that evidence. Ved Prakash, a member of the Jan Sangh, says that except for one man, people who got down at Faizabad on the 10th night from a I Class bogie near the engine were all civilians. The passenger who was in the army uniform was 'short, stout and wheat complexioned'. I do not think that on this evidence one can exclude that Sidh Singh got down at Faizabad from the F. C. T. bogie. As regards Raj Narayan, he had travelled by the Train Service Coach and he got down at Faizabad. He would not know what other passengers had got down from the other bogies.

30. The Jan Sangh has similarly examined one Prabhu Narayan Upadhyaya to disprove that Shri G. S. Rai got down at Shahganj. Prabhu Narayan says that he saw Shri G. S. Rai getting down from the Toofan Mail at about 4.30 A.M. on the 11th. This cannot be true for, in the first place, we have the independent testimony of Shri Durga Prasad Srivastava, Deputy Collector of Ballia, that he and Shri G. S. Rai travelled together from Shahganj to Ballia after alighting from the Sealdah Express at Shahganj. Secondly, the evidence of Shaukat Ali Muravat Ali, a booking clerk at the Charbagh Railway Station, Lucknow, shows that from the 1st to the 10th February 1968, no I Class ticket was sold for a journey from Lucknow to Buxar. On the other hand, two tickets were sold on the 10th February for a journey from Lucknow to Ballia, one *via* Shahganj and the other *via* Varanasi. It is clear that Shri Rai travelled on one of these tickets. The fact that he got down from the off-side at Shahganj has no special significance. He did so because he could not find a coolie and as the train for Ballia was waiting on the off-side. It is also clear that he preferred to go to Ballia *via* Shahganj, because that is more convenient than going *via* Varanasi. The latter course means getting down at Varanasi at an odd hour of the night and waiting for the connecting train to arrive. The Sealdah Express reaches Shahganj at 11.25 P.M. and the Ballia bogie is kept waiting at the station so that one can get in and relax, till the train for Ballia leaves Shahganj in the morning.

31. Thus, the evidence of Sidh Singh and Gauri Shankar Rai shows that none else apart from them travelled by the 'C' Cabin from Lucknow to Shahganj. The presence of the middle-aged stranger clad in white, in the 'C' Cabin at Lucknow is therefore both improbable and innocuous.

32. I have no doubt that Major Surendra Mohan Sharma, much-maligned, did travel by the Train Service Coach from Lucknow to Gomoh and that no one masqueraded as Major Sharma from Lucknow to Shahganj.

## CHAPTER XI

### WHEN WAS SHRI UPADHYAYA LAST SEEN ALIVE?

1. The case of the Jan Sangh is that Shri Upadhyaya was murdered in the running train between Jafarabad and Varanasi. The rival version is that he was pushed out of the train when the F.C.T. bogie was near the traction pole, that he dashed against the pole and died instantaneously.

2. After the train left Lucknow at 7.00 P.M. Subedar Sidh Singh, who was travelling in the 'C' Cabin along with Shri G. S. Rai was the first to get down. He detrained at Faizabad at 9.26 P.M.

3. The evidence of Shri Rai shows that Shri Upadhyaya had come out of the compartment at Faizabad Station. Shri Rai was taking his food with his back towards the corridor side when Shri Upadhyaya got back into the train by the door near the 'C' Cabin. The train was then about to leave. Shri Upadhyaya and Shri Rai had a brief conversation on whether the door should be bolted.

4. After Faizabad the train halted at Reedganj, Ayodhya, Akbarpur and Shahganj. The train reached Shahganj at 11.25 P.M. Shri Rai got out of the train from the off-side to catch the connecting train for Ballia.

5. Thus when the train left Shahganj, there were only two passengers in the I Class compartment of the F.C.T. bogie—Shri Upadhyaya in the 'B' Cabin and M. P. Singh in the 'A' Cabin.

6. The next halt after Shahganj was Jaunpur where the train reached at 12.45 A.M., with the platform on the cabin-side. K. L. Shukla, Private Secretary to the Raja of Jaunpur had gone to the Station to deliver a letter written by the Raja to Shri Upadhyaya. He found that both the doors of the I Class compartment were bolted from inside. There was no light inside any of the three Cabins, but Shri Upadhyaya had put down the glass shutter only and K. L. Shukla could see in the light of a lamp on the platform that he was lying asleep on his berth. In a shortwhile, Shri Upadhyaya came out when Shukla handed over to him the letter of the Raja. They went inside, Shri Upadhyaya switched on the light in his cabin, read the letter and told Shukla that he would send a reply to the Raja.

7. The evidence of Shukla was not challenged at any stage. That evidence establishes that Shri Upadhyaya was alive when the train left Jaunpur, which was at 12.30 A.M.

8. The train reached Jafarabad at 12.39 A.M. and the question which requires examination is whether as alleged by the Jan Sangh Shri Upadhyaya was murdered between Jafarabad and Varanasi.

9. Two witnesses have been examined by the Jan Sangh in support of this case. They are: (1) Rama Shankar, and (2) Ramesh Chandra. Both of them say that on the 10th evening they travelled by the III Class compartment of the F. C. T. bogie, which is immediately next to its I Class compartment. Two or three minutes after the train left Jafarabad, they claim to have heard a shriek first and then a thud. It is alleged that these noises which emanated from the I Class compartment were directly related to the assault on Shri Upadhyaya. In its issue of 10th March 1968, the 'Organizer' has described these noises picturesquely as 'Third Class noises from Frist Class Compartment'.

10. The possibility that Shri Upadhyaya was assaulted immediately after the train left Jafarabad can be excluded in relation to a variety of circumstances to which I will come later. But the evidence fo these two witnesses fails to carry conviction on its own merits. The I Class and the III Class compartments, though parts of the F. C. T. bogie are not so close to one another that a shriek and a thud would be heard while the train was in motion. It was a chilly, wintry night and it is common experience that passengers take care to down the shutters on such nights. If persons sitting in the III Class compartment could hear the noise, M. P. Singh, the next door neighbour, should have been rattled out of his sleep.

11. The conduct of the two witnesses after they got down at Varanasi is so unnatural that they could not have possibly heard any noises during the journey. They claim that they had written letters to the S. S. P. Varanasi, informing him that they had heard strange noises during the journey. This is falsified by the evidence of S. N. P. Sinha, Additional S. P. Varanasi and Radhe Shyam Sharma, S. S. P. who say that they did not receive any communication at all from either of the witnesses. If, as contended by the Jan Sangh, Shri Ramacharya Pandey knew on the 14th of February that the two persons had heard strange noises on the particular night, he would have taken them to the C. B. I. That admittedly was not done. The evidence of Rama Shankar and Ramesh Chandra must therefore be rejected.

12. The train reached Varanasi at 1.25 A.M. A question of importance which requires determination is as regards the identity of the person, who standing in the corridor in front of the 'B' Cabin, talked to B. D. Kamal.

13. Kamal, Conductor of the Sealdah Express, went to the F.C.T. bogie immediately after the train reached Varanasi. He wanted to wake up M. P. Singh because the latter had given instructions at Lucknow accordingly.

14. Kamal says that he opened a glass shutter, knocked on the 'A' Cabin by inserting his hand through the corridor and woke up M. P. Singh. Kamal then waited outside for M. P. Singh to come out of his cabin and open the door of the compartment. Kamal wanted to wake up the passenger travelling in the 'C' Cabin, for his

chart showed that the passenger was booked for Mughalsarai. It may be recalled that "Major S. L. Sharma" was allotted a berth in the 'C' Cabin, from Lucknow to Mughalsarai.

15. Kamal says that while he was thus waiting on the platform, a person came out of the 'B' Cabin and stood in the corridor. Kamal requested him to open the door as he wanted to wake up the passenger travelling in the 'C' Cabin, who was due to get down at Mughalsarai. The person, who had come of the 'B' Cabin replied that the man had already got down at Shahganj. Kamal, however, wanted to verify it for himself and so he asked the stranger to open the door. After the door was opened, Kamal went in but found that the 'C' Cabin was empty. The person who came out of the 'B' Cabin was, according to Kamal, wearing a white dhoti and had a shawl on.

16. Kamal's statement was recorded by the C.I.D. on the 12th February. The C.B.I. recorded his statement first on the 27th February and then on the 17th March.

17. The version of M. P. Singh as regards this incident is strikingly different. His statement was recorded by D. S. P. Tewari on the 15th of February at Raghamines, where he had gone for a departmental camp which was to last for three months. He said in that statement:

- (1) That the person who was standing in the corridor in front of the 'B' Cabin was not Shri Upadhyaya in so far as he remembered. His reason for saying so was that the person was clean-shaven and had no moustaches, whereas Shri Upadhyaya had moustaches; and
- (2) That the stranger had probably put on a white pyjama, though that could not be said with any certainty. He was however sure that the stranger was not wearing pants.

18. When M. P. Singh was examined in the Sessions Court he stated in his examination-in-chief that he was not certain whether the stranger was or was not Shri Upadhyaya. In his cross-examination he stated at first that he had not seen the face of the stranger carefully. He however diluted the effect of this statement by saying that he had noted that the stranger had two or three white hair on his chin. He explained the statement which he had made before D. S. P. Tewari on the 15th February by saying that it was merely his impression that the stranger had no moustaches and that he was not Shri Upadhyaya. On a second thought, he felt that he had not seen the man carefully. M. P. Singh further stated that the stranger was wearing either a Dhoti or a Pyjama but not pants. Finally, he stated that the chances of the stranger being Shri Upadhyaya were "fifty-fifty".

19. M. P. Singh's statement was recorded by the C.B.I. on the 10th March.



20. There is only one other aspect of M. P. Singh's evidence to which reference must be made. He stated that when the train reached Varanasi, he went to the bath-room on the side of the 'A' Cabin but could not open it though he tried to open it twice or thrice. He thereafter went to the other bath-room near the 'C' Cabin.

21. It is clear that on some of the important aspects of the Varanasi incident, there is a fundamental difference between the versions of M.P. Singh and B. D. Kamal. Kamal's evidence tends to show that the person who came out of the 'B' Cabin was Shri Upadhyaya himself but it fails to inspire confidence. In the context of the untrue evidence given by Kamal that he had checked the F.C.T. passengers at Lucknow, it would be unsafe to rely on him for holding that the person who came out of the 'B' Cabin was Shri Upadhyaya.

22. Equally, however, it would be hazardous to place reliance on the evidence of M.P. Singh in order to determine the identity of the stranger. It is true that Shri Ram Prakash, the Deputy Chief Minister and Shri Pitambar Das have stated before me, as Harischandra had stated in the Sessions Court, that M. P. Singh was introduced to Shri Upadhyaya at the Lucknow Railway Station. M. P. Singh however denies the introduction and I am left with an uneasy feeling that the evidence that M. P. Singh was introduced to Shri Upadhyaya is given merely to add weight to the earliest statement of M. P. Singh that he was certain that the stranger was not Shri Upadhyaya. Shri G. S. Rai who was admittedly introduced to Shri Upadhyaya says that M. P. Singh was not introduced in his presence in any case.

23. Shri Ram Prakash had filed an affidavit dated the 25th January 1970 before the Commission but he does not say therein that M. P. Singh was introduced to Shri Upadhyaya. He has mentioned therein that Shri Pitambar Das had introduced Shri Rai to Shri Upadhyaya.

24. At Ex. 4 is a statement dated the 19th March 1968 made by Shri Ram Prakash before D.S.P. Baijal, which has been accepted by him as correct. There also he has stated that Shri Rai was introduced to Shri Upadhyaya. I have therefore no doubt that Shri Ram Prakash and Shri Pitambar Das are not right in saying that M. P. Singh was introduced to Shri Upadhyaya. There was no occasion for such an introduction and I am certain that it was not made. Shri Rai was introduced because there was a wrangle over the shifting of his luggage and he had shown some courtesy and consideration to Shri Upadhyaya.

25. The reason why I do not propose to rely on the evidence of M. P. Singh for fixing the identity of the stranger is that he has made conflicting statements from time to time. His earliest statement was that the stranger was very certainly not Shri Upadhyaya. He neutralised his firm conviction in course of time and put the chances of the stranger being Shri Upadhyaya at "fifty-fifty". A vacillating witness like this cannot be trusted when he claims to

have identified the stranger. Besides, if he could not identify Bharat whom he had seen even more closely, it is unlikely that he could have identified the stranger as Shri Upadhyaya.

26. On a balance of probabilities, Kamal seems to be right in saying that M. P. Singh did not come out of his cabin at all. It is the stranger who seems to have opened the door for Kamal. The bulk of the conversation was between Kamal and the stranger, and not between M. P. Singh and the stranger. Then again, Kamal was standing face to face with the stranger, whereas M. P. Singh would only be standing by his side, assuming that he came out of his cabin at all. The evidence of Singh gives an impression that though he holds a post-graduate qualification in Science, he was unconcerned with the true facts of life. His statement of the 15th of February reads as if he was trying to be in tune with an early theory that Shri Upadhyaya was murdered before the train had reached Varanasi.

27. Therefore, one can neither rely on Kamal for holding that the stranger was Shri Upadhyaya, nor on M. P. Singh for holding that the stranger was not Shri Upadhyaya. In other words, the oral evidence of these witnesses is not adequate to prove either hypotheses—either that Shri Upadhyaya was alive or that he was not alive at Varanasi. Whether the probabilities of the case and the other circumstances are more consistent with one hypothesis than with the other is a separate matter. That depends on the plausibility of the theory that Shri Upadhyaya was murdered in the running train and his body was subsequently placed near the traction pole. I will deal with that aspect later.

28. The Jan Sangh has examined three witnesses in support of its case that the person in the corridor was not Shri Upadhyaya. They are: (1) Dev Datta Tiwari, (2) Madan Lal Bajpai and (3) Laxmi Shankar Shukla.

29. Dev Datta Tiwari has stated that he had gone to the Varanasi Station to see off a friend's son, Ram Bali. While they were taking tea on the platform, he saw two persons talking with Conductor Kamal in English. One of them had come out of the 'A' Cabin, and the other out of the 'B' Cabin. One had put on a full-pant and a long coat, while the other had put on a pyjama and had a shawl on his person.

30. I find it difficult to uphold the claim of Dev Datta because there is apparently no reason why his attention should have been drawn to the conversation between Kamal and the two strangers or to the dress worn by them. If it were true that Dev Datta had gone to the Station to see off Ram Bali, it is surprising that this important fact should not have found place in the affidavit of the 22nd of January 1970 filed by him before the Commission.

31. Dev Datta's allegation that he had disclosed the particular incident to Radhe Shyam Sharma, S.S.P. is denied by the latter. It seems to me surprising that a leading member of the Jan Sangh like

Dev Datta should not have supplied such an important piece of information to the C.B.I.

32. Dev Datta's claim that he saw through the window that one of the two passengers had a pyjama and a shawl on is really too tall. He has admitted that the passengers were leaning on the window while talking to the Conductor. He could not have possibly seen the lower garments worn by them. It is significant that Nanaji Deshmukh had said in the Sessions Court that he did not know the names of persons who had direct knowledge of the matter. Nanaji should have really said that Dev Datta had furnished to him data showing that none of the two persons could be Shri Upadhyaya. It is said that Shri Upadhyaya never talked in English with anyone who could understand Hindi.

33. The evidence of Laxmi Shankar Shukla must fall with that of Dev Datta, because he merely says that on the 12th of February Dev Datta had told him that a stranger was impersonating Shri Upadhyaya and was talking to Kamal in English. Laxmi Shankar, a Professor in the Engineering College Banaras Hindu University, has added his own spice by introducing the new element of impersonation.

34. For the same reason, the evidence of Ramacharya Pandey and Nanaji Deshmukh must also be discarded to the extent that they say that Dev Datta Tiwari had told them that a person who was talking to the Conductor was talking as if he was Shri Upadhyaya.

35. The only evidence that remains to be considered on this aspect is that of Madan Lal Bajpai, a railway clerk. He says that on the particular night he and two others had gone to the Varanasi Station to meet one B. D. Tewari who was to come by the Sealdah Express. While he was looking out for Tewari, he saw a young man of about 30 years asking Kamal in English as to how long it would take for the train to reach Mughalsarai. The person was clean-shaven, wheat complexioned, was wearing a pyjama and was standing in the I Class compartment of the F.C.T. bogie.

36. This witness is in the same category as Dev Datta Tiwari. It is not likely that Madan Lal had gone to meet Tewari, because as admitted by him, Tewari did not come to Varanasi by any other train round about that time. Madan Lal is one of those split-second witnesses who hear a significant conversation or see a significant detail in a passing moment. I find it hard to believe that while looking out for Tewari, Madan Lal happened to be passing by the F.C.T. bogie when the conversation was going on and that he could even see that the person standing in the compartment was clean-shaven, wheat complexioned, of average height and was wearing a pyjama.

37. Madan Lal has given a touch of drama to his evidence by saying that he had once gone to the Sessions Court while the trial of Bharat and Ram Awadh was going on and to his surprise he found that the person who was in the witness-box, Major S. M. Sharma, was the very person who was talking to Kamal on the particular

night. The only difference was that he was clean-shaven first but standing in the witness-box he had moustaches. Madan Lal immediately wrote a chit and passed it on to the Defence Counsel suggesting that the witness be photographed. He claims to have made a similar suggestion to others in the Court-room, including Ramacharya Pandey.

38. This coincidence is even more unnatural than the earlier. It is also not possible to believe that Madan Lal would not disclose such an important piece of information to the Investigating Officers. I cannot believe that he either wrote a chit to the Defence Counsel or made any disclosure to Ramacharya Pandey.

39. I am unable to see any connection between the closed toilet near the 'A' Cabin and the presence of the stranger in the corridor, assuming that he was not Shri Upadhyaya. Toilets do have the disconcerting habit of getting jammed when needed most. But what is really important is that it is highly improbable that the stranger would voluntarily make a sort of public appearance by emerging out of the 'B' Cabin if he had anything to do with any one kept in the toilet in an injured or dead condition. No blood stains were found in any part of the toilet.

40. Putting it briefly, I would prefer to say, after considering the entire evidence on this issue, that Shri Upadhyaya was definitely alive at Jaunpur, but he was last seen alive only at Jaunpur. There is no reliable evidence to show that he was seen alive at Varanasi, though this does not justify the inference that he was not alive when the train arrived at Varanasi. The reason for this latter observation is that just as I am not disposed to rely on Kamal's evidence for holding that the person who came out of the 'B' Cabin was Shri Upadhyaya, I am also not disposed to accept the nebulous version of M. P. Singh that he was not Shri Upadhyaya.

41. The question whether Shri Upadhyaya was alive at Varanasi shall have to be dealt with independently on a separate footing.

## CHAPTER XII

### DISCOVERY OF THE BODY AND ITS POSSIBLE PLANTING NEAR THE POLE

1. Whether the murder of Shri Upadhyaya was committed elsewhere and the dead body laid near the pole involves consideration of four inter-dependent questions: (1) The possibility that the murder was committed in the I Class compartment of the F.C.T. bogie; (2) The possibility that death resulted due to an impact with the traction pole; (3) The time when the body was first discovered; and (4) The position in which the body was seen lying.

2. These are inter-connected questions because: (a) If the murder was committed in the compartment, it must follow that the body was laid near the pole later; (b) If the death did not occur instantaneously as a result of an impact with the traction pole, the planting of the body near the pole becomes a live possibility; (c) If the body was discovered not at about 2-20 A.M. during an early stage of shunting, but at about 2-50 A.M. after the shunting of the Sealdah Express was over, it must follow that the body was laid near the pole during the shunting operations, presumably after the shunting of the Sealdah Express was completed; and (d) If the position and condition of the body were such as to belie the case of a fall on the spot, there would be a plausible basis for the supposition that the body was brought to the pole from somewhere else. I might add that the rival theories are specific. The allegation of the Jan Sangh is that the murder was committed in the compartment while the train was in motion. The case of the C.B.I. is that the death of Shri Upadhyaya occurred because he was pushed from the running train and he dashed against the traction pole.

(i) *Was the murder committed in the compartment?*

3. I will first deal with the question whether the murder of Shri Upadhyaya could have been committed in the compartment. Several circumstances will have to be borne in mind while dealing with this aspect.

4. In the first place, it must be remembered that no blood at all was found in any part of the compartment. Bhola Bharati who cleaned the 'B' Cabin and the I Class compartment at Patna with a brush says that he did not notice any blood in the cabin or anywhere in the compartment. Conductor Yadav who had accommodated a passenger in the 'B' Cabin at Patna also says that he saw no blood-stains anywhere in the compartment.

5. The bogie was sealed immediately after it reached Howrah and it arrived in that condition at Mughalsarai on the night between the 13th and the 14th February. The Expert team headed by Dr. S. N.

Garg, Director of Forensic Science Laboratory, Hyderabad, says in its report (Ka-65) dated the 15th of February 1968 that no trace of blood was found either inside the bogie or on the suit-case which was first discovered at Patna and was sent to Mughalsarai by the G.R.P., Mokamah. Dr. Garg had found some greasy stains near the Attendant's seat which is close to the toilet near the 'A' Cabin, but the report of Shri Basak (Ka-133B) shows that the greasy substance only showed "light orange coloured fluorescence under ultra violet lamp".

6. Inspector Mukherjee, who had sealed the bogie at Calcutta has stated that spots of undiluted phenyl were noticed near the Attendant's seat. It is true that as admitted by Shri Bhattacharya, Assistant Director, Central Forensic Science Laboratory, Calcutta, phenyl can destroy blood stains. The criticism is also justified that the greasy substance was not tested in order to ascertain if it contained phenyl. But I find it difficult to attach importance to the stains of phenyl near the Attendant's seat, assuming inspector Mukherjee to be right in his lay observation that the stains were of phenyl. On the case made out by the Jan Sangh, there should have been a fair sprinkling of blood at more than one place in the compartment. In any event, the 'A' toilet should have shown traces of sizeable stains. I am unable to agree that the blood stains in the compartment and the toilet, which should have been found if the murder was committed in the compartment, might have got wiped out or washed in the normal process when the bogie was cleaned. It is clear from the evidence of S. R. Kandu, the Train Examiner at Howrah, that it was not washed before it was sealed.

7. No blood was found on any part of the bedding, except the caseless pillow, in a corner of which a tiny speck of human blood was found. This is clear from the report (Ka-52) dated the 22nd February 1968, of Shri Bhattacharya. If Shri Upadhyaya was assaulted in the 'B' Cabin, one should have found some evidence of that assault in the shape of blood-stains either in the Cabin or on some part of the bedding.

8. Not much importance can be attached to the tiny dot of blood on the pillow, though Dr. Roychowdhary, the Serologist, has stated in his report (Ka-296) dated 13th May 1968, that the blood was of 'B' Group. True that the blood of Shri Upadhyaya was also of 'B' group, but as stated by Dr. S. Choudhary, Special Officer, Forensic Science Laboratory, Calcutta, the blood spot was caused by direct contact and was not a result of the soaking of the blood through any other article like the pillow cover. It may sound light-hearted and a Judge must always avoid that charge, but I would like to draw attention to a passage in Sir Sydney Smith's Forensic Medicine, 10th Edition, page 207, that stains on garments due to bugs are caused by blood sucked from human beings and therefore such stains "will give all the reactions for human blood."

9. The pillow cover which was produced by Lalta Kalwar on the 17th was not found to be blood-stained. It may perhaps be that whatever kind of stains there might have been on it were obliterated as Lalta had got it washed from Mitia, the washerwoman. That

cannot however justify the inference that Lalta got the pillow cover washed, because it was blood-stained.

10. The characteristic blood-stains on the banyan and the two full-sleeved sweaters which appear clearly from the photographs K-122, K-124 and K-125 are also inconsistent with the theory that the murder was committed in the compartment. If the head injury was caused while Shri Upadhyaya was lying on his bed, the bedding would have been profusely blood-stained. If the injuries were caused while he was in a standing posture, the blood would not have fallen directly on the full-sleeved woollen sweater. The blood would have trickled down from the injury towards the neck and the other parts of the body. The photographs show that the blood fell on the shoulder region only. That happened because, as is clear from the photograph Ka-31, the blood trickled from the right ear directly on to the shoulder region of the outermost full-sleeved woollen sweater, the head being tilted to the right.

11. It is significant that the clothes on the person of Shri Upadhyaya and the articles in the bedding showed no signs of struggle. There was no tear on any part of the clothing. There was no injury on the face and indeed there was no defensive injury on any part of Shri Upadhyaya's person.

12. M. P. Singh had passed by the 'B' Cabin at Varanasi. In fact, he first went from 'A' Cabin to the 'A' toilet and then from the 'A' toilet to the 'C' toilet. Thus he walked through the whole of the compartment but he found nothing unusual.

13. Kamal also entered the compartment at Varanasi. He walked past the three cabins, for the thought he must wake up the passenger in the 'C' Cabin. He saw nothing unusual. Were the stranger concerned with the murder, it is surprising that he should not only be unruffled both in the matter of his composure and clothes but that he should butt in while Kamal was conversing with M. P. Singh. In fact, Kamal has stated that the man came out of the 'B' Cabin on his own.

14. The 'A' toilet which was of the Indian Style, measured 6'-2" x 3'-7". Inside the toilet would be a basin and the latrine. It is hard to believe that not only was Shri Upadhyaya dumped into the toilet in a dead or injured condition but the murdered had also locked himself in. The jamming of the toilet at Varanasi could only be significant if both the murderer and the victim were in the toilet. That seems to me impossible.

15. The typical leg fractures of the tibia and the fibula could not have been caused in the compartment. There were no external marks of violence on the seat of those fractures, which must mean that the fractures were caused indirectly and not by a direct application of force. Considering the severity of the fractures, Dr. Bhushan Rao is right that they could not have been caused manually by angulation or twisting of the legs.

16. I am unable to accept Dr. Kataria's opinion that the leg fractures could have been caused by angulation. That would involve the adoption of a process rather too neat and meticulous. It is contrary to all experience that a murderer will cover the legs with a cushion and then twist them. Even a surgeon might find it somewhat difficult to produce such a result by such means.

17. The injuries on the back of Shri Upadhyaya have their own significance. These injuries which appear from the photograph Ka-31 are in the nature of imprint abrasions. The total length of the back injuries Nos. 2 and 3 is 38 cms. The width of injury No. 2 is 8 cms. while that of injury No. 3 is 7 cms. The abraded contusion on the right buttock was 16 cms.×8 cms. Thus the total length of injuries Nos. 2, 3 and 7 is 54 cms. One has to strain one's experience and imagination to think of a weapon which would cause injuries of such dimensions and that too in the compartment. In fact, I am unable to picture out how such injuries could be caused while the victim was in a standing posture. They could only be caused by felling him down on the stomach, which would cause injuries on the face and the front portion of the body. Such injuries are conspicuously absent in this case.

18. Yet another significance of the imprint abrasions is that the object which caused these injuries had to leave its mark through four layers of clothes: the banyan and the three sweaters. After causing the imprint abrasions, having met the resistance of four garments, the weapon has to break seven ribs. The post-mortem report shows that ribs Nos. 3 to 9 were broken. This aspect of the matter shows that the imprint abrasions were caused not by a deliberate physical attack but as a result of an impact with a broad and hard object like a traction pole. A combination of mass and velocity has produced the particular result.

19. Before concluding this topic, I might refer to a small detail. Shri Upadhyaya had shoes on at the time when he met with his death. It is not likely, howsoever allergic he might have been to cold, that he was sleeping with his shoes on. The greater probability is that he had got ready to get down on the platform, though perhaps for a different reason from that for which he had got down at Faizabad and Jaunpur.

20. For these reasons, I am clearly of the view that Shri Upadhyaya was not murdered in the compartment.

(ii) *The true cause of death*

21. If the injuries on the back and the legs could not have been caused inside the compartment, they must stem from some source outside the compartment. On a plain matter-of-fact-view, the only object near about the place where the body was seen lying, which could cause the back and the leg injuries would be traction pole No. 1276. The pole is situated at a distance of 748 feet from the western end of platform No. 1 and is four feet to the south of the southern rail of line No. 9, which leads to platform No. 1. That is the line by which the Sealdah Express entered the Mughalsarai Station.



22. The eastern and western faces of the traction pole are each 10" wide. They are comprised of two small channels  $1\frac{1}{2}$ " wide on either side, joined by a zig-zag steel bracing in between, 7" in width. The northern and southern faces are flat, each being 7" in width.

23. I have already indicated my reasons for holding that the back injuries could not have been caused in the compartment. The positive aspect of that issue which has now to be considered is whether the back injuries could be caused by an impact with the traction pole.

24. In view of the fact that those injuries are in the nature of imprint abrasions and that as a result of those injuries seven ribs got broken, there is a high degree of probability that the injuries were caused by an impact with the traction pole. I see no other reasonable explanation of the injuries on the back and the buttock.

25. Attention must in this behalf be drawn to the fact that Dr. S. Chowdhary, who was one of the members of Dr. N. K. Sen's team of Experts, found that there was a blackish impression on the shawl of Shri Upadhyaya, 93 cms.×5 cms. Another faint blackish impression 46 cms.×5 cms. was found above the earlier impression. A photograph of these impressions is Ka-126. On a microscopic and spectroscopic examination, Shri N. Das, Senior Physicist of the West Bengal Forensic Science Laboratory, Calcutta, found that the impressions on the shawl contained the same ingredients as were found in the dust and dirt particles collected from the traction pole. This, in my opinion, is an important expert finding which lends considerable support to the conclusion that Shri Upadhyaya dashed against the traction pole with great force. The report of Shri Das is Ka-133A.

26. Regarding the leg injuries, Dr. S. Chowdhary's team further noted that there were two areas bearing fresh marks of abrasions on the outer surface of the right shoe, close to the sole. The photographs are Ka-127 and Ka-128. On the left shoe fresh marks of abrasions were found, some area bearing dark brown stains. The photograph of the left shoe is Ka-73.

27. Shri N. Das's report Ka-133A shows that the dust collected from the abrasion marks on the shoes consisted of minute fragments of ballast, spectroscopically identical to the ballast collected from the place where the body was found lying.

28. According to Shri Das, the abrasion marks on the shoes and the presence of fine particles of ballast therein showed that the deceased fell on the ballast from a height, with the right foot inverted and the left foot everted.

29. Shri Das's opinion accords with the probabilities of the case and must, therefore, be accepted. His opinion receives some support from the photograph Ka-130, which shows that the left heel was involved in a sort of circulatory movement.

30. Frankly, I am unable to understand why the assailants should have concentrated their attention on twisting Shri Upadhyaya's legs.

That, certainly, was not an easy means to achieve their ends. Experience shows that such crudity is adopted in crimes of a peculiar pattern. Even granting that the murder was not committed for mere mercenary motives, the gentle Shri Upadhyaya, described eloquently as an 'Ajatashatru', could not have aroused such intense ire in his assailants.

31. It remains now to consider whether the head injury could have been caused by an impact with the traction pole. That was a vertical lacerated wound 7 cms. × 1 cm. × bone-deep on the right side of the head commencing at 5 cms. above the right ear. On internal examination, an area of contusion 11 cms. × 9 cms. was found on the right temple around this injury. On eversion of the scalp, another area 9 cms. × 8 cms. was found on the occipital region. There was comminuted depressed fracture of the right parietal and right temporal bones and depressed fracture of the right side sphenoid bone. There was extensive subdural haemorrhage on the right side of the brain below injury No. 1. The brain itself was congested.

32. The head injury has been a fertile source of conflicting arguments. These arguments are largely based on the diametrically opposite opinions given by Dr. Bhushan Rao on the one hand and Dr. R. N. Kataria on the other.

33. The shape of the head injury is faintly visible in the photograph Ka-30. Its location can be better appreciated from the sketch Ka-78 prepared by Dr. Patankar. Its nature is evident from the notes, made by D.I.G. Lobo, of the discussion which he had with Dr. Bhushan Rao on the 5th and 6th of March 1968. The notes are Ka-68 and Ka-69.

34. The main difference between Dr. Bhushan Rao and Dr. Kataria is that whereas according to the former death must have occurred almost instantaneously after the head injury, according to the latter death must have supervened not earlier than an hour after the head injury and the other injuries were caused.

35. The main points on which the two experts have differed are these: According to Dr. Bhushan Rao (1) Death must have taken place instantaneously, a cadaveric spasm having occurred at the moment of death; (2) All the injuries must have been caused at the same time as a part of the same transaction; (3) The back and the buttock injuries were in the same line of alignment; (4) The leg fractures were caused first; (5) The head injury could not have been caused inside the compartment and that (6) The contusions on the occipital region were post-mortem.

36. Dr. Kataria has expressed a sharply contrary opinion on every one of these points. He has stated that (1) The blood circulation must have continued after the infliction of the injuries; the blood in the pleural cavity showed that the heart and lungs must have been working after the injuries were caused, so that there could be no cadaveric spasm; (2) The fractures of legs must have been caused immediately before or after death, as there was no blood near the site of those fractures; (3) The presence of the black eye showed that

the injuries leading thereto must have been caused at least an hour before the black eye was caused; (4) All the injuries could have been caused inside the compartment; (5) A single impact with the traction pole could not have caused the injuries on the head, the right shoulder, the lower back and the right buttock; (6) The occipital injury was ante-mortem and that (7) The back and buttock injuries were not in a straight line.

37. I have already indicated my reasons for holding that the injuries on the back, the buttock and legs were caused partly as a result of an impact with the traction pole and partly because Shri Upadhyaya fell on the ballast from some height. Taking a realistic view of the matter, it must, in my opinion, follow that the head injury was caused at the same time as the other injuries were caused and as a part of the same transaction. I have attempted to exhaust all reasonable possibilities in which the head injury could be caused independently of the other injuries, but every such possibility militates against common-sense.

38. If the head injury was caused in the compartment, the assault would leave behind some traces in the shape of blood or struggle. Such traces are significantly absent. Then again, anyone who caused a severe injury like injury No. 1 in the compartment would attempt to cause further injuries on the other vital parts of the body. Such injuries are not to be found. Instead, one finds the indirect injuries like the fracture of the ribs and the fracture of the legs.

39. The contusion on the occipital region is apt to create a confusion which one must avoid. It is important to bear in mind that there was only one injury on the head and not two. The post-mortem report shows that the contusion on the occipital region was an internal injury, having no corresponding external mark of violence. Were there two injuries on the head, one above the right ear and the other on the occipital region, it would have been difficult to hold that both the injuries were caused by a single impact with the traction pole. What must not be lost sight of is that the damage to the occipital region was only internal. It was disclosed on an internal examination and is an obvious consequence of injury No. 1.

40. To agree with Dr. Kataria that an hour at least must have intervened between the time when the injuries were caused and the death is to create rather than solve a problem. To commit a grievous assault on a person in the position of Shri Upadhyaya and to hold him tied in an injured condition for an hour in a running train is a fantastic task. I should have thought that if the murder was pre-planned, the murdered would rather adopt the "hit and run" method. He would achieve his object by giving a blow with sufficient severity on a vital part of the body and then make himself scarce at the earliest chance. It is impossible to appreciate that the murderer of Shri Upadhyaya would nurse a dangerous cargo, say, between Jafarabad and Mughalsarai. He had to countenance the very reasonable prospect of visitors calling on the President of a political organisation at intermediate Stations like Varanasi and Kashi. Therefore, it is not possible to accept Dr. Kataria's opinion that death

was not instantaneous or that the several injuries were not caused as a part of the same transaction.

41. Dr. Kataria, though a reputed Surgeon, is not an independent witness. On his own admission he has been associated with the Jan Sangh since a little before 1968. He has gone all out to support the theory of Shri Nanaji Deshmukh that every one of the injuries was caused inside the compartment. He has made only a small modification therein by saying that the fractures of the legs could not have been caused at the same time as the other injuries, but were caused a little before or a little after death.

42. There is an interesting sidelight to Dr. Kataria's evidence. The Jan Sangh produced before me a truncated cutting from the "Organiser" dated the 18th February 1968. It says that one could make "the following" statement after discussing the matter regarding Shri Upadhyaya's death with Shri Ram Prakash, Shri Balraj Madhok, Shrimati Khanna and "a leading Surgeon". In that cutting, what follows has not been included. It has been cleverly cut out.

43. That the reference in the cutting to "a leading Surgeon" is to Dr. Kataria is clear from the diary of Shri Ramacharya Pandey in which, under the date 13th of March 1968, he refers to a cutting from the *Organiser* dated the 18th February in regard to "Dr. Kataria".

44. It is interesting to have a look at the whole of the news item dated the 18th of February. It says expressly at page 2, that according to the opinion of "A leading Surgeon of Delhi.....only the sudden stroke in the head, causing instantaneous death, can explain the closed eyes and the calm face".

45. Reading this, one can understand why the whole of the cutting was not placed before me. It is clear that the initial opinion of Dr. Kataria was that death must have occurred instantaneously as a result of the head injury. He has now made a valiant effort to establish that death must have supervened an hour after the injuries were caused but I regret to have to say that his opinion is influenced by his political affiliation. I find myself unable to accept that opinion.

46. For these reasons, I am of the view that the injuries which were found on the person of Shri Upadhyaya were caused by an impact with the traction pole, after he fell on the ballast from the running train. The fall first led to the fracture of the legs.

### (iii) *Discovery of the body*

47. It is common ground that the body was discovered during the shunting operations, that is sometime between 2-20 and 2-55 A.M. It is however necessary to ascertain with precision when exactly the body must have been seen first. That would help decide the issue whether the body was planted near the pole.

48. This question is apparently rendered difficult by the conflicting statements made at different times by members of the shunting team

and others, like A.S.M. Prasad and Leverman Ramdas who derive their knowledge from them. Drigpal, the Shunting Porter, Kishori Misra the Shunting Jamadar and Abdul Gafoor the driver of the shunting pilot stated in the Sessions Court that the body was seen first at about 2-20 A.M. A.S.M. Prasad and Ramdas supported them. They had however given a very different version soon after the incident. The statements of Kishori Misra and A.S.M. Prasad were recorded by S.I. Fateh Bahadur Singh on the 12th morning. Those statements were verified by D.S.P. Tewari the same evening. Tewari also recorded the statements of Abdul Gafoor, Ramdas and Drigpal on the 12th, 13th and 14th February respectively. The case of these witnesses then was that the body was discovered after the first stage of shunting was over, that is at about 2-50 A.M. Abdul Gafoor had gone to the length of denying all knowledge of the dead body and said that he came to know about it in the early morning.

49. Ramdas and A.S.M. Prasad had then stated that they had gone to see the dead body at about 3-15 A.M. In the Sessions Court they took a somersault and stated that they had not gone to see the body at all.

50. The question which falls for consideration on the data furnished by these witnesses is whether the body was discovered at 2-20 A.M. or 2-50 A.M. It might appear an over simplification of the issue, but consistently with my finding that the injuries were caused by an impact with the traction pole, it must follow that the body was lying near the pole since about 2-10 A.M. when the F.C.T. bogie passed by the pole. In that event, the body which was lying so close to the area of shunting operations must have been seen when the shunting team passed by the body first, that is at about 2-20 A.M. It is true that the shunting pilot always passed by the south of the traction pole while the body was lying to the north of the pole. That however is immaterial, because the body was lying so close to the three lines—Line No. 9, the Buffer Line and Line No. 10—on which the pilot operated, that even a casual observer could not have missed it.

51. If one were to accept the earlier statements of these witnesses, one would be driven to conclude that the body was brought from somewhere else and was placed near the pole during the shunting operations. But such a conclusion is impossible to accept and is far-fetched. The fear of detection and the inherent difficulty involved in transporting a dead body render it impossible that the body was placed near the pole later.

52. There is a slightly different aspect of this matter to which I must refer. The F.C.T. bogie is normally marshalled last and therefore it is not necessary to keep it in a solitary state at the 'O.C. Siding'. It would always be accompanied by the shunting engine. On the 10th evening, a bogie which was to be detached at Lucknow was converted into an F.C.T. bogie and that bogie happened to be 3rd from the rear. It is clear from the evidence of A. R. Bansal, the Guard of the Sealdah Express and A.S.M. Prasad that the decision to convert the particular bogie into an F.C.T. bogie for Patna was

taken at about 6-30 P.M. No one, therefore, could have known beforehand that the F.C.T. bogie would be lying alone in the 'O.C. Siding' at Mughalsarai, so as to facilitate the removal of the body therefrom and its clandestine placement near the pole.

53. The question however still remains as to why these persons made untrue statements before S.I. Fateh Bahadur Singh and D.S.P. Tewari. The reason in my opinion is not far to seek.

54. The fact that the shunting engine was initially blocked by Haradwar's engine caused some delay for the shunting engine to go to platform No. 1. It is only natural that A.S.M. Prasad, who was on duty on that platform, should ask Kishori Misra, the head of the shunting team, as to why the delay was caused. And the most natural answer for Kishori Misra to make would be that the delay had occurred because Haradwar's engine had blocked the way and because a dead body was lying on the way. Therefore, A.S.M. Prasad would come to know of the dead body at the very threshold of the shunting operations, that is at about 2-20 A.M. He however took no steps to secure medical assistance or any sort of attention to the body at least till 3-25 A.M. when he sent a copy of his memo to the G.R.P.

55. A.S.M. Prasad had therefore to explain his conduct, especially because the person whose dead body was found was no less than Shri Upadhyaya. The only way he could avoid a charge of remissness or negligence in his duty was to say that he came to know of the dead body at about 3-15 A.M. and he prepared the memo (Ka-34) within 10 minutes thereafter.

56. All others who were subordinates of A.S.M. Prasad evidently played to his tune. In addition, they had to protect themselves, because if they were to admit that they had seen the body at 2-20 A.M. they would also be required to explain why they were so callously indifferent to it during the entire shunting operation. They found an easy way out by saying: (a) That the body was seen at about 2-50 A.M.; (b) That Kishori Misra shouted to the Cabinman that a dead body was lying near the pole; (c) That the Cabinman, Ishwar Dayal, passed on the information to the A.S.M. on phone at 3-15 A.M., which was immediately after the A.S.M. went to his office after the departure of the Toofan Express and (d) That the A.S.M. promptly prepared a memo at 3-25 A.M. and sent a copy thereof to the G.R.P. This was the device adopted by A.S.M. Prasad and his subordinates to wriggle out of an inconvenient position.

57. I am therefore satisfied that D.I.G. Lobo is right in saying that what the investigating team did was to persuade A.S.M. Prasad and his subordinates to tell the truth even if it was inconvenient to them or contrary to their interest. Not that "hectic efforts" were made by the investigating officers to obtain untrue statements from these witnesses.

58. It is some consolation that these witnesses eventually told the truth but even in that act they have distinguished themselves as liars. They stated that their statements were never recorded at all before they were contacted by the C.B.I. This attitude is impossible to

appreciate. I am also not happy that the fact that the statements of these witnesses were recorded between the 12th and 14th February was suppressed by the prosecution from the Sessions Court and from the Defence. The witnesses had to be re-called in the Sessions Court after it came to light that they had given a wholly different version before S.I. Fateh Bahadur Singh and D.S.P. Tewari. The witnesses found themselves in a tight corner from which there was no escape. They should have shown the simple honesty of offering an explanation of their conduct, but instead they tried to escape by the back door by totally denying the very fact that their statements were recorded earlier. Dr. Chakravarty, who altered the record to show that he attended to the body promptly at 3-55 A.M. was at least frank to own up the alteration.

59. In my opinion, therefore, the dead body of Shri Upadhyaya was discovered at 2-20 A.M. and not at 2-50 A.M. It was found lying near traction pole No. 1276.

*(iv) Position of the body*

60. Fortunately, there is unanimity as to the position in which the body was found. The members of the shunting team have given but a brief description of the position, for they saw the body in passing. Constable Ram Prasad, Constable Mohammad Zahoor, S.I. Fateh Bahadur Singh and Dr. B. R. Chakravarty, the Assistant Medical Officer, have given a detailed description of the position in which the body was lying. I do not propose to rely on Ram Prasad as his statement was recorded as late as the 17th April 1968 and as he could not have possibly noted so many details in the feeble light of match-sticks.

61. The evidence shows that: (1) The body was lying fully stretched on its back with the head towards the east and legs towards the west; (2) The body was lying between line No. 9 and the traction pole, that is to the south of the Banaras Down Line and north of the traction pole; (3) The left leg was lying over the right; (4) The face was covered with a chaddar; (5) The head was a few inches to the north of the traction pole but clear of the junction-box; (6) The legs were to the west, but slightly inclined towards the south; (7) The left hand was bent near the elbow and was lying on the abdomen; (8) There was a wrist watch on the left wrist; (9) The right hand was in a raised position; (10) There was a five-rupee note in the right palm and (11) There were socks and shoes on the feet.

62. It seems to me impossible to conceive that the position in which the body was seen was the position in which the body had initially fallen after dashing against the traction pole. After receiving the head injury and the other injuries the body could not have come to rest in a fully stretched position. The evidence of the witnesses who saw the body first shows that the body was lying in a symmetrical manner, which is too neat to be natural.

63. Unfortunately, S.I. Fateh Bahadur Singh took a photograph of the body after disturbing its position. He was all intent on securing a clue to the identity of the person and was wholly oblivious of the implications of the posture in which the body was found.

64. The Jan Sangh has led the evidence of three witnesses to show that initially the head was lying on the junction-box. They are: Chhotelal, a coolie, Satyanarayan Prasad, a Jan Sangh worker and Lachhu Ram Suraj Bali, also a Jan Sangh worker. Out of these, Chhotelal says that when he went to the body along with the A.S.M., he saw that the head was lying on the junction-box. The other two merely say that they were not allowed to go near the dead body but that they heard that the body was laid near the track.

65. I do not think that these witnesses are speaking the truth. Chhotelal is merely taking advantage of an alteration made by Fateh Bahadur Singh in the inquest report. Initially, Fateh Bahadur had stated therein that the head was lying on the junction-box ("Dhakkan Par"). But he changed these words to read "near the junction-box" ("Dhakkan ke pas"). The reason for this alteration really was that Fateh Bahadur had kept the head of the body on the junction-box in order to take a good photograph. He started writing the inquest report regarding the body as it was lying before him and therefore he wrote that the head was on the junction-box. He realised that he had to describe the position in which the body lay originally and so he changed the wording appropriately. He was not right in disturbing the position of the body, but he was certainly justified in correcting an error which had crept in the inquest report.

66. This alteration gave to Chhotelal a plausible basis for saying that the head was lying on the junction-box. Assuming the Jan Sangh case to be true that the body was laid near the pole, it is difficult to imagine that the conspirators would place it so neatly in a bid to simulate an accident.

67. Though, however, I see no doubt that the original position of the body was disturbed, I am of the opinion that there could be no ulterior motive behind it. In all probability, the members of the shunting team who first saw the dead body shoved it aside, partly to ensure their own convenience and partly out of a traditional respect for the dead. They must have covered the face with the Chaddar, which was lying on the body, just as Fateh Bahadur Singh stitched the body in the very Dhoti which was on it.

68. While considering this aspect, one must remember that if the body was laid near the pole as a part of the scheme of conspirators, it would not have been kept in such a symmetrical position. That is a valid reason for holding that though the position of the body was tempered with, the tempering was not motivated.

(v) *The five-rupee note*

69. One of the most intriguing features of this case is that a five-rupee currency note was found in the hand of the deceased. The note was gripped in the right palm, the placement of the fingers of the right hand being very peculiar. As the photograph (Ka-29) taken by Fateh Bahadur Singh shows, the right thumb was under the other fingers and was resting on the palm. The currency note was partly protruding out of the palm from the hollow space near



the small finger. The photograph shows that the right hand was in a raised position. It looks as if it is suspended in the air against gravity.

70. Dr. Bhushan Rao studied the inquest report, the post-mortem report and the photographs and submitted his report Ka-77. According to him, the head injury resulted in instantaneous death which was clear from the fact that there was instantaneous rigor of the right palm in which the currency note was gripped. In other words, a cadaveric spasm had occurred at the moment of death.

71. In a well-known text-book, "Medical Jurisprudence" by Gordon, Turner and Price (3rd Edition, page 417), it is stated that:

"Cadaveric spasm is a condition in which those muscles which are in a state of normal contraction at the actual moment of somatic death persist in this state throughout the period of molecular death when the other muscles are in the state of primary flaccidity. Cadaveric spasm continues until rigor mortis is developed in the other muscles and only passes off in the stage of secondary flaccidity....."

"Cadaveric spasm may affect all the muscles of the body but it most commonly involves groups of muscles only, such as the muscles of the fore-arms and hands. When some object is held in the hand of a person at the time of death, the development of cadaveric spasm may result in this object remaining firmly grasped after death. An object cannot be grasped in this manner during the ordinary development of rigor mortis. Cadaveric spasm of this nature can be simulated if an object is placed in the hand of the deceased during the stage of primary muscular flaccidity, and if the fingers are then tied into position around the object until rigor mortis is fully developed. For practical purposes, however, if an object is firmly grasped in the hand of the deceased it is strong presumptive evidence that the object was in his hand at the time of death."

72. For testing the validity of Dr. Bhushan Rao's opinion it is necessary to consider whether the currency note was gripped firmly or loosely in the right palm. Constable Ram Prasad says that it was possible to remove the note easily. I have already indicated why I do not propose to rely on his evidence. Apart from the fact that his statement was recorded as late as the 17th of April, his evidence is far too exaggerated to be believed. He claims to have seen almost the whole universe in the light of matchsticks.

73. I would rather prefer to rely upon the evidence of Fateh Bahadur Singh and others that the note was gripped fairly firmly. There is good reason for taking this view and that is a reason quite independent of the expert opinion.

74. The more important question is whether the deceased was carrying the note in his hand at the time of his death, rather than whether the grip of the right palm was firm. The Jan Sangh has contended that the note must have been planted in the hand of the

deceased by those who laid the body near the pole with an ulterior motive. To some extent, the contention that the note was planted must fall with the contention that the murder was committed elsewhere and the body laid near the traction pole.

75. Apart from this consideration, I am unable to understand as to who would plant the note and why. Murderers, particularly political murderers, do not tarry after their purpose is accomplished. One can even understand, though I have rejected that theory, that the body was kept near the pole in order to simulate an accident. But I am unable to appreciate that in an attempt to enact an accident, the conspirators found leisure enough to ensure that no loop-hole was left. The theory of planting must therefore be ruled out.

76. It must follow as a logical corollary of the last finding that the deceased was carrying the note with him at the time of his death. That gives plausibility to the opinion of Dr. Bhushan Rao in preference to that of Dr. Kataria.

77. Let me however frankly confess that it is difficult to imagine the reason why Shri Upadhyaya was carrying the note in his hand. Considering his habits and disposition, it is highly unlikely that he wanted to make any purchases on the platform. Books, he had enough with him to read and food, he did not care for. He was suffering from chronic collitis. It may perhaps be that he wanted to send a telegram to Patna, as a final message had yet remained to be sent that he would be arriving by the Sealdah Express. But this is pure speculation.

78. The nature of the injuries has an indirect relevance on the question whether the deceased was carrying the note with him when he met with his death. I have arrived at the conclusion that Shri Upadhyaya was pushed out of the train as a result of which he dashed against the traction pole. It is implicit in this finding that though it was a chilly, wintry night and though he was allergic to cold, he was standing in the door of the compartment. Otherwise he could not have been pushed out. If he was standing at the door, evidently he wanted to get down, which could only be if he had some pressing piece of work to do on the platform. It must be in connection with that purpose, that he had taken out the five-rupee note.

79. I might refer in this connection to a small but important detail. Shri Upadhyaya had five upper garments on his person—the shawl, the two full-sleeved sweaters, the sleeveless sweater and the banyan. Only the banyan had pockets and it was in the inner pocket of that banyan that four five-rupee currency notes, one one-rupee note, the reservation ticket and the journey ticket were found.

80. It is clear that if Shri Upadhyaya wanted to take out the money, he would have to reach the inner pocket of his banyan. Trying to do so on the platform could be somewhat inconvenient and awkward. He must therefore have taken out the note and held it in his hand before he stood at the door, having decided to get down on the platform at Mughalsarai.

81. Taking all these circumstances into account, I am of the opinion that Shri Upadhyaya had the currency note in his right hand immediately prior to his death. Instinctively, he must have held it firmly at the moment of death. The evidence of the two Jan Sangh witnesses, Sukhanandan Prasad and Raghbir Prasad Saxena, that at 7-30 A.M. on the 11th they had seen a police constable taking out the five-rupee note with ease leaves me wholly unimpressed. Their evidence is both unnatural and untrue.

## CHAPTER XIII

### THEFT OF THE BEDDING

1. Whether Bharat Lal committed the theft of Shri Upadhyaya's bedding at the Mughalsarai Station, whether that bedding was recovered from Lalta Kalwar and whether other articles like the coat, kurta, chappals, spectacles etc., were seized from Bhallu, Moti, Aziz, Munni and Indo are matters which are not directly relevant for my purpose. It am not hearing Bharat's appeal against his conviction for theft and as that appeal is pending before the Allahabad High Court, I would like to avoid saying anything about the subject-matter of that appeal. It would also not enter into the question whether Lalta Kalwar and others are receivers of stolen property.

2. But it is important for my purpose to decide whether Shri Upadhyaya's bedding was stolen from the 'B' Cabin after the Sealdah Express arrived at Mughalsarai. If the theft was committed on the heels of the murder, it would be legitimate to infer that the two incidents are part and parcel of the same transaction.

3. On the question of the theft of the bedding, the evidence of M. P. Singh is very important. He got down at Patna from the Toofan Express to which the F.C.T. bogie was attached at Mughalsarai. From Patna he went to Tatanagar and from there to Rakhamines where he had to attend a three months' geological training camp. His statement was recorded on the 15th of February at Rakhamines by D.S.P. Tewari. He and Tewari left Rakhamines the same evening and reached Mughalsarai at 2 A.M. on the 17th.

4. M. P. Singh said in his statement, as he said in the Sessions Court, that after the Sealdah Express reached Mughalsarai which was at 2-10 A.M., he went to the 'A' bath-room and then got down by the 'C' door. He wanted to go to the Parcel Office as he was anxious that his luggage should be transferred from the brake-van of the Sealdah Express to the brake-van of the Toofan Express. He gave instructions accordingly to the Parcel Office and returned to the F.C.T. bogie within about seven minutes. As he entered the I Class compartment by the 'C' door, he saw a young man standing in the corridor, looking towards the 'B' Cabin. M. P. Singh asked him as to what was the matter. The stranger pointed to the 'B' Cabin and asked him "as to where he had gone". M. P. Singh asked: "Who?", whereupon the stranger, pointing again to the 'B' Cabin, said that his "father was there". M. P. Singh ventured an opinion that, "he might have got down".

5. M. P. Singh further says that the young man then entered the 'B' Cabin and removed the bedding and the file. He had asked for somebody's assistance for taking the bedding out of the station. M. P. Singh entered his cabin and soon fell asleep.

6. There was some dispute before me whether M. P. Singh's statement was recorded at Rakhamines on the 15th or whether it was recorded some time after the 17th, after he came to Mughalsarai with D.S.P. Tewari. Apparently, there is a striking coincidence between the arrival of M. P. Singh at Mughalsarai on the night between the 16th and the 17th and the recovery of the bedding the same night. Taking, however, all factors into account, I am inclined to the view that M. P. Singh's statement must have been recorded at Rakhamines on the 15th. There is no doubt that D.S.P. Tewari contacted him at Rakhamines on the 15th. It cannot be that he was merely questioned there and his statement was recorded two or three days later.

7. Let us look at a comparable event which shows the pattern of investigation. Inspector Jha, who was asked to trace Major Sharma, contacted him at Ranchi on the 3rd of March 1968 and recorded his statement the same day at Ranchi itself. That shows that when important witnesses were traced and contacted by the investigating officers, the first step taken was to record statements of those witnesses.

8. The fact that M. P. Singh's statement was recorded on the 15th has an importance of its own. It is impossible to conceive that at such an early stage of investigation D.S.P. Tewari of the U.P. C.I.D. would put a false statement in the mouth of M. P. Singh regarding an incident which was pregnant with endless possibilities. D.S.P. Tewari had left Mughalsarai on the 13th night when the investigation had assumed neither shape nor form. Even the announcement that the C.B.I. will be associated with the investigation came on the 14th. The C.B.I. team consisting of D.I.G. Lobo and J. P. Sharma, S.S.P. reached Varanasi on the 15th. I have therefore no doubt that M. P. Singh told D.S.P. Tewari what in fact he had seen.

9. There is a small detail which is said to render it improbable that M. P. Singh could see the removal of the bedding. Conductor Kamal has stated in his evidence that he got down after the train reached Mughalsarai and while he was on his way to the brake-van, he saw M. P. Singh standing on the platform near the F.C.T. bogie. It may be recalled that M. P. Singh has stated that after the train reached Mughalsarai he first went to the brake-van and then to the Parcel Office. The argument is that if M. P. Singh was merely standing on the platform, he did not go to the parcel office and if he did not go to the parcel office, he did not come out of his Cabin at all. Therefore, he could not have seen the removal of the bedding.

10. I do not think that there is anything in the evidence to render it improbable that M. P. Singh had seen the removal of the bedding. It may be that M. P. Singh was standing on the platform for a brief second, when Kamal passed by him. Besides, both of them first went towards the brake-van, though not together, and Kamal might have seen him then. The visit to the brake-van and the Parcel Office was a very natural piece of conduct on the part of M. P. Singh. It is a matter of common knowledge that in so far as is possible, one likes one's luggage to accompany oneself.

11. The failure of M. P. Singh to identify Bharat in the parade held on the 11th March does not impair his evidence that the bedding was stolen from the 'B' cabin. It only renders infirm his evidence regarding the identity of the thief. The benefit of that infirmity has gone to Bharat.

12. It might appear strange that neither the wrist watch, nor the money on the person of Shri Upadhyaya nor his suit-case was stolen. Now in regard to the wrist watch and the money, they were on the person of Shri Upadhyaya and the thief would not have the courage to go near the body and invite an easy detection. Besides, the wrist watch was on the inner side of the left wrist and as would appear from the photograph Ka-29, it was not easily visible. The two full-sleeved sweaters had almost covered it.

13. The money on the person of Shri Upadhyaya—four five-rupee notes and one one-rupee note—was in the inner pocket of the banyan as stated by Fateh Bahadur Singh. It was difficult for any one to reach the money, for there were three sweaters on top of the banyan.

14. Shri Upadhyaya had also a five-rupee note in his hand, but there were two difficulties in taking it away: One, the fear of detection and two, firmness of the grip associated with cadaveric spasm.

15. As regards the suit-case, the evidence of Bhola Rawat Bharati, the sweeper, shows that it was under the lower berth. Conductor Yadav, who was in charge of the Toofan Express from Mughalsarai to Madhupur accommodated a passenger in the 'B' Cabin of the F.C.T. bogie, at Patna. That passenger wanted the Cabin to be cleaned. Yadav asked Bhola to clean up the cabin. Yadav also says like Bhola that the suit-case was under the lower berth. It is important that while handing over the suit-case to the G.R.P. at Mokamah, Yadav wrote a memo Ka-88 asking the G.R.P. to take charge of the suit-case, which was found lying, "under the lower berth". It is evident that the thief took away what he could easily lay his hands on. The suit-case being under the berth, did not catch his attention.

16. It is said that the conjoint theft of the bedding and the file cannot fit in squarely in the scheme of a simple theft. Why, it is asked, should a mere thief take away Shri Upadhyaya's file? I will deal with the file more fully in the following chapter but I will make a brief answer here. The file was taken away because M. P. Singh was standing near the 'B' Cabin and the ruse of the thief was that his father was travelling in the 'B' Cabin. He adopted a posture suggestive of a bonafide anxiety to take his father's luggage on to the platform and then out of the station. If he were to be choosy and select the bedding, M. P. Singh might perhaps have gone wiser, for a son who wanted to take away his father's luggage would not leave a part of it behind. It may be recalled that even Shri Upadhyaya's *Jhola* containing books was found missing.

17. As I have stated earlier in this chapter, I am not concerned with the recoveries of the various articles from Lalta Kalwar and others, for it is enough for my purpose to ascertain whether the

murder was accompanied by theft. But the Jan Sangh has led evidence before me to show that the bedding was really recovered from a pit near the Railway Club and not from the house of Lalta Kalwar. I will deal with that evidence briefly.

18. Three witnesses, Mohan Lal Chourasia, Deena Nath Sukhdeo and Sakhranj Shivnandan have been examined in support of the pit theory. These witnesses say that four or five days after Shri Upadhyaya's death, the G.R.P. asked them to act as Panchas to the recovery of the bedding. Two Police-men went into a pit and took out the bedding from the bushes. The bedding contained, amongst other articles, two bed-sheets, one of which was blood-stained. A *panchayatnama* was drawn of the recovery which according to the witnesses was signed by them.

19. There is an inherent improbability in the evidence of these witnesses. They are all connected with the Jan Sangh in some capacity or the other and it is difficult to believe that the Police would get them to act as witnesses to a false document. It is surprising that these witnesses did not approach the C.B.I. though according to them it was a talk of the town that the C.B.I. Officers had committed fraud in foisting the bedding on Lalta Kalwar. These witnesses have filed affidavits before the Commission but there is no mention therein that any of the articles in the bedding was blood-stained. If the witnesses are right that two chaddars were found in the bedding and that one of them was blood-stained, it is surprising that the Committee, which was appointed by the President of the Jan Sangh to inquire into the circumstances relating to the death of Shri Upadhyaya, should have come to the conclusion that only one chaddar was recovered. Shri Nanaji Deshmukh was the Chairman of that Committee. The allegation is that Mohan Lal and Deena Nath had told him all about the recovery of the bedding from the pit.

20. Kalpanath Gupta, who was examined before me by the Jan Sangh, has stated in his affidavit that he was informed by the rickshawallas that some persons had gone to the station in a black car and had taken away the bedding from the station on the night of occurrence. Kalpanath has not referred to any such thing in his evidence and it is therefore unnecessary to deal with his affidavit.

21. For these reasons, I am of the opinion that the murder of Shri Upadhyaya was accompanied by a theft of his belongings, the theft having been committed within about ten minutes of the murder. The thief knew that the true owner was no longer in a position to come forward. In the bluff of the thief there was an air of confidence that the field was clear for a safe theft. One had only to use one's wits.

## CHAPTER XIV

### MOTIVATION FOR THE MURDER: IS IT POLITICAL?

1. If the death of Shri Upadhyaya was accompanied by a theft of his belongings and if the murder and theft are a part of the same scheme, it is a legitimate inference to draw that politics is no part of this crime. The murder was committed for purposes of gain, the immediate reason of the murder being either to avoid detection in the act of theft or to facilitate the theft. The matter cannot, however, rest there.

2. The Jan Sangh has led a mass of evidence which shows, *prima facie*, that the movements of Shri Upadhyaya were being watched over a period of time commencing from December 1967. That evidence must be examined with care. During the course of obituary references to Shri Upadhyaya's death, members of the Parliament expressed a deep concern whether politics was no longer safe for politicians, whether the price of political beliefs was as high as one's life. This anxiety must be answered. Three Presidents of the Bharatiya Jan Sangh have died in circumstances apparently shrouded in mystery, circumstances bewildering at least at first blush. Dr. Shama Prasad Mukerji died while in detention in Kashmir in 1953, Dr. Raghbir died in a motor car accident while on an election campaign in 1963 and Shri Deen Dayal Upadhyaya died in 1968 during a Railway journey, while on his way to a meeting of the Bihar Provincial Executive Committee of the Jan Sangh. Is the death of Shri Upadhyaya a part of a pattern? As was said in the trial of George Joseph Smith, popularly known as the "Brides-in-the-bath-tub" murder case, in which three successive brides were found dead in the bath-tub, one death in the bath-tub is accident, two deaths in the bath-tub are coincidence and three deaths in the bath-tub are murder. Can this apply here? That doubt must be resolved and if possible, set at rest.

3. Before discussing the evidence on this issue it would be worthwhile to know what Shri Nanaji Deshmukh has to say about the motive behind Shri Upadhyaya's murder. Nanaji has been closely associated with the Jan Sangh since its inception in 1951. He was its All-India Secretary from 1965 and is at present its Treasurer. He was the chairman of the Committee appointed by Shri Atal Behari Vajpayee, who succeeded Shri Upadhyaya as the President of Jan Sangh, for the purpose of collecting data relating to the death of Shri Upadhyaya.

4. In the concluding portion of his evidence before the Commission, Nanaji says:

"I say that this is a case of political murder because Pandit Deen Dayal was a soft-spoken, straightforward and a somewhat reserved person. He had no private enemies. He had



dedicated his life to the cause of the country and he had no worldly possessions in regard to which he could have been done to death. The opposition to him was ideological and intellectual. The circumstances immediately leading to his death appear to me to be wholly inconsistent with the death having been caused for motives of gain. One of his most valuable worldly possessions, namely, a wrist watch, was permitted to remain with him, and the thieves certainly would not think of such a thing. The thieves would not be interested in shifting the venue of the offence. The very fact that the scene of offence was shifted shows that there was a well-knit and well executed conspiracy behind this murder. The view that the murder of Pandit Deen Dayal was politically motivated which is held by the Jan Sangh members is shared by many others. Acharya Kripalani in fact gave expression to the same view in Lok Sabha while paying a tribute to the memory of the departed on the 12th February 1968."

5. I have already dealt with why the wrist-watch was not stolen. I have also taken the view that in the circumstances of the case it is not possible to hold that the venue of the offence was shifted by laying the body near the traction pole. What remains to consider is whether there was a "well-knit and well executed conspiracy" behind the murder.

(i) *Unknown persons shadowing Shri Upadhyaya from 28th December 1967 to 10th February 1968.*

6. The evidence led by the Jan Sangh that unknown suspicious characters were shadowing Shri Upadhyaya from 28th December 1967 till 10th February 1968 covers six different stages of Shri Upadhyaya's movements during that period. I will deal with those stages chronologically.

7. The annual Session of the Jan Sangh was held at Calicut on the 28th December 1967. Shri Amarchand Shubh who is a practising lawyer at Delhi, an Executive Councillor in the Delhi Administration and a Jan Sangh worker of long standing had attended that Session. Shri Upadhyaya, the President-elect, was taken in a procession and a cordon formed around his car. Amarchand says in his evidence that a young man, whose name he subsequently came to know as "Chandrashekhar", was asking one of the Jan Sangh workers who had formed the cordon, as to who was the person who was being taken in a procession and as to where he resided. Amarchand disclosed this incident to D.S.P. Badri Sharma on the 30th May 1968.

8. I am unable to attach any particular significance to the inquiry made by the young man. If he was a conspirator, it is unlikely that he would ask one of the Jan Sangh workers who had formed the cordon around Shri Upadhyaya's car, as to who he was and where he resided. It seems to me that the young Chandrashekhar was merely inquisitive and that the inquiries he made had no sinister significance.

9. The next incident took place on the 7th of January 1968 at the V. T. Station Bombay. Shri Jhamatmal Wadhvani now the President of the Bombay Jan Sangh and Shri Vasant Bhagwat, Organising Secretary of the Maharashtra Jan Sangh, had gone to the Station along with others to see off Shri Upadhyaya, who was travelling by the Pathankot Express. Wadhvani and Bhagwat say that while they were talking to Shri Upadhyaya on the platform, they saw a person dressed in Khaki, loitering about in a suspicious manner. Once or twice he entered the compartment by which Shri Upadhyaya was to travel. Bhagwat asked him why he had got into the train. He replied that he was checking up electrical connections. He was not carrying any tools with him. After Shri Upadhyaya boarded the train, he followed him. Wadhvani and Bhagwat asked him whether he was travelling by the train, but he gave evasive replies, suggesting half-heartedly that he intended to travel upto Dadar.

10. It is clear from the admissions made by the two witnesses that they did not act on their suspicion. Wadhvani has stated that he did not report the matter to the Police, because he did not think that the movements of the stranger "were so very suspicious". Bhagwat has admitted that he thought that the stranger "might perhaps be a *bonafide* traveller". These admissions show that the stranger could not have been connected with Shri Upadhyaya's murder.

11. Then we go to the incident which is alleged to have taken place on the 3rd and the 4th of February at Delhi and Bareilly. Rajveer Singh, Secretary of the District Jan Sangh, Bareilly, says that he travelled from Delhi to Bareilly on the night between the 3rd and 4th by the Allahabad passenger. On the Delhi platform, he met Shri Upadhyaya who was to go to Bareilly by the same train. While Rajveer Singh was getting into his compartment at Delhi, a young man asked him where Shri Upadhyaya was going. When the train reached Bareilly, the same man asked him as to how long Shri Upadhyaya would be staying at Bareilly.

12. In the first place, Rajveer Singh has not stated in his affidavit dated the 31st of January 1970 what he has stated in his evidence. Even assuming that he is right, the type of enquiries to which he depose are quite often made casually. After all, politicians are the focus of public interest and people do want to know if there are any interesting public engagements in which politicians figure. Listening to their lectures is a favourite pastime of many.

13. The next incident is said to have taken place on the 5th of February at Bhojipura. Kartar Singh Lalchand, Secretary of the Bhojipura Jan Sangh, says that he had gone to the Station Master's Office for collecting a parcel received in the name of "M/s Lalchand Kartar Singh". There, he heard a stranger asking the Station Master details regarding the reservation made for Shri Upadhyaya. The Station Master looked at a chart and gave the necessary information to the stranger. That reservation is alleged to have been made for the 5th.

14. Now in the first place, the Station Master of Bhojipura; Pyarelal Babbar, who was examined by the C.B.I. has stated that

there was no reservation chart at Bhojipura, as reservations from Bhojipura to Lucknow are made at Kathgodam. The Station Master, therefore, could not have looked at any chart and told the stranger that Shri Upadhyaya's reservation was made for a particular date. The message book Ex. 69 does not contain any record of a message asking that reservation be made for Shri Upadhyaya at any time from the 29th of December 1967 to the 12th of February 1968.

15. Rajendra Prasad Shukla, a C.B.I. witness has produced a reservation register Ex. 64, which shows that no reservation was made for Shri Upadhyaya for a journey from Kathgodam to Lucknow on the 5th.

16. How untrue the claim of Kartar Singh is, is further apparent from the evidence of Amarnath Hanumanprasad, a C.B.I. witness, who though a reservation clerk at Bhojipura, is also concerned with the delivery of parcels. Ex. 65, the register of parcels, and Exs. 67 and 68, the parcel way-bills, show that the parcel meant for M/s Lalchand Kartar Singh was delivered to one Laddan on the 7th February. No parcel was delivered to Kartar Singh as claimed by him.

17. Two witnesses, Professor Gyan Chand Agarwal and Ramakant Shukla, have given evidence regarding two incidents which took place at Kanpur on the 7th of February. Professor Agarwal, who is a Jan Sangh worker, says that he had gone to the Kanpur Railway Station on the 7th when the Jhansi Mail arrived at the Station. Shri Upadhyaya came to Kanpur by that train in connection with a meeting. Agarwal says that a stranger asked him on the platform as to where Shri Upadhyaya would be staying in Kanpur and what was his programme. Ramakant Shukla, also a Jan Sangh worker, says that on the 7th morning he had gone to the Jan Sangh office at Kanpur where Shri Upadhyaya was busy with a meeting. Half an hour after the meeting was over, a stranger asked him where Shri Upadhyaya was staying and what was his programme.

18. I would dismiss this evidence with a brief observation that there is nothing to show that there was an evil design behind the enquiries made by the strangers. Those who have such designs do not make open enquiries.

19. The next incident is alleged to have taken place on the 10th of February 1968 between 9.00 and 10.00 A.M. at the Charbagh Railway Station, Lucknow. A witness called Ravi Shankar Trivedi says that at about 9.15 A.M. he had gone to the Station for reserving a seat for Shri Pitambar Das from Lucknow to Delhi. Witness says that Uma Shankar had made the reservation for Shri Upadhyaya from Lucknow to Patna just a little before. The witness heard a stranger enquiring with the reservation clerk about the details of the reservation made by Uma Shankar.

20. Ravi Shankar can be easily demonstrated to be an untruthful witness. It is correct that Uma Shankar got a reservation for Shri Upadhyaya, at about 9.30 A.M. on the 10th February. But the evidence of Govind Bijani, a C.B.I. witness, who was working as a

reservation clerk at Charbagh shows that the reservation for Shri Pitambar Das was made initially on the 1st of February for the journey on the 9th, from Lucknow to Delhi. On the 4th of February, the reservation was altered from a journey on the 9th to a journey on the 10th. This is borne out by the reservation sheets, Exs. 70 and 71. Therefore, Ravi Shankar could not have gone to the Charbagh Station on the 10th February to reserve a seat for Shri Pitambar Das.

21. Thus, the evidence of this group of witnesses examined by the Jan Sangh to show that unknown, suspicious persons were closely following Shri Upadhyaya's movements from 28th December 1967 to 10th February 1968 fails to carry conviction. Lazy, innocent enquiries arising out of idle inquisitiveness have been distorted so as to have a sinister significance. The evidence gives the impression that in retrospect, the witnesses have imaginatively discovered an evil design in what was plainly casual.

(ii) *Evidence showing the presence of known persons, including known Communists, near the traction pole on the 10th and round-about Mughalsarai on the 11th February 1968.*

22. The evidence under this head also covers six different incidents.

23. The first of these is alleged to have taken place at about 7.00 P.M. on the 10th of February 1968 in the house of S.I. Prabhu Singh Bhati, who was then attached to the G.R.P., Mughalsarai. A witness called Ram Murat says that while passing by the house of Bhati, he saw Munnal Gupta, Ramdas the Ticket Collector and one other person. These persons were talking between themselves, but on seeing Ram Murat they receded into the house.

24. Apart from the fact that this evidence carries one nowhere, Ram Murat cannot be believed. On the 3rd of March 1968, Shri Nanaji Deshmukh had given a list Ex. 59 to D.I.G. John Lobo, containing the names of certain Left Communists, who were suspected to be concerned with Shri Upadhyaya's death. The names of Munnal Gupta and Ticket Collector Ramdas are mentioned in that list, but significantly the alleged meeting in the house of Prabhu Singh Bhati is not mentioned therein. In fact, the name of Bhati does not at all find a place in Ex. 59.

25. The truthfulness of Ram Murat can be tested in another way also. As stated earlier, Shri Atal Behari Vajpayee had appointed a Committee for the purpose of collecting data relating to the death of Shri Upadhyaya. Nanaji Deshmukh, who was appointed as a Chairman of that Committee had co-opted Shri Ramacharya Pandey to assist him. The report of the Committee was placed by Nanaji Deshmukh before the meeting of the Central Working Committee of the Bharatiya Jan Sangh, which was held at Bhopal on the 22nd and 23rd of March 1968. The report was simultaneously released to the press. It has been published in an official publication of the Jan Sangh, called "Apni Gatividhi", dated the 15th of April 1968.

26. The report of the Committee is a comprehensive document reflecting the result of the efforts made by a Committee which was appointed for a specific purpose. It is significant that there is no reference in that report to the incident described by Ram Murat.

27. Ramacharya's personal diary Ex. 40 shows that he had contacted Ram Murat on the 12th February. If that be so, one cannot understand how the incident now described by Ram Murat does not find a place in the report.

28. The next incident is also stated to have happened at about 7-00 P.M. on the 10th February but the venue this time is the Executive Engineer's office near the Railway Yard, on the same side as Bhati's house.

29. Jhamar Singh, who describes this incident, says that he saw Ticket Collector Ramdas and Bhati near the Engineering Office.

30. Here also it must be recalled that Bhati's name is not mentioned in the list Ex. 59 and Ticket Collector Ramdas' name has been mentioned in a different context altogether. If Jhamar Singh was contacted by Ramacharya Pandey on the 12th of February as would appear from Ramacharya's diary Ex. 40, it is surprising that this incident should not find a place in Ex. 59. It is even more surprising that there is no reference to it in the Committee's report published in "Apni Gatividhi".

31. The third incident which is deposed to by Triveni Prasad and Ramesh Singh is alleged to have happened at about 8-00 P.M. on the 10th, near about the traction pole. The effect of their evidence is that while they were going to the house of one Tiwari where Triveni Prasad had to repair a radio, they saw that Ticket Collector Ramdas, Prabhu Singh Bhati and Pranav Kumar *alias* Dada Ghosh were standing near a tea-shop, which is in the north-west corner of the Railway Yard and is about 70 paces away from the traction pole.

32. The fourth incident is also deposed to by the very two witnesses. They say that at about 8-15 P.M. while they were returning from Tiwari's house, they saw Munnelal Gupta, Satyanarayan Tiwari, Dr. Shivtahal Mehta, Ticket Collector Ramdas and Pranav Kumar Ghosh, standing four or five paces away from the tea-shop. They were whispering that "the train arrives at 2-10 A.M." When they saw the witnesses, they cut short their conversation.

33. A simple answer to the evidence in regard to these incidents is that they do not find a place either in the list Ex. 59 or in the report published in "Apni Gatividhi". I have no doubt that Triveni Prasad and Ramesh Singh who are partisan witnesses have trotted out a story from the blue. Triveni Prasad displayed some anxiety to conceal his connection with the Jan Sangh, but he had admitted in his evidence in Criminal Case No. 103 of 1969 that he was a Treasurer of a Jan Sangh Branch. The evidence in that case is at Ex. 17 (collectively). There is no doubt that Ramesh Singh is also a Jan Sangh worker.

34. The fifth incident is after the murder and is alleged to have taken place at about 9-00 p.m. on the 11th February. Jhamar Singh, who has deposed to the second incident in this group, refers to this incident also. He says that he went to Bhati's house where Ramdas, Leverman and Drigpal Singh, the Shunting porter were also present. Seeing Jhamar Singh, the three people stopped their conversation abruptly. He asked Bhati as to what was wrong with his health as he had taken sick leave from the 10th afternoon. Bhati said that there was nothing particularly wrong with him. He also asked Bhati as to why he did not go to the Police Station for investigation. Bhati replied that there was nothing particular in the case and that Fateh Bahadur Singh would be able to attend to it.

35. Jhamar Singh has been a Jan Sangh worker since 1958, having been a whole-time worker from 1958 till 1962 at Mirzapur. The whole of his evidence has an unnatural ring about it. In the first place, he had no particular reason to go to Bhati's house. Secondly, it is difficult to believe that on being pointedly questioned in that behalf, Bhati would affirm that there was nothing wrong about his health. It is alleged that he has communistic leanings and he had gone on leave on the 10th, feigning to be sick. He really wanted to get ready for the impending murder of Shri Upadhyaya. If that be so Bhati would have told Jhamar Singh, who is a known Jan Sangh worker, that he was unwell and that he had therefore taken leave. He would also never have stated that "there was nothing particular in the case."

36. It shall have been seen that Prabhu Singh Bhati figures in all the incidents mentioned above under sub-head (ii), except the fourth. It therefore becomes necessary to examine the question whether he had anything to do with the murder of Shri Upadhyaya.

37. A Jan Sangh witness called Pratap Rai, who lives in Bareilly, says that when Bhati was posted there in 1966-67, he was very friendly with some of the Communist leaders of Bareilly. According to Pratap Rai, Bhati used to say that the Jan Sangh is a tool in the hands of the Americans. Bhati also used to abuse Shri Upadhyaya in objectionable language.

38. Pratap Rai has no regard for truth, because though he had made a statement before the C.B.I. officers when they were making confidential enquiries about Bhati, he said in his evidence that he did not remember whether he had made any such statement. It was only when his attention was drawn to the statement Ex. 1 that he admitted that the statement was in his hand and that it bore his signature. In that statement he has expressly said that Bhati had never abused Shri Upadhyaya or the Jan Sangh. He explained it by saying that he had written out the statement blindly at the dictation of the C.B.I.

39. A mere look at the statement will show that it could not have been written at the dictation of the C.B.I. officers. Bhati himself has been examined by the C.B.I. before me and I am satisfied that he has nothing to do with the murder of Shri Upadhyaya. He was friendly with Mohanlal, the elder brother of Pratap Rai. In the dispute between the two brothers over a family concern called "Vijay Biscuit Factory", Bhati sided with Mohanlal. The price for that is his involvement by Pratap Rai in the murder of Shri Upadhyaya.

40. The report made by Inspector M. A. Khan of the C.B.I. which is at Ex. 73 also shows that Pratap Rai is at the bottom of the allegations against Bhati. It is a significant coincidence that Pratap Rai who calls himself a Congressman should approach Shri Virendra Varma, an Advocate of Bareilly, for drafting his affidavit. Kartar Singh and Rajveer Singh whose evidence has been discussed by me under sub-head (i) had also gone to the same lawyer in connection with their affidavits.

41. Prabhu Singh Bhati must therefore be cleared of all suspicion. There is nothing to show that he was in any manner concerned with the murder of Shri Upadhaya.

42. The sixth incident under this sub-head is alleged to have taken place at about 10-00 P.M. on the 11th of February. Jhamar Singh says that when he went to Mawai which is close to Mughalsarai, he saw Munnelal Gupta, Dr. Shivtahal Mehta, Satyanarayan Tiwari and a Clerk of the G.R.P. office together.

43. This is really innocuous evidence. If indeed it had any significance, it is strange that it does not find a place in Ex. 59. The names of Munnelal Gupta, Shivtahal Mehta and Satyanarayan Tiwari are mentioned in Ex. 59 but in an entirely different context. It is stated therein that Munnelal Gupta and Shivtahal Mehta were not to be traced from the 10th morning till the 11th. Of Satyanarayan Tiwari it is stated that he had gone to Taranpur, which is near Mughalsarai, on the 10th of February to meet Ticket Collector Ramdas.

44. Jhamar Singh, who is an omnibus witness is supposed to have been contacted by Ramacharya Pandey on the 12th of February. It is surprising that what Jhamar Singh alleges now finds no place either in the list Ex. 59 or in the report of the Committee, published in "Apni Gatividhi", Ex. 56.

45. This is the entire evidence which was led by the Jan Sangh to show that the movements of certain known persons including Communists, on the 10th and the 11th of February were suspicious. I am wholly unimpressed by that evidence. It is artificial, innocuous, motivated and imaginative. It would be wholly wrong to implicate any one in a grave charge of murder on the basis of such flimsy evidence.

(iii) *Previous preparation by Ramdas and Pranav Kumar Ghosh and subsequent absconding of Dr. Shivtahal Mehta.*

46. The Jan Sangh has examined two witnesses, Kumari Daya Bahen and Shreeprakash, to show that Ticket Collector Ramdas and Pranav Kumar *alias* Dada Ghosh left Lucknow by the Punjab Mail on the 10th at 11-30 A.M. It may be recalled that Ramdas and Pranav Kumar are said to have been seen near the Mughalsarai Station at different times between 7-00 P.M. and 8-15 P.M., the same evening. I have dealt with that evidence under the previous sub-head.

47. The allegation seems to be that Ramdas and Pranav Kumar, who formed the main arm of the conspiracy, went to Mughalsarai in order to make necessary arrangements for facilitating execution of the conspiracy.

48. Both Daya Bahen and Shreeprakash are Jan Sangh workers and they seem to have permitted their loyalty to the party to influence their better judgment. Daya Bahen says that she had told Ramacharya Pandey on the 13th of February that she had seen the two persons getting into the Punjab Mail. This cannot possibly be true, because as stated earlier, the name of Pranav Kumar Ghosh does not find any place in Ex. 59, the list containing the names of suspected Communists. Ticket Collector Ramdas' name is mentioned therein but it is stated against his name that he was in Taranpur on the 10th of February, that three unknown persons had gone to his residence on the 10th and that he went back to Lucknow on the 11th by the Punjab Mail. The evidence of Daya Bahen and Shreeprakash cannot therefore be accepted.

49. A witness called Dayaram was examined by the Jan Sangh to show that right from the day on which Shri Upadhyaya died, Dr. Shivtahal Mehta was absconding for a month and a half. Now this is directly contrary to what is stated in Ex. 59. What is stated there against Shivtahal Mehta's name is that he had left his village, Dulhaipur, on the 10th February informing his wife that he would come back after three or four days, but he returned on the 11th. Many more things can be said about the utterly fanciful evidence of Dayaram, but it is not necessary to do so. I will only mention one more thing. He did not disclose to Jhamar Singh, a well-known Jan Sangh worker that Shivtahal was absconding. He admits that he used to meet Jhamar Singh. Shivtahal Mehta has been examined by the C.B.I. before me and though, perhaps, he may be a member of the Communist Party as shown by the hand-bill Ex. 85, I am satisfied that there is no substance in the allegation that he was absconding.

(iv) *The role of Dr. Faridi*

50. Shri Ramacharya Pandey has stated in his diary Ex. 40, in the weekly memo ending with the 3rd of March, that Rr. Faridi and Prabhu Singh Bhati were the brains behind the conspiracy. I have already rejected the charge that Bhati was connected with Shri Upadhyaya's murder. I must now consider the validity of the charge against Dr. Faridi.

51. Dr. Faridi, a Muslim, is a heart specialist practising at Lucknow. He owns a house in Lucknow, a part of which is let out to a company called 'Cipla', of which Shri V. N. Sharma is the Branch Manager. On the 17th January 1966, V. N. Sharma's daughter was married to Major Surendra Mohan Sharma, who commanded a Field Battery Regiment at Namkom, near Ranchi. Major Sharma had taken one month's leave from the 14th of January and he returned to his headquarters on the evening of the 11th February. He went for regimental exercises on the 12th.



52. I have rejected as unsubstantial the allegation that Major S. N. Sharma was in any manner connected with the death of Shri Upadhyaya. I have held that he travelled by the Train Service Coach and that no one masquerading as Major Sharma travelled by the F.C.T. bogie, at any stage of the journey between Lucknow and Mughalsarai. This conclusion necessarily implies that Major S. N. Sharma was not used as a tool by Dr. Faridi. Nonetheless, it is necessary to examine the charges against Dr. Faridi a little closely.

53. The Jan Sangh has examined three witness in support of its case that not only Communists but Muslims like Dr. Faridi had conspired to commit Shri Upadhyaya's murder. These witnesses are: Maheshya Datta, Shivraj Bahadur and Sardar Jagjit Singh.

54. Maheshya Datta, a full-time Jan Sangh worker says that in the communal riots at Meerut which took place in January 1968, an organisation called "Jamiyat-ul-ulma" had arranged a reception for Sheikh Abdullah and that slogans like "Pakistan Zindabad", "Jan Sangh Murdabad" and "Khun Ka Badla Khun Se Lenge" were raised.

55. This evidence may be true or false but it cannot connect Dr. Faridi with the murder of Shri Upadhyaya. Besides, slogans may have a political utility but no thinking person ever takes them too literally.

56. Shivraj Bahadur, a cloth merchant of Lucknow says that in early 1968 he had attended three meetings of an association called "Majlis-e-Mushawwarat", Lucknow. Two out of these meetings were presided over by Dr. Faridi and one by Ishahac Ilmi of Kanpur. The latter is the Editor of an Urdu Daily called "Siasat".

57. Shivraj Bahadur says that Dr. Faridi declared in his speeches that so long as the Jan Sangh was carrying on its propoganda, the Majlis had no chance of survival and therefore it was necessary to deal with the Jan Sangh properly. Dr. Faridi is further alleged to have said that unless the leaders of the Jan Sangh were crushed, the Majlis would not be able to make any headway and that the Communist Party was ready to offer the necessary help. Ishahac Ilmi is alleged to have said in his speech that the Jan Sangh, which was working under the leadership of Shri Upadhyaya, was responsible for the Meerut riots. According to Shivraj Bahadur, a report of the speeches had appeared in 'Siasat'.

58. The C.B.I. has produced the relevant issues of 'Siasat'. It stated before me by Counsel for the Jan Sangh that there was nothing in these issues to bear out Shivraj Bahadur.

59. It is in my opinion not safe to accept the mere word of the witness that fiery and provocative speeches were made by Dr. Faridi. He says that the Police were present at the meeting. If that were true, it would not have been very difficult for the Jan Sangh to produce better evidence in regard to the speeches made in the three meetings. It is also difficult to believe that such open

provocation was given by the two speakers. Finally, assuming for a moment that such speeches were made, there is nothing to show that the threat was carried out by Dr. Faridi.

60. The evidence of Sardar Jagjit Singh is to the effect that the relations between Dr. Faridi and Shri V. N. Sharma were cordial. I will accept this for the purposes of argument, but it is a fantastic allegation to make that because of this so-called friendship, V. N. Sharma agreed that his son-in-law may act as a tool in the hands of Dr. Faridi.

61. It is interesting in this behalf to have a look at a certified copy of a criminal complaint, Ex. 115, filed by V. N. Sharma against Dr. Faridi on the 6th of June 1967 in the Court of the Special Magistrate, Lucknow. V. N. Sharma had alleged therein that Dr. Faridi, the landlord, had committed trespass on a part of the premises let out to the 'Cipla' company.

62. The C.B.I. has also filed record of Miscellaneous Case No. 51 of 1970, which is Ex. 116. It shows that the Cipla Company was in arrears of rent from 1st November 1966 to 31st January 1970.

63. This certainly is not evidence of cordiality. True that the company and not V. N. Sharma was the tenant of Dr. Faridi, but the company was acting through V. N. Sharma, as is clear from Exs. 115 and 116.

64-65. In my opinion, the charge against Dr. Faridi that he is connected with the murder of Shri Upadhyaya is baseless. It is significant that in the report of the Committee appointed by Shri Vajpayee, of which Shri Nanaji Deshmukh was the Chairman, there is no reference to Dr. Faridi whatsoever.

(v) *The Akbarpur incident*

66. Shri Nanaji Deshmukh has stated in his evidence before me that some time in February or March 1968 he had handed over to D.I.G. John Lobo the statement of one Prabhu Dayal, carriage fitter, Akbarpur. Akbarpur is on the Lucknow-Mughalsarai line, a run of about four hours from Lucknow. In that statement Prabhu Dayal has said that on the 11th of February at about 4-00 A.M. Satyanarayan Tiwari, a Train Examiner, told him at Akbarpur that a leader called Deen Dayal was murdered.

67. The statement of Prabhu Dayal which is Ex. Ka-264 is relied upon by the Jan Sangh to show that as early as at 4-00 A.M. on the night between the 10th and 11th it was known at a place as far as Akbarpur that Shri Upadhyaya was murdered.

68. I am unable to attach any importance to Prabhu Dayal's statement. Dy. S. P. Badri Sharma had made inquiries with Prabhu Dayal but he repudiated the statement substantially and admitted his enmity with Satyanarayan Tiwari. The four documents which have been produced before me by the C.B.I., Exs. 83, 84, 86 and 119 have no doubt that there was enmity between Prabhu Dayal and

Satyanarayan Tiwari. As recently before Shri Upadhyaya's murder as the 26th of January 1968, Prabhu Dayal had filed an application to the Divisional Superintendent, Northern Railway, Lucknow, complaining that Tiwari had assaulted him with a roller. The three files at Ex. 83 show that there were complaints and counter-complaints between Prabhu Dayal and Tiwari. Eventually, a departmental enquiry was held against Prabhu Dayal at the instance of Tiwari in which a fine was imposed on him. On the 3rd of March 1968, that is one day prior to the day when Prabhu Dayal wrote out his statement, he had filed an appeal against the sentence imposed on him.

69. I have not the least doubt that Prabhu Dayal wanted to involve Satyanarayan Tiwari falsely on account of his long-standing enmity with him.

(vi) *Identification of the deceased*

70. The case of the prosecution in the Sessions Court was that the dead body of Shri Upadhyaya was identified by Vishwanath Prasad Agarwal at about 10-30 A.M., after the body was taken to the G.R.P. Office by Fateh Bahadur Singh. In answer to this, and for the same purpose for which evidence regarding the Akbarpur incident was led, the Jan Sangh has examined two witnesses before me. They are: Kashinath Pandey and Bholanath Gupta. The former says in his evidence that someone had phoned him at the Varanasi City Office of the Jan Sangh at about 9-00 A.M. on the 11th that Shri Upadhyaya was murdered and the body was kept near the G.R.P. Office, Mughalsarai. He says that he tried to contact the G.R.P. on the trunk telephone but that he could not do so. When he went to see the body at Mughalsarai, he was surprised that Vishwanath Prasad Agarwal should be talking about the death of Shri Upadhyaya as late as 10-30 A.M. The other witness Bholanath Gupta says that at about 9-15 A.M. on the 11th he left Varanasi for Mughalsarai with Kashinath Pandey and others.

71. Kashinath Pandey's evidence that he had received a phone at Varanasi at 9-00 A.M. to the effect that the dead body was kept near the G.R.P. Office, is clearly false because the body was shifted from the traction pole to the G.R.P. Office by Fateh Bahadur Singh at 10-00 A.M. Equally false is the claim of the witness that he tried to phone the G.R.P. but could not do so. Kalika Prasad Tripathi, Engineering Supervisor, Trunk Telephones, Varanasi, who was examined by the C.B.I. says on examining the relevant record, that on the 11th of February 1968 no trunk call was booked from Telephone No. 4911 Varanasi, to No. 86 Mughalsarai or to the G.R.P., Mughalsarai. In fact, the G.R.P. had no phone of its own in February 1968. The number of the Jan Sangh telephone at Varanasi is 4911. The number of the Railway Station Telephone at Mughalsarai is 86.

72. Therefore, the evidence of Vishwanath Prasad Agarwal must stand that he was the first to identify the body at 10-30 A.M. Prior to that the Control Operator had informed S.I. Jagannath Singh at about 9-40 A.M. that on checking with the Lucknow end, the reservation ticket on the person of the dead body was found to have been issued in the name of Deen Dayal Upadhyaya.

(vii) *Guards at the house of M. P. Singh*

73. It may be recalled that whereas M. P. Singh had said before D.S.P. Tiwari on the 15th of February that the stranger in the corridor at Varanasi was not Shri Upadhyaya, he stated in the Sessions Court that he had not seen the stranger carefully and that there was a 'fifty-fifty' chance of the stranger being Shri Upadhyaya. The case of the Jan Sangh is that threats were held out against M. P. Singh's life and therefore he was labouring under a fear complex. That is why, instead of describing the incident as it had happened, he introduced the element of theft in it. It is urged that the threats show that the two accused were mere scapegoats and the real culprits wanted M. P. Singh to stick to the story of theft and absolve them.

74. The Jan Sangh has examined three witnesses: Bishambhar Nath Srivastava, Panchanan Srivastava and Laxman Singh Chaturvedi in support of its case. The first two witnesses say that armed Police Constables were posted at the house of M. P. Singh, in the Paper Mill Lane at Lucknow in February 1968. Laxman Singh merely says that in January 1970 he had gone to the Paper Mill Colony to check up the information regarding the posting of the guards and that he met Bishambhar and Panchanan Srivastava.

75. The C.B.I. has examined B. N. Mehrotra, Senior Reserve Inspector, Lucknow and Daljit Singh Ranbir Singh, Adjutant, Pradeshik Armed Constabulary, Lucknow, to rebut the evidence led by the Jan Sangh.

76. The evidence of these two witnesses leaves no doubt that no guard was provided for duty at M. P. Singh's house, either by the Reserve Police Office or by the Pradeshik Armed Constabulary. Normally, no other agency provides guards for private citizens.

77. The evidence of Bishambhar Nath and Panchanan sounds absurd. They claim to have made inquiries with the guards themselves and they further say that the guards told them that they were posted there because M. P. Singh's father had received a letter containing a threat to his, that is, M. P. Singh's life. The guards themselves would not know the exact reason why they were posted and even if they knew it, they would certainly not disclose it to strangers. It is interesting to note that M. P. Singh had himself stated in the Sessions Court that his father had told him that the Chief Minister had received a letter that there was a threat to his, that is, M. P. Singh's life and therefore guards would be kept at his house. It seems to me that advantage is being taken of this part of M. P. Singh's evidence, and an attempt was made to establish that guards were posted at M. P. Singh's house. There is no substance in that evidence.

(viii) *The 'Tippu Sena' letters*

78. Shri Nanaji Deshmukh had tendered a bunch of letters in the Sessions Court, which are comprised in Exs. C-1 to C-18. He says that after the murder of Shri Upadhyaya, a number of threatening

letters were received by the "Organiser" and various Jan Sangh workers and sympathisers. The letters purport to emanate from an organisation called "Tippu Sena".

79. Most of these letters appear to have been written by the same person. They contain filthy abuse at the policy of the Jan Sangh, particularly for its attitude towards the Muslims. The letters contain a warning that the leaders of Jan Sangh should be prepared to meet their 'Mughalsarai'.

80. I am unable to attach any importance to these letters. The Jan Sangh has its political rivals as any other political party has. It may perhaps be that some perverse political opponents of the Jan Sangh gloated over Shri Upadhyaya's death and gave unrestrained expression to their feelings in the letters. Such threats however cannot be taken too seriously. In fact, how empty the threats were taken to be, is clear from the fact that neither the report of the Committee presided over by Shri Nanaji Deshmukh nor the diary of Ramacharya Pandey contains any reference to the letters.

81. Therefore, I am of the opinion that the 'Tippu Sena' letters are mere sound and fury, signifying nothing.

(ix) *The Missing File*

82. The case of the Jan Sangh is that Shri Upadhyaya used to collect information regarding anti-national activities and keep it in a file and some diaries. As the file which Shri Upadhyaya was carrying with him has not been traced, it is urged that the file was taken away for a political purpose. It could not have been taken away by a mere thief. Nanaji Deshmukh and Ashwini Kumar, the Organising Secretary of the Bihar Jan Sangh have stated in their evidence that Shri Upadhyaya used to collect information about the activities of the anti-nationals.

83. Before me, a witness called Kailash Pati Misra was examined by the Jan Sangh on the same question. Kailash Pati, who has been the Provincial Secretary of the Bihar Jan Sangh since 1960, says that on the specific instructions given by Shri Upadhyaya, he and the other Jan Sangh workers used to keep Shri Upadhyaya posted about all types of anti-national activities. Kailash Pati claims to have supplied such information regarding the conditions prevailing in Singhbhum, Santhal Paragana, Ranchi, Darbhanga and other districts.

84. In view of the clear evidence of M. P. Singh that the person who stole the bedding also carried away the file, it must be held that Shri Upadhyaya did have a file with him when he left Lucknow on the 10th evening. This file was stolen along with the bedding and though the bedding has been traced, the file could not be traced.

85. I am however unable to hold that the particular file which was stolen at Mughalsarai from Shri Upadhyaya's cabin could have contained any secret or important information regarding anti-nationals. It is remarkable that in the report of the Committee presided over by

Nanaji Deshmukh there is no reference at all to the file or the diaries. In paragraph 8, the report says that "Almost the entire luggage of Panditji has been recovered except a bag containing books, a pillow and a slate coloured chaddar". If the file contained important matter, the report would have undoubtedly referred to it, especially when reference is made to the other articles which were not traced.

86. Kailash Pati claims to have been supplying secret information to Shri Upadhyaya for about six years. It is surprising that he has not produced a single letter written by Shri Upadhyaya acknowledging receipt of the information. In fact, there is no evidence that there was any correspondence between the two. Kailash Pati has taken the easy course by saying that Shri Upadhyaya did not reply back to him. That is impossible to believe. A person as methodical and meticulous as Shri Upadhyaya would not have failed to send a simple acknowledgement, though without discussing the nature or the merits of the information supplied to him.

87. The C.B.I. recorded Kailash Pati's statement on the 3rd of April 1968, which is Ex. 14. He did not even suggest in that statement that he used to supply any information to Shri Upadhyaya. He only stated that he had gone to receive Shri Upadhyaya at the Patna Station first on the 10th night and then on the 11th morning, but Shri Upadhyaya did not come by either train. Lastly, Kailash Pati did not file any affidavit before the Commission, which normally he would have done if he were in possession of such an important clue.

88. In my opinion, therefore, though the file which Shri Upadhyaya had taken with him on the journey has not been traced, there is no satisfactory evidence to show that the file was in the nature of a precious political document. As the file has not been traced, so have the books not been traced. Experience shows that thieves promptly part with stolen articles which have a market value. Files and books are valueless in the eye of the Receiver, though they may be otherwise worth their weight in gold.

(x) *The Personal Diary of Shri Ramacharya Pandey*

89. Shri Ramacharya Pandey, who is a graduate of the Calcutta University, edits a weekly called "Jan Deep" published from Lucknow. He has written a dozen books of poetry. He became a member of the Jan Sangh in 1960.

90. He says that he received the news of Shri Upadhyaya's death at about 9.45 A.M. on the 11th of February 1968 while he was sitting in the Jan Sangh Karyalaya at Lucknow. He immediately passed on the information to the Jan Sangh leaders including Nanaji Deshmukh. Nanaji told him on phone to proceed to Mughalsarai immediately and collect the relevant information regarding the death of Shri Upadhyaya. Ramacharya says, he accordingly contacted several persons from day to day and noted their names in his personal diary, Ex. 40. He says that he maintains the diary regularly. The diary contains other personal jottings also.

91. While in the witness-box, Ramacharya created a very favourable impression on me. He struck me as an earnest worker dedicated to the cause of his party. I however regret to have to say that I find myself unable to place any reliance on his diary.

92. The diary is of the year 1968 and is a publication of the Life Insurance Corporation of India. It gives half a page for every day. In addition, half a page is reserved for the "Weekly Memo", at the end of every Sunday.

93. The diary effectively commences on the 6th of February 1968, in the sense that the movements or the activities of Shri Upadhyaya are noted in the diary on the 6th February for the first time. This is strange because Ex. 58, the itinerary of Shri Upadhyaya which was given by Shri Nanaji Deshmukh to D.I.G. Lobo on the 2nd of March 1968, shows that Shri Upadhyaya arrived in Lucknow on the 9th of January 1968 and was there till the morning of the 20th. As the diary shows, Ramacharya was in Lucknow from the 7th to the 16th January 1968. It is surprising that there is no reference in the diary to any part of Shri Upadhyaya's programme from the 9th to the 16th. It cannot possibly be that Ramacharya did not meet the President of his party or that he did not attend any of his programmes from the 9th to the 16th.

94. Under the date 8th of February, Ramacharya has stated that Nanaji left Lucknow for Delhi and that he had gone to see him off at the Lucknow Station. Now Nanaji has stated in his evidence that he left Lucknow for Delhi on the 8th and that he went from Delhi to Bombay by plane on the next day, that is the 9th February. Nanaji has really committed an error in saying this because he must have left Lucknow not on the 8th but on the 9th. As shown by the evidence of K. B. Vishwanathan, Traffic Officer of the I.A.C., who was examined before me by the C.B.I., reservation for Nanaji Deshmukh was made at Lucknow on the 8th by Flight No. 405 leaving Delhi for Bombay on the 10th at 10.15 A.M. As Nanaji had not halted at Delhi except to await the connection, he must have left Lucknow on the 9th and not on the 8th.

95. But Ramacharya could not have committed such a mistake, if he is right that he used to write the diary at the end of every day. It seems that the diary has not been written regularly, but events have been entered therein later so as to fit in with some scheme.

96. It is too much of a coincidence that under the date 9th of February, a day prior to Shri Upadhyaya's death, Ramacharya should refer to a talk he had had with Shri Upadhyaya regarding his personal safety. It is an equally striking coincidence that Shri Upadhyaya should have told him: "No one can restrain death, as no one can obstruct the course of life". This seems to me to have been written after the event had happened, in order to lay the foundation for the theory that there was danger to Shri Upadhyaya's life.

97. The entries made under the date 12th of February have a crucial importance on the authenticity of the diary. The several notings made under that date read like entries made by an investigating

officer in a case diary. Frankly, I am unable to appreciate how just a day or two after the death of Shri Upadhyaya, Ramacharya would go about conducting a sort of a parallel investigation. At that stage the anxiety of all concerned was to co-operate with the Police who were investigating into the murder. Nothing had happened, till then at any rate, to cast any doubt on the fairness of the official investigation.

98. I cannot accept Shri Nanaji Deshmukh's statement that he had told Ramacharya on the 11th morning on phone that he should collect the relevant information. Nanaji was then in Bombay and knew nothing about the murder. In fact, there is a good basis for doubting that Ramacharya at all telephoned Nanaji from Lucknow on the 11th morning. Om Prakash Chatwal of the Lucknow Telephone Exchange, who was examined before me by the C.B.I., has stated that no trunk call was made from telephone number 23509 (Lucknow) to Bombay on the 11th February 1968. 23509 is the telephone number of the Jan Sangh Karyalaya, Lucknow, where Ramacharya says he received the information about Shri Upadhyaya's death.

99. The entries of the 12th February would put the smartest and the most experienced investigator to shame. So efficient indeed was Ramacharya. In one day he claims to have been able to contact almost all the principal actors in this mysterious drama.

100. If the diary is authentic, to Ramacharya must go the credit of having solved the riddle of Shri Upadhyaya's death within a short span of two days. The C.B.I. took a little over two months and a half to file the charge-sheet against the two accused. The learned Sessions Judge took a year to decide the case. I have been grappling with this mystery since February 1970. But, Ramacharya concluded on the 12th of February 1968 that Communists (whose names are mentioned in the entry) were concerned with the murder and that the five rupee note was planted to simulate an accident. The entry of the 12th leaves me but with one feeling, that it was made months after.

101. The diary mentions that Ramacharya had contacted certain witnesses on the 13th, 14th and 15th of February. Some of the persons whose names are mentioned therein are Ravi Shankar, Daya Bahen, Rama Shankar, Ramesh Chandra and Rajveer Singh. I have considered the evidence of these witnesses and have rejected it as untrue. It is some measure of the truthfulness of the diary that it refers to untrue witnesses.

102. I will now turn to another variety of entries showing that the diary has been written subsequently. In these entries Ramacharya, like a seer, has made advance reference to coming events. For example, under the date 17th of February, it is mentioned that the itinerary of Shri Upadhyaya (which is Ex. 58) was handed over to D.I.G. Lobo by Nanaji on that date. Nanaji has admitted that Ex. 58 was given by him to D.I.G. Lobo on the 2nd of March 1968. There is an endorsement to that effect on Ex. 58 itself.



103. This in my opinion proves beyond any doubt that the diary was written out subsequently in support of a certain theory which was to be made out. Otherwise, Ramacharya could not have possibly written on the 17th that a certain event had happened which in fact happened 13 or 14 days later.

104. Under the date 29th of February it is stated that information was obtained that "Major S. L. Sharma", the son-in-law of Shri V. N. Sharma, had travelled by a particular train. As a matter of fact, Major Sharma was traced at Ranchi on the 3rd of March. The entry of the 29th of February is also therefore written after the event.

105. Many more entries can be pointed out from the diary, to show how untrue they are. They are however too numerous to mention.

106. Ramacharya claims that Ex. 40 is his personal diary and not a mere record of the investigation done by him. I am sorry to say that the diary is pre-eminently a record of the investigation made by Ramacharya. Pages after pages of the diary are blank. 13 days in March, 27 days in April, 23 days in June and all the 31 days of July are completely blank. I do not think that any life could run such a blank course for so long a period. And, Ramacharya is a poet and a politician. If there was no political event worth noting in the diary during those days, his Muse at least could not have so cruelly deserted him. In any event, a personal diary can always have enough food for thought in the shape of the endless problems of personal life.

107. I will only refer to one more improbability in the investigation conducted by Ramacharya and leave the matter there. On the day that Shri Upadhyaya died, the Samyukta Vidhayak Dal Ministry was in power in U.P. The Jan Sangh was a constituent of the Dal and in fact Shri Ram Prakash, who belongs to the Jan Sangh, was the Deputy Chief Minister. It is impossible to believe that Nanaji would ask Ramacharya to conduct a parallel investigation on the 12th when one of the leaders of the Jan Sangh was occupying a high place in the U.P. Cabinet. The Ministry fell on the 17th and the President's Rule was introduced in U.P. on the 25th February. There was therefore no reason for Nanaji to suspect the *bona fides* of the Police, at least till the 17th.

108. It is no pleasure to distrust political workers but Ramacharya seems to have identified himself so completely with the cause of his party that he permitted his vision to be blinded. He put himself in a position where he could not see truth from falsehood. I must express my disapproval that any one should have been a party to the fabrication of a document for the purpose of producing it as evidence.

(xi) *The inherent improbabilities in the theory of conspiracy*

109. I will briefly point out how, in the circumstances of the case, there could have been no conspiracy behind Shri Upadhyaya's murder.

110. It was on the 10th morning that it was finally decided that Shri Upadhyaya would go to Patna to attend a meeting on the 11th. Even the office-bearers of the Jan Sangh at Patna did not know that Shri Upadhyaya would be travelling by the Sealdah Express. That is why Kailash Pati Misra, the Provincial Secretary of the Bihar Jan Sangh, first attended the Punjab Mail on the 10th night and then the Toofan Express on the 11th morning for receiving Shri Upadhyaya.

111. A conspirator is supposed to have seen Uma Shankar reserving a berth for Shri Upadhyaya at about 9.45 A.M. He gets the relevant information from the reservation clerk and the wheels of conspiracy are set in motion.

112. At about 11.30 A.M. Pranav Kumar Ghosh and T. C. Ramdas leave Lucknow for Mughalsarai by the Punjab Mail. They constitute the advance party.

113. Another arm of the conspiracy is that after 10.00 A.M. the conspirators contact Dr. Faridi who approaches V. N. Sharma, who in turn persuades his son-in-law Major Surendra Mohan Sharma to forget all about the recent marriage and participate in the murder.

114. Major Sharma tells Har Govind Pandey of the R.T.O's Office at about 1 P.M., to reserve his seat in the F.C.T. bogie though military quota was available in the Train Service Coach.

115. The conspirators have then to start thinking about the actual mode of murder—whether it should be committed in the compartment or outside and if it is committed in the compartment, how the dead body should be dealt with. It is important to remember here that the decision to convert the third last bogie of the Sealdah Express into an F.C.T. bogie for Patna was taken at about 6.30 P.M. at Lucknow. Until then the conspirators, howsoever ingenious they might have been, could not have imagined that the F.C.T. bogie would be lying solitarily in the 'O.C. Siding' for some length of time.

116. In the background of all these hurdles, is it possible that the conspirators would decide to commit the murder just before the train reached Varanasi. There was always the danger of a visitor calling on Shri Upadhyaya or even a sweeper entering the compartment for cleaning it.

117. One of the intrinsic infirmities of the theory that the murder was committed before Varanasi and the body laid at Mughalsarai is that the Jan Sangh had a fairly large following in that tract. Given the choice, the conspirators would have preferred some other area for their operation.

118. Finally, laying the body on the track involved a grave risk for the conspirators. That would require the co-operation of the members of the shunting team, against whom no conspiratorial accusation has been made.

119. These intrinsic infirmities render it difficult to believe that there was a conspiracy to commit Shri Upadhyaya's murder.

120. It seems to me that in their moment of grief, those interested in Shri Upadhyaya were groping in the dark to discover the truth. They did not even hesitate to consult the planchette but they were not satisfied with the answers they got there. As reported in the "Organiser" dated the 10th of March 1968, the planchette favoured the theory that a drunken man with a masked face knocked on the door of Shri Upadhyaya's Cabin, entered the cabin, twisted his arm, sat on his chest, and hit on his head before the train had reached Varanasi, but while the train was travelling at a slow speed. This theory was found unsuitable and was dropped. In a quest for a more plausible theory, politics was imported into the crime. I do not think that either planchette or politics can yield a correct solution to the problem before me.

(xii) *Summing up*

121. Having considered the entire evidence and the circumstances bearing on this crucial issue, I have come to the conclusion that Shri Upadhyaya's murder was not politically motivated. There are circumstances here and there which on a superficial view may excite one's suspicion. But suspicion is not proof. On a deeper analysis, such suspicion as appeared initially on the surface begins to wither. Be it the enigmatic civilian in the unlighted 'C' cabin at Lucknow, or the turn to the initials of Major Sharma, or Shri G. S. Rai changing his mind in the midst of the journey and detraining at Shahganj on the off-side, or the "fifty-fifty" stranger in the corridor, or the almost bloodless death, or finally the five-rupee note in the right hand—there is a rational explanation to each one of these circumstances. Only, that he who seeks it will alone find it. I have striven to seek such an explanation and I am hopeful that the solution which I have found will answer the requirements both of reason and conscience.

## CHAPTER XV

### THE JAN SANGH ATTACK ON THE C.B.I.

1. On the 12th of February 1968 several members of the Parliament, while paying a tribute to the memory of Shri Upadhyaya, asked that the investigation of the case should be entrusted to the Central Bureau of Investigation. On the 14th of February, the then Home Minister Shri Y. B. Chavan announced in the Parliament that, at the request of the Chief Minister, Uttar Pradesh it was decided to entrust the investigation to the C.B.I. The Home Minister explained that the U.P. Police officers had already started the investigation and that they and the C.B.I. officers will work together as a single team.

2. Accordingly, a team of C.B.I. officers headed by D.I.G. John Lobo and J. P. Sharma, S.P. reached Varanasi on the 15th. The investigation was formally taken over by the C.B.I. from the U.P.C.I.D. on the 18th February, after the Central Government notified, with the consent of the U.P. Government, that the jurisdiction of the Delhi Special Establishment was extended to the State of U.P. for investigation of the offence in regard to the death of Shri Upadhyaya. On the 26th, the Director of the C.B.I. issued an order that Shri M. P. Singh, D.I.G. will be associated with the investigation of the case. D.I.G. Singh reached Varanasi on the 27th and took part in the further stages of the investigation.

3. The C.B.I. team consisted of a large number of officers. D.S.P. Bajal was the Chief Investigating officer. He was assisted mainly by D.S.P. Kapur, D.S.P. Badri Sharma, D.S.P. Sanyal, D.S.P. Srivastava, Inspector Bholan Das, Inspector Sukhdeo Singh, Inspector Jha and Inspector Kapur.

4. The Jan Sangh has made a frontal attack on the C.B.I. It is alleged that the C.B.I. officers deliberately suppressed the political origin of the crime and gave a commonplace slant to it by making scapegoats of two notorious thieves. Precious clues are said to have been supplied to the C.B.I., but it is alleged that the C.B.I. officers either turned a deaf ear or destroyed the efficacy of those clues by disclosing valuable information to persons who were themselves suspected of the crime. In other words, the very purpose for which an independent organisation like the C.B.I. was entrusted with the task of investigation, was frustrated on account of the oblique attitude adopted by the C.B.I. officers. The investigation, says the Jan Sangh, is wholly wanting in *bona fides*.

5. Specific instances have been cited before me by the Jan Sangh, showing the *mala fides* of the C.B.I. The instances are like these:

(a) Though the statement of M. P. Singh must have been recorded after the 17th of February, it was represented that it was recorded by D.S.P. Tewari at Rakhamines on the 15th.

(b) That though M. P. Singh had stated expressly in the statement alleged to be of the 15th that the stranger in the corridor at Varanasi was not Shri Upadhyaya, he was persuaded to dilute that statement by saying that he had not seen the stranger carefully and that there was a "fifty-fifty" chance of the stranger being Shri Upadhyaya.

(c) That Kamal was deliberately dropped as a prosecution witness in the Sessions Court. The object of the C.B.I. in doing so was to compel the Sessions Court to examine him as a Court witness so that he could not be contradicted by reference to his earlier statement.

(d) The C.B.I. obtained false statements from the members of the shunting team, which are wholly contrary to the statements made by them before S.I. Fateh Bahadur Singh of the G.R.P. and D.S.P. Tewari of the U.P.C.I.D.

(e) That though three photographs were taken of Shri Upadhyaya's injuries before the commencement of the post-mortem examination, only two photographs were produced in the Sessions Court and the third was suppressed. This was done because that photograph could have showed that the injuries on the back and the buttock were not in a straight line. The traction pole theory derives its main strength from Dr. Bhushan Rao's opinion that those injuries were in a straight line and could therefore be caused by a single impact.

(f) That though the bedding was seized from a pit, it was falsely alleged that it was recovered from Lalta Kalwar. It was also falsely alleged that the towel and the pillow-cover were taken charge of from Lalta's house on the 17th of February.

(g) Two chaddars were found in the bedding, which was seized from the pit. One of those chaddars, which was blood-stained, was never produced before the Court, because it showed that Shri Upadhyaya was assaulted in the compartment.

(h) That false evidence was obtained to show that Bharat had made extra-judicial confessions to Munni, Dwarika and Parasnath Srivastava.

(i) That deliberate delay was caused in recording the statements of Sharda, Bhaiyya Lal, Lalu, Nanhku and Gur Prasad, and

(j) That some of the points which formed the core of the case were deliberately left unexplained.

6. Almost every one of these points has been dealt with by me in the course of my report. It would be needless repetition to furnish the same answers once over again. I would however like to make a brief observation on some of the points enumerated above.

7. M. P. Singh was indisputably contacted at Rakhamines on the 15th and the greater probability is that his statement was recorded on the same day. That is what happened in the case of Major S. M. Sharma whose statement was recorded on the 3rd of March at Ranchi, that is, on the very day on which he was contacted. There is no substance in the accusation that M. P. Singh was persuaded to

dilute the effect of his earlier statement. From the 15th of February 1968 till the date that he gave his evidence in the Sessions Court he was consistently doubtful about the identity of the stranger. What was basically against the C.B.I. version in M. P. Singh's statement continued to be so at all stages of the investigation.

8. Regarding Kamal, the C.B.I. was in two minds whether or not to examine him as its witness. In the charge-sheet filed on the 4th of May 1968 his name was not included as a witness. On the 24th July 1968, an application was made in the committing Court that his name be included in the list of witnesses. On the 17th December 1968, an application was made in the Sessions Court that the prosecution did not want to examine him. One cannot approve of this vacillating attitude but then the prosecution could not possibly adopt Kamal as its witness. His version regarding the stranger in the 'C' Cabin at Lucknow was quite clearly imaginary. I have taken the view that Kamal had not checked the passengers in the F.C.T. bogie. He merely wanted to put up the pretence that he was very dutiful.

9. In regard to the conflicting statements of the shunting team, however, the C.B.I. did not act fairly or properly. There was justification undoubtedly for obtaining fresh statements from Drigpal, Kishori Misra, A.S.M. Prasad and others, because the statements which they had made before the U.P.C.I.D. were not true. They had made those statements to protect themselves and to save A.S.M. Prasad from a possible charge of remissness in duty. But surely it was the duty of the prosecution to disclose to the Court and to the Defence that on an earlier occasion the witnesses had made statements which were contrary to the statements recorded by the C.B.I. This was not done. After the witnesses were examined, it came to light that they had made conflicting statements at an earlier stage. They had therefore to be recalled for further cross-examination. Unabashedly they told the Court that their statements were recorded for the first time when they were contacted by the C.B.I. They said so because when the C.B.I. recorded their statements no explanation was sought from them as to why they had told the U.P.C.I.D. that the dead body was seen by them after the first stage of shunting was over. The C.B.I. officers should have questioned them pointedly in regard to the earlier statements.

10. There is no substance in the grievance that three photographs of the injuries were taken, out of which the one that was inconvenient was suppressed. The evidence of Dr. Murlī Manohar Joshi that three such photographs were taken seems to me untrue. It is strange that in the affidavit which he filed before the Commission there is no reference to the photographs at all. Dr. Joshi was a member of the Committee appointed by the Jan Sangh to organise the case before the Commission. His affidavit was sworn on the 1st of February 1970, which was more than three months after the Commission was appointed and yet he says nothing therein about the photographs. His evidence is also directly contrary to the representation submitted to the Commission by Nanaji, in which the latter says that no steps were taken to have a photograph of all the injuries. Thus, what Nanaji alleges is not that one photograph was suppressed but that one more should have been taken.

11. I do not want to go further into the affidavit of Dr. Joshi, but I must record that the endorsement on the affidavit that it was sworn on the 1st of February 1970 before Shri N. P. Singh, the Oath Commissioner, is false. Shri M. P. Tandon, Deputy Registrar of the Allahabad High Court who was examined before me by the C.B.I. says that "Serial No. 38" which is endorsed on the affidavit does not correspond to that number in Shri N. P. Singh's Register of affidavits, Ex. 98. That Register shows that affidavit Number 38 made before Shri N. P. Singh related to a First Appeal and was sworn on the 27th of January 1970.

12. K. M. Bhatia of the "Goras Studio" who took the photographs says that he took only two photographs in the mortuary at the instance of Shri Ram Prakash, the Deputy Chief Minister. Finally, even the Jan Sangh published only two photographs in its booklet "Who killed Upadhyaya?" Those photographs are copies of Ex. Ka-30 and Ka-31 which were produced in the Sessions Court. Shri Ramacharya has tried to support Dr. M. M. Joshi but there is no substance in it. It is disturbing that people occupying responsible positions should have been parties to such manipulations. The charge that the C.B.I. suppressed one of the photographs is, thus, wholly unfounded.

13. Regarding the recovery of the bedding, the towel and the pillow-case from the house of Lalta Kalwar, I have said that I would prefer not to deal with that aspect except for considering whether there is any truth in the allegation that the bedding was recovered from a pit. I have taken the view that there is no truth in the pit theory. However, that conclusion cannot by itself establish the truth of the allegation that on the night between the 16th and 17th of February, the bedding was recovered from the house of Lalta and that on the 17th the towel and the pillow-case were similarly recovered. I do not want to enter into this aspect of the matter because I have found that the murder of Shri Upadhyaya was accompanied by a theft of his belongings. That shows that the murder was influenced by plain mercenary motives and there was no politics in it. It is needless for my purpose to pursue the thief any further, either for the purpose of identifying him or for the purpose of tracing the receiver. Bharat's appeal is pending in the Allahabad High Court and perhaps, Their Lordships there may want to deal with this problem.

14. I have discarded the allegation that the blood-stained slate coloured chaddar was found in the bedding and has been suppressed by the C.B.I. There is no warrant for this accusation and it runs counter to many other pieces of evidence.

15. I have not dwelt on the extra-judicial confessions in my report. That is because I am not determining the guilt of Bharat or of any other individual. Nonetheless, I would like to observe that none of the three extra-judicial confessions seems plausible. I do not, however, think that the C.B.I. can be accused of having tutored Munni, Dwarika or Parasnath into saying that Bharat had confessed to the crime before them. If Shri Upadhyaya's murder were to have

a political origin and the C.B.I. were to lead evidence of such extrajudicial confessions, it might have been possible to say that an oblique slant was given to the investigation to avoid an inconvenient situation. But once it is clear that the murder is not politically motivated, no such charge can be made against the C.B.I. They were right in their conclusion that the murder was committed by thieves. You cannot then dub their investigation as *mala fide* if for proving their thesis, they tried to collect evidence pointing in the direction of theft. The evidence may fail to carry conviction but in fairness, the charge that the investigation was influenced by an ulterior motive cannot be sustained.

16. Regarding the delay caused in contacting witnesses like Sharda, Bhaiyya Lal, Lalu, Nanhku and Gur Prasad, I would absolve the C.B.I. of any charge of dilatoriness, except in the case of Gur Prasad. The four others are but rickshawallas and theirs is a shifting population. It could not have been easy to get their names, particularly because the names could be obtained only from their unwilling colleagues in the trade. It is notorious that in these matters there is quite a fraternity.

17. I am however unable to appreciate that Gur Prasad could not be traced till the 17th of April. I visited the Kashi Railway Station along with the Counsel and what I found was that the tea-stall of Awat Ram, in which Gur Prasad works, occupies a prominent place near the very entrance to the station. It could not have been possibly overlooked, for it is the only tea-stall within a radius of about 100 yards from the station. The search for Kashi witnesses was intensive from the very beginning and therefore it is somewhat puzzling that Gur Prasad could not be contacted before the 17th of April. But this is a small point.

18. That finishes the answer to the more important points mentioned at the beginning of this chapter. I will now turn to the other points of criticism against the C.B.I.

19. Two witnesses, Kalpanath Gupta and Lalta Kalwar have stated before me that the C.B.I. officers used to torture the rickshawallas and others. There is no substance in this allegation. Kalpanath said in cross-examination that he had received the particular information from two rickshawallas, Sukku and Hari. He added in re-examination that they gave up rickshaw driving as they were beaten mercilessly by the Police and that in course of time they died. Lalta followed the same pattern and said that his nephew, Kapil Deo, died as a result of the torture at the hands of the G.R.P. and the C.B.I. officers. Both the witnesses have resorted to a questionable but time-honoured device of deposing in reliance on a dead source. Such evidence is hardly ever satisfactory. Torture by the Police to the point of death would not have failed to evoke a strong public reaction.

20. It was urged before me that D.I.G. Lobo was replaced by D.I.G. Singh from the 26th February 1968 because the former had expressed his agreement with the theory propounded by Nanaji Deshmukh. There is no substance in this allegation. D.I.G. Lobo



had submitted two reports to the Director of C.B.I., one, an interim report dated the 20th of March 1968 and the other, the final report dated the 29th of April 1968. Shri Lobo was examined as a witness before me, his evidence in regard to the two reports having been taken *in camera*. Neither of these reports nor the evidence of Shri Lobo would justify the inference that he had expressed his agreement with any theory advocated by Nanaji. Equally unsubstantial is the charge that Shri Lobo was replaced by D.I.G. Singh. There is clear evidence to show that he took an active part in the investigation even after Shri Singh joined the investigating team. In fact, the final report was submitted to the Director of C.B.I. by Shri Lobo.

21. Since it is alleged that Nanaji Deshmukh had propounded a definite theory when the C.B.I. officers were investigating into the case, it would be worthwhile considering whether any definite view was ever expressed by Nanaji.

22. During the course of investigation, Nanaji had handed over to Shri Lobo a list Ex. 59, containing the names of eight suspected Communists and describing their suspicious activities at the material time. This list was given on the 3rd of March 1968. The information contained in Ex. 59 was verified by the C.B.I. and was found to be baseless.

23. As the Chairman of the Committee appointed by Shri A. B. Vajpayee, Nanaji collected data relating to the death of Shri Upadhyaya with the assistance of Shri Ramacharya Pandey. The Committee prepared its report in the middle of March 1968. It is published in 'Apni Gatividhi' (Ex. 56) which is an official bulletin of the Jan Sangh. The particular issue is dated the 15th of April 1968. The report shows that the Committee was not in a position to propound any definite theory. It only came to a tentative conclusion that Shri Upadhyaya was murdered before the train had reached Varanasi. In the concluding portion of the report, the Committee says: "From all these facts, it is clear that behind this murder are not only those thieves who have themselves confessed their guilt but some other elements." This shows how the Committee was groping in the dark and how in spite of their best efforts, they found it difficult to come to any definite conclusion.

24. At Ex. Ka-263, there is a cutting from the *Times of India* dated the 26th of March 1968. It contains the report of a news conference addressed by Shri Nanaji at Nagpur on the 25th of March. Though Nanaji said in that conference that it was a case of a political murder, he added that the two accused who were arrested by the C.B.I. were reported to have "canvassed for the Communist Party.....in the General Election". This shows that Nanaji himself toyed with the idea that Bharat and Ram Awadh may be the real culprits but that they were associated with the Communists.

25. The report of the news conference shows, as the report of the Committee (Ex. 56) shows, that Nanaji had no grievance to make

till as late as the 15th of April 1968 when the report in 'Apni Gati-vidhi' was published, that the C.B.I. was suppressing the truth by giving an over-simplified complexion to the case. The only charge which Nanaji made against the C.B.I. in the news conference was that "The C.B.I. was too slow in its investigation". In the report of the Committee no grievance at all is made against the line of investigation pursued by the C.B.I.

26. A charge was made against the C.B.I. that it was virtually dormant and that it meekly adopted whatever Inspector Baijnath Singh of the Varanasi Kotwali did. This charge is cruel. It must be remembered that, as stated by the Home Minister in the Parliament on the 14th of February 1968, the C.B.I. was not placed in exclusive charge of the investigation. It was to collaborate with the U.P.C.I.D. Probably, the U.P.C.I.D. thought highly of Baijnath Singh and leaned on him at all crucial stages of the investigation. The C.B.I. did not object to it. I agree that Inspector Baijnath Singh has been instrumental in obtaining clinching clues to the mystery of Shri Upadhyaya's murder, but that does not mean that the C.B.I. was lying supine or that it had abdicated its functions in favour of Baijnath Singh. It is under the guidance of the C.B.I. officers that every important information was collected. Therefore, it is not a fair criticism to say that if the investigation is denuded of Baijnath Singh's contribution, nothing will remain to the credit of the C.B.I.

27. Counsel for the C.B.I. found fault with the shifting stand of Nanaji. I do not agree with that criticism. True it is, that different theories were suggested by the Jan Sangh at different times. But it cannot be overlooked that the party had forfeited a priceless asset in the death of Shri Upadhyaya. As stated by Nanaji, Shri Upadhyaya was the true architect of the Jan Sangh success in the General Elections. A measure of the regard in which Shri Upadhyaya was held by his followers can be found in the way they described him. They called him 'Panditji'. For them there was darkness after his death and they did not want to leave any stone unturned to trace the real culprits. To the extent to which false evidence has been produced before me, I must express my strong disapproval. That however is in the same vein in which I have expressed my disapproval of some of the lapses on the part of the C.B.I. I do not see justification for finding fault with the Jan Sangh merely because they propounded different theories at different times. They lacked the equipment of the C.B.I., they lacked its official power and being after all a political organisation they lacked its dispassionateness. But complete identification with a cause which you hold dear is a failing of politics. Therefore, I have not dismissed the Jan Sangh case out of hand merely because it was not consistent. I have endeavoured to examine every one of the theories advocated by it at different times and in this I have permitted myself to be influenced solely by the merits of each individual theory.

28. Having considered the matter in all its aspects, I have come to the conclusion that the C.B.I. conducted the investigation with care and objectivity. Clues which were replete with possibilities were pursued by them. Clues which were merely fanciful had to be

left alone. Sins of commission and omission fall to the lot of all policemen and one must confess that the debit side of the C.B.I. is not quite blank. But there is no substance in the charge that they acted *mala fide*. I see nothing from which to infer that they gave amnesty to Communists and communalists and found an easy way out by catching two common thieves. I endorse their conclusion that Shri Upadhyaya's murder was accompanied by a theft of his belongings.

## CHAPTER XVI

### CONCLUSION

1. I would like to give here a brief resume of my findings but I must recall that it was not without misgivings that I embarked upon this task. Fortunately my fears proved false. Credit for that must go in a large measure to the courtesy and consideration which I received from all quarters. The case was complicated but Counsel made it look simple. The care and ability with which Shri C. D. Sheth and Shri Bipin Behari Lall presented their respective cases for the Jan Sangh and Central Bureau of Investigation made my task lighter. But above all, they put their points of view before me with a certain amount of dispassionateness. They were ably supported by their juniors, Shri Chaudhary, Shri Tiwari, Shri Tripathi and Shri Chaube. I am thankful to them all for their assistance. I must also express my appreciation of the help which I received from Shri M. C. Bhandare, Counsel for the Commission. The sifting of evidence and the spade work which he did aided me greatly.

2. What made the case apparently complicated was a combination of coincidences and a fusion of mysterious circumstances. Every crime presents a problem in some measure but only a few bristle with so many of them. That gives to Shri Upadhyaya's murder an eerie complexion. Look for example at the following facts:

- (a) Major Surendra Mohan Sharma's name was taken down by Naik Har Govind Pandey of the R.T.O.'s Office as Major "S. L. Sharma" and his ticket number as 06171 instead of 06172.
- (b) Padam Singh, the Coach Attendant of the Train Service Coach took down the name of Major Surendra Mohan Sharma as Major "S. N. Sharma".
- (c) Kamal, the Conductor of Sealdah Express, asserted that when he checked up the passengers in the I Class compartment of the F.C.T. bogie at Lucknow, he found a stranger dressed in civilian clothes standing in the unlighted 'C' Cabin.
- (d) Shri Gauri Shankar Rai, M.L.C., who was to travel from Lucknow to Ballia *via* Varanasi, changed his mind and detrained at Shahganj. He got down from the off-side.
- (e) M. P. Singh found at Varanasi that the bath-room near the 'A' Cabin was jammed and could not be opened.
- (f) When M. P. Singh got back into the F.C.T. bogie at Mughal-sarai after visiting the Parcel Office, he saw a stranger standing in the corridor, opposite the 'B' Cabin.

- (g) That stranger hoodwinked M. P. Singh by feigning to be the son of the passenger who was travelling by the 'B' Cabin (that is, Shri Upadhyaya) and he successfully took away the bedding from the 'B' Cabin.
- (h) The thief took away the file also, which was apparently of no value to him. The file was never traced.
- (i) The thief did not, however, take away the wrist watch and the sum of Rs. 21, which were on the person of Shri Upadhyaya.
- (j) The dead body of Shri Upadhyaya was found lying fully stretched on its back, with left leg over the right and the face fully covered with a shawl.
- (k) In the right hand of the dead body was a five rupee note, held in a peculiar way.
- (l) The injuries on the person of Shri Upadhyaya presented a unique combination—a head injury over the right ear, imprint abrasions on the shoulder, back and the right buttock, and bilateral fractures of the legs, with the left leg everted and the right leg inverted.
- (m) There was no blood in any part of the compartment and none worth the name near the traction pole either. A substance like phenyl was however found near the attendant's seat in the F.C.T. bogie.
- (n) The blood-stains on the personal apparel of Shri Upadhyaya had a characteristic pattern. There were blood-stains on the shoulder region only of the two full-sleeved sweaters and the full-sleeved banyan. There were no blood-stains at all on the sleeveless sweater. There were fairly large blood-stains on the shawl.
- (o) The members of the shunting team and A.S.M. Prasad made diametrically opposite statements before the C.I.D. and the C.B.I. Their earlier version was that the body was first seen at about 2-50 A.M. The version which they gave before the C.B.I. was that they saw the body first at about 2-20 A.M.
- (p) Even an independent person like Dr. B. R. Chakravarty, Assistant Medical Officer, tampered with the record. A.S.M. Prasad gave him a copy of his memo, asking him to attend the dead body. Dr. Chakravarty made an endorsement on the original memo stating that he had received the copy at 5-55 A.M., which was correct. He later changed the timing to "3-55 A.M." by altering the figure "5-55" into "3-55".

3. Now, look at the following coincidences:

- (1) Originally Shri Upadhyaya was to go to Delhi but in response to the invitation of the Bihar Branch of the Jan Sangh, he decided on the 10th morning to go to Patna. He had a tryst with Destiny.
- (2) His berth was reserved in the 'A' Cabin of the F.C.T. bogie, where M. P. Singh's berth was also reserved. But he changed from 'A' to 'B' Cabin, by incurring to some extent the displeasure of Shri Gauri Shankar Rai. Shri Rai's luggage was shifted from 'B' to 'C' Cabin without his consent. The result was that Shri Upadhyaya became the sole occupant of the 'B' Cabin.
- (3) Shri Rai met Shri Srivastava at the Lucknow Railway Station. On the latter's advice, Shri Rai got down at Shahganj instead of getting down at Varanasi.
- (4) Shri Upadhyaya dashed against a traction pole while falling down from the F.C.T. bogie. There is hardly any other such pole on the particular line, within the vicinity of the particular traction pole.
- (5) Major Sharma could have afforded to leave Lucknow on the 11th February as he was required to join his regiment on the 14th but he decided on the 10th that he should leave the same day, and this in spite of his recent marriage which had taken place on the 17th January.
- (6) Though Major Sharma did not travel by the 'C' Cabin where his berth was reserved, another army officer, Subedar Sidh Singh, holding an unreserved ticket, travelled by that cabin.

4. I have dealt with every one of these facts and have endeavoured to offer a rational explanation thereof. I have also discussed the rival theories and have furnished an answer. I hope that I am right in the solution which I have offered to the riddle of Shri Upadhyaya's death.

5. Stated briefly, I have taken the view:

- (1) That Shri Upadhyaya was pushed out of the running train when he was standing near the door of the I Class compartment of the F.C.T. bogie.
- (2) That he dashed against Traction Pole No. 1276 and died an instantaneous death.
- (3) That the injuries found on his person were caused in a single transaction.
- (4) That the injuries could not have been caused inside the compartment.

(5) That it cannot be that the murder was committed in the compartment or elsewhere and the dead body laid near the pole in order to simulate an accident.

(6) That the dead body was discovered at about 2-20 A.M. during the earlier stage of shunting and not at about 2-50 A.M. after the first stage of shunting was over.

(7) That the members of the shunting team made conflicting statements before the C.I.D. and the C.B.I. in order to save themselves and their superior officer B. N. Prasad from a possible charge of negligence.

(8) That B. N. Prasad, the Assistant Station Master, changed his version to accord with truth, his earlier version having been influenced by an anxiety to avoid a charge of remissness in duty.

(9) That the C.B.I. was right in obtaining further statements from these witnesses but the prosecution was not justified in suppressing from the Sessions Court and the Defence, a very material circumstance that the witnesses had made conflicting statements before the C.I.D.

(10) That Dr. B. R. Chakravarty, Assistant Medical Officer, altered the record to show that he had attended to the dead body at 3-55 A.M. though he had not done so till 5-55 A.M., because he wanted to create an impression that he had done his duty promptly.

(11) That the position in which the dead body was lying initially, was definitely disturbed by some one—most probably by members of the shunting team.

(12) That this was not done for any ulterior purpose but was done either as a matter of convenience or out of a common human sympathy.

(13) That S.I. Fateh Bahadur Singh further disturbed the position of the body for the purpose of taking a photograph.

(14) That the five rupee note was not planted in the hand of the dead body.

(15) That the body was first identified by Vishwanath Prasad Agarwal at about 10-30 A.M.

(16) That only two and not three photographs of the injuries were taken at the mortuary by K. M. Bhatia of the 'Goras Studio'

(17) That Shri Upadhyaya was last seen alive at Jaunpur but there is no reliable evidence to show that he was last seen alive at Varanasi.

(18) That no reliance can be placed on the evidence of M. P. Singh or B. D. Kamal for holding that Shri Upadhyaya was or was not alive at Varanasi.

(19) That in the context of the other circumstances, however, it must be held that Shri Upadhyaya was alive at Varanasi.

(20) That Major Surendra Mohan Sharma travelled from Lucknow to Gomoh by the Train Service Coach and not by the F.C.T. bogie of the Sealdah Express.

(21) That in the misdescription of his initials and the ticket number there was nothing more than an error, first on the part of Naik Har Govind Pandey and then on the part of Padam Singh.

(22) That Shri Gauri Shankar Rai got down at Shahganj because it was more convenient to go to Ballia *via* Shahganj and he got down on the off-side because there was no coolie to carry his luggage.

(23) That apart from M. P. Singh, Shri Upadhyaya, Shri Gauri Shankar Rai and Subedar Sidh Singh, no one else travelled by the I Class compartment between Lucknow and Varanasi.

(24) That the murder of Shri Upadhyaya was accompanied by an immediate theft, which shows that the two are part and parcel of the same transaction.

(25) That the bedding of Shri Upadhyaya was not recovered from a pit.

(26) That there is no reliable evidence to show that the missing file contained any matter of political significance.

(27) That the murder was not committed for political motives.

(28) That neither the left Communists nor Dr. Faridi nor any communalists are connected, directly or indirectly, with the murder, and

(29) That there is no substance in the accusation that the C.B.I. acted *mala fide*.

6. I have dealt exhaustively with the charge that Shri Upadhyaya's murder was committed for political motives, as that was one of the important points involved in my inquiry. On the 12th February 1968, some members of the Parliament had expressed a fear on the floor of the House whether in India, politics had become so unsafe for politicians that one had to pay for one's political beliefs by one's life. I can say with a certain amount of confidence that nothing that has come before me can support the accusation that there was any politics in Shri Upadhyaya's murder. Undoubtedly, he had political rivals but his death is the rash and extempore handiwork of mere thieves.

7. Before I conclude, a word of praise is due to the staff of the Commission. Shri B. D. Divekar, Shri R. K. Gadagkar, Shri K. M.



Kulkarni and Shri G. G. Chavan have put in long hours of work over the past six months. Shri Gadagkar particularly has been of great help, as ever.

8. I must finally record my appreciation of the invaluable assistance which I received from Shri G. S. Nande, Secretary to the Commission. He had to discharge a variety of functions and I am glad to say that he excelled in all that he did. His willing co-operation and resourcefulness made my work so much lighter and enjoyable.

(Sd.) Y. V. CHANDRACHUD  
Commission of Inquiry

20th October 1970.

**PART V**  
**ANNEXURES**

ANNEXURE I

*Re: The affidavits received by the Commission*

Serial No.	Name and address	Date of the affidavit	Reference to the evidence before the Commission	Remarks, if any
1	2	3	4	5
1.	Shri Kamal Krishna Sharma, Faizabad.	20-1-1970	..	Not examined.
2.	Shri Ved Prakash Agarwal, Faizabad.	20-1-1970	J. S. Witness No. 28	
3.	Shri Raj Narain Raghunath Prasad Agarwal, Faizabad.	20-1-1970	Do. 29	
4.	Shri Satyanarayan Prasad Bhagwandas, Mughalsarai.	20-1-1970	.. 3	
5.	Shri Lachhu Ram Suraj Bali, Mughalsarai.	20-1-1970	.. 8	
6.	Shri Madanlal Bajpai, Varanasi.	21-1-1970	.. 35	
7.	Shri Shreeprakash Hiralal, Lucknow.	21-1-1970	.. 5	
8.	Shri Harischandra Trilokiram, Lucknow.	21-1-1970	..	Not examined.
9.	Shri Bholanath Gupta Dukharan Sahu, Varanasi.	21-1-1970	J. S. Witness No. 24	
10.	Shri Deonath Girza Shankar Pandey, Varanasi.	23-1-1970		Not examined
11.	Shri Ghanashyam Jayantilal Maniar, Varanasi.	23-1-1970		Not examined.
12.	Shri Tribeni Prasad Baldev Prasad, Mughalsarai.	23-1-1970	J. S. Witness No. 15	
13.	Shri Anand Shankar Barnwal, Varanasi.	22-1-1970		Not examined.
14.	Shri Kashinath Shripati Pandey, Varanasi.	22-1-1970	J. S. Witness No. 23	

1	2	3	4	5
15.	Shri Laxmi Lall Mani Varanasi.	Shanker Shukla,	22-1-1970	J.S. Witness No. 36
16.	Shri Balvir Lall Prasad Varanasi.	Prakash Gupta,	22-1-1970	Not examined.
17.	Shri Ramesh Fakir Singh, Mughalsarai.	Singh	23-1-1970	J.S. Witness No. 18
18.	Shri Devdatta Hari-krishna Tiwari, Varanasi.		22-1-1970	„ 1
19.	Shri Ram Mahendra Varanasi.	Janam Pandey,	23-1-1970	Not examined.
20.	Shri Kalpanath Dwarakanath Gupta, Varanasi.		23-1-1970	J.S. Witness No. 38
21.	Shri Ram Hardev, Mushalsarai.	Murat	24-1-1970	„ 43
22.	Shri Ram Adhar Harakh, Mughalsarai.	Ram	24-1-1970	Not examined.
23.	Shri Rameshchandra Radhamohan Nigam, Varanasi.		24-1-1970	Do.
24.	Shri Babban Ganesh Singh, Niyamatabad.	Singh	24-1-1970	J.S. Witness No. 12
25.	Shri Vashistha Tribedi, Varanasi.	Narayan	24-1-1970	Not examined.
26.	Shri Ravi Ramashraya Lucknow.	Shankar Trivedi,	24-1-1970	„ 22
27.	Shri Kartar Lalchandra, Bhaujipura.	Singh	23-1-1970	„ 44
28.	Shri Pratap Hemandas, Biharipur.	Rai	23-1-1970	„ 27
29.	Shri Bishambhar Nath Bhagvati Prasad Srivastav, Lucknow.		23-1-1970	J.S. Witness No. 13
30.	Shri Panchanan Shivanberlal Srivastav, Lucknow.		23-1-1970	„ 14
31.	Shri Uma Puttanlal, Ambarpur.	Shankar	23-1-1970	„ 20

1	2	3	4	5
32.	Kumari, Daya Bahen Ishwardas, Lucknow.	23-1-1970	J.S. Witness No. 4	
33.	Shri Rameshchandra Ghanashyamdas, Lucknow.	23-1-1970	„	11
34.	Shri Ramashankar Singh Girdhar Singh, Lucknow.	23-1-1970	„	10
35.	Shri Ram Prakash Gopal Krishna Gupta, Lucknow.	25-1-1970	„	37
36.	Shri Ram Niwas Kedarnath Sharma, Varanasi.	28-1-1970		Not examined.
37.	Shri Purnachandra J. Goswami, Mughal- sarai.	28-1-1970		Do.
38.	Shri Shobhanath Singh Shivmangal Singh, Varanasi.	28-1-1970		Do.
39.	Shri Sukhanandan Prasad Parmeshwar Prasad, Mughalsarai.	27-1-1970	J.S. Witness No.39	
40.	Shri Sakharaj Shiv- nandan, Mughalsarai.	27-1-1970	„	9
41.	Shri Chhote Lal Gauga, Mughalsarai.	27-1-1970	„	2
42.	Shri Deena Nath Sukh- dev, Mughalsarai.	27-1-1970	„	7
43.	Shri Brindavan Chandradatta Laxmi- narayan Datta, Mughal- sarai.	27-1-1970		Not examined.
44.	Shri Ramnaresh Sadhu Tiwari, Mughalsarai.	27-1-1970		„
45.	Suri Sardar Jagjit Singh Sardar Krupal Singh, Lucknow.	27-1-1970	J.S. Witness No. 31	
46.	Shri Gyan Chandra Anand Swaroop Agar- wal, Kanpur.	28-1-1970	„	16

1	2	3	4	5
47.	Shri Ramakant Deepchand Shukla, Kanpur.	28-1-1970	J.S. Witness No. 17	
48.	Shri Shivraj Bahadur Lala Jamunadas Bajaj, Lucknow.	27-1-1970	"	30
49.	Shri Mohanlal Ramjilal Chaurasiya, Mughalsarai.	27-1-1970	"	6
50.	Shri Dayaram Subba Singh, Mughalsarai.	29-1-1970	"	32
51.	Shri Vasant Jayaram Bhagwat, Bombay.	31-1-1970	"	49
	Shri Jhamatmal T. Wadhvani, Bombay.	31-1-1970	"	48
52.	Shri Amarchand Shubb, Delhi.	30-1-1970	"	45
53.	Shri Jhamarsingh Ramlakhan Singh, Niyamatabad, Moghalsarai.	31-1-1970	"	25
54.	Shri Prabhunarayan Tribeni Prasad Upadhyaya, Valiya.	30-1-1970	"	33
55.	Shri Raghbir Prasad Mahesh Prasad Saxena, Moghalsarai.	30-1-1970	"	40
56.	Shri Banwali Hari-mohan Bhattacharya, Mughalsarai.	30-1-1970		Not examined.
57.	Shri Rajveer Sinha Dharmaveer Sinha, Bareilly City.	31-1-1970	J. S. Witness No. 26	
58.	Dr. Murli Manohar Joshi, Allahabad.	1-2-1970	"	19 The Affidavit was produced by the witness during his evidence on 18-3-1970.

1	2	3	4	5
59.	Shri H. B. D. Baijal, D.S.P. (C.B.I.), Delhi.	28-1-1970		This affidavit was filed on behalf of the Central Bureau of Investigation. It sets out briefly the case of the Central Bureau of Investigation.
A Representation dated 27-1-1970, was, filed before the Commission on behalf of the Bharatiya Jan Sangh by Shri Nanaji Deshmukh, its Treasurer.				
J.S. indicates that witness was examined by the Jan Sangh.				

ANNEXURE 2

*List of Witnesses examined in the Sessions Court at Varanasi*

(In Sessions Case No. 74 of 1968.)

Serial Number	Witness Number	Name of the witness
1	2	3
1.	P. W. 1	Shri K. Dayal.
2.	P. W. 2	Shri M. H. Razvi.
3.	P. W. 3	Shri K. M. Bhatia.
4.	P. W. 4	Shri Drigpal.
5.	P. W. 5	Shri Kishori Mishra.
6.	P. W. 6	Shri Abdul Gafoor.
7.	P. W. 7	Shri Hardwari.
8.	P. W. 8	Shri Ram Das.
9.	P. W. 9	Shri B. N. Ptasad.
10.	P. W. 10	Shri Kashinath.
11.	P. W. 11	Shri Sachu Lal.
12.	P. W. 12	Shri Ram Prasad.
13.	P. W. 13	Dr. B. R. Chakravarti.
14.	P. W. 14	Shri Mohammad Zahoor.
15.	P. W. 15	Shri P. N. Mehra.
16.	P. W. 16	Shri Vishwanath Prasad Agarwal.
17.	P. W. 17	Shri A. B. Chakravarti.
18.	P. W. 18	Shri Jagannath Singh.
19.	P. W. 19	Shri B. Bhattacharya.
20.	P. W. 20	Shri Ram Chander Singh.
21.	P. W. 21	Dr. S. N. Garg.
22.	P. W. 22	Kumari Sarla Rani.
23.	P. W. 23	Shri Harish Chandra.
24.	P. W. 24	Shri D. N. V. Chhallan.



1	2	3
25.	P. W. 25 . . . . .	Shri Govind J. Bijani.
26.	P. W. 26 . . . . .	Shri Vikram Singh.
27.	P. W. 27 . . . . .	Shri Kanhiya Lal Sunkla.
28.	P. W. 28 . . . . .	Shri Gauri Shankar Rai.
29.	P. W. 29 . . . . .	Shri Sidh Singh.
30.	P. W. 30 . . . . .	Dr. K. P. Singh.
31.	P. W. 31 . . . . .	Shri M. P. Singh.
32.	P. W. 32 . . . . .	Dr. I. Bhushan Rao.
33.	P. W. 33 . . . . .	Dr. S. N. Patarkar.
34.	P. W. 34 . . . . .	Shri M. M. Mukherjee.
35.	P. W. 35 . . . . .	Shri S. N. P. Yadav.
36.	P. W. 36 . . . . .	Shri S. R. Kundu.
37.	P. W. 37 . . . . .	Shri Bijoy Deogan.
38.	P. W. 38 . . . . .	Shri Bhola Rawat Basti.
39.	P. W. 39 . . . . .	Shrimati Mitia.
40.	P. W. 40 . . . . .	Shri Ved Prakash.
41.	P. W. 41 . . . . .	Shri Kapil Deo.
42.	P. W. 42 . . . . .	Shri Hari Narayan.
43.	P. W. 43 . . . . .	Shri Abdul Aziz.
44.	P. W. 44 . . . . .	Shri Bhallu.
45.	P. W. 45 . . . . .	Shri Moti Lal.
46.	P. W. 46 . . . . .	Shri Vijay Singh.
47.	P. W. 47 . . . . .	Shri Uma Kant.
48.	P. W. 48 . . . . .	Shri Sumer Singh.
49.	P. W. 49 . . . . .	Shri Kalyan Sunderan
50.	P. W. 50 . . . . .	Shrimati Indu.
51.	P. W. 51 . . . . .	Shri Durga Tiwari.
52.	P. W. 52 . . . . .	Shri Saiyad Mohomad Ayub.
53.	P. W. 53 . . . . .	Shri Raj Nath Tiwari.
54.	P. W. 54 . . . . .	Shri Nijamuddin Shah.
55.	P. W. 55 . . . . .	Shri Shyam Kishor Singh.
56.	P. W. 56 . . . . .	Shri Acharji Lal Mishra

1	2	3
57.	P. W. 57 . . . . .	Shri Ram Das Baijal.
58.	P. W. 58 . . . . .	Shri Paras Nath Srivastava.
59.	P. W. 59 . . . . .	Shri H. C. Basdeo Tiwari.
60.	P. W. 60 . . . . .	Shri Ramji Singh.
61.	P. W. 61 . . . . .	Shri Baleshwar Singh.
62.	P. W. 62 . . . . .	Shri Bhuwaneshwar Chand.
63.	P. W. 63 . . . . .	Shri Sikandar Khan.
64.	P. W. 64 . . . . .	Shri Bholu Ram.
65.	P. W. 65 . . . . .	Shri Awadh Singh.
66.	P. W. 66 . . . . .	Shri Mitra Singh.
67.	P. W. 67 . . . . .	Shri Ranbhir Singh.
68.	P. W. 68 . . . . .	Shri Haider Mohdi.
69.	P. W. 69 . . . . .	Shri Sharda.
70.	P. W. 70 . . . . .	Shri Bhaiya Lal.
71.	P. W. 71 . . . . .	Shri Bashistha Rai.
72.	P. W. 72 . . . . .	Dr. S. Chowdhari.
73.	P. W. 73 . . . . .	Shri T. B. Soren.
74.	P. W. 74 . . . . .	Professor N. Das.
75.	P. W. 75 . . . . .	Shri Ashwanj Kumar.
76.	P. W. 76 . . . . .	Shrimati Lata Khanna.
77.	P. W. 77 . . . . .	Shri S. K. Chakravarti.
78.	P. W. 78 . . . . .	Shri Saryu Prasad Maurya.
79.	P. W. 79 . . . . .	Shri Mohomad Mohomad Akhtar
80.	P. W. 80 . . . . .	Shri A. R. Bansal.
81.	P. W. 81 . . . . .	Shri T. Majumdar.
82.	P. W. 82 . . . . .	Shri Balkaran.
83.	P. W. 83 . . . . .	Shri Laxman Singh.
84.	P. W. 84 . . . . .	Shri Nand Lal Srivastava.
85.	P. W. 85 . . . . .	Shri Ram Swarup Singh.
86.	P. W. 86 . . . . .	Shri Lallu.
87.	P. W. 87 . . . . .	Shri Rameshwar Tiwari.
88.	P. W. 88 . . . . .	Shri Kapildeo.

1	2	3
89.	P. W. 89 . . . . .	Shri Mahavir Prasad.
90.	P. W. 90 . . . . .	Shri Padam Singh.
91.	P. W. 91 . . . . .	Major S. M. Sharma.
92.	P. W. 92 . . . . .	Shri Ram Gulam.
93.	P. W. 93 . . . . .	Shri H. C. Johri.
94.	P. W. 94 . . . . .	Shri N. Das Gupta.
95.	P. W. 95 . . . . .	Shri Gurdev Prasad.
96.	P. W. 96 . . . . .	Shri Nanku.
97.	P. W. 97 . . . . .	Shri Manik.
98.	P. W. 98 . . . . .	Shrimati Munki.
99.	P. W. 99 . . . . .	Shri Radheshyam.
100.	P. W. 100 . . . . .	Shri Naik Hargovind Pandey.
101.	P. W. 101 . . . . .	Shri P. C. Srivastava.
102.	P. W. 102 . . . . .	Shri S. N. Gupta.
103.	P. W. 103 . . . . .	Shri T. N. Kapoor.
104.	P. W. 104 . . . . .	Shri S. P. Srivastava.
105.	P. W. 105 . . . . .	Shri Julius Turkey.
106.	P. W. 106 . . . . .	Shri N. K. Sharma.
107.	P. W. 107 . . . . .	Shri Bholan Das.
108.	P. W. 108 . . . . .	Shri S. B. Tripathi.
109.	P. W. 109 . . . . .	Shri D. K. Yadav.
110.	P. W. 110 . . . . .	Shri D. S. Singh.
111.	P. W. 111 . . . . .	Shri Ishtiaq Ahmed.
112.	P. W. 112 . . . . .	Shri Sukhdev Singh.
113.	P. W. 113 . . . . .	Shri S. D. Jha.
114.	P. W. 114 . . . . .	Shri S. K. Sanyal.
115.	P. W. 115 . . . . .	Shri K. C. Kapur.
116.	P. W. 116 . . . . .	Shri Raj Bahadur Singh.
117.	P. W. 117 . . . . .	Shri B. N. Khare.
118.	P. W. 118 . . . . .	Shri Fateh Bahadur Singh.
119.	P. W. 119 . . . . .	Shri P. P. Mishra.
120.	P. W. 120 . . . . .	Shri R. D. Pandey.

1	2	3
121.	P. W. 121 . . . . .	Shri B. R. Puri.
122.	P. W. 122 . . . . .	Shri Badri Sharma.
123.	P. W. 123 . . . . .	Shri D. K. Tiwari.
124.	P. W. 124 . . . . .	Shri Baijnath Singh.
125.	P. W. 125 . . . . .	Shri D. P. Srivastava.
126.	P. W. 126 . . . . .	Shri Surendra Rai.
127.	P. W. 127 . . . . .	Shri H. B. D. Baijal.
128.	P. W. 128 . . . . .	Shri Kalika Prasad Arya.
1.	C. W. 1 . . . . .	Shri B. D. Kamal.
2.	C. W. 2 . . . . .	Shri Nageshwar Singh.
3.	C. W. 3 . . . . .	Shri Nanaji Deshmukh.
4.	C. W. 4 . . . . .	Shri Dwarika.
5.	C. W. 5 . . . . .	Shri Mati Bahadur Singh.

NOTE :—P. W. indicates Prosecution witness.  
C. W. indicates Court witness.

ANNEXURE 3

*List of important documents produced in the Sessions Court*

Serial Number	Exhibit Number	Description of the document
1	2	3
1.	Ka-1 . . . . .	Post Mortem Report.
2.	Ka-29 . . . . .	Photograph of the deceased, taken by S. I. Fateh Bahadur Singh.
3.	Ka-30 . . . . .	Photograph showing injuries on head and the back.
4.	Ka-31 . . . . .	Photograph showing the leg fractures.
5.	Ka-34 . . . . .	Report by A.S.M. of time, when body was seen.
6.	Ka-40 . . . . .	Inquest Report by S. I. Fateh Bahadur Singh.
7.	Ka-52 . . . . .	Expert Report by Mr. B. Bhattacharya.
8.	Ka-65 . . . . .	Expert Report of Dr. Garg.
9.	Ka-69 . . . . .	Requisition slip for reservation, written by Uma Shankar.
10.	Ka-70 . . . . .	Extract of reservation register.
11.	Ka-77 . . . . .	Report of Dr. Bhooshan Rao, dated the 23rd March, 1968.
12.	Ka-78 . . . . .	Sketch of injuries, prepared by Dr. Patankar.
13.	Ka-89 . . . . .	Recovery Memo of Hold all etc. recovered from Lalta, dated the 16th February, 1968.
14.	Ka-90 . . . . .	Production Memo of pillow case, pillow cover etc., dated the 17th February 1968.

NOTE :—'Ka'—represents the documents produced by the prosecution.

ANNEXURE 4

*List of witnesses examined before the Commission*

PART A (Witnesses examined by the Jan Sangh)

Serial Number	Name of the witness	Date on which the witness was examined
1	2	3
1.	Shri Devdatta Harikrishna Tiwari . . .	9-3-1970
2.	Shri Chhote Lal Ganga Sao . . .	9-3-1970
3.	Shri Satyanarayan Prasad Bhagwandas .	9-3-1970
4.	Kumari Daya Bahen Ishwardas . . .	10-3-1970
5.	Shri Shreepakash Hiralal . . . .	10-3-1970
6.	Shri Mohanlal Ramjilal Chaurasiya . . .	10-3-1970.
7.	Shri Deena Nath Sukhdev . . . .	10-3-1970.
8.	Shri Lachhu Ram Suraj Bali . . . .	10-3-1970.
9.	Shri Sakhraj Shivnandan . . . .	10-3-1970.
10.	Shri Rameshankar Singh Girdhar Singh .	11-3-1970.
11.	Shri Rameshchandra Ghanashyamdas . .	11-3-1970.
12.	Shri Babban Singh Ganesh Singh . . .	11-3-1970.
13.	Shri Bishambhar Nath Bhagvati Prasad Srivastav	12-3-1970.
14.	Shri Panchanan Shivamberlal Srivastav .	12-3-1970.
15.	Shri Tribeni Prasad Balbhadra Prasad . .	12-3-1970.
16.	Shri Gyanchand Anandswaroop Agarwal . .	18-3-1970.
17.	Shri Ramakant Deepchand Shukla . . .	18-3-1970.
18.	Shri Ramesh Singh Fakir Singh . . .	18-3-1970.
19.	Shri Murli Manohar Joshi . . . .	18-3-1970. } 25-3-1970. }
20.	Shri Uma Shankar Puttanlal . . . .	19-3-1970.
21.	Shri Pitambardasji Lala Triveni Prasad . .	19-3-1970.
22.	Shri Ravi Shankar Ramashraya Trivedi . .	19-3-1970.

1	2	3
23.	Shri Kashinath Shripati Pandey . . .	19-3-1970.
24.	Shri Bholanath Dukharan Sahu Gupta . . .	19-3-1970.
25.	Shri Jhamar Singh Ram Lakhan Singh . . .	19-3-1970.
26.	Shri Rajveer Sinha Dharmaveer Sinha . . .	20-3-1970.
27.	Shri Pratap Rai Hemandas . . . . .	20-3-1970.
28.	Shri Ved Prakash Ayodhya Prasad Agarwal . . .	20-3-1970.
29.	Shri Rajnarayan Raghunath Prasad Agarwal . . .	20-3-1970.
30.	Shri Shivraj Bahadur Lala Jamunadas Bajaj . . .	21-3-1970.
31.	Shri Sardar Jagjit Singh Sardar Krupal Singh . . .	21-3-1970.
32.	Shri Dayaram Subba Sinha . . . . .	21-3-1970. 26-3-1970. 27-3-1970. }
33.	Shri Prabhunarayan Triveni Prasad Upadhyaya . . .	21-3-1970.
34.	Shri Laxman Singh Mahendra Singh Chaturvedi . . .	21-3-1970.
35.	Shri Madanlal Mannulal Bajpai . . . . .	22-3-1970.
36.	Shri Laxmishankar Lallmani Shukla . . . . .	22-3-1970.
37.	Shri Ram Prakash Gopal Krishna Gupta . . . . .	24-3-1970.
38.	Shri Kalpanath Dwarkanath Gupta . . . . .	24-3-1970. 27-3-1970. }
39.	Shri Sukhanandan Prasad Parmeshwar Prasad . . .	25-3-1970. }
40.	Shri Raghubarprasad Maheshprasad Saxena . . . . .	25-3-1970.
41.	Shri Laltraprasad Chaibarprasad Vaishya . . . . .	25-3-1970.
42.	Shri Kailashpati Pandit Hazari Mishra . . . . .	26-3-1970.
43.	Shri Ram Murat Hardev . . . . .	26-3-1970.
44.	Shri Kartar Singh Lalchandra . . . . .	27-3-1970.
45.	Shri Amarchand Girdharilal Shubh . . . . .	9-4-1970.
46.	Shri Maheshya Pandit Rama Datta . . . . .	9-4-1970.
47.	Shri Dr. R. N. Katariya . . . . .	10-4-1970. 25-4-1970. }
48.	Shri Jhamatmal T. Wadhvani . . . . .	10-4-1970.
49.	Shri Vasant Jairam Bhagwat . . . . .	10-4-1970.
50.	Shri Ramacharya Pandit Hariharnath Pandey . . . . .	13-4-1970. 27-4-1970. }
51.	Shri Nana Amritrao Deshmukh . . . . .	24-4-1970. 25-4-1970. }

PART B (Witnesses examined by the Central Bureau of Investigation)

Serial Number	Name of the witness	Date on which the witness was examined
1	2	3
1.	Shri Bramajnaranayan Bishannarayan Mehrotra .	27-4-1970.
2.	Shri Rajendraprasad Munnalal Shukla . .	28-4-1970.
3.	Shri Amarnath Hanumanprasad . . .	28-4-1970.
4.	Shri Pyarelal Shree Lalaram Babbar . .	28-4-1970.
5.	Shri Shaukat Ali Muravat Ali . . .	28-4-1970.
6.	Shri Govind J. Bijani . . . .	28-4-1970.
7.	Shri Durgaprasad Shivmbharprasad Srivastava .	29-4-1970.
8.	Shri K. P. Vishwanathan . . . .	29-4-1970.
9.	Shri Mukhtar Ahmed Khan Wakil Ahmedkhan	29-4-1970.
10.	Shri Dr. I. Bhooshan Rao . . . .	30-4-1970. } 22-6-1970. } 23-6-1970. }
11.	Shri Jagdeesh Rai Vasty . . . .	23-6-1970.
12.	Shri Om Prakash Chhatwal . . . .	23-6-1970.
13.	Shri Baccha Rai . . . .	23-6-1970.
14.	Shri Berahu Singh . . . .	23-6-1970.
15.	Shri Shiv Tahal Mehta . . . .	23-6-1970.
16.	Shri Badri Sharma . . . .	24-6-1970. } 25-6-1970. }
17.	Shri S. N. P. Sinha . . . .	24-6-1970.
18.	Shri Prabhu Singh Harishchandra Bhati . .	24-6-1970.
19.	Shri Kalila Prasad Ramnath Tripathi .	24-6-1970.
20.	Shri Daljeet Singh Ranbir Singh . . .	26-6-1970.
21.	Shri John Eufemiano Lobo . . . .	26-6-1970. } 29-6-1970. }
22.	Shri Maheshprasad Madanlal Tandon . .	29-6-1970.
23.	Shri Radhe-shyam Sunderlal Sharma . .	30-6-1970.



## ANNEXURE 5

(List of documents before the Commission)

### PART (A Documents produced by the Jan Sangh)

Exhibit Number	Nature of the document	Date of production
1	2	3
6.	Newspaper cutting of paper "Gandiv" dated 1-2-1968 . . . . .	24-3-70
10.	Booklet "Who killed Upadhyaya" . . . . .	25-3-70
19.	Letter dated 26-9-1969 addressed to Shri Surendra Singh Bhandari, tendered by Shri Amarchand Shubb (witness No. 45) in his examination-in-chief . . . . .	9-4-70
22.	Statement of Drigpal. Badan Kohar, porter Mughalsarai, tendered by J. S. Witness No. 50 in examination-in-chief . . . . .	13-4-70
23	Statement of B. N. Prasad, A.S.M., Mughalsarai, tendered by J. S. Witness No. 50 in his examination-in-chief . . . . .	13-4-70
24.	Statement of Ramdas, liverman, Grade II, Mughalsarai, tendered by J. S. Witness No. 50 in his examination-in-chief . . . . .	13-4-70
25.	Statement of Abdul Gafoor, dated 12-2-68, tendered by J. S. Witness No. 50, in his examination-in-chief . . . . .	13-4-70
26.	Newspaper cutting of paper "Panchajanya" dated 12-2-68 . . . . .	13-4-70
27.	Newspaper cutting of paper "Panchajanya" dated 12-2-68 . . . . .	13-4-70
28.	Newspaper cutting of paper "Samachar Times" dated 13-2-68 . . . . .	13-4-70
29.	Newspaper cutting of paper "Samachar Times" dated 13-2-68 . . . . .	13-4-70
30.	Newspaper cutting of paper "Samachar Times" dated 13-2-68 . . . . .	13-4-70
31.	Newspaper cuttings of papers "Statesman" dated 18-4-68 and "Panchajanya" dated 26-2-68 . . . . .	13-4-70
32.	Newspaper cuttings of paper "Organiser" dated 18-2-68, 3-3-68, 12-3-68, 18-3-68, 24-3-68 and 31-3-68 . . . . .	13-4-70 21-7-70 } }

1	2	3
33.	Inland letter dated 12-2-68 addressed to Shri Chaudhari Charansing and Shri Ravi Prakashji, Dy. Chief Minister . . . . .	13-4-70
34.	Newspaper cuttings of paper "Panchajanya" dated 26-2-68 and 4-3-68 . . . . .	13-4-70
35.	Newspaper cuttings of paper "Panchajanya" dated 13-11-67, 20-11-67, 27-11-67 and 1-1-68 . . . . .	13-4-70
36.	Booklet—Presidential Address by Shri Deen Dayal Upadhyaya on the 14th Annual Session of Bharatiya Jana Sangh. (Pages 19, 21 and 24 only) . . . . .	13-4-70
37.	Newspaper cutting of paper "Gandiv" dated 8-3-68 . . . . .	13-4-70
38.	Proceedings Book of Varanasi Nagar Jana Sangh . . . . .	13-4-70
39.	Letter dated 22-12-69 from the Secretary (Mr. G. S. Nande) Commission of Inquiry re. death of Shri Deen Dayal Upadhyaya. (The letter is addressed to Shri Nanaji Deshmukh of Jana Sangh) . . . . .	13-4-70
40.	Personal Diary of Shri Ramacharaya Pandey for the year 1968 . . . . .	13-4-70
48.	Book—"Rashtra Chintan" . . . . .	24-4-70
49.	Book—"Ekatama Manav Vad" . . . . .	24-4-70
50.	Book—"Political Diary" written by Shri Deen Dayal Upadhyaya . . . . .	24-4-70
51.	Article in "Organiser" dated 23-4-67 (Pages 8, 9 and 14) . . . . .	24-4-70
52.	Newspaper cuttings of paper "Organiser" dated 17-9-67 and 8-10-67 . . . . .	24-4-70
53.	Newspaper cutting of paper "Organiser" dated 8-10-67 . . . . .	24-4-70
54.	Newspaper cutting of paper "Organiser" dated 17-3-68 . . . . .	24-4-60
55.	Group photograph of the Jana Sangh Leaders with the dead-body of Shri Deen Dayal Upadhyaya . . . . .	24-4-70
122.	Certified copy of Order Sheet in Criminal case No. 248 of 1968 in case of State <i>versus</i> Shrimati Munni under Section 411 Indian Penal Code, pending in the Court of A.D.M. (J) Varanasi . . . . .	30-6-70
123.	Certified copy of Order Sheet in Criminal case No. 241 of 1968 in case of State <i>versus</i> Lalita Prasad under Section 411 Indian Penal Code, pending in the Court of A.D.M. (J) Varanasi . . . . .	30-6-70

PART B (Documents produced by the Central Bureau of Investigations)

Exhibit Number	Nature of the document	Date of production
1	2	3
1.	Statement of Shri Pratap Rai dated 17-4-68 .	20-3-70
4.	Statement of Shri Ram Prakashji, Ex Dy. Chief Minister dated 19-3-68 recorded by C.B.I. .	24-3-70
5.	Newspaper cutting of paper "Aaj" dated 22-3-70 .	24-3-70
7.	Newspaper cutting of paper "Gandiv" dated 22-11-69 . . . . .	24-3-70
14.	Statement of Shri Kailash Pati Mishra, Secretary, Bihar State Jana Sangh, Patna, dated 3-4-68, recorded by C.B.I. . . . .	26-3-70
41.	Book—"Din Dayal Upadhyaya Hatya kand" Part—I . . . . .	13-4-70
56.	Report of the Committee of the Bharatiya Jana Sangh "Gati Vidhi" Official Bulletin . . . . .	24-4-70
57.	Souvenir of the Bharatiya Jana Sangh "Who's Who" . . . . .	24-4-70
58.	List of programme of Pandit Deen Dayal Upadhyaya. . . . .	24-4-70
59.	List of persons of Left Communists ideology who were away from their duty on 10-2-68 .	24-4-70
60.	Book—"Pandit Deen Dayal Upadhyaya Maha Prasthan" . . . . .	25-4-70
61.	Newspaper cutting of paper "Panchajanya" dated 26-2-68 . . . . .	27-4-70
62.	Advertisement for 3 publications : "Rashtra Dharma" "Panchajanya" and "Tarun Bharat".	27-4-70
63.	Panchajanya special issue dated 15-8-68 . . . . .	27-4-70
64.	Register of Reservation of 1st class berths of Kathgodam station. (See page 74 dated 5-2-68) .	28-4-70
65.	Foreign Delivery Register of N.E. Railway for parcels Inwards and Delivery, dated 5-2-68 (The whole Register). . . . .	28-4-70
65A.	Entry on page 3 is marked as Exhibit . . . . .	28-4-70
66.	Local and Foreign Inward and Delivery Luggage Register of Bhojipura Railway Station .	28-4-70

1	2	3
67. } 68. }	Two Consignment Receipts Nos. F-296699 and P-980927 of the Northern Railway and Central Railway, respectively . . . . .	28-4-70
69.	Message Book of Bhojipura Railway Station . . . . .	28-4-70
70.	Three Reservation sheets of I Class reservation dated 9-2-68 . . . . .	28-4-70
71.	Three Reservation Sheets of I class dated 10-2-68 . . . . .	28-4-70
73.	Report dated 17-4-68 from M.A. Khan, Police Inspector, Special Police Establishment, Lucknow . . . . .	29-4-70
76.	Sketch of human body . . . . .	22-6-70
77.	Photograph showing injuries on the dead body of Shri Deen Dayal Upadhyaya (Orig. Photo is exhibited as Ka-31) . . . . .	22-6-70
78.	Certified copy of Exhibit Kha-69 on the file of the Special Judge Varanasi, in Sessions Trial No. 74 of 1968 (Portion marked "A", "B" and "C" is exhibited only)	22-6-70
80. } 80A. }	Two files No. F-20(144)/58-M & PH of Delhi Administration Secretariat, Delhi . . . . .	23-6-70
81.	Four Trunk Call Bills on Phone No. LW-23509 . . . . .	23-6-70
82.	Seven tickets of Trunk Calls . . . . .	23-6-70
83.	Three files regarding conduct of Prabhu Dayal, Fitter . . . . .	23-6-70
84.	One file regarding conduct of Prabhu Dayal, Fitter . . . . .	23-6-70
85.	Hand Bill dated nil . . . . .	23-6-70
86.	One file regarding conduct of Prabhu Dayal, Fitter, and his appeal to the Divisional Mechanical Engineer, Northern Railway, Lucknow . . . . .	24-6-70
89.	Original Statement of accused Ram Awadh dated 9-2-68 recorded by C.B.I. . . . .	25-6-70
90.	Original Statement of accused Bharat Lal dated 2-3-68 recorded by C.B.I. . . . .	25-6-70
91.	Original Statement of accused Bharat Lal dated 7-3-68 recorded by C.B.I. . . . .	25-6-70
93.	Order passed by the Director of the Central Bureau of Investigation, dated 26-2-68 asking Mr. M.P. Singh, D.I.G. to supervise, control and direct the work of the investigating team . . . . .	26-6-70
94.	Text of Planchet . . . . .	26-6-70

1	2	3
95.	Interim Report dated 20-3-68 submitted by Shri John Lobo . . . . .	29-6-70
96.	Final Report dated 29-4-68 submitted by Shri John Lobo . . . . .	29-6-70
97.	Affidavit dated 1-2-70 of Dr. Murli Manohar Joshi . . . . .	29-6-70
98.	Register of Mr. M.P. Singh, Oath Commissioner, Allahabad High Court . . . . .	29-6-70
99.	The issues of the Urdu Journal "Siasat" (18 issues) . . . . .	30-6-70 <sup>f</sup>
100.	Certified copy of the Judgment dated 25-6-55, in Criminal Case No. 107/54 in the case of State vs. Sita Ram and others . . . . .	30-6-70
101.	Certified copy of the Judgment dated 9-12-48, in Criminal Case No. 189 of 1948 in the case of Rex vs. Deo Dutta and Kedar Nath . . . . .	30-6-70
102.	Certified copy of the order dated May 21 of 1954 in case of No. 1/54, Bholanath vs. Deo Dutt . . . . .	30-6-70
103.	Newspaper cutting of paper "Azad" dated 25-8-54 . . . . .	30-6-70
104.	Certified copy of the order dated 12-12-59 in Criminal Case No. 27 of 1959 in the case of Bholu and others vs. Panchayat Adalat . . . . .	30-6-70
105.	G.D. No. 15 dated 11-10-67 of P.S. Mughalsarai . . . . .	30-6-70
106.	G.D. No. 18 dated 31-5 67 of P.S. Mughalsarai . . . . .	30-6-70
107.	G.D. No. 37 dated 16-6 67 of P.S. Mughalsarai . . . . .	30-6-70
108.	G.D. No. 24 dated 15-11-67 of P.S. Mughalsarai/VNS. . . . .	30-6-70
109.	G.D. No. 11 dated 5-12-67 of P.S. Mughalsarai/Varanasi . . . . .	30-6-70
110.	Map of the Northern Railway . . . . .	30-6-70
111.	Map of the North East Railway . . . . .	30-6-70
112.	Road map of Uttar Pradesh . . . . .	30-6-70
113.	Time Table of Government Bus Service between Azamgarh and Shahganj and vice versa . . . . .	30-6-70
114.	Time Table of Government Bus Service between Varanasi and Azamgarh and vice-versa . . . . .	30-6-70
115.	Certified copy of the Complaint dated 7-7-67 filed by Mr. V.N. Sharma against Dr. Faridi . . . . .	30-6-70
116.	Certified copy of the application dated 21-2-70 in Misc. Case No. 51/70. . . . .	30-6-70

1	2	3
117.	Newspaper cutting of paper "Bharat" dated 18-2-68 . . . . .	30-6-70
118.	Newspaper cutting of paper "Gandiv" dated 19-2-68 . . . . .	30-6-70
119.	Certified copy of the First Information Report by Prabhu Dayal against Satya Narain Tiwari .	30-6-70
120.	Newspaper cutting of paper "Milap" dated 14-2-68 . . . . .	30-6-70
121.	Chart of Fare and Distance in regard to the Bus Route between Varanasi and Azamgarh .	30-6-70
124.	Statement of M.P. Singh dated 15-2-68 recorded by U.P., C.I.D. . . . .	1-7-70
125.	Statement of M.P. Singh dated 10-3-68 recorded by C.B.I. . . . .	1-7-70
126.	Statement of B.D. Kamal dated 12-2-68 recorded by U.P., C.I.D. . . . .	1-7-70
127.	Statement of B.D. Kamal dated 27-2-68 recorded by C.B.I. . . . .	1-7-70
128.	Supplementary statement of B.D. Kamal recorded by C.B.I. . . . .	1-7-70
129.	Statement of Major S.M. Sharma dated 3-3-68 recorded by C.B.I. . . . .	2-7-70
130.	Newspaper cutting of paper "Hindustan Times" dated 14-2-68 . . . . .	21-7-70

PART C (Documents called for by the Commission)

1. Record of the Sessions Court, Varanasi, in Sessions Case No. 74 of 1968. By consent of the parties this record forms a part of the record before the Commission.