

Travesty of Justice in the The Seema Azad and the Vishwa Vijay case

A critique of the Allahabad Court Judgement

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**To ask for papers proving guilt in black and white,
Is useless for there need be no such papers
The guilty have proof of their innocence
The innocent often have no proof.**

- Bertolt Brecht

Introduction

On the 8th of June 2012 Additional District Judge, Sunil Kumar Singh, Presiding officer of the District and Session Court, Allahabad, pronounced life imprisonment to 36 year old Seema Azad, writer and editor of Dastak (a monthly magazine) and the Organising Secretary of the People's Union for Civil Liberties, Uttar Pradesh branch, under waging war against the Government of India and for offences related to being a member and supporter of a terrorist organisation. Her husband Vishwa Vijay too was similarly sentenced. The Judgement came exactly after the two had spent twenty seven months (two years and three months) in Naini Jail.

This Judgement has once again exposed how the Indian Security Establishment, the Police and the Intelligence are working in tandem with a section of the Judiciary and that any arrest made in the name of Maoism and Terrorism can be justified by invoking the draconian laws like the UAPA and the colonial era security provisions of the Indian Penal Code. Through this judgement there is also an attempt to send a warning to all activists of their fate if they are going to be questioning Government policy or hold alternative views.

Thus it becomes very important to examine the case, critique the judgement and build a campaign against this injustice demanding the release of Seema Azad and Vishwa Vijay. It is also important that we do so at this juncture when disappearances, false cases and illegal detentions have become rampant in the name of fighting Maoism and Terrorism. An undeclared emergency persists with life and liberty of the people of India being the biggest casualty. There is an effort to silence Human Rights activists and all voices of dissent. We need to fight it back NOW!!

About Seema Azad

Seema now almost 37 years was born on 5th August 1975, soon after the emergency was imposed. She initially studied in Gorakhpur and later in Allahabad after her family moved following her father's transfer to the city. She completed her B.A. and a master's degree in psychology from Allahabad University. Till 1995, her interests were mainly confined to scientific quests in understanding the mysteries of the universe. But very soon she connected these inquiries with societal movements through books such as J.D. Bernal's book, *Science in History*. She also tried to understand the obstacles slowing down the speed of the society she lived in through other books such as Julius Fuchik's *Notes from the Gallows*. In 1995-96, she became active in student and gender politics. Seema remained active on the women's liberation front till 2001. The bonds forged with the revolutionary students movement continued till 2004.

Seema made her own choice in marriage and married Vishwa Vijay and left home. She got rid of the caste identity reflected in her name and replaced her surname, Srivastava, with 'Azad'. A new Seema was born: Seema Azad. She put together some money and bought a motorbike. She went amongst people to write about their lives, their struggles, their dreams. Her constant effort was to ensure publication of ordinary people's struggles in newspapers. Till 2006 she wrote regularly for Sahara. Many other newspapers in Allahabad also prominently featured her reports. Seema also became a part of movements associated with human rights and those that were taking place against the exploitation and oppression of peasants and workers.

After 2006 she decided bring out a magazine which she decided would privilege people's movements and sociopolitical thoughts. The magazine, *Dastak*, became a part of the movement. Through the magazine, she did a thorough investigation of the Ganga Expressway plan which threatened to displace thousands of farmers. In order that the threats posed by the Expressway plan be known to more and more people, she published the findings of her survey in the form of a booklet and distributed copies. *Dastak* also published a long report on the arbitrary arrests and excesses by the STF upon Muslim youth in Azamgarh. Seema Azad became more and more active in the human rights movement. One issue of 2009 also focussed on whether Obama was really talking of the change that poor people living in the third world countries wanted to see.

Seema's inspiration in life was also her father, Mr. MP Srivastava who retired as Assistant Labour Commissioner from the Government of UP. He was well known for making efforts at ensuring justice for workers. After his retirement he also published several books on Labour Laws and its Praxis the State and the Country.

She also joined the PUCL branch in Uttar Pradesh in 2009 where she was entrusted with the responsibility of the Organising Secretary.

At the time of Seema's arrest, there was a generation of youth in Uttar Pradesh vocal in raising human rights issues, the profiling of Muslims, Corrupt politics, a plundering economy, growing social insecurity, violence-inciting politics, the manipulations resorted to for winning the votes of Dalits and Minorities and then oppressing the same people: all these were creating anger and discontent amongst people. Such a reaction was seen as a threat by both the centre and the state. One name expressing this protest was that of Seema Azad's.

The Arrest of Seema and Vishwa Vijay

Like every year this time too Seema was at the International Book Fair in Delhi. She left Delhi on the 5th February evening and took Rewa Express back to Delhi. It was after their train had crossed Kanpur in the morning of the 6th, that she felt that something was amiss when strange tall men all with a police look, got into her coach. Very soon she knew that they were from Andhra Pradesh as she realised they were speaking Telegu. When she got off at Allahabad she was surrounded by more men, but she continued to move towards the Civil Lines exit, where her husband Vishwa Vijay was waiting for her. When Vishwa Vijay was getting his moped off the parking, they were arrested. The time was 11.30 am.

However the **FIR number 33/ 2010 (Criminal Case number 37/ 2010) dated 6th February, 2012** was lodged at the Khuldabad police station, Allahabad, shows the timing of arrest as 9.30pm from the other exit of the Railway Station which is the Khushrubag. The section under which they were booked were sections 18, 20, 21, 23 (2) of the Unlawful Activities Prevention Act, 1967, amended 2004 and 2008 and IPC sections 120 (b), 121, 121(A) of the IPC.

The family of the Seema only learnt about it the next day through the new channels, following which they rushed to the police station and had to find their way through a maze of cameramen and photographers to even get a glimpse of her.

The local magistrate didnot grant the police the remand of Seema and Vishwa Vijay and on the 7th of February and they were sent to Naini Jail in Allahabad soon after.

The Police Story against Seema Azad and Vishwa Vijay

Interestingly the charge sheet made out by the police does not go beyond the FIR. The only movement in the story of the FIR come from what the police tries to show from what they obtained in the house search, a procedure that was carried out through an illegal remand 5 months after her arrest. Thus we have combined both and are presenting a summary of it.

The story on the basis of which charges were made out by the prosecution against Seema Azad and her husband is as follows:

1. Information that Seema Azad and her husband Vishwa Vijay were CPI (Maoist) activists was made available to them by a CPI Maoist party by a person arrested in Gorakhpur on 06.02.2010, some hours before the couple were arrested. Which is how they came under surveillance and were tracked them down.
2. That Seema Azad and her husband were at the railway station at 9.30 pm on the 6th of February in order to board a train to Kanpur for a CPI(Maoist) meeting of Bihar, Jharkhand and UP representatives, where some important leaders who were wanted were also reaching.

3. .Their sling bags (jholas) contained some literature ostensibly published by the CPI Maoist party. (Interestingly the FIR claims that the policemen as per the rules carried out a search of each other and only after being satisfied that nobody had anything that could be planted that they searched the two. There was a woman constable who searched Seema)
4. Interestingly according to the FIR they both stated to the police (supposedly while standing at the railway station) that they were activists of the CPI Maoist party and that they wanted to establish Maoist rule by overthrowing the state and that it could only be achieved through an armed resistance.
5. Since they were unable to show the papers of the moped their two wheeler had to be seized and that they were also charged under the Motor Vehicles Act.
6. Prior to their arrest in Gorakhpur and subsequent to their arrest, the people who were arrested in Kanpur and in Delhi who were all CPI (Maoists) or sympathisers of the CPI (Maoist) party were found with published literature, of which some was the same as that found in the possession of Seema Azad.
7. That the disclosure statements made to the police of the other arrested persons referred above states that Seema Azad and her husband were activists of the Maoist party. (please note that no confessional statements were made out in front of the magistrates of anybody. The entire case moves on statements made to the police).
8. That recoveries were made from her house included copies of the magazine Dastak, a report on the Ganga Expressway project, and ‘secret’ document of the CPI Maoist party and a cell phone. That Seema Azad and Vishwa Vijay was taken on police remand over five months after her arrest.
9. That the call details obtained concerning the cell phone of Seema Azad show that she travelled widely to "secret" places.
10. That the ‘secret’ document owned up to killing of security personnel by the CPI Maoist Party and waging a war against the Government of India.

On these details hangs the story that claims that Seema Azad and her husband are activists of the CPI Maoist party and that they are also conspirators and participants in the waging of war against the government. Hence Seema and her husband were charged under S. 120B, 121, 121A of the IPC and S. 13, 18, 20, 21, 23(2), 38, 39, 40 of the UAPA.

Seema’s Version

Seema’s story is a far cry from the police version. She boarded the Rewa express at the Allahabad railway station at 11:30 a.m. on 06.02.2010 and her husband had come on their two wheeler moped to receive her at the railway station. Outside the station, they were approached by the police, her belongings, money, Dastak magazine, cell phone, camera were forcibly taken

away and taken to Khuldabad P.S. at Allahabad. Her backpack laden with books purchased from the Book Fair at Delhi was also taken away. There the police prepared a false seizure list that included documents and literature that was not in her possession along with clothes and money that were with her. The books that she had bought from the Delhi Book Fair were never returned to her or made part of the seizure memo.

As stated earlier the Judicial Magistrate Court and later the Sessions Judge refused police remand for Seema Azad and her husband. The prosecution applied to the Allahabad High Court which directed it to apply afresh at the lower court. This order was stayed by the court upon the application by Seema Azad and the stay was vacated by the High Court after dismissing her petition on 7 July, 2012. This was done *ex parte*, so the lawyers of Seema filed a recall application in the High Court, while the hearing on this was still awaited the prosecution on the 19 July, 2012 moved the lower court and obtained an order that she be sent on police remand for 2 days from 20 July till 22 July, 2012.

According to Seema, her lawyers and her family members, the police took Seema Azad and her husband from the Jail in the evening of the 20th of July, 2012, just before sundown. She was brought to her house near Durga Puja Park at 8 pm. Without the presence of any public witnesses, her lawyers or her family members the police brought them for a house search. When they started breaking the lock of the house, Seema urged that her parents be contacted. But they paid no heed and the lock was broken. It was only after the house was opened and Seema refused to cooperate if her father would not be called, they called him. Mr Srivastava came rushing with a neighbour. The police then went around the house and collected only **three** items, copies of Dastak magazine, a booklet on the Ganga expressway project and her articles published in Sahara Samay, on the basis of the disclosures made by Seema and Vijay. .

Seema's father was then asked by the police to purchase a lock so that the house could be locked as they wanted to hand over their possession to the father. When he returned with the lock, he was asked to sign on a sheet of paper on which was mentioned that he was being handed the key to the house. He signed it. Seema's father went home and Seema and Vishwa Vijay were taken to the police station as they were to undergo a medical test the next day, before sending her back to the Jail.

In the police station the police that had taken her for the search asked Seema to sign on the same paper which she refused to do since the paper at the top was mentioned annexed papers. She insisted that she be shown all the papers only then she would sign it. She was never shown the continuation sheets so the search papers were never signed by Seema and Vishwa Vijay. It is clear that the so called recoveries could never be used legally.

In the Trial Court

In the Trial court, the STF police presented 16 witnesses, of which 14 were policemen and only two non-police witnesses. Who were officials of the Government. One was an engineer of the BSNL and another a bureaucrat of the UP Government. None of the witnesses had evidence to offer against Seema or her husband except re-stating the police story provided in the FIR. Neither did they have any eye-witness account to allege involvement in any specific crime. Nor any confessional statement.

The police witnesses merely stated that they had been informed through disclosure statements made by others arrested in different places, both before and after the arrest of Seema Azad, that Seema Azad and her husband were Maoist activists. Disclosure statements are statements to the police extracted in police custody. Such statements have no sanctity as evidence in a court of law. Moreso, when the prosecution did not consider it fit to get the persons making such “disclosures” to present their evidence during the trial. Thus there was no valid claim presented in court that could pass the test of a trial in court.

What the court inferred

The District and Sessions Court at Allahabad pronounced its judgment on 8.6.2012 convicting Seema Azad and her husband under the Unlawful Activities (Prevention) Act, 1967 amended 2004, 2008 (UAPA) for involvement in unlawful activities (Sec. 13), for conspiracy to commit a terrorist act (Sec. 18), for being a member of a terrorist gang or organisation (Sec. 20), offence relating to membership of a terrorist organisation (Sec. 38), for giving support to a terrorist organisation (Sec. 39), and under the IPC for criminal conspiracy (S.120B), waging war against the government of India (S. 121) and conspiracy to wage war against the government of India (S.121A). They were acquitted by the court against sec 13, sec 21 and 23 (2) and sec 40 of the UAPA.

To reach this conclusion the arguments presented by the court are as follows:

1. That it is stated in the FIR that Seema Azad and her husband were questioned by the police at the time and from the place mentioned in the FIR and that upon their confession to the police they were arrested and the FIR prepared. Hence, though the law states that the confession before the police is not valid as evidence, the contents of the same being part of the FIR make it valid evidence. This is then used to conclude that Seema and her husband were arrested on the way to the railway station when they were leaving Allahabad for a meeting of the CPI Maoist party.
2. Seema has categorically stated that she was returning to Allahabad and her husband was there to receive her and that the police took her into custody many hours prior to the formal arrest. Her brother has also stated before the court that he purchased her railway ticket and a copy of the same was produced. This evidence was rejected since it merely proved that Seema arrived in Allahabad in the afternoon, while the police states the time of arrest during the night. And the court held that what the police officers state before the court has to be assumed to be true. And since Seema was in the custody of the police from the afternoon, she cannot humanly provide any proof of the lies. ***Interestingly the phone calls details were of the 6th of February, 2012 were never presented to the court which would have proved her location.***
3. Contrary to the law of the land, the court has held that the disclosures made by Seema Azad and Vishwa Vijay to the police are valid in court. This is done through an ingenious deception. It is argued that if recoveries are made on the basis of previously recorded disclosure statements, then the statements themselves become valid evidence. Thus, since

the police claims that it recovered the mobile phone and a Maoist document from her house when Seema was taken into police remand, the disclosure statement magically transforms itself into a judicial confession.

4. Seema Azad has stated that her mobile phone was taken away from her at the time of her arrest which was never shown on the seizure list and that the Maoist document of 26 pages was planted on her during the search on her house. The desperation of the police to obtain her police remand even after the permissible 90 days in jail can be seen in the judgment itself. The District, Sessions and High court had all previously refused police remand for her. The importance of the police remand and the subsequent search of her house and recoveries becomes visible through this judgment as a ploy to convert inadmissible police confession into valid legal evidence.
5. That the lack of any public witnesses at the time of arrest and seizure does not make the seizures at the time of arrest less believable, even though the arrest and search of belongings was done in a public place by the police itself. This is justified in the judgment by the argument that it should be assumed that the official work done by the police is done in a proper manner. That there are serious allegations by Seema regarding the time of arrest were brushed aside.
6. The highlighted contents of the Maoist document purportedly seized from Seema's house, then, forms the basis for an understanding the actions of the Maoists as well as the association of the accused with the CPI Maoist party and the involvement of the accused as conspirators and perpetrators of the actions referred to in the Maoist document. **This inference is drawn in the Judgment without the mention of a single incident of violence in which either of the accused was either a conspirator or a participant.**

This seizure it may be recalled also was done without public witnesses and that the accused refused to sign seizure list since they were only presented the last page to sign on. This apart, the judgment argues that the Supreme Court judgment that mere possession of a document does not prove complicity, is not applicable since the contents of the document are so objectionable. A perfect example of a paradoxical argument.

7. The documents seized from Seema and her husband at the time of the arrest were sealed and kept in the store at the police station. However, the police, without any permission from the court, broke the seal ostensibly, without taking permission from the magistrate to examine the contents, and sealed it again. This blatant disrespect of procedure that should have in normal circumstances made the police subject of the wrath of the court and raised serious questions on the authenticity of the contents, was held in this judgment to be no violation of procedure at all.
8. Finally the judgment states that a clinching piece of evidence showing connection with other members of the Maoist party is a letter written by Seema to Kanchan a.k.a. Anu who was in judicial custody at Delhi, accused with Maoist affiliation. That Anu stated that she had previously stayed at the Seema's house is seen as a damning piece of evidence. Incidentally, Anu has been released on bail by the court at Delhi.

Conclusion

How did the reach court reach this conclusion? It can only be explained by the fact that the court refused to assume the innocence of the accused. For, if it were to do that, it is apparent that the entire evidence brought forth is wholly consistent with the inference of innocence.

What makes the judicial mind lose its way, is the labyrinthine world of UAPA, and the section of crimes against the Government which are a part of the IPC. These provisions on our statute book define crimes that are trumpeted to be the most heinous and at the same time the most ill-defined.

Since these are mainly crimes to do with intention, rather than the action, disbelieving the police story by itself is regarded as the lack of concern for the nation. And then the UAPA messes about with the established procedures in a manner that innocence and guilt become relative categories, easily capable of being turned around on the current disposition of a judge or of a government.

In sum, the Judgment pronounced by the sessions court at Allahabad in the case of Seema Azad and Vishwa Vijay is a perfect example of how a large number of half-truths, inadmissible evidence, procedural violations and an obnoxious piece of legislation can convert a free citizen into a threat to national security.

(This note has been prepared jointly by the PUCL and the PUDR)