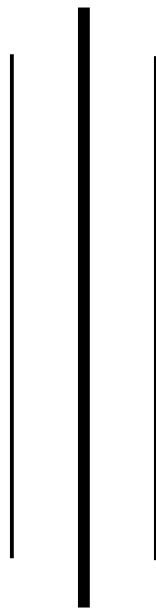
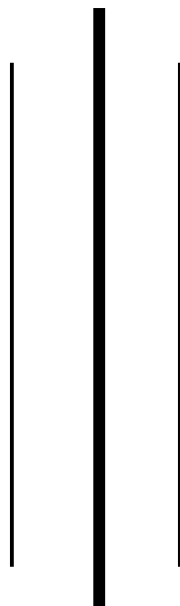


The National Human Rights Commission



Siraha District, Dhangadhi VDC-2, Zeromile Incident



On-the-spot Inspection and Report of the Investigation Committee
2060 BS (2003)

Background

On the basis of a news published in various means of news media regarding the killing of Assistant Sub-Inspector Ganesh Prasad Dahal and police constable Shyam Narayan Yadav by some unidentified gunmen on Aug.19, 2003 at the market place at Zeromile in Dhangadhi VDC, ward No. 2 of Siraha District, the National Human Rights Commission had constituted, as per its decision made on August 26, 2003, a four member Investigation Committee under the convenorship of a justice of the Supreme Court.

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|-------------------------|-------------|--------------------------------------|
| 1. Uday Raj Upadhyay | Coordinator | Ex-justice, Supreme Court |
| 2. Leela Bahadur Basnet | Member | Ex-Deputy Attorney General |
| 3. Dr. Tulsi Kandel | Member | Foresic Expert, T.U. |
| 4. Anand Bahadur Chand | Associate | The National Human Rights Commission |

Procedure of Investigation

The above mentioned Committee had visited, from August, 29 to September 2, 2003, the scene of occurrence at Zeromile-2 Dhangadhi of Siraha district, the Area Police Office, Dhangadhi and Siraha market located at the district headquarters, and had also sought information about the incident from the officials working in various bodies and the representatives of various parties, the representatives of Human Rights Organizations, journalists, intellectuals etc. and had enquired and collected facts about the incident and inspected the scene of occurrence.

The details of the collected general facts about the incident are as follows:

1. The sketch and the map and the document describing the nature of the alleged scene of occurrence.
2. The document describing the written descriptions presented by the local residents and the vegetable vendors around the scene of occurrence.
3. The facts received from the Area Police Office, Dhangadhi, Siraha.
4. The sketch of the scene of occurrence, the document prepared after inspecting the state of the dead bodies, photographs of the dead persons, a copy of the letter written by the Area Police Office, Lahan to the hospital for conducting postmortem, a copy of the letter about

- hand over of the dead bodies and other collected information concerning the incident – all those were received from the Area Police Office, Lahan.
5. The summary of the facts gathered from the interactions with the local representatives of various parties, media persons and the representatives of the Human Rights Organizations.
 6. The postmortem reports and the details of the information made available by the doctors who had conducted the postmortem and who had been enquired about it.
 7. The accounts of the information received from the chiefs of Siraha District Administration Office, the National Investigation Department and the District Police Office.
 8. Other acquired facts relating to the incident.

Analysis of the Facts:

A close inspection of the sketch/map of the scene of occurrence and also the scene of occurrence itself shows that, as per a document prepared in the presence of the Secretary to Dhangadhi VDC Jeevan Kuram Dhital, there is a temple of lord Buddha about 50 ft. away in the north from the Zeromile which lies at east-west Mahendra Highway and to the north of that on both sides there were small retail shops and some *banyan* and *pipal* trees by the side of the road. The dead bodies of the two policemen were lying near those *banyan* and *pipal* trees which were standing at the place where *bajar* (market) used to take place always on tuesday and friday.

In course of enquiries made by the Committee it was reported that, on that particular day of the birthday of Lord Krishna "Krishna Janmasthan" i.e. August 19, 2003, a local NGO community Development Forum had organized a Tooth Camp with the assistance of RRDS Kathmandu at a school near the local police station. It was learnt that that camp had been inaugurated by Deputy Speaker Chitra Lekha Yadav. Assistant Sub-Inspector Ganesh Prasad Dahal and Police constable Shyam Narayan Yadav had been deputed there to maintain peace and security. When that programme was over at about 5 p.m. in the evening they had gone towards the market in the west by riding in a bus, which had come from the east of the highway. After arriving at the market they went through different vegetable stalls bargaining about the price and enquiring what types of new vegetables were available. When they had bent down to select and pick up cauliflower and cabbage Assistant Sub-Inspector Ganesh Prasad Dahal was

fired at who collapsed on the spot. At that time the pistol in his possession was taken out and seven or eight rounds of firing were made. **a** The dead body of Police constable Shyam Narayan Yadav was lying on the ground some 7/8 feet away in the north of the dead body of the Assist. Police Inspector. Hearing the sound of firing in the market the people were reported to have run helter shelter and fled away from that place. The assailants who fired the shots were two persons aged 20/22 yrs. who were wearing half pants and vests. After the incident both of them were reported to have headed towards the north shouting, "We have killed the moustache – sporting Assist. Police Inspector, long lives the Maoists!" All this was described in the said document. That document also shows as described by the said Assist. Police Inspector had been working there since two years and was dutiful and strikes towards the Maoists.

As described by a local eyewitness the Assist Police Inspector used to buy vegetables from his stall on market days. An on that day, too, he had asked about the price cauliflower and when he was told the price as Rs. 16/- per k.g, he had asked to give it Rs. 15/- and when the vendor had agreed to the price and The Assist. Police Inspector had bent down to pick up the vegetable for weighing all of a sudden the sound of firing was heard the vendor also had become completely nervous and confused and had run away from his stall. He could not either see or recognize the assistant. And when he came back next day he could not find his bicycle and money. All the people in the market had run away and since there was big a big crowd of the people there he could not see whom, where and when fired the shot. All this was described in the written statement made by the eye-whiteness before the committee.

The Details made Available by the Area Police Office Dhangadhi

"On the day of occurrence of the incident under division of duties Assistant Police Inspector Dahal and Police Constable Yadav were deputed to the camp as well the market. After the end of the camp they were fired at when they had gone to supervise the market. The sumour spread that firing has taken place at the Zeromile and also Head constable Who also, while going to the market on bicycle in civil dress, had heard about the firing some 20/25 meters away from the scene of occurrence on the highway itself. He immediately returned from there to the Police station. I

communicated the news to Siraha District Police Office and the Area Police Office; Lahan by wireless set proceeded towards the scene of occurrence with a contingent of seven policemen. When I reached the scene of occurrence at about 5:15 to 5:30 I found the dead body of Assist. Police Inspector Dahal there and that of constable Yadav lying close by Dahal Sir's arms were not with him which had been looted. No body was around. There was complete loneliness One shop was open. As about the dead body of Assist. Police Inspector Sir, his body lying over the basket of Vegetable and his head and feet lying on the ground, he was falling dead. 5/6 rounds of bullets had been hit in his head. His dead body was lying in the west-north direction with his head being in a turning position. The bullets had hit from behind in the chest and the feet. Later on a team had come from Lahan and Mirchaiya under the leadership of Police Inspectors. When local inhabitants and vegetable vendors were enquired it came to knowledge that although only two persons had fired the bullets the group of assailants comprised 5/7 people. The investigation is in progress, No body has been arrested so far. Because no body had imagined that such an incident should take place, as there was a state of ceasefire, such an incident took place on that day. The Assistant Police Inspector Sir was a highly dutiful, honest and fearless person. No body had ever made any complaint against him."

In a search made around the scene of occurrence after the incident no body could be found. After preparing the document relating to the inspection of the nature of the dead body it was taken to Lahan for postmortem, and the Area Police Office, Lahan, completed the rest of the proceedings. The scene of Occurrence lies at a distance of one and a half kilometer. Except those two policemen no body else was found to have been injured or assaulted. The cartridges of the bullets fired in the incident were recovered and the revolver and 6 rounds of bullets of the assistant police Inspector were found to have been taken away. It was informed that even though there was no definite knowledge about the murder might have been committed by the Maoists.

The Area Administration Office Lahan:

The Area Administration Office had informed that since that area did not of all under its jurisdiction the information should be available from the District Administration Office.

The Details of the Information Provided by the Area Police Office, Lahan:

In course of investigation on the basis of the documents made available by the Area Police Office, Lahan, a study of the documents relating to the inspection of nature of the scene of occurrence and the dead body and a sketch of the scene of occurrence proved that the incident had occurred. The death of the Assist Police Inspector and the Police Constable seems to have been caused by bullets fired by some unidentified persons. The incident seems to have taken place on August 19, 2003 at 5 O'clock during the market time under the papal tree behind the temple of Lord Buddha to the east of the Zeromile chowk.

The fired cartridges and the dead bodies of those two persons were recovered from the scene of occurrence and the details have been mentioned in the document relating to the inspection of the nature of the scene of occurrence and the dead body.

Siraha district is almost similar to the Maoist affected Rolpa in the hills. The police have used to work in collaboration with the community. We have worked in the capacity of monitor and investigator of human rights even in the UNO.

The deceased Assist. Police Inspector was an honest, dutiful and intellectual police official. His death and that of other policemen have been caused in an inhuman way. The Maoists have turned into dacoits. A Mr of District Police Office Siraha has informed that after the occurrence of that incident another Police Post at Janaki Nagar has also been attacked.

Dhangadhi Area Police Office had requested Lahan Area Police Office by wireless set at about 5:10 to provide additional force as firing had taken place at the Zeromile. Immediately after that another wireless message came for additional force since two policemen had been killed. On receipt of the message 10/12 policemen immediately rushed to the scene of occurrence. The team from Mirchaiya also arrived at the scene in between 5:30 to 5:45. Documents were prepared about the incident. SSP and ASP also arrived at the scene. So did the Royal Nepal Army, too. In course of investigation about the incident we conducted searches till 11 O'clock at night in the north. No body could be found and so we returned at the night itself. We handed over the dead bodies the next day after the completion of postmortem while going to hand over the dead bodies the motorcar met an

accident and some policemen sustained minor injuries. The late Assist. Police Inspector was dutiful and competent. NO complaints had been filed against him alleging excesses or human rights violations. Although the investigations conducted so far have revealed that the Maoists had engineered the incident, no body has been arrested. Police Inspector Sudarshan Thapa informed the team that the late Assist. Police Inspector Dahal had his permanent residence at Thapa and his mother, father, wife, two daughters and a son were dependent on him where as the late police constable had his permanent residence at Batch of Saptari, and his father, mother, wife and a daughter were dependent on him.

Besides, Police Inspector Sudarshan Thapa of the Area Police Office, Lahan had also informed the team that on Aug. 26, 2003 a group of the Maoists nearing 50 to 60 in number had attacked the Janakinagar Police Station which is located close to the Indian border in the south of Siraha District and killed three policemen and injured one who is reported to be taking rest after medical treatment at present. In that incident the Maoists killed two policemen they were in the civil dress and killed the third by bullet brutally and inhumanely, tying his hands at the back. Of the injured police constables Bhesh Bahadur Niraula, Bachchulal Yadav and Dilu Thami and head constable Upendra Thakur were rescued in a wounded state and were able to survive of the dead Bhesh Bahadur Thapa had got married only six months ago whose wife tried her best to save him but could not succeed. The policemen who had fled away were brought back to the police station and killed there. Of about ten policemen six could run to safety. And four three-not-three rifles, one shotgun, one pistol, one revolver, two grenades, one handset and about five hundred round of cartridges were looted away from the Police Post.

Gist of the Interaction

In the process of collecting actual facts about the incident the team invited the local representatives of the Lahan Municipality of Siraha district, the local leaders of the political parties, the representatives of different human rights organizations, media persons and the local intellectuals to Madwari Sewa Sadan, Lahan and acquired from them the accounts of what they had seen, heard and known about the incident of Aug. 30, 2003. According the accounts given by all the people present there, the incident involving attack on Assistant Sub-Inspector Dahal and constable Yadav by the Maoists had

been reportedly caused by two armed assailants who were wearing half pants and tshirts and whose physical descriptions could not be ascertained. The incident was a sad and living example of the violation of human rights and although only two persons were instrumental in the incident it was believed that a group of about 6 to 7 persons was present at the scene.

Following the incident all the people in the market as well as the local inhabitants got terrorized and ran helter skelter and the local inhabitants could not switch on the light even till 8/9 O'clock in the evening. It was also heard that after the incident two youths carrying pistols in their hands (one person had got two pistols in his hand and another had got one pistol in his hand) headed towards the north shouting "The moustache – sporting Assistant Sub-Inspector has been killed, long live Maoism". Since the incident had not been investigated, everybody present there had emphasized before the team about the need for the investigation of the incident. On the third day of the incident four persons belonging to the Indian Police (Called S.P.) had come to Zeromile by motor car and enquired the local inhabitants about the incident. Because they had hurled abuses in regard to the incident and forced the people to close down their shops all this ultimately led to scuffles between the local people and allegedly the Indian policemen who threatened to come back again to destroy the whole village. However, as the villagers had reported this to the Police and the administration no untoward incident was reported to have taken place.

The following facts were brought to the notice of the team in regard to the occurrence of the incident:

1. The incident might have been engineered in retaliation of the Doramba incident.
2. The incident might have been caused to violate the ceasefire Code of Conduct.
3. It might have been executed in a planned manner as a retaliatory measure in reaction to the killings of the Maoist activists.
4. In retaliation to the action taken against the Maoists in that area during the period of Emergency it might have been intended to symbolically frighten (the people).
5. Negative attitude towards the said Assist Police Inspector among the local people and the citizens, greater emphasis on financial inducement, harassment of the local inhabitants by involving them in fake cases etc. might have led to the incident.

6. The Maoists may have caused that accident to terrorize the common people during the market time and thereby to expand their influence.
7. A pamphlet distributed by the Eastern Commander of the Maoists stated that the Maoists had called the "Bandh" of Aug. 27, 2003 as a protest against the Doramba incident of Ramechhap, and that the other incidents (such as that of Siraha, Dhangadhi Zeromile) had been caused as a deterrent measure against the Doramba incident.
8. That even any criminal gang might have caused the incident was also informed on that occasion. Since a team of the joint security forces including the said Assistant Sub-Inspector had killed in an encounter a few months ago a gang of 3 persons led by Bhola Yadav who used to commit illegal works, the incident might have been engineered by that gang in retaliation.
9. Since the Assistant Sub-Inspector had assaulted a Maoist activist a few days ago and that Maoist activist of "Chaudhari" surname had pointed him out as the one who had assaulted him, there was a probability that the Maoist activists might have immediately taken action against him.
10. The incident was not an encounter and the Assistant Sub-Inspector and the Police constable seem to have been killed by bullets in an abrupt attack.

The Summary of the Information Received from the Office Chiefs Working in Siraha District.

In addition to the information provided by the Area Police Offices Dhangadhi and Lahan the team, in order to collect further facts, went to the Siraha market, the head quarters of Siraha district, and enquired and acquired information from the District Administration Office, the National Investigation Department and the District Police Office. It was informed that the late Assistant Sub-Inspector Dahal was a dutiful and sincere public servant and no complaints had been filed against him. Nor did any body have any personal enmity against the dead persons. Although the investigation about the incident was in progress, the said incident had tried to demoralize the security forces. The investigation conducted so far revealed that the general public were terrorized after the incident and were reluctant to provide any information about the incident. Since the incident had occurred during the continuation of the ceasefire it was a clear violation of the same. The area under the Dhangadhi Area Police Office was described before the team as the most Maoist-affected area of the whole district. As informed by the chief of the District Police Office, Police Superintendent

Mukti Nath Thami, the incident was immediately reported by a wireless set and the security forces were mobilized immediately therefore. Some time earlier a Maoist activist named Poojan had been killed but the security forces had no hand in his murder. According to the investigation undertaken so far it was believed that a Maoist activist called Chhotu Whole surname was "Paswan" had fired at the Assistant Sub-Inspector. However, no arrest had been made. The Assistant Sub-Inspector was man of strict nature. As both the Assistant Sub-Inspector and the police constable were working in a maoist-affected area they were two public servants who had discharged their duties actively in the operations against the Maoists during the preceding state of Emergency. No complaints had been made against either of them and, as a result of due evaluation of their performances, recommendations had been made to the department for their promotion. The attack made against them seemed to have been executed in a premeditated manner at the local level. This incident must have been caused as a strategy of psycho war to make dutiful Officers and constables passive. The SP had told the team that as the parents of the deceased policemen had not been include in the category of dependents who were entitled to get compensation, the National Human Rights Commission must make initiatives to include even such parents in the category of dependents and to provide them relief.

Details Acquired From the Document Describing the Nature of the Scene of Occurrence, Postmortem Report and Photographs of the Deceased:

On the basis of the document describing the nature of the scene of occurrence, the post mortem reports, the photographs of the deceased and the interrogation of the doctor who had conducted postmortem the death of both of them seem to have been caused by rifled firearm. The team has arrived at the following conclusions regarding the death of Assistant Sub-Inspector Ganesh Prasad Dahal:

1. Cause of Death:
Multiple rifled firearm wounds to the head.
2. Manner of Death:
Homicide
3. Four bullets seem to have pierced the head of late Dahal.
4. It is probable that two small rifled firearms (two rifled handguns) were used in the shooting of ASI Ganesh Prasad Dahal - one handgun of the assailant and one revolver of the decedent.

5. It is probable that ASI Ganesh Prasad Dahal was shot one to two times in the head when he was upright and one to two times when he had fallen and was lying supine over the vegetable basket.
6. The four-rifled firearm entry wounds of the head of ASI Ganesh Prasad Dahal (GPD) are not contact wounds. The range of fire of all of these wounds is most likely 1 to 3-5 feet.
7. All the four rifled firearm entry wounds of the head have corresponding exit wounds.
8. ASI Ganesh Prasad Dahal was armed when he was fired upon and killed.
9. ASI Ganesh Prasad Dahal was in his police uniform when fired upon and killed whereas the assailant is said to have been in civilian clothes.

The investigation team has arrived at the following conclusion regarding the death of constable Shyam Narayan Yadav:

1. Cause of Death:
Rifled firearm wound to the chest.
2. Manner of Death:
Homicide
3. (a) Police constable Shyam Narayan Yadav was shot once in the right anterior chest.
(b) The firearm used was a small rifled firearm (rifled handgun).
4. Police constable Shyam Narayan Yadav was shot from the front and when he was upright.
5. There is no corresponding exit wound to the entry wound of the chest. Therefore, the bullet has been retained in the body.
6. Police Constable Shyam Narayan Yadav was not armed when he was fired upon and killed.
7. Police Constable Shyam Narayan Yadav was in his police uniform when he was fired upon and killed whereas the assailant is said to have been in civilian clothes.

The Conclusion and Findings of the Team:

The team has arrived at the following conclusion in regard to the deaths of Assistant Sub-Inspector Ganesh Prasad Dahal and constable Shyam Narayan Yadav. An analysis of the above-mentioned facts has established that the

incident had been executed by an unidentified gang involved in criminal activities in a premeditated way by availing the opportunity that whatsoever they got to attack without giving any chance to the victims to defend themselves. Thus rifled firearms on the spot had killed both the policemen while they were bending to bargaining for vegetables. As for the version that the incident had been caused by the Maoists an analysis of the statements made above indicates, no definitive conclusion could be drawn for want of definite knowledge about the physical features and name and surname of the assailants. The Maoists had been alleged to have executed the accident. But while the Code of Conduct agreed upon by the Maoists and the Government side was in operation. It was a violation of No.3 of the Code of Conduct and an infringement of man's right to survive freely and also an infringement of the right to lead a free-life guaranteed by the Constitution and the relevant laws by terrorizing the people. Although it could not be identified, as described above, as to who, wherefrom and what type of people were involved in the disputed incident the nature of the incident shows that the common Article 3 and other Articles of Geneva Conventions had been violated. Because the Assistant Sub-Inspector could not make use of the arms, although he possessed them, for his self-defense whereas the police constable Yadav had been killed in a condition when he did not possess any arms. This team therefore has arrived at the conclusion that the national and the international law had been infringed. So the following recommendations have been made for implementation:

Recommendations:

1. It shall be appropriate to write to His Majesty's Government to provide compensation after taking into consideration the members of the family dependent on Assistant Sub-Inspector Ganesh Prasad Dahal and constable Shyam Narayan Yadav, as they had been the victims of homicidal death in the incident of Dhangadhi-2 Zeromile incident of Siraha District.
2. It shall be appropriate to write to His Majesty's Government to initiate proceedings in accordance with the law because no culprit involved in the crime had been arrested so far, although the investigation process was in progress.
3. It shall be proper on the part of the National Human Rights Commission to draw the attention of the concerned parties to observe the Geneva Conventions and the Human Rights law, as it has been discovered by the investigation of the incident that the Geneva Conventions have been infringed.

4. As it was discovered that the general public and various other bodies displayed interest and full support towards the Investigation Committee, the National Human Rights Commission must constitute similar Investigation Committees in future in order to protect and promote the human rights.

NB The names of the persons enquired in the process of the investigation have not been published due to specific reasons.
