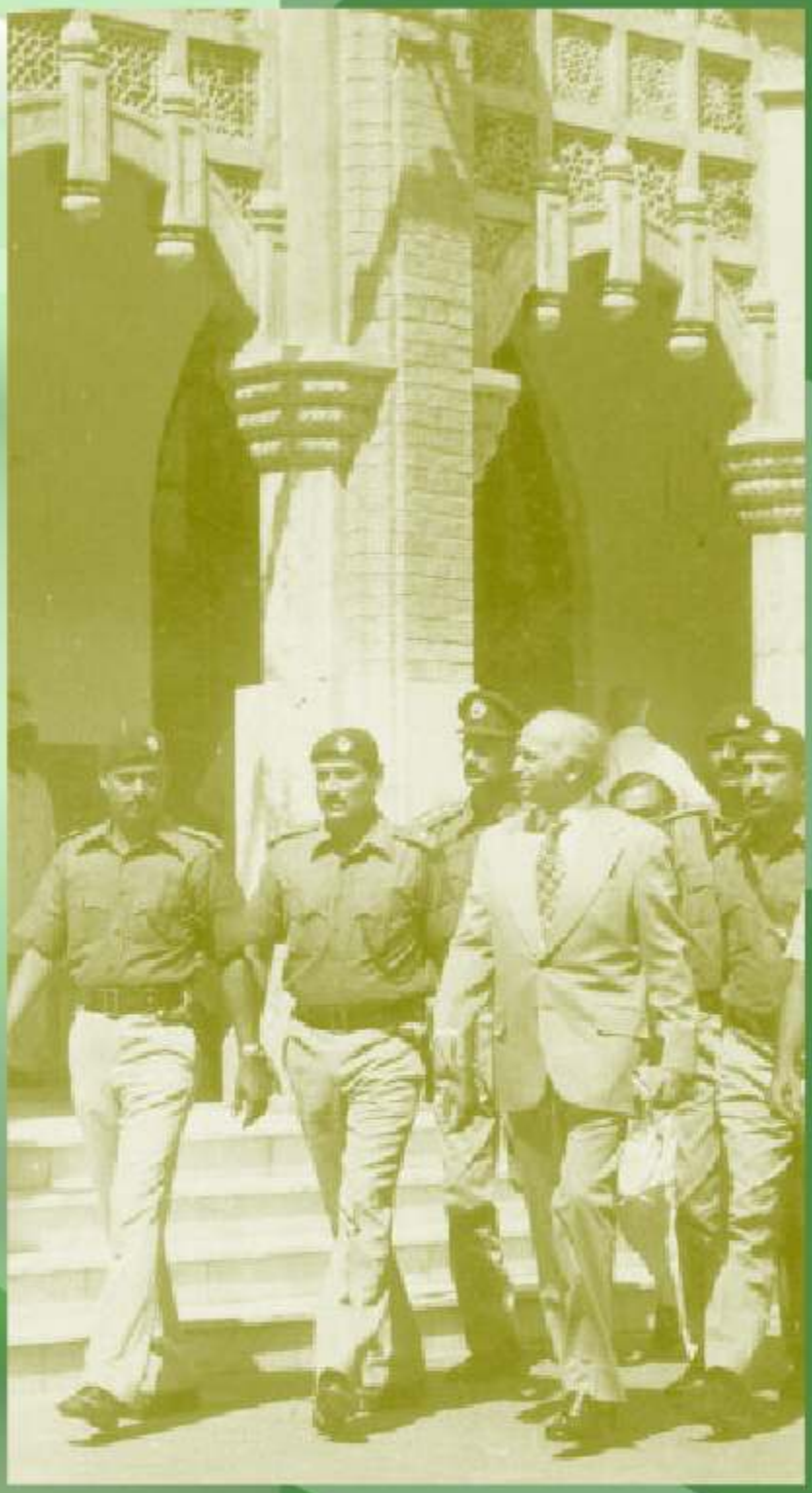
# Supreme Court Judgment



## Zulfikar Ali Bhutto & others
## Vs.
## The State

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**Sani Hussain Panhwar**

Member Sindh Council, PPP

# Summary of

# Supreme Court

# Judgment

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After a seven-month-long hearing the Supreme Court on Tuesday (February 6, 1979) by a majority opinion dismissed the appeals of Z. A. Bhutto and four others who had been sentenced to death by a full Bench of the Lahore High Court and upheld the judgment of the trial Bench.

The judgment was announced in a packed court room by the Chief Justice, Mr. Justice Anwarul Haq.

So far as Z. A. Bhutto and Mian Mohammad Abbas were concerned three Judges disagreed with the majority judgment and expressed the view that both of them should be acquitted. Four other Judges, however, found that the culpability of Bhutto and Mian Mohammad Abbas in the murder of Nawab Mohammad Ahmad Khan had been proved beyond doubt and that the unanimous judgment of the trial Bench, which comprised five Judges of the Lahore High Court, be confirmed. So far as the other accused namely, Ghulam Mustafa, Arshad lqbal and Rana Iftikhar Ahmad were concerned the verdict was unanimous, all the Judges expressing the opinion that their convictions and sentences should be upheld and confirmed.

The Court assembled at five minutes past eleven and the Chief Justice read out the operative part of the decision. After the judgment had been announced Mr. Yahya Bakhtiar, counsel for Z. A. Bhutto, submitted that he wished to file a review petition against the judgment which had just been pronounced. He requested that the execution of the order might be stayed till such time as the review petition was decided. He submitted that under the Jail Rules once the appeal was dismissed the appellant had to be informed of the result of the appeal and he could file a mercy petition within seven days. However, the authorities might not allow these seven days to pass and the judgment might be executed.

Mr. Yayha Bakhtiar submitted that law allowed 30 days for the filing of the review petition. He said that the case was intricate and he wished to study the questions involved.

The prosecution advocate on record, Mr. M. A. Rahman, submitted that the apprehensions of Mr. Yahya Bakhtiar were not well founded. The order of the Supreme Court had first to be passed on to the Lahore High Court. The Lahore High Court would then issue a warrant directing the Superintendent of the jail to execute the order fixing the date and the time. At that stage the convict was asked if he wished to file a mercy petition. After this the relatives of the convict were informed of the date of the execution of the order and then the actual execution could take place. He said that it was not necessary for the Court to pass any order at this stage since this would be asking for an order from the Court without filing any application to it.

**Bakhtiar's Plea**

The Court adjourned to consider the question. It reassembled at 12.15. After hearing the arguments of Mr. Yahya Bakhtiar once again the Chief Justice dictated an order to the effect that the Court was of the view that it would not be proper to pass any order on a verbal request. Such an order could appropriately be made when the review petition had been filed and was considered. The order said that a convict under death sentence was allowed seven clear days from the date he was informed of the sentence or the dismissal of the appeal to prepare and submit a petition for mercy. During this period there was no question of execution of the sentence. In this period the convict could make up his mind. There was no basis for the apprehension that before the expiry of this period the order would be executed. If the review petition were filed the Court would be in a position to decide what interim order had to be passed. A copy of the order was directed to be sent to the Superintendent of the District Jail, Rawalpindi.

It was ordered that during the period of seven days, Mr. Bhutto would not be shifted from Rawalpindi and the counsel for the appellant would be allowed to meet him to take instructions.

The main judgment spreading over 825 pages was written by Chief Justice Anwarul Haq with whom Mr. Justice Mohammad Akram, Mr. Justice Karam Elahi Chohan, and Mr. Justice Nasim Hasan Shah agreed. However, Mr. Justice Mohammad Halim, Mr. Justice Safdar Shah and Mr. Justice Dorab Patel disagreed with the majority view. Two of them wrote separate judgments expressing the view that the appeals of Z. A. Bhutto and Mian Mohammad Abbas be allowed, their sentences and convictions be set aside and they be acquitted and set at liberty. The third agreed with then.

The Chief Justice in the main judgment observed on the question of sentence that the facts which had been proved beyond any doubt established that Bhutto used the apparatus of the Government namely, the agency of the Federal Security Force for a political vendetta. "This was a diabolic misuse of the instruments of state power as the head of the administration. Instead of safeguarding the life and liberty of the citizens of Pakistan, he set about to destroy a political oppor1ent by using the power of the Federal Security Force, whose Director-General occupied a special position under him. Ahmad Raza Kasuri was pursued relentlessly in Islamabad and Lahore until finally his father became the victim of the conspiracy, and Ahmad Raza Kasuri miraculously escaped. The power of the Prime Minister was then used to stifle proper investigation and later to pressurize Ahmad Raza Kasuri in rejoining the Pakistan People's Party." he observed.

The Chief Justice also said in the judgment that these facts went to show that there were no extenuating circumstances in favour of Bhutto and the High Court was right in imposing the normal penalty sanctioned by law for the offence of murder as well as its abetment.

The judgment said : "The cumulative effect of all this oral and documentary evidence is to establish conclusively the existence of motive on the part of appellant Zulfikar Ali Bhutto; and the existence of a conspiracy between him, approver Masood Mahmood, approver Ghulam Hussain and appellants Mian Mohammad Abbas, Ghulam Mustafa, Arshad Iqbal and Rana Iftikhar Ahmad. It is significant that the task was entrusted to the Director-General of the Federal Security Force who was made personally responsible for its execution. The various subordinate officers were inducted at various levels and at various stages for the execution of the conspiracy through the employment of highly sophisticated and automatic weapons of the Federal Security Force as well as its trained personnel.

Continuing the judgment said: "It is true that most of the evidence was collected in this case after the promulgation of Martial Law, but I have not been able to persuade myself, that highly-placed officers like Masood Mahmood, Saeed Ahmad Khan, M. R. Welch, DIG Abdul Vakil Khan, SSP Mohammad Asghar Khan and a host of other smaller officers, have all come forward to concoct a false story against the former Prime Minister under pressure from the Martial Law authorities. Masood Mahmood and Saeed Ahmad Khan had enjoyed positions of special privilege and power under Zulfikar Ali Bhutto, and were in constant and close touch with him throughout his years in office right up to his fall on the 5th of July, 1977. In view of their seniority, age and experience, and their close association with the former Prime Minister, and the privileges enjoyed by them under his patronage, it is difficult to believe that they would falsely fabricate such detailed evidence against him. Even if they were under any pressure to falsely implicate the former Prime Minister, I have not been able to discover any reason, why people like Masood Mahmood, M. R. Welch, approver Ghulam Hussain and witnesses Fazal Ali and Amir Badshah Khan should falsely implicate appellant Mian Mohammad Abbas who was holding the rank of Director in the Federal Security Force at the relevant time. These circumstances lead assurance to their evidence, which, in any case, stands amply corroborated by contemporaneous documents, to which extensive references have already been made. It may also be observed here that it is true that some of the confessing accused expressed their willingness to confess after they had been in detention for four to six weeks, but this factor is irrelevant once the approver has appeared in Court to give direct testimony and subjected himself to cross-examination. In any case, his evidence is not to he accepted unless properly corroborated. In the present case this requirement has been more than amply fulfilled. "

The judgment also said: "It has also to be remembered that the case was registered as long ago as the early hours of the morning of the 11th of November, 1974, and the Prime Minister's name had been clearly mentioned therein by the complainant Ahmad Raza Kasuri. In spite of the identity of ammunition used in the Islamabad incident and the Lahore incident being established and clearly pointing to the use of the Federal Security Force, both the cases were filed as untraced. There is no explanation as to why the investigation was not allowed to be conducted properly and independently, except that Prime Minister must have apprehended that if the Investigators were to reach the Director-General of the. Federal Security Force, he might divulge the whole plan. It is significant chat the expert reports, to the admissibility of which objection was taken by

the defence during the course of arguments in this case, were obtained by the police officers of two different districts namely, Islamabad and Lahore, from the same Ballistics Expert, namely, the Inspectorate of Armaments G.H.Q. Leaving aside the question of their legal admissibility, which is only a technicality for the purpose of the trial, the police officers engaged in ;ant investigation of the two incidents had obviously no doubt that the crime empties found had been fired from Chinese automatic weapons of 7.62 MM calibres. In spite of this valuable information being available, no steps at all were taken to take the investigation into that direction. The confessing accused and the two approvers could not have prevented such a probe.

**Political Motive**

Continuing the judgment said: "In these circumstances there is absolutely no support for the contention that the present case was politically motivated, or was the result of international conspiracy. The case having been registered almost three years before the ouster of the appellant from power, and a clear indication being available as to the possible identity of assailants not only in the kind of ammunition used in both the incidents, but also in the Report of the Shafi-ur-Rahman Tribunal, the investigation was deliberately allowed to be stultified. It is, therefore futile to urge that the prosecution of the appellant is politically motivated, or a result of international conspiracy".

The judgment also said: "As a result of the very detailed and exhaustive examination of the evidence of the two approvers, supported as it is by a mass of oral and documentary evidence. I am left in no doubt that the prosecution has fully succeeded in establishing its case, namely, the existence of the conspiracy the identity of conspirators and also the further fact that the death of Ahmad Raza Kasuri's father Nawab Mohammad Ahmad Khan deceased was probable consequence of the foresaid conspiracy, and was brought about during the course of a murderous assault launched on Ahmad Raza Kasuri in pursuance of this conspiracy. On these findings all the convictions recorded against the appellants are fully justified, except that in the case of appellant Zulfikar Ali Bhutto, Mian Mohammad Abbas and Ghulam Mustafa section 301 of the Pakistan Penal Code has been found by me to be inapplicable, as this section applies only to the actual killers, which in this case means Arshad Iqbal and Rana Iftikhar Ahmad."

**Facts Established**

The Chief Justice observed that the oral and documentary evidence led by the prosecution had succeeded in establishing the following facts without reasonable doubt:

(i) Ahmad Raza Kasuri was an admirer of appellant Zulfikar All Bhutto, and became one of the founder-members of the Pakistan People's Party, was made the Chairman of the local Branch of the Party in Kasur, and subsequently awarded the party ticket for election to the National Assembly of Pakistan in the elections held in December, 1970, and was so elected. However, thereafter differences began to develop between the two, and Ahmad Raza Kasuri became a virulent critic of the person and policies of the appellant, both inside

and outside Parliament. He lost no opportunity of accusing appellant Zulfikar Ali Bhutto of being power-hungry and being responsible for the break-up of Pakistan. He made speeches in Parliament criticizing the provisions of the Constitution, which in his view, were aimed at perpetuating the rule of one man, and stifling human freedom and rights in Pakistan. He even refused to sign the 1973 Constitution which had the support of all sections of the National Assembly, and ultimately he broke away from the Pakistan People's Party and joined the Tehrik-i-Istiglal Party of Pakistan. The records of Parliament con taro ample evidence of the outspoken and bitter criticism of Ahmad Raza Kasuri against the appellant.

(ii) The climax, or the breaking-point was reached on the 3rd of June. 1974, when a highly unpleasant altercation took place between the two on the floor of Parliament during the course of which Zulfikar All Bhutto told Ahmad Raza Kasuri to keep quiet, adding "I had enough of you: absolute poison. I will not tolerate your nuisance."

(iii) (a) The motive to do away with Ahmad Raza Kasuri is thus firmly established on the record on the part of appellant Zulfikar Ali Bhutto. During the lengthy cress-examination of Masood Mahmood and other prosecution witnesses no tangible motive was shown to exist on the part of either Masood Mahmood or Saeed Ahmad Khan, or any of the other accused persons involved in this case, to arrange for the assassination of Ahmad Raza Kasuri through the agency of the Federal Security Force. (b) Ahmad Raza Kasuri was certainly not a non-entity in so far as the PPP was concerned. In one of the letters written by the appellant to Kasuri the latter was praised very high and described as a man of crisis. Even his speeches in Parliament display his flair for pungent speech. His surveillance and subsequent pursuit by the former Prime Minister's Chief Security Officer and his Assistant show his importance to the appellant.

(iv) It was at this juncture that Zulfikar Ali Bhutto entered into a conspiracy with approver Masood Mahmood, who was then the Director-General of the Federal Security Force, to get Ahmad Raza Kasuri eliminated through the agency of the FSF. The exact direction given by Zulfikar Ali Bhutto to Masood Mahmood was to produce the dead body of Ahmad Raza Kasuri, or his body bandaged all over. In spite of the fact that Masood Mahmood protested to the then Prime Minister against the carrying out of such a task, yet all his subsequent actions show that he became a voluntary participant in the design to eliminate Ahmad Raza Kasuri, and for this purpose he inducted appellant Mian Mohammad Abbas into the conspiracy whose name had, also been indicated to Masood Mahmood by Zulfikar Ali Bhutto saying that this man was already in the know of the thing having been given instructions in this behalf by Masood Mahmood's predecessor Malik Haq Nawaz Tiwana.

(v) Mian Mohammad Abbas inducted approver Ghulam Husain as well as appellants Ghulam Mustafa, Arshad Iqbal and Rana Iftikhar Ahmad directing

them to assist Ghulam Hussain in this task. He also gave instructions to witnesses Amir Badshah Khan and Fazal Ali for the supply of arms and ammunition to Ghulam Mustafa and Ghulam Hussain for this purpose. Ghulam Hussain had been specially selected for the task as he had been a commando instructor in the Army for 14 years, and had also demonstrated his capabilities in this behalf by running a commando course for the Federal Security Force under the direct supervision of Mian Mohammad Abbas and had been given rapid promotions from A.S.I. to S.T. and to Inspector in less than a year.

(vi) That it was in pursuance of this conspiracy that an abortive attack was made on Ahmad Raza Kasuri's car in Islamabad on the 24th of August. 1974. Ahmad Raza Kasuri promptly registered a case in this behalf at Islamabad Police Station and the Investigating Officer Nasir Nawaz was able to recover five crime empties bearing the mark 661/71 and expert examination showed that they were of 7.62 mm bore *i.e.* of the type which was in use with units of the Federal Security Force. However, this case was filed as untraced although Ahmad Raza Kasuri tabled a privilege motion in the National Assembly.

(vii) On the 29th of July 1974, the Prime Minister and Masood Mahmood were together in Quetta, and there Zulfikar Ali Bhutto again gave instructions to Masood Mahmood to take care of Ahmad Raza Kasuri during the latter's proposed visit to Quetta. Masood Mahmood thereupon gave instructions to his local Director M.R. Welch who has given oral and documentary evidence in support of this Part of the prosecution case. A study of the documents proved by M.R. Welch leaves no doubt whatsoever that there was indeed, a conspiracy to get Ahmad Raza Kasuri killed during his visit to Ouetta, but he escaped owing to the fact that M.R. Welch did not play the game. The correspondence proved by M.R Welch shows beyond doubt that Mian Mohammad Abbas was fully in the picture at that stage. The oral testimony of M.R Welch further establishes that the reason for getting Ahmad Raza Kasuri killed was that he was making obnoxious speeches against the Prime Minister.

(viii) After the failure of the Islamabad incident, and inability of M.R. Welch to take care of Ahmad Raza Kasuri during his visit to Quetta in September 1974 the scene of activities shifted to Lahore. The whole plan was again master-minded by Mian Muhammad Abbas through approver Ghulam Hussain and the other appellants already named. As a result the attack was eventually launched upon Ahmad Raza Kasuri's car when he was returning home after attending a marriage in Shadman Colony. Thirty rounds were fired from automatic weapons at a carefully selected road-junction. as a consequence whereof Ahmad Raza Kasuri's father Nawab Mohammad Ahmad Khan deceased was hit and later died at the United Christian Hospital at 2.55 a.m. on 11th of -November, 1974. The evidence clearly establishes that the actual attack was made by appellants Arshad Iqbal and Rana Iftikhar Ahmad after

the plan had been finalized by consultation among approver Ghulam Hussain, appellants Ghulam Mustafa and Arshad Iqbal as well as Rana Iftikhar Ahmad.

(ix) In the First Information Report registered soon after the death of his father, Ahmad Raza Kasuri clearly stated that the attack was launched on him as a result of political differences, and that he had previously also been similarly attacked, and he recalled that an unpleasant incident had taken place between him and Zulfikar Ali Bhutto in the Parliament in June, 1974. (x) The caliber of 24 empties recovered from the scene of the crime again shows that they were of 7.62 mm bore, and they had the same marking, namely, 661/71 as was, the case with the crime empties recovered after the Islamabad incident. The investigation of the case did not, however, make any bead-way.

(x) A Tribunal presided over by Mr. Justice Shafi-ur-Rehman of the Lahore High Court was appointed by the Punjab Government to enquire into the incident, but its Report was not allowed to be published for the reason that the Provincial Chief Minister, who was fully competent to decide the question of publication, "respectfully" sought the advice of the appellant in the matter. The original Report of the Tribunal has not been traced, but an office copy of the letter written by the Chief Minister of the Punjab to the former Prime Minister gives a gist of the conclusions and findings, of the Tribunal and also the directions given by it for further investigation of the case. However, nothing carne out of further investigation, and ultimately the case was filed as untraced on the 1st of October, 1975.

(xi) In the meantime Ahmad Raza Kasuri kept on clamoring for justice, and demanding the resignation of the then Prime Minister on the ground that he would not get justice as long as Zulfikar Ali Bhutto was in power. In spite of the identity of ammunition used in both the incidents at Islamabad and Lahore the investigation was not allowed to travel in the direction of the Federal Security Force owing to the intervention of the Prime Minister's Chief Security Officer Saeed Ahmad Khan, and his Assistant the late Abdul Hamid Bajwa. The senior officers of the Punjab Police like DIG Abdul Vakil Khan, SSP Mohammad Asghar Khan and DSP Mohammad Claris have also testified that they did not, have a free head in the matter of this investigation, and everything was being done in accordance with directions given by the Chief Security Officer and his Assistant.

(xii) When the case was reopened after the promulgation of Martial Law in Pakistan on the 5th of July, 1977, it was found that there was voluminous documentary evidence to show the intermeddling of the Prime Minister's Chief Security Officer and his Assistant with the investigation of the case, so much so that even a copy of the Report of the Shafi-ur-Rehman Tribunal was found to have been sent to Saeed Ahmad Khan by the Chief Secretary to the Punjab Government, indicating that the matter had already been discussed between the two. It also transpired that both, the officers on the staff of the

appellant had been making frequent visits to Lahore during the pendency of the inquiry before the Tribunal, as well as subsequently. The testimony of Saeed Ahmad Khan, supported by relevant documents, unmistakably shows that all this was being done under the directions of the appellant and he was kept fully informed of the day-to-day progress of the activities.

(xiii) There is also voluminous oral and documentary evidence to show that after the murder Ahmad Raze Kasuri was kept under special surveillance, and reports on his activities and utterances were being submitted to the former Prime Minister in quick succession, by the late Abdul Hamid Daiwa and Saeed Ahmed Khan. Even the physical description and identity of the gun-mar engaged by Ahmad Raza Kasuri was brought on the record.

(xiv) In the final phase, efforts were initiated by the appellant to bring Ahmad Raza Kasuri back to the fold of the Pakistan People's Party, and this task was entrusted to his Chief Security Officer Saecd Ahmad Khan and the late Abdul Hamid Bajwa. The prosecution has placed on the record an exceptionally large number of documents which leave no doubt whatsoever that in a subtle manner these two experienced police officers were working on a much younger man like Ahmed. Raza Kasuri, and almost succeeded in convincing, him that his political future and the safety of his own life and family lay in a rapprochement with the Prime Minister. After a careful and detailed analysis of these documents I am left in no doubt at all that the moves had been initiated by the appellant Z. A. Bhutto otherwise the repeated visits of his senior officers like Saeed Ahmad Khan and Abdul Hamid Bajwa to this disgruntled politician did not make any sense. In fact, the last document in the series significantly speaks or negotiations having been conducted for the last six months win Ahmad Raza Kasuri so as to bring him back to the Pakistan People's Party. This part of the evidence makes It clear that these moves were initiated so as to silence Ahmad Raza Kasuri, who was still persisting in his loud demand for justice against the sitting Prime Minister. As a result of these moves Ahmad Raza Kasuri did return to the People's Party and were shown petty favors, including his deputation on a Parliamentary delegation to Mexico, from where he sent a report eulogizing the leadership of the appellant. In evidence he has asserted that he had to adopt finis stance as a matter of sell-preservation. Ail these acts of subsequent conduct are relevant under Section 8 of the Evidence Act, and are incompatible with the appellant's innocence

**Baseless Fears**

It was held in the judgment that the trial Bench of the Lahore High Court was lawfully and properly seized of this case on its transfer to its original side. There was no question or the judges of the bench having the slightest pecuniary or proprietary interest in the subject-matter of the proceedings. The apprehensions in the mind of Z. A. Bhutto, if any, about the partiality or prejudices of the Chief Justice of me Lahore High Court were baseless.

The judgment said: "The allegation of bias leveled against the Acting Chief Justice in his capacity as the Chief Election Commissioner by the Central Executive Committee of the Pakistan People's Party was totally misconceived. In fact on 24th September, 1977 at the hearing in Court the appellant had, for once, himself expressed his confidence in the learned Acing Chief Justice. The fact that in the circumstances the trial Bench did not allow an opportunity to the appellant to make his submissions on 9th October, 1977 after the close of the arguments by his learned counsel did not betray any bias of the Court against him. At the commencement of the trial the dock had to be prepared for segregating the accused from the visitors in Court and there was no mala fides of the Court about it. Strictly speaking the allegations in connection with the "dock" and the "benches" had nothing to do with the actual proceedings conducted in the case. The appellant has failed to establish that thereby he was handicapped in communicating with his counsel in giving instructions to him in Court. To say the least the conduct of the learned defence counsel in Court was far from desirable and at times he even aligned himself with his client. Even the appellant himself did not lag behind and was at times unruly.

This is in addition to the fact that he had all along indulged in baseless allegations of scurrilous and scandalous character against the learned Acting Chief Justice with scant regard for the contempt of Court so often committed by him. Even the press talk by the learned Acting Chief Justice that the trial would be held in the full light of the day attracted the wrath of the appellant to vilify him and strangely enough was taken to be an expression of bias on his part. The allegations that the record of the case was manipulated and tailored in a fashion to suit the prosecution is devoid of any force and the appellant has failed to substantiate it.

**No Question**

Indeed the entire proceedings in the trial Court were tape-recorded and this could have been easily verified in case the appellant was at all serious about his allegations. In this connection it seems that most of the grievances put forward by the appellant were imaginary rather than real. I have already found against the appellant in connection with his other grievances contained in his petition dated 18th December, 1977. "His allegations were based on mistrust and suspicious entertained by him from the very beginning shown against the Court, without any justification on surmises and conjectures."

The judgment further said: "It is a pity to find that from the very beginning the appellant entered upon his trial with an initial bias ingrained into him against the Court and as the prosecution evidence involving him began to pour in, he instead of defending himself, became more and more defiant and indulged in scurrilous and scandalous attacks on the Court. He was thus responsible for having created a tension and it was rendered increasingly difficult for the Court to maintain the decorum and control the proceedings.
Continuing the judgment said: "in conclusion I have held that the impugned judgment of the learned trial Court is substantially based on the evidence on the record and its

conclusions are well founded. Indeed I have agreed with the learned trial Bench and substantially affirmed its findings on all the material issues raised in this case. As discussed above the allegations of bias against the trial Bench are unfounded. In spite of the heavy odds the procedure followed at the trial in the case, as held by me above, was warranted under the law and it did not in fact occasion and result in any prejudice caused to the appellant."

The Chief Justice observed in the judgment: "In paragraphs 610 to 616 of the impugned judgment the High Court has made gratuitous observations about the personal belief of the appellant and delivered a sermon as to the mode of conduct prescribed by Islam of a Muslim ruler. It is also slated that the appellant was a 'Muslim in name' only and that he had abused his powers under the Constitution. I am inclined to agree with the learned council that the observations in these paragraphs were not necessary for the disposal of the case by the High Court. In this connection, however, the learned counsel further submitted that these observations and remarks about the appellant disclose the extreme hostility and bias entertained on the part of the learned trial Bench against the appellant. It, however, appears to me that the High Court had found the appellant guilty along with the other co-accused on the merits of the evidence adduced in the case. Its findings to that effect were not influenced by any such extraneous considerations. In fact it was only towards the end of the judgment that this discussion occurs and the conclusion was drawn in proposing the punishment as stated in paragraph 617 that the appellant was 'thus liable to deterrent punishment'. Although even for this limited purpose also these observations were not strictly relevant, yet that aid lot thereby vitiate the order of conviction of the appellant which was not based on any such extraneous considerations".

Continuing the judgment said: "In the proceedings as well as in the impugned judgment the learned trial Bench has often used the term 'principal accused' in referring to the appellant. In that connection stress was laid before us by the learned counsel to contend that this by itself sufficiently disclosed bias and prejudice of the Bench towards him. But it is evident that on the findings recorded by the trial Court, the appellant alone had the motive behind the attempted murder and had thought about it. Even otherwise having regard to his status in life he was the principal amongst the co-conspirators, and occupied the most important position amongst them. It cannot, however, be denied that strictly speaking, in law, the description of the appellant as the principal accused as an abettor was inapt. But this by itself is not sufficient to betray any bias and prejudice of the Court against him who was otherwise found guilty on the merits. Similarly the mere use of the other terms like the 'arch culprit' and 'compulsive liar' etc against the appellant do not go to prove the bias of the Court against a guilty accused."

The judgment said: "One last contention advanced by the prosecution in this connection may also be mentioned here in passing. The trial Bench consisted of five learned judges of the High Court including its learned Acting Chief Justice heading it. Each one of the judges was independent and not susceptible of any influence of the learned Acting Chief Justice in their judgment. The allegations alleged in this case were almost entirely directed against the learned Acting Chief Justice. In these circumstances the independent

opinion expressed by the other learned Judges constituting the Bench was entitled to its due weight and respect."

The Court held that it had been authoritatively laid down in a number of cases by the Supreme Court that mere suspicion of bias, even if it was not unreasonable was not sufficient to render a decision void. A real likelihood of bias must be established. A mere apprehension in the mind of a litigant that he might not get justice such as is based on inference from circumstances was not sufficient.

Finally the Chief Justice on the question of bias of the trial court observed : "In the light of declared law and the facts I have reached the conclusion that although some of the orders made by the trial Bench in the day-to-day conduct of the case may not have been correct on a strict view of the law ; and some others may not have been fully called for in the facts and circumstances of the case, yet these were all matters within the discretion of the Court, and mere error therein cannot amount to proof of bias. The appellant was unfortunately misled into thinking from the very start of the case that the learned Acting Chief Justice was biased against him. There was, in fact, no factual basis for such an apprehension. In any case there was no such apprehension in respect of any of the other four learned Judges constituting the Bench. The trial of the appellant has by and large been conducted substantially in accordance with law, and the conclusions reached by the High Court on the merits of the case have been found to be correct on detailed analysis of the evidence and the law. I would, therefore, repel the contention that the trial was in any manner vitiated by reason of bias on the part of the Presiding Judge of the Bench."

**Conclusion**

The Judgment said that this was an unprecedented trial involving a former head of the Government and for this reason the proceedings before the trial Bench were of a particularly difficult and taxing nature. "Unfortunately the task of the Bench was not made any the easier by certain attitudes adopted by appellant Zulfikar Ali Bhutto at various stages of the trial. In this Court, major part of the arguments addressed by the defence were devoted to demonstrating that the trial had not been held fairly, and that it suffered from a large number of procedural illegalities, which went to the root of the matter, vitiating the whole trial, and the convictions and sentences recorded as a result thereof. My examination of these submissions, ranging over almost the entire field of Criminal Procedure, has led me to the conclusion that by and large the trial was held substantially in accordance with the provisions of the Criminal Procedure Code and that any omissions, errors or irregularities or even illegalities that have crept in, were of such a nature as did not vitiate the trial, and were certainly curable under the provisions of section 537 of the Criminal Procedure Code as it now stands in its amended form since 1972," it was observed.

The Chief Justice said: "I have further found that the allegations of bias against the Presiding Judge of the Bench, and criticism of the actions and orders made by the Bench during the course of the trial are not justified. In spite of the events, and the background,

alluded to by the appellant and his counsel, the High Court Bench of five Judges has done its best to conduct the trial as fairly as possible, in the •circumstances then prevailing.

With regard to holding the proceeding of the trial Court in camera the judgment observed that it was an essential principle of administration of justice that it must not only be done but should also appear to have been done. This necessarily carried with it the right to an open trial in full gaze of the public including the Press. But this rule was not rigid and inflexible and must not be pressed to its breaking point in defeating the very ends of justice. It admitted of exceptions and cases might arose whereby following this rule for an open trial justice might itself be defeated. There was no dearth of cases in which the very requirement of the administration of justice demanded that the trial be held in private or in camera as an open trial was likely to result in the stultification of justice. In this category were included cases within the parental jurisdiction of court for the safeguard of the interest of the ward of lunatic. However each case depended on its own facts.

**Hostile Attitude**

The court observed: "It cannot be denied that in the trial Court a number of applications were filed from time to time in which unfortunately scandalous and scurrilous allegations were made mostly against the present Chief Justice, who headed the trial Bench constituted for the trial of this case in the Lahore High Court. In the course of the hearing in this appeal before us also those allegations were repeated on behalf of the appellant to contend that the entire trial stood vitiated because of bias in the learned Chief Justice. The blasphemous allegations attributing bias and motive, made in the face of the Judge of Superior Court constitute one of the worst forms of contempt, and these were repeated with impunity in this case to defame the Judge and the Court, with scant regard for the dignity of the law and its enforcing agency, viz., the Court. In the course of this trial the appellant, who was no less a person than the former President and Prime Minister of the country, appears to have adopted an openly hostile attitude in Court and became defiant towards the end, and it became all the more arduous for the Court to conduct the trial. He appears to have further developed a strategy, and started indulging in vilification and insults towards the Court and wanted publicity for it, without caring for his own defence in the case. Indeed the unfortunate situation thus created became all the more embarrassing to control at the trial.

The Court further observed: "It appears, therefore, that from 25th of January. 1978, onwards the Court had a genuine and reasonable apprehension that the appellant was out to further indulge in scurrilous and scandalous allegation against it and wanted publicity for it. This was likely to result in undermining the dignity of the High Court and shake the confidence of the people in it. In these circumstances the Court was left with no alternative but to hold further proceedings in camera in the larger interest of the administration of justice; and this it had power to do in the exercise of the discretion vested in it under the Proviso to section 352 of the Code.

Continuing the judgment said: "On 25th of January, 1978, the Court also observed that a few of the supporters of Zulfikar Ali Bhutto appellant were found shouting and yelling in the corridor outside the Chief Justice's Chamber. This raised a further apprehension in the mind of the Court about a likely disturbance in the proceedings of the Court, if held in open: and for this additional reason as well the Court was justified in holding further proceedings in the case in camera. Before us the learned counsel vaguely expressed his doubt about the genuineness of this last mentioned order passed on 25th January, 1978, but this appears to be a wholly unjustified allegation, and does not deserve any serious consideration. Before concluding discussion of this matter, it would not be out of place to repeat that the entire prosecution evidence in this case was recorded in open Court. Appellant Zulfikar Ali Bhutto did not produce any evidence in defence. Most of his own examination as an accused under section 342 Cr. P.C. was also conducted in open Court. In these circumstances, I am satisfied that the alleged irregularity, if any, in the mode of the trial by holding it partly in camera has not in fact occasioned any failure of justice of prejudice to the appellant in his trial or defence. The objection is thus without any force and is hereby repelled."

The Court continued: "As far as the proceedings conducted in open Court are concerned, the appellant can have no grievance if they were reported in the Press or otherwise. It seems to me, however, that publicity ought not to have been given to the statements made by the other co-accused during the time when the proceedings were being held in camera. It is possible, as suggested by the learned Special Public Prosecutor, that those statements were allowed to be published for the reason that the camera proceedings had not been necessitated on account of anything done or intended to be done by the co-accused. Whatever the reason, it would have been better to avoid even the publication of these statements made by the co-accused during camera proceedings does not in any manner, detract from the necessity which was clearly made out for excluding the public from this stage of the trial, once appellant Zulfikar Ali Bhutto had notified the Court of his intention to repeat the allegations he had already made and publicized in successive petitions against the Presiding Judge of the trial Bench.

The Supreme Court laid down the law on a number of provisions of the Criminal Procedure Code and the Pakistan Penal Code. Interpretation of section 10 of the Evidence Act with regard to admissibility of the statements of co-conspirators, the use of section 10 with regard to confessions and statements made under section 342 Cr. P.C. by the accused, the requirements 0! section 347 and 164 Cr. P.C. regarding approvers and their statements, the application and scope of section 540-A of the Cr. P.C. in regard to conducting proceedings in the absence of the accused and the failure of the High Court to pass a formal order under this section. The Court also dealt with the legal position when statements of certain witnesses made to the police were not provided to the defence. The admissibility of the Log Book of the jeep involved in the crime under section 35 of the Evidence Act, the fact of non-production of certain witnesses by the prosecution, the hearing of miscellaneous applications in chambers, the principles governing the appraisal of approvers' evidence, the relevance of motive in conspiracy cases, corroboration and credibility of approvers' statements, and leading of evidence regarding subsequent conduct of the accused were some of the propositions on which authoritative

pronouncements were given. Another point decided by the court was the exact nature of the position of an accomplice. And then the court considered the definition of conspiracy and the nature of conspiratorial agreement, the mode of proof of conspiracy and the application of section 111 read with section 301 of the PPC. The court also discussed in the judgment the immunity available under section 22 of the Federal Security Force Act of 1973, to the personnel of the force.

**'Hearsay'**

In his dissenting judgment spread over 441 pages Mr. Justice G. Safdar Shah expressed the view that certain statements of Masood Mahmood were in the nature of hearsay and were not admissible in evidence. Secondly this approver was not a reliable witness and those who were supporting him were witnesses which fell in the category of accomplices. One accomplice could not support another accomplice. He was of the view that the case had not been proved to the hilt by the prosecution. The evidence of the prosecution witnesses was, according to the judge, unnatural, improbable and untrue and was made up of significant and prominent improvements made by them during their evidence in court.

The Judge expressed the view that the prosecution had failed to prove the existence of a criminal conspiracy between Zulfikar Ali Bhutto and Masood Mahmood and therefore no evidence of it could be brought under Section l0 of Evidence Act. The Judge said that the prosecution had failed to prove the case against Bhutto and Mian Abbas and the conviction against them should be set aside. According to him the cases of Sufi Ghulam Mustafa, Arshad Iqbal and Rana Iftikhar Ahmed were different since they had admitted the commission of the offence. Accordingly he expressed the view that he was satisfied beyond doubt that all three of them were guilty and their convictions by the Lahore High Court were proper. He was of the view that all these accused had agreed to fire at the car of Mr. Ahmed Raza Kasuri with automatic weapons. The act of firing by Arshad Iqbal and Rana Iftikhar was not only a reckless act but was an independent act of their own. The case of Ghulam Mustafa was different because he was not at the site.

An independent Judgment was given by Mr. Justice Dorab Patel who disagreed with the majority view.

According to the Judge, Masood Mahmood was not a reliable witness and his evidence required stronger corroboration than was needed in the usual sort of murder case based on the evidence of an approval. The Judge was of the view that conspiracy between Bhutto and Masood Mahmood had not been proved. The second approver Ghulam Hussain was a thorough dishonest witness. His evidence was nothing more than hearsay upon hearsay. The corroboration of Masood Mahmood's statement by Saeed Ahmed Khan was of no avail to the prosecution.

The Judge was not satisfied with regard to the prosecution version that bullets had fallen at four places fired by two men. It was held by the Judge that the High Court had erred in proceeding with the trial in the absence of Z. A. Bhutto.

Mr. Justice Mohammad Haleem wrote a five-page note agreeing with Mr. Justice G. Sardar Shah. He also expressed the view that the case against Bhutto and Mian Abbas had not been proved but since the other appellants had confessed .the crime there was no doubt with regard to their guilt.

***(Reproduced from the Pakistan Times, Rawalpindi, dated February 7, 1979).***

# COPY OF JUDGMENT ORDER

ORDER OF THE COURT

Criminal Appeal No.11 of 1978
Zulfikar Ali Bhutto Vs. The State

According to the opinion of the majority this appeal is dismissed, and the convictions and sentences recorded by the High Court are upheld and confirmed, except that section 301 PPC will not apply.

Criminal Appeal No.12 of 1978
Mian Muhammad Abbas Vs. The State

According to the opinion of the majority this appeal is dismissed, and the convictions and sentences recorded by the High Court are upheld and confirmed, except that sec.301 PPC will not apply.

Criminal Appeal No.13 of 1978
Ghulam Mustafa, Arshad Iqbal
and Rana Iftikhar Ahmad Vs. The State

According to the unanimous opinion of the Court this appeal is dismissed, and the

convictions and sentences recorded by the High Court against the three appellants are upheld and confirmed, except that sec.301 PPC will not apply to Ghulam Mustafa.

SAH
C.J.

J.

J.

J.

J.

J.

RAWALPINDI:
February 6,1979.