

# WITNESS TO SPLENDOUR

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**Z.A. Bhutto**

Reproduced by  
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# Introduction

I am reproducing the statement given by Shaheed Zulfikar Ali Bhutto in the Supreme Court of Pakistan during the murder trial of Mr. Ahmed Raza Kasuri. The statement is divided in four chapters each one covers his deliberation for each day he appeared in front of the Judges of the Supreme Court of Pakistan.

Shaheed Bhutto's initial trial began on October 24<sup>th</sup> on charges of "conspiracy to murder" Ahmed Raza Kasuri. The prosecution produced a witness in Masood Mahmood, who had been the chief of the Federal Security Force under Shaheed Bhutto. A very questionable and dubious witness, Mr. Mahmood testified that Bhutto had ordered the killing of Kasuri. Four men who were arrested and charged as Kasuri's assassins testified to confirm Mahmood's testimony. It was evident that the army had fabricated the evidence and installed the Justice Maulvi Mushtaq Ali an old enemy of Bhutto as Chief Justice of Lahore High Court. The Lahore High Court sentenced Bhutto to death on March 18<sup>th</sup> 1978; he was also ordered to pay Rs. 25,000 in fines or face six months rigorous imprisonment.

While this was going on General Zia published a white paper accusing Bhutto of rigging the 1977 elections, the Supreme Court of Pakistan agreed to hear Bhutto's appeal. Chief Justice S. Anwarul Haq adjourned the court until the end of July 1978, supposedly because 5 of the 9 appeals court judges were willing to overrule the Lahore verdict. One of the pro-Bhutto judges was due to retire in July. Chief Justice S. Anwarul Haq presided over the trial, despite being close to Zia, even serving as Acting President when Zia was out of the country. Bhutto's lawyers managed to secure for Bhutto the right to conduct his own defense before the Supreme Court. On December 18<sup>th</sup> 1978, Bhutto made his appearance in public before a packed courtroom in Rawalpindi and addressed the court for four days continuously. This book is based on his deliberations. On February 6<sup>th</sup> 1979 the Supreme Court, in an ethnic split, upheld the verdict by a narrow 4-3 vote. Bhutto appealed to the court to review its decision, but the plea was rejected on March 24<sup>th</sup> 1979.

Now most of those who were involved including the generals and judges regret their support for Zia and admit their mistake. If you go through these pages you will yourself find that Bhutto was innocent and was framed by Martial Law authorities. He gave more then one reasons to the judges to believe his innocence.

Sani H. Panhwar  
August 28, 2009  
Lawndale California

## CHAPTER ONE: THE FIRST DAY

*Mr. Zulfikar Ali Bhutto:* My Lords, I know that according to protocol and the ethics of the court, I am not supposed to express my thanks and gratitude to this honorable court for permitting me to appear before you this morning. Nevertheless, according to the social conditions of the country, and in Rome do as the Romans do, I am very thankful to you for allowing me this opportunity.

In my application to Your Lordships on the 4<sup>th</sup> of December, I submitted that I would like to present before this honorable court my point of view because not only my life as life of an individual is involved but because, according to my objective appreciation, far more is at stake. My reputation, the honor of my family, my political career and above all the future of Pakistan itself is involved. This is my view; it may be a mistaken view but it is an honest and sincere view. I am not trying to dramatize or exaggerate.

In my application, I said that in the interest of justice I would appreciate that kind favorable consideration be given to my application. On the 5<sup>th</sup> of December, Your Lordships were kind enough to pass an order stating that Your Lordships had decided at the inception that if needed I should make an appearance before this honorable court in the course of this appeal. Your Lordships reiterated the observation made originally and observed that it was not in any way connected with the developments that took place subsequently as a result of the necessity of Mr. Justice Waheeduddin's departure from the Bench. Your Lordships also, I think, indicated in that order that you would hear me in the interest of justice and that I could speak on any subject. You expressed that hope that I would choose not to cover those points that have already been covered.

Now, I would like to give this assurance to Your Lordships straight away that I would not like to cover those points that have already been covered but if at all I go on the beaten track, it would be because I am not familiar with everything that has been said in this court. I have been in a death cell, 7 by 10 feet, for over a year now and even in this room I feel a little dizzy. I cannot really adjust myself to the momentum and equilibrium of this room and to people. It is nice to see people. Therefore, I am being a little slow in this presentation.

I do not want to mention here in this honorable court before people who are not Pakistanis although I have great respect for our friends from abroad whatever has been done to me. I do not want to show marks on my body or anything like that. But I would like to say that I have something to say and if in that process I do trespass on ground already covered it is not being done with a mala fide intention or to waste Your Lordships' time. I can see, even from my small death cell, the compulsions that are at play for winding up this case. Those are clear to me as I see the panorama.

My second assurance to you is that I have no intention of scandalizing the institutions as mentioned in one of the newspapers. I do not know whether that newspaper correctly reported these remarks, but I was a little amused by them. Why should I scandalize institutions? In the first place, precious few institutions are left to scandalize. Secondly, I have been deeply connected and associated with the institutions of this country and I have tried to build them. I have never tried to destroy them.

I would not like to be presumptuous and say that I am the author of the Constitution of 1973. However, in the past, even when undemocratic constitutions have been passed, they have been known as Chaudhry Mohammad Ali's Constitution and Ayub Khan's Constitution. In that context this constitution could have been called Z. A. Bhutto's Constitution, if the word Zulfikar Ali Khan Bhutto is too high sounding.

I have, actually promoted the institutions. Your Lordships will very well remember that when I was President of Pakistan and Your Lordships were members of Hamoodur Rahman's Commission, Chief Justice Hamoodur Rahman and the Hamoodur Rahman Commission wanted to examine me in the President's House. I immediately sent a message through my Special Assistant saying that I could not conceive of the Chief Justice of the High Court of our country coming to me; that it was my duty to go to the Commission and that I would not think it right for the commission to come to me merely because I am the first elected President of Pakistan.

Your Lordships, here also when I appeared in October 1977, when Your Lordships were considering Begum Nusrat Bhutto's constitutional petition, you will recall, and all of you were on this Bench except one or two Justices, that the moment any one of the honorable Justices said that I should not go into a certain point, I immediately stopped. When that Judgment was delivered, I was in Kot Lakhpat Jail as an under-trial prisoner, and in retrospect, taking the existing social realities into account, I say it is a positive judgment. I said it was a very difficult judgment because on the one hand there was the legacy and precedent of Dosso's case and other matters. On the other hand, there was an elected Constitution, a democratic Constitution, a unanimous Constitution. A via media, a modus vivendi, had to be found in the prevailing social conditions of Martial Law and from that point of view the judgment was positive.

But I felt that this judgment would have rendered an even greater contribution if two aspects, two elements had been incorporated in it.

Firstly, if a time limit had been fixed by this honorable Court for elections in this country. I regretted not having said it then, when I was before your Lordships. I was not directly touching on this point out of propriety and consideration that your Lordships might misunderstand my suggesting a time factor, a time element, and might think that I have something personal to gain in terms of Party and results of the election. Thus, I was beating about the bush, so to speak, and I think, it was Mr. Justice Shah and Mr. Justice Dorab Patel who said, "What you are driving at is that we should fix a time limit?". I replied, precisely, precisely. These were my words.

Secondly, if the amendment of the Constitution that has been provided for could have been restricted to those essential mechanisms required for running the administration, that there could be constitutional amendment only in terms of absolute necessity to remove the difficulties in the running of Martial Law, and not a blanket approval to amend the Constitution. You have, in fact, not given this blanket approval to amend the Constitution because you have defined a necessity and actually it is under the scope of that definition that these amendments could have been made.

My third observation was that this Judgment is too subtle, too refined and too sophisticated for this Government to take advantage of, that it will be making a hash of it because this judgment does not go on meta juristic and meta legal considerations and does not wipe the slate clean. Now, the arguments used here for Your Lordships to uphold impartiality, to uphold validity of Martial Law, are being applied in practice rather than the dictum that Your Lordships gave in Begum Nusrat Bhutto's case.

For the reasons cited, I wished that I could have elaborated some of my points and because I did not choose to do so, I will put the blame on myself for I had been in a position to understand and appreciate the consequences on the executive side as to a juridical side. Therefore, I regretted very much not having pleaded before this honourable court for a little more time to elaborate fully my point of view. Your Lordships will remember that even in that brief period of an hour or so that I had here before Your Lordships, I made certain observations and Your Lordships will kindly correct me if those observations have not been fulfilled by the fullness of time. I told Your Lordships that in due course of time, there will be a proliferation of Parties, that Parties will split up. I told Your Lordships that the umbrella of Constitution not being there, the question of nationalities will arise because of the Constitutional vacuum.

Pakistan was a Federation. Today, it is not a Federation any more. It is being run as de facto unitary Government. My Lord, we had arrived at a consensus on the Federation after a lugubrious and painstaking process. Now that lid has been lifted and the result has been that national interest has not gained by this and I would even like to say that it has suffered. In purely objective terms, it pains me to see the present developments, the way the Parties are proliferating, for Parties are national links and if the national links are weakened or severed, then the national structure cannot remain. By way of analogy, let us take the example of Mrs. Indra Gandhi, who hails from Uttar Pradesh and goes and gets elected from Madras by a lead of 70,000 votes. Now, if there were no national Party in the country, it would not be possible for a leader, no matter how important that leader is individually, to go from Uttar Pradesh to go to Madras at the other end of the country and to get elected from there.

Here in Pakistan these national institutions are being broken and severed and therein one can see the seed and blossom, if not the full bloom, of four nationalities grow with accelerating speed. Had a time period been fixed for elections then the present situation, which has developed since, might not have taken such an alarming form. Now, because of the substantive amendments in the Constitution, even when, and if, the elections are held, the question will arise as to whether the Assembly that is elected is a Constituent Assembly or a National Assembly.

Thirdly, My Lord, I would like to say that I have no intention of scandalising any individual either. I have not come before Your Lordships so as to scandalise or embarrass individuals. That is certainly not my purpose. The stakes, My Lord, are too high. I would, however, like to touch on certain matters which have been raised in the judgment of the High Court. This case has gone on for very long, there is a long judgment going into about 409 pages, then there are depositions. I have no intention of going into the details, but certain observations have been made in the judgment regarding my person and I find it my bounden duty to comment on these observations while I am here before you.

It has been said, for instance, that I am a Muslim in name. Now, this is something which no representative, however eminent, would be able to elaborate or elucidate. God forbid, if I were to say to Mr. Justice Safdar Shah that he is not a Pakhtoon, I think he would feel that he has a right to comment on whether he is a Pakhtoon or not. And then, My Lord, being a Pakhtoon or a Sindhi or a Punjabi or a Baluchi is not so important, but being a Muslim is important for this relates to one's faith, one's religion, one's "deen".

A subsidiary point arising out of these comments on my person is the question of my temperament, my character, my capacity to bear insults. In this connection My Lord, the State counsel, after winding up his arguments in the Lahore High Court, where I had been repeatedly and unnecessarily subjected to insults, made what he thought was a very profound observation. The State counsel said in his summing up, "My Lords, when I was a student in Government College Lahore, we had a professor of English called Professor Dickenson. One day, one of our boys went to Professor Dickenson and said that he had a quarrel with someone else. Professor Dickenson asked him why he had a quarrel with this person and the boy replied because he had been insulted by the person. Remembering something which took place thirty years ago must have been in the forties the State counsel continued, "My Lords, you know what Professor Dickenson told that "What? Insulted? A gentleman does not get insulted."

And having thus narrated the story of Professor Dickenson, the State counsel looked at me and everyone looked at me. I felt insulted because I was not a gentleman. I, however, smiled for I have great regard for the character of the English and what Professor Dickenson had said was simply an Englishman's way of telling a colonial that he had no right to get insulted. Those who had lost their independence could not claim to being gentlemen. For, My Lord, in England with its code of chivalry dating back to the time of King Arthur, a gentleman does get insulted, so much so that he goes into a duel to redeem his honour. Honourable people do get insulted. Gentlemen do not tolerate insults. Only a colonial was not expected to get insulted.

My Lord, this talk about gentlemen not getting insulted reminds me of another phrase coined by the British, "Oh, no. That was loose talk." The origin of this phrase also goes back to the days of colonial rule. You see, sometimes in the mess, a British officer would insult an Indian officer and when the latter would complain to his superior British officers, he would be told, "Oh, forget it, Keval Singh - or, forget it Irshad - that was loose talk," implying that a colonial must overlook that which his masters say.

So, My Lord, it is a question of interpretation. I, My Lord, can quote you a different example. When I went to Christ Church, Professor Trevor-Roper was the Senior Guidance Counselor. I met him then for the first time and he asked me what I wanted to study. I said I wanted to study jurisprudence and law. I had a *suma cum laude* from the United States in first class and was, therefore, entitled to finish my schooling in two instead of the usual three years. Professor Trevor-Roper asked me if I knew Latin. I replied in the negative and he advised me to do my course in three instead of two years. Latin was a compulsory subject and if I failed in Roman law, I would fail altogether. Who would not have wanted an extra year at Oxford? I agreed, but when I was leaving, he said to me, "Your know, even the best brains of our own boys would not be able to do it in two years." I turned back and said I would do it in two years because of what he had said and I would show him that I had brains as good as their boys, if not better. My Lord, I did it in two years and got high honors in jurisprudence, including Roman law.

My Lord, one's reaction to insults is a subjective factor. I have not been brought up to insult people. I am a cultivated and educated person. I don't insult people, but neither do I expect people to insult me unnecessarily. In order to wash away the insults that were unnecessarily hurled at me and to which I will refer later, when I come to the question of bias, the State counsel cited the example of Professor Dickenson. Well, My Lord, the State counsel should not get insulted when I speak, because he is a gentleman.

Next, I would like to speak on the question of social conditions because a great deal has been said about the social conditions prevailing at the time I was President and Prime Minister of Pakistan. For every unproved probability in the case, the answer is either the telephone or the prevailing social conditions. The telephone has become the greatest prosecutor against me, both in this case and in the White Paper. When no evidence is available, then the telephone is brought into play for the basis of convicting the leader of the country for murder and for giving him capital punishment, the telephone is used as a powerful instrument of oppression against him and as the surest means of collecting evidence.

On the other hand, shelter is taken behind the social conditions prevailing at that time. There was tyranny at the time of Mr. Bhutto. People were terrorized by Mr. Bhutto. The thing is, My Lord, one can't have it both ways. On the one hand, there was tyranny in my times, and on the other all manner of speeches and statements were made in Parliament. It must not be forgotten that there was democracy in existence at that time and, as Rao Rashid has said in his affidavit, no matter how difficult the conditions may be under civilian rule, they can never be compared with conditions under Martial Law.

My Lord, if S.H.O, Abdul Haye Niazi says one thing before the Shafiur Rahman Tribunal and then chooses to change his evidence, what has that got to do with the social conditions prevailing in my times? It has been repeatedly said in this honorable court that within twenty-four hours of filing the case, Abdul Haye Niazi became inactive and immobilized. If this is so, I still fail to see how I can be held responsible. I had nothing to do with Niazi, I did not know who Niazi was and if he became inactive twenty-four hours after filing the case, then his inactivity is the result of the social

conditions prevailing for centuries and certainly not because of me. My Lord, the contradictions speak for themselves. Muhammad Asghar, prosecution witness No. 12, says that he subverted to mention my name in the F.I.R. and yet my name was mentioned in the F.I.R. the same night within three hours.

If the subordinate police officers were reluctant to mention the name of the Prime Minister in the F.I.R., I would not be aware of it. If today the name of the Chief Martial Law Administrator is mentioned in a murder case, I think the first reaction of the subordinate officers would be to take it easy, to consider it or at least to consult the senior officer. "After all, no ordinary person is being mentioned, so, if there was some reluctance at that time and at that level, how can that be considered something unnatural?

Even so, the senior officer, the S.S.P. came to the High Court and proudly said that he told Kasuri to give his statement in writing and the written statement, which was drafted by a friend because Kasuri was in a disturbed state of mind, was taken. Then Wakil Khan came and said that the F.I.R. was filed straightaway and Niazi was told to go to the place of occurrence and collect the empties. There is nothing in this evidence to show that these officers did not behave according to the requirements of the law.

And yet, in juxtaposition, there are repeated pleas of taking into consideration the prevailing social conditions. Now, if you plead social conditions, then there must at least be consistency in your plea. You cannot approbate and reprobate social conditions. Approbate social conditions in your favour and reprobate social conditions against you.

Next, My Lord, I would like to speak on motive and, if Your Lordships permit, to some extent on conspiracy and subsequent conduct. You see My Lord; there are inherent contradictions in the judgment. I have had it both ways in the judgment. For example, talking of motive, it has been said in the judgment that the said individual made speeches which show that he was a virulent critic of mine and that if what was said in the speeches was false, I would naturally have got agitated and would have liked to eliminate him and if what was said was true I would then also have liked to eliminate him. I have no standing room either way. The point is: if what was said was false, why should I be agitated?

My Lord, I am a politician. This was not the first time that I had gone to the Assembly. I have been in the Assembly for over twenty two years, having been elected on a number of occasions, elected five times in 1970 alone. My father was the first representative in the Imperial Council of Sindh in 1921. When he went to the Bombay Legislative Assembly as a leader of the Muslims, my uncle became the representative of Sind. My Lord, we have been in the Assembly since the Chelmsford-Montague Reforms so, it was not for the first time that I heard attacks against us in the Assembly. I had been hearing attacks against my father and my uncles in the Bombay Legislative Assembly, which I attended as a boy.

I have myself faced virulent attacks since the time I became a member of the National Assembly in 1962. Even in this Assembly, Your Lordships, the attacks made on me by

others were far more virulent, far more aggressive. So, it cannot be said that I was thin-skinned in politics, that coming from a different profession I had trespassed into politics and could not tolerate the flood of bitter criticisms. My Lord that would happen to a non-politician. It would not happen to a politician elected by the people by an overwhelming majority. An intolerant person does not get elected by an overwhelming majority, only a person who is loved and cherished gets elected.

My Lord, it has also been said that I was a tyrant, a dictator, a Hitler. Recently we have heard that a person has styled himself a Rightist. Hitler was a Rightist, but even he did not call himself a Rightist. And yet I am the one who is called a Hitler. My Lord, there are reference in the judgment which require your Lordships' consideration.

*An honorable Judge intervened to remark that the Public Prosecutor, Mr. Batalvi, had owned most of the reasons of the judgment of the Lahore High Court.*

**Mr. Zulfikar Ali Bhutto:** My Lord, he has disagreed on the question of substitution, he has talked about high probability in a criminal case, and he has tried to draw quantum of proof from the law of torts. My Lord this much of law even I know. I remember Wolmanton's case from the days when I was studying. I have read Howlers. I know the law of torts and Stevenson, My Lord, the categories of torts are not closed. The quantum of proof in torts cannot be implanted in a criminal case. The Public Prosecutor has discarded the High Court on substitution. Has the substitution been by Ahad? Has the substitution been by Rao Rashid? Has it been by Bajwa? All these theories are mutually contradictory.

Then My Lord, there is the question of double test. After all, if there is an approver, the approver must first of all, be a reliable witness in his own right and after standing on his own legs he must be corroborated by material evidence, independent evidence and sufficient evidence, which is not forthcoming at all in this case.

We come next to the question of section 10. How can one open section 10 with dirty hands? He who comes to equity must come with clean hands. Section 10 can only be opened by clean hands, by independent evidence and then the dirty hands can come into it. It cannot be opened by dirty hands; the dirty hands can come in only when it has originally been opened by clean hands.

Then there is the conspiracy, My Lord. It is a bewildering thing that an effort has been made to prove the conspiracy from the tail to the top. In that case, My Lord, to give an analogy, it can well be proved that President Carter is responsible for what happened in Guyana recently. You see, it can be said that Congressman Ryan approached the State Department saying that he must go to Guyana because he had heard that strange things were happening there. The State Department knew that strange things were happening there and still permitted him to go. He went, a massacre took place, and he was killed, and tracing the thing backwards the blame can be laid at the door of the United States President.

The question is not that of placing the cart before the horse. You can place the cart before the horse or the horse before the cart. The question is that of making the cart move. It will move only if the horse is placed before the cart and not the cart before the horse.

Before going on to the next step, you must establish an agreement. When there is no agreement why waste time on duress. Duress becomes relevant only if agreement is first established. In effect, there is no agreement, no conspiracy or pre-existing conspiracy dating from the time of Haq Nawaz Tiwana. There is no consistency to the date of the conspiracy. Is it supposed to be April or June or at the time of the speech in August after the Islamabad incident? As a matter of fact, I am not even directly implicated in the F.I.R. I have been mentioned in it: (It must be remembered that Mr. Bhutto also gave a speech.) This does not make me the accused; this does not pinpoint me as the murderer of Kasuri's father. As Mr. Justice Waheeduddin aptly pointed out, this may be the reason for the motive but it cannot be a motive.

Then, My Lord, I do not like to talk about myself, not only I am embarrassed but I believe our people will be embarrassed. They will be hurt. There will be a sense of trauma. Believe me; I have been very shabbily treated. Very shabbily treated.

Sorry, My Lord, I am not a rootless phenomenon. I have done no harm. President Sadat is still trying to get his desert from the Israelis. Begin calls it the land of Israelis. Hindus call this land Bharat Mata, but I brought back ninety thousand prisoners of war. Yet, I am treated like a criminal, I am not a criminal I am not a criminal but I am treated worse than the other co-accused. I hear the sound of music. I hear their laughter in the death cell from which I cannot get out. My Lord, for ninety days I have not seen the sunshine or the light. On the 15<sup>th</sup> of October when two prisoners ran away, I was locked up. What did I have to do with their escape? Where was the connection? I have not run away from my country. I would not run away from my country.

My Lord, Mr. Mustafa Khar told me in Murree to leave the country. He said those people are after your blood. I said, no, you go if you want to, I will not leave my country, I will not leave my roots. On the 13<sup>th</sup> of September, after a Press Conference in Sadiq Hussain Qureshi's house, a foreign journalist, whose name I cannot mention, took me aside and said, "Mr. Bhutto I cannot tell you what is in the store for you. You better leave this country. I am an admirer of you." I thanked him and told him that I did not wish to hear more from him, but that I would never forget him. Then he said, "Do not go to Larkana, please go elsewhere. You do not know what is happening." I said I would go to Larkana, the land from which I sprang, the land to which I belong and the land to which I shall return. I would not go out.

My Lord, not that I would like to have pity, I do not want pity from anyone and as I said earlier, I do not want mercy. I want justice. I am not pleading for my life as life as such, not as way of flesh, because everyone has to go. There have been so many attacks on my life. My Lord, I was attacked at Sanghar, I escaped miraculously in Sadiqabad. Then in the Frontier tribal territories, bomb exploded just before I was to speak. I did not wait for a minute and went up to speak. There were at least four or five attempts in Baluchistan, once by a Langah, who threw a hand grenade at me and said, "Take this, you toady of

the Panjabis". The Khan of Kalat, who was one of my closest friends, told me not to go out for I would be killed. I said I have to do my public duty and I went and addressed a public meeting so, it is not life as life that I plead for. I want justice.

Your Lordships, justice is indivisible and this is a forged case. It is completely fabricated case. The question is not that I have to establish my innocence; the question is that the prosecution has to prove its case beyond reasonable doubt. I want my innocence to be established not for the person of Zulfikar Ali Bhutto. I want it established on higher considerations for there has been grotesque injustice. All the crimp and color of political persecution cannot be found in a more classical case than this. It puts in the shade Dreyfus and everything else.

In this connection, I would like to speak of the bad treatment meted to me, because it forms a part of the mala fides, for only a sick and depraved regime could have treated me like this. They keep on saying I want to be treated like a Prime Minister, that I still think I am the President. My Lord, I am a humble man. It is not a question of my wanting to be judge in my case. Chief Election Commissioner spoke against me and told Mr. Pirzada that I had compiled thirty volumes against politicians and that Mr. Pirzada should read what I had to say about him. He advised Mr. Pirzada to leave me. Mr. Pirzada was shocked and according to him he became violent.

*Dr. Nasim Hassan Shah intervened at this juncture to observe that Mr. Bhutto had not been correctly informed as he himself was present and the Chief Election Commissioner had not spoken against him.*

**Mr. Zulfikar Ali Bhutto:** I immediately accept what Your Lordships has said. I was only repeating something which had been recounted to me by Mr. Pirzada himself when I was in Kot Lakhpat Jail. However, even if I leave out what Mr. Pirzada told me, now can one take out the objective bias exhibited in other instances? There is a plethora. I can conveniently leave out what was said to Mr. Pirzada, because I stand on firmer grounds. I stand on the record. I stand on the orders passed.

Now, My Lords, I am in your hands. Your Lordships have been very kind in affording me this opportunity. I appreciate it very much. I have confidence in this court and I have accepted this opportunity in good faith and with the fullest confidence in your judgment. I have broadly mentioned the outline of the points on which I would like to elaborate. I have come absolutely unprepared today, for although my lawyers meet me, they meet me in a small, congested, suffocating room, 7' by 10' in size, and where one can hardly talk, where I feel sorry for them and let them go even earlier than their time because they start feeling uncomfortable.

Now, if Your Lordships could kindly tell me how long you would want me to speak then I can fix my priorities and cut my arguments and my points. I would, however, like to, not for any other reason but for the sake of putting things in their proper perspective, I would like to say something on the current, prevailing situation in our region and in the world, because believe me, Pakistan today is in a very critical and precarious position. My Lord, this has nothing to do with governments or with individuals. You

might say that I am a very vain man, a boastful man, but surely you can see the notorious void that there is in the country. It is a barren void. One year ago while in Kot Lakhpat Jail, I said that in a year's time the Foreign Minister of India will be making a very harsh statement on Pakistan. I also said that President Sadat would be going to Jerusalem and I predicted the results today especially, the balance of power has shifted so much and is shifting so fast that the sub-continent is in a new political situation, in a new political crisis of grave magnitude.

*The honorable Chief Justice intervened to say that Mr. Bhutto could speak as long as he felt that he had something to say which was directly relevant to his case and the court would be certainly and naturally willing to hear him. As far as the other matters were concerned, although it would be very useful for the country at large and for the honorable judges as citizens of Pakistan, especially given Mr. Bhutto's deep insight into foreign affairs, but as the court saw the ambit and scope of the case, these matters hardly appeared relevant.*

**Mr. Zulfikar Ali Bhutto:** My Lord, I readily accept what Your Lordships has said.

*Mr. Justice Nasim Hasan Shah asked Mr. Bhutto if he would like to continue the following day. Mr. Yahya Bakhtiar pointed out that Mr. Bhutto was tired and that it would be best to resume the following day.*

**Mr. Zulfikar Ali Bhutto:** This is the first time I have come out of solitary confinement. I find it hard to adjust to the equilibrium. I can hardly stand. The honorable Chief Justice asked Mr. Bhutto if he felt he could continue. Mr. Bhutto said that if the court so wished he would continue, as honorable judge intervened to say this was not necessary.

*The court thus adjourned till 9 o'clock the following day. Mr. Yahya Bakhtiar requested that the court may meet at 9.30 a.m. instead, but the honorable Chief Justice said 9 a.m. would be fine as Mr. Bhutto was an early riser.*

**Mr. Zulfikar Ali Bhutto:** Early riser? My Lord, I am not permitted to sleep. In Kot Lakhpat, fifty lunatics were kept near my cell for three months. They would shriek and scream all the time and I could hardly sleep. When I came to Rawalpindi, first the game was to throw pebbles on the roof of my cell. At first I used to think perhaps I was dreaming but then during Ramazan I did not sleep at night. I used to wait for Sehri and then I heard the noise on the tin roof at intervals of fifteen minutes and I realized that pebbles were being thrown on the roof. When that stopped, a new device was adopted. There is a parapet just close to my cell and there is a military guard posted there, so every now and then the guard jumps on the parapet with his boots and, now, that terrible jumping noise like a heavy thud has replaced the pebbles. The noise comes twice and keeps on happening because apparently there is not only one guard but several. I thought last night that I would be spared the ordeal as I was to come to court today, but it happened all the same.

Your Lordships, it is because of my spirit and my determination, it is because of my will power and because I am a leader that I have been able to face this ordeal and have been able to come here. No ordinary man would have been able to come; any ordinary man

would have disintegrated long ago. You don't know how haggard I am. I am finished, for twenty-five days, there has been no water in the death cell. It was restored only yesterday. But if Your Lordship so wishes I can come at 9 o'clock or even 8 o'clock.

*The Chief Justice asked the Advocate on Record of the Prosecution to see that Mr. Bhutto is permitted to get ready in time.*

## CHAPTER TWO: THE SECOND DAY

### A Muslim In Name

*Mr. Zulfikar Ali Bhutto:* Your Lordships will kindly recall that yesterday I said that I would like to begin on the question of “Muslim in name” and the paragraphs pertaining to the subject which are in the judgment of the Trial Court and which are covered by paragraphs 609 to 615, My Lord.

It is unusual in an Islamic state and polity for a ‘kalima go’ Musalman to establish the fact that he is a Muslim. This is, I think, the first time in the history of Islamic civilization that a Muslim President, a Muslim leader, a Muslim Prime Minister elected by a Muslim nation, has one day to find himself in a position where he has to say that he is a Muslim.

It is not only an embarrassing matter; it is a painful matter, Your Lordships, for that day to arise. And how does it arise? It does not arise in the term of a people’s revolt or movement against that individual for not being a Muslim. It comes from an ivory tower. It comes as an opinion of an individual - no matter how highly he may be placed. But he has no *locus standi* on this matter. He may have a *locus standi* on the case itself, on the matters within his jurisdiction. This is neither a matter within his jurisdiction nor is it a subject matter of the determination of the charge for that individual or for that institution or for that Bench to go out of its way to make comments which they are not competent to make.

I will give Your Lordships an example of Haroon-ur-Rashid. In the court of Haroon-ur-Rashid, one of the most eminent Muslim scholars got up in the court and told Haroon-ur-Rashid that suppose I tell you that I no longer believe in God from today and I do not believe in Islam any more. Haroon-ur-Rashid said, I will not believe you. That is not for me to believe, it is between you and God to determine whether what you are telling me is so or it is not so. As far as I am concerned, I am to believe that you are a Muslim because you have been a Muslim. Now that you tell me this, I accept it as an indication of the tolerance of my society. These are the words in the court of Haroon-ur-Rashid, monotheist religions, in the strictest sense (in my view almost all religions are monotheist, almost all believe in God) have a different way of expression of belief. In the scientific sense, the concept of monotheism begins with Judaism and with the Prophet Ibrahim and the successive Israeli or Judaic Prophets that succeeded him. At the culmination of the religious-Judaic civilization, the concept of the chosen tribe emerges.

After that comes Christ and after him comes Christianity. Christ himself says, I am the son of man. Of course, Islam believes in his immaculate conception. Islam prescribes to the concept of immaculate conception of Christ. Not only did Christ say. “I am the son of man;” but Christ said I am the son of a Jew; I am a Jew and a son of a Jew. Has he not propagated a new religion? Does he preach a new religion or is it an extension of Judaism? Christianity established the concept of Trinity - the Father, the Son and the

Holy Ghost. In a way this is a serious dilution of the concept of monotheism, oneness, and indivisibility of the Sovereign of sovereigns.

And then comes the final religion of monotheism, Islam. Apart from all its other contributions, (and I am not a scholar on the subject) Islam restored the concept of monotheism, of the oneness of God. The Trinity concept is not accepted in Islam. In addition to establishing the monotheism, the oneness of God, the second concept is that there is a direct communication between God and man. There is no intermediary in Islam, like the Rabbi is an intermediary in the Jewish religion and the Pope and priesthood of the Christian religion. The Prophet himself says I am merely a Messenger of God. He does not ascribe to himself any contribution of his own to Islam as such. Of course, he was a great political genius, he was a great warrior, he was a great philosopher but he does not ascribe to himself a contribution as his own separate contribution to Islam. He does not claim that this is my *Ayat*. He says that it is all God's and that; there is no intermediary between God and man.

Since there is no intermediary between God and man, there are wrongs, social evils in society, those between man and man, which are punishable here on this earth like theft, goondaism, adultery, etc. But there are also wrongs against God in Islam and those are between man and God to be settled by God on the Day of Judgment. This extent is the extent of direct communication between man and God. What Islam preaches is not the God of Jews or the God of the Christians or the God of the Muslims, but the God that Islam preaches, the God that Islam defines is Rabbul Alameen. He is the God of the Worlds, He is the God of all mankind, not only of Muslims. God the Sovereign of sovereigns, the Absolute Sovereign. But God, the Absolute Sovereign imposes on Himself a voluntary restriction, a self-imposed restriction. He cures His own Sovereignty and says that mercy and kindness are obligatory on Him: *Rahm* and *Karam*.

The Creator of the world, the Creator of the universe, the Creator of this world, of both worlds, the seven heavens, Who has no obligation to impose a restriction on Himself, imposes a restriction on His own Sovereignty and says that God imposes as a self-imposed limitation of *Rahm* and *Karam* of mercy and kindness on Himself, on His Absolute Powers.

*Honourable Chief Justice:* Mr. Bhutto I hate to interrupt. Would you like to come to the point that whether the High Court was justified in making any such remark about yourself or not.

*Mr. Zulfikar Ali Bhutto:* My Lord, this is my very point that nobody can tell me.

*Honourable Chief Justice:* Quite right. So, that is the point. I think we can leave it at that, you see. I mean it is always interesting, but unfortunately we are hard pressed for time. We would like to get home with your criticism of the paragraphs of the judgment itself. So, do you wish to like to say?

*Mr. Zulfikar Ali Bhutto:* My Lord, I can make these criticisms in the context of the relevant paragraphs at least to some extent.

*An Honourable Judge:* You should take it that we at least know this.

*Mr. Zulfikar Ali Bhutto:* I have been accused of not knowing these things.

*Honourable Chief Justice:* No, no. All this Mr. Yahya Bakhtiar has also already commented upon and if one has the time devoted in a different context would be very illuminating, but what is exactly.

*Mr. Zulfikar Ali Bhutto:* Then, My Lord.

*Honourable Chief Justice:* So, the basic point is that what we have understood from you is that there was no justification for the High Court to comment upon whether you are a Muslim in name; you are in fact a devoted Muslim. That was relevant for the decision of this case. So, yes please carry on then. Let us proceed further.

*Mr. Zulfikar Ali Bhutto:* My Lord, as I said earlier that for a Muslim it is sufficient that he believes in *Kalema* and recites *Kalema*... to the extent that when Abu Sufian became Muslim and recited the *Kalema* some of the Prophet's companions thought that his animosity was so great that perhaps it was only a verbal acceptance. The Prophet, however, disagreed and said that once he recited the *Kalema* he is a Muslim. And from that point of view the concept of Islam is a simple concept. It is a fundamental concept. Islam itself is submission. It is a fundamental submission. Fundamentalistic Islam or Islamic fundamentalism is a petrodollar expression, because Islam itself is fundamental. Islamic fundamentalism is a misnomer because of the fact that there is complete and total submission to the religion and so from that point of view also.

*Honourable Chief Justice:* But are they commenting upon your beliefs or your conduct. I think that is more relevant. This is Muslim in name. I think I found - is it in paragraph 611 or 160 - yes 611. That is the paragraph to which criticism is directed mostly. It starts from 609 and then 610. The learned Judge who is the author, he goes on to make observations so this phrase occurs in 611. It is as clear from the Prime Minister.. etc. when he goes on and which may satisfy, so, I think, that would be directly relevant, you see.

*Mr. Zulfikar Ali Bhutto:* My Lord, it is not relevant that when sovereignty is delegated by God Almighty to people, that there is Government of the people, the people chose their rulers. That is also relevant because *amanat* here has been used as Government being a trust. This is relevant. This part is relevant that Government is trust. In Islam the Government is a trust that Government is - our Objectives Resolution also states that it is a delegated trust - of the people and through the people by their chosen representatives. So, the point is that when the people decide on their rulers that only constitutes the Government. It is the delegation which the people further delegate to their chosen representatives. Now, from that point of view also, in Islam, the trust in a Government can only be in an elected Government. In Islam it cannot be in an unelected Government. Secondly, as far as elected Government is concerned, the first national elections in Pakistan were held in 1970 and I was elected by the people of Pakistan.

*The Court observes that the conduct of Mr. Zulfikar Ali Bhutto's government is not relevant to the case.*

Mr. Zulfikar Ali Bhutto submits that the Trial courts' personal observations are a manifestation of clear bias.

*The chief Justice asks Mr. Zulfikar Ali Bhutto not to dilate on the nature of the trust placed in the hands of the elected representatives of the people as it is not an issue before the Court.*

**Mr. Zulfikar Ali Bhutto:** I was the first leader of Pakistan to have the authority to do that in terms of the Islamic concept. This is why I was saying about the delegation to the people.

**An Honourable Judge:** Islamic Summit was held in your time....

**Mr. Zulfikar Ali Bhutto:** Islamic, in terms of the fact that this was the first time in 1970 that the people of Pakistan chose their leader, chose their Party and gave them a majority, and that majority of the people of Pakistan are Muslims. And during the election campaign, much worse things were said. *Fatwas* were given, because we were progressive. We believed in modern and contemporary standards and problems of society. *Fatwas* were given that this man is a "kafir". This Party is "kufir".

And these were given not only by *Ulema* of Pakistan, but they also imported some from abroad to give these kind of *fatwas*, and these *fatwas* were put in the election campaign. They were propagated in the election campaign. Apart from that, I contested elections in Lahore against Allama Iqbal's son, Javed Iqbal, and I was in Lahore only for one day. I defeated him by 40,000 votes. Now the people of Lahore have not gone purblind that they should choose me after all this campaign by the reactionariest and the obscurantists, and give me an overwhelming majority.

In Multan, I gained victory by 70,000 votes against Maulvi Hamid Ali. The people themselves, who are Muslims majority of the people are Muslims they elected me as their leader as a Muslim. I took office as President in that capacity, according to Islamic jurisprudence, Islamic social polity and political policy. After that, what interpretation can be given for such remarks to be made? I was giving only that preamble.

Usurpation is not possible in Islam. According to Islam, it has to be a democratic polity, it has to be a government of the people, elected by the people and through the people. There cannot be usurpation of government in Islam. Because usurpation was the main quarrel in Islamic history. Why is it that in Islam illegitimacy cannot be legitimized? An illegitimate child can be a burden on his parents, but he cannot inherit. He cannot be legitimized, an illegitimate government cannot become a legitimate government.

## The “Principal Accused”

*Mr. Zulfikar Ali Bhutto:* I am not the principal accused in law. It is a misleading terminology. Consider the effect it will have on the minds of the people to continuously hear me being called “the principal accused” for six months?

It has almost become a term of art in the terms of the judgment. This is also then bias. Also “arch culprit”. I take exception to that even in terms of the judgment and in terms of the finding.

The Federal Security Force, if I may say, Your Lordships, was not created for perpetration of the personal vendetta. The Federal Security Force was created because in almost all federations, subject to correction, there is a force like the Federal Security Force, which ties the provinces together in terms of law and order, in times of disturbances. For that purpose the Federal Security Force was created, not by me, but by the Parliament of Pakistan. The Bill was fully debated there.

Of course, the complainant has made some remarks against the Federal Security Force to tie it into the conspiracy of this false case against me. The Prosecution witness No. 2 has taken almost verbatim the observations of the complainant in the National Assembly. The link of that conspiracy may be seen by comparing the two statements. For instance, it is alleged that the F.S.F. wanted to swell my meetings. Now My Lord, the Federal Security Force started with about 5,000 to 7,000 and at the most it went to about 18,000. In the big cities of Pakistan like Karachi, Lahore, Multan 18,000 or 5,000 or 7,000 people would be drop in the ocean. So far at least, I have not had any problem of having masses of people coming to hear my speech as for me to create a special force.

The Charter of the Federal Security Force and the Federal Security Force itself was enacted by Parliament and not personally by me or for my personal use. There was no personal oath P. W. 2 rather said that there was no personal oath. On certain occasions the co-accused has said that there was a personal oath and they were bound by that personal oath. They have taken that plea. But, on the other hand, they were so much bound by this personal oath that some time they felt “sorry” for the persons because they were old, some time they felt sorry for the ostensible target because he was young and they did not fulfill this personal oath. Some time they did not feel like it.

There must be an inherent capacity to turn that instrument into such an abusive force. The Federal Security Force has been linked with me in this case as if it was some kind of a personal force of mine, which I am trying to say is not at all correct. The charter of the force says it is not correct. Apart from that the FSF was under the Ministry of Interior.

*Note:* The trial court had observed in its Judgment: “He has used members of the Federal Security Force for personal vendetta and for satisfaction to avenge himself upon a person whom he considered his enemy. For his own personal ends, he has turned those persons into criminals and hired assassins and thus corrupted them”. Mr. Zulfikar Ali Bhutto elaborates on the provisions of the FSF to demonstrate that they cannot be turned into the instrument as alleged by the trial court in its finding.

**Mr. Zulfikar Ali Bhutto:** My Lords, this nation of 70 million people, the country, is a poor country. Even in advanced countries crimes take place. There is not a perfect law and order situation anywhere. There is not an ideal situation in which society functions. Every crime or wrong is not thrown on the doorsteps of the President of a country or the Prime Minister of a country. Each and every heinous crime or wrong that takes place in a country does not mean that the President or the Prime Minister of that country is running that country whimsically. See the breakdown of law and order in countries like Italy. Terrorists are emerging everywhere. These are factors of historical importance and have historical causes. If you bring a tank on the street, terrorism will be the off-spring.

All these are not the questions that should be thrown conveniently on the doorsteps of the Prime Ministers or the Presidents. Aldo Moro was kidnapped by the Red Brigades. He gets shot. Does that go into the account of the Italian Government or is the Prime Minister of Italy held responsible for the kidnapping and murder of Aldo Moro? I could go on recounting so many other things.

Here, in the past 18 months of Martial Law, with Martial Law Regulations, Martial Law being supreme, and, all that, see the amount of crime that is taking place in this country, the amount of dacoities, the amount of kidnapping. There have been political assassinations. Makhdoomzada Hasan Mahmud's brother gets shot in broad daylight in Bahawalpur. Murad Jamali, an important tribal leader, gets shot in Quetta and there is some other Jamaet-i-Islami man in Sanghar who gets shot. These things are happening today under Martial Law. Would you throw everything on the doorsteps of the executive, especially an all-powerful, all-mighty executive, answerable to nobody, neither answerable to man, nor to a Parliament nor to anyone else. Each and every one of these crimes cannot go to the '*khata*' of the executive.

**Honourable Chief Justice:** All right. Yes, so, you say that these are not justified. No head of the government can be held responsible for those acts.

**Mr. Zulfikar Ali Bhutto:** For each and every act that has taken place.

**Honourable Chief Justice:** All right, then 611. "It is as clear from the oath of the Prime Minister....."

**Mr. Zulfikar Ali Bhutto:** Yes, My Lord, that is a very important one.

**Honourable Chief Justice:** That the Prime Minister of Pakistan must be a Muslim.

**Mr. Zulfikar Ali Bhutto:** Muslim and a believer in the totality and the teachings of the holy Quran and Sunnah. He should not be a Muslim only in name who may flout with impunity. That is why I was mentioning the first part that, to be a Muslim he does not have to get through a ritual that he is a Muslim. Basically it is enough if he recites the *Kalema* and claims to believe in it. Therefore, I was giving these examples in that sense. This is very relevant. And then apart from that fact, not only the people accept him as a

Muslim in a Muslim society, in a Muslim country, but the people accept him with an overwhelming majority as their Muslim leader.

This being the position, you are not repudiating me. You are actually repudiating and insulting the people of Pakistan. You are calling them not good Muslim; all of them are Muslims in name only. Not only me but all those people who have elected me and my Party to the Assemblies and will even tomorrow do the same. They are being condemned. This is an attack on the populace also, that they should elect a person who is a Muslim in name and who does not believe in Islam. It is not only an attack and an insult on the person elected but even on those who elected such a person.

In that context of bias: If I was not a good Muslim, leave alone my election, leave alone everything else, Maulana Maudoodi would not have come and lived in my village as our guest for three months to get treatment by a Hakim of ours. I would not go to his village if I did not believe him to be a Muslim.

*Honourable Chief Justice:* We did not know this fact. An Honourable Judge: When was this?

*Mr. Zulfikar Ali Bhutto:* 51 or 52. He had kidney trouble and we had a very good Hakim. He came to our village and got treated and he was staying with us.

*Honourable Chief Justice:* Probably at that time he was not aware of your belief.

*Mr. Zulfikar Ali Bhutto:* My Lord, everyone knows it. They were fully aware. You may kindly look at the amount of mosques that we have built in our place. The holy Quran is recited for 24 hours in my village.

*An Honourable Judge:* You need not have to justify it.

*Mr. Zulfikar Ali Bhutto:* Twenty-four hours the holy Quran is recited. That is not in my shoes. You do not know how much these remarks hurt me. I would prefer hanging to these remarks. I would prefer the gallows to having these charges made. A person who has been involved in the Pakistan movement from the age of 15, whom Pandit Nehru told in 1946: "Why you want Pakistan? You can be the Prime Minister of "Mutaheda Hindustan". You are such an intelligent man". I said I want an Islamic State. I want a Muslim state. We are fighting for a Muslim state. I do not want "Mutaheda Hindustan". It hurts one's feeling. A person who from the beginning, from the time he began to think, has been associated with the Pakistan movement, with the Quaid-e-Azam's concept of Pakistan, which has been perverted by his enemies, in power at the moment, to make such accusations. Quaid-e-Azam's first speech in the Constituent Assembly of Pakistan was a secular speech, a modern speech, a progressive speech, a speech of equality. And that is all being perverted today. Those who opposed Pakistan are running country, who opposed him tooth and nail. They called him a *Kafir*, and a Muslim in name.

**Honourable Chief Justice:** But they are not the authors of this judgment. Let us come to para 612, if you like. Shall we proceed?

*Mr. Zulfikar Ali Bhutto submits that Islam does not believe in the privileged classes and the Pakistan People Party has been fighting the privileged classes who are the exploiters of society. Mr. Zulfikar Ali Bhutto submits that the Chief Justice of the trial court is a part of the exploitative machinery, perpetuating privileges as he is the Chief Election Commissioner.*

*In the interchange it is said that the trial court stated what Hazarat Abu Bakar said. Mr. Zulfikar Ali Bhutto replies that instead of practising what Hazrat Abu Bakar said the Junta is preaching, and that his grievance is that the Junta is talking against the privileged class and in practice protecting it and resuscitating the private sector.*

*The Chief Justice observes that the statement has been made by the Judges of the Lahore High Court.*

*Mr. Zulfikar Ali Bhutto says that as the Chief Election commissioner, the chief Justice is part of the Executive.*

*The Chief Justice objects and says that the judgment was made in Mr. Maulvi Mushtaq's capacity as Chief Justice and not Chief Election Commissioner.*

*Mr. Zulfikar Ali Bhutto says that the sermon in paragraphs 612, 613 and 615 are preached but not practised by the executive. "Moreover, the said paragraphs are "a clear demonstration and manifestation of bias" and that it vitiates the whole trial.*

**After further interchanges, Mr. Zulfikar Ali Bhutto resume:** I consider myself a humble Muslim. When I was the President Islamic Summit Conference was held in Pakistan and King Faisal who was the king of Saudi Arabia and Custodian of the holiest shrines, of the holiest cities of Islam, proposed that I should be the Chairman of the Islamic Conference, a proposition from King Faisal himself which was unanimously accepted and agreed to by all participants. I was not only chose as the Chairman of the Islamic Conference but still continue to be the Chairman of the Islamic Conference. If the Islamic Conference were to be held tomorrow, I would be presiding it. How? Of course, the arrangement will have to be made by Your Lordships.

**Honourable Chief Justice:** Unless they elect a new Chairman, the previous one must...

**Mr. Z.A. Bhutto:** A new Chairman is to be elected. First the existing Chairman takes the Chair, he presides and then somebody proposes, by King Faisal had the distinction of being proposed

**Honourable Chief Justice:** But would it not be normal, the host country....

**Mr. Zulfikar Ali Bhutto:** Not necessarily. I was expecting that question. I would say that if king Faisal, who was a very well informed person and knew me from 1958, if he had any doubts, if he had even a scintilla of the thinking that is reflected in 609 to 615, he would have very politely said why should the conference be held in Pakistan? He would

have sidetracked the issue and said the conference should be held somewhere else. There are many Muslim countries right from Mauritania, Morocco up to Indonesia. He could have chosen any other place. Tehran was keen to hold the conference. He insisted that it should be in Pakistan.

Not only that, he paid me compliments for my services to Islam. It is not that he just chooses me and says I propose Mr. Zulfikar Ali Bhutto. But he gave reasons, mentioned the services I had rendered to the cause of Palestine, to the cause of Islam. In that context he proposed my name. If he had thought that I was not a good Muslim, then he would have said: Let us hold it in Cairo, Baghdad, and Damascus please. The conference could have been held in so many places. He co-sponsored it and, it was the unanimous decision. It was the first and only Islamic Summit held in Pakistan in our history as a nation.

Then the 90 year-old Ahmadi problem was amicably settled in my time when I was the Prime Minister. It was unanimously settled. And then the Constitution itself, the 1973 Constitution, which is a unanimous Constitution of consensus of all democratic forces. You see the provisions on Islam in that Constitution. Islamic Ideology Council, various other aspects of it are all there. And apart from that the Seerat Conference and the other questions. For the first time in Pakistan's history Hajj was made free for everyone. Quota restrictions were removed for the people of Pakistan to perform Hajj. Friday, which was not the holiday, which was a working day, right from the time of the British up to 1977 was declared to be a holiday by my government. Till then, Sunday was observed as a holiday.

Red Cross was changed by me into Red Crescent, and all previous Governments had said that it was not possible to change it to Red Crescent. It remained Red Cross right from 1947 to 1974. In 1958, when I was a Minister this issue was raised but it was argued that it was not possible to change the name. When we came to office we said it is possible. We changed it into Red Crescent. Prohibition was abolished in my time; posterity will tell whether that was a good thing or not. However, it was introduced. Taking into account the illicit liquor coming from India and how much of our foreign exchange is going to India from this source....

*Honourable Chief Justice:* You are not having second thought about that?

*Mr. Zulfikar Ali Bhutto:* I am having very serious second thought because, you see, this crime between man and God.

*Honourable Chief Justice:* Man and God, yes.

*Mr. Zulfikar Ali Bhutto:* This is not a crime between man and man and therefore...

*Honourable Chief Justice:* Yes, it leads to over-intoxication.

## Motive

*Mr. Zulfikar Ali Bhutto:* My Lord, Motive is important generally also motive has been made more important in this case in view of the observations made in the trial court and in the judgment before Your Lordships, and the fact that although I am described as principal accused, arch criminal, actually if there is any link or thread, it is very thin or thick link or thread depending on my discussion with Masood Mahmood. Secondly Saeed Ahmed reminding Masood Mahmood of something that I had said about the complaint. Thirdly if I had a motive otherwise independent. If I can succeed in establishing before Your Lordships that there is no link then there is a break. Whatever happens afterwards is not my concern. I am not involved. I am not concerned in it as a matter of fact. At one stage, although it was not suggested in the legal sense, it was said that Masood Mahmood might have had his own motive for committing the offence. On that remark, the State counsel said half of his case has been proved! Half of your case has been proved: against whom? Maybe against Masood Mahmood, may be against the confessing co-accused but not against me. I say this because the defence is not obliged to give any counter reasons for motive or for the crime. Evidence means the prosecution evidence. This is why I objected yesterday to the question of fabricated in inverted commas in the order passed by the lower Court. Now can you say fabricated in inverted commas it is fabricated? It is for the prosecution to prove beyond reasonable doubt that it is not fabricated.

Therefore, the point is that we do not have to even take any position on substitution theory, or any probable theory or a propale motive or a probable cause for the crime. We can just keep quite. Not only that, I would say, subject to correction, even if we admit, as in wollmington's case that: I took the gun, I shot my wife, it still falls on the law, on other aspects of the law. If the test is not met, the case falls, Hence, the question of half the case being approved on that remark not based on law, might only be an expression of opinion. But it is not an expression of law.

Now paragraph 216 of the judgment, referring to Mohammed Asghar Khan, who was SSP Lahore says; "He gave very significant answer to the question whether the statements of the witnesses had not been recorded. He stated that the investigation of blind murder cases started on the basis of motive". So, Mohammed Asghar Khan, SSP Lahore, says this is "a blind murder case" and we can only proceed by going into motive. He goes further to say that in the present case motive was clearly mentioned by Ahmed Raza Kasuri in the First Information Report. The case could subsequently be investigated only by interrogating "the principal accused" who has been named in the FIR, but neither he nor his subordinates were in a position to interrogate the then Prime Minister, the question of satisfaction or dissatisfaction was therefore irrelevant.

In this so-called blind murder case, the motive was attributed to me. I could not be investigated because I was Prime Minister. Therefore, the case cannot be investigated satisfactorily further. Now please read 216 with paragraph 506 of the judgment the trial court says "I am in complete agreement with the statement of Asghar Khan prosecution

witness No. 12. To start with the investigation officer should have had access to the principal accused in order to interrogate him since his name was recorded in the FIR". So, it is not just a question of the "professional" view of SSP, Lahore, but the judgment has said that we are in complete agreement with him that this is a blind murder case and it can only proceed and start with any satisfaction when I should be interrogated and not otherwise.

*An Honourable Judge:* Interrogated first.

*Mr. Zulfikar Ali Bhutto:* Interrogated first before the second step can be taken or subsequent step can be taken only thereafter, I can support the condition precedent; however my interrogation is condition precedent. The anomaly My Lord, comes in paragraph 216 where the DIG, who is a superior of the SSP, smells a rat straightway. So, it is not a blind murder case. The DIG comes to a contrary view to his SSP. He immediately smells that there is some FSF involvement. So I first of all say that there is a contradiction here between the SSP and his DIG. The DIG immediately thinks that in some form FSF is involved, but the High Court agrees with the SSP.

Now I say in furtherance to that, of course, the High Court is at liberty to agree with one view or the other view. But I also say that if this is the position, the logical consequence would have been that when the reinvestigation of the case started after Martial Law, in view of the fact that the officers who are still in their positions or the reinvestigation officers who started investigation afresh should have first come to me. Because that is the condition precedent and apart from being the condition precedent, if I have had not been interrogated in that case which went untraced, they should have then come straight to me and interrogated me. I was available.

But I was not interrogated. On the contrary, approximately at the time when all this was happening, Masood Mahmud's confession (on 13<sup>th</sup> or 14<sup>th</sup> August, followed up with other developments). I was in Rawalpindi. On 28<sup>th</sup> August, I was invited and was told that in this country I was the best person, with all my experience, to let them know what should be the future shape of the Constitution. I am to be arrested in a few days, and I am being told: 'Why don't you render a national service and give us a draft on what should be the general principles?' I told them that this is not my function any longer. I politely declined. But this was the way in which the investigations were going on.

All were taken into custody; all were taken into safe houses. And after four weeks or six weeks in custody someone makes a 100 pages statement "making a clean breast" another makes a 30-page statement of "a clean breast". Various others are investigated, their statement recorded. But I am not brought into the picture at all. I am merely arrested dramatically on the 3<sup>rd</sup> of September in a manner which, if I go into again, Your Lordship might say that I am not preceding according to the record. But that is also a very important factor, the manner of my arrest in Karachi. How my house was broken in.

I was not in hiding. We do not expect that. The way the commandos came, fifty/sixty commandos, every room, with stenguns, breaking open our doors. My young son got hit

on his head. These things were quite unnecessary. My servants were beaten up, but there was no need for it. The door bell could have been rung, I would have gone out.... Coming into my bedroom, with rifles over my head! I had just finished "Sehri"; I was about to sleep.

All this drama was enacted. Then I was brought to Lahore to a cantonment bungalow, kept under army custody. Everyone was told that I was under the FIA custody, the FIA were investigating my case. Nevertheless, when the time comes for re-investigations, the re-investigation does not begin with me.

And then also, it is not an investigation. It is an arrest, downright arrest in which I am taken, and threatened by Abdul Khalid, not only taken but threatened by Abdul Khaliq, My Lord. Your Lordships were kind enough to pass an observation the other day that evidence was not under pressure. With all due respect and submission Your Lordships, if you take a tentative view of that nature from this Bench, when there is preponderant evidence of pressurization, indeed preponderant evidence, I myself, as I had mentioned in the High Court, when Abdul Khaliq was there, and when he said that he had not pressurized Mian Abbas, at first kept quiet I did not want to get up, because I knew what the immediate reaction of the High Court would be. But when he was trying to become a great "Momin" and a pious man, (he had got a beard My Lord) that "I would not do a thing like this." Then I had to get up. I told him: What are you talking? You had the audacity to try and threaten me when I was in the cantonment bungalow; until I gave you a piece of my mind, you did not keep quiet. When you were trying to threaten me, how can you say you have not threatened these people?

The evidence of motive is furnished by the testimony of prosecution witness No. 1, prosecution witness No. 2 and prosecution witness No. 3, and the same is corroborated by the documentary evidence produced by prosecution witness No. 1 and No. 2. So the three individuals that are concerned are the complainant himself, Masood Mahmood, Saeed Ahmed, and the so-called documentary evidence produced by prosecution witness No. 1 and No. 2 insofar as the motive is concerned. Then, My Lords, comes paragraph 453, I am a layman, I may be entirely wrong. Your Lordships are in the best position to judge but in my view, this is all hearsay, and the whole of paragraph 453 is hearsay.

**Honourable Chief Justice:** I think they have relied upon what Ahmed Raza Kasuri has said.

**Mr. Zulfikar Ali Bhutto:** Yes, but he has not relied upon his own personal information. He is not a party, he is not a witness to these scenes and to these occurrences.

**An Honourable Judge:** He was questioned pointedly by the defence and he said 'yes' this is based on my opinion. This is his answer. So you are quite right that this is his opinion.

**An Honourable Judge:** His opinion may not be opinion of A, Y, Z....

**Mr. Zulfikar Ali Bhutto:** Or for instance, I leave out 'IDHAR SE HUM UDHAR SE TUM' leave that out. But now the Lahore meeting of 28th February, just by way of example. He said that I said

کہ میں ان کی ٹانگیں توڑ دوں گا۔ ایک طرف کا کرایہ لے جائیں۔ اگر جناب ایک طرف کا کرایہ ان کو ملتا ہے تو میں اس کی ٹانگیں کیسے توڑ سکتا ہوں۔ وہ تو پھر وہاں ہوں گے۔ وہ دھاکے میں بیٹھے ہیں۔ میں یہاں سے ان کی ٹانگیں کیسے توڑ سکتا ہوں۔

I did not say such funny things. Actually these reactionaries, obscurantist, anti-people press were hamstringing, trying to destroy my speeches and statements. This is so obvious: "If they go to Dacca, they should take one-way ticket". How their legs would be broken if they take one-way tickets and remain in Dacca?

*An Honourable Judge: We have some experience here in the court also.*

**Mr. Zulfikar Ali Bhutto:** There is the big Indian Ocean separating Lahore from Dacca. How can I break their legs from Lahore when they are in Dacca with one-way tickets? I said they will have no legs to stand on.

That sort of thing I said

کس منہ کے ساتھ یا رہات کریں گے ان کے ساتھ۔ کیا آپ کو آکر کہیں گے۔ بس ٹانگ پر کھڑے ہوں گے کیسے آپ ذکر کریں گے کیا کر کے آئے وہاں سے۔

In order to save time when I come to the subsequent conduct, may I just make a few observation here on subsequent conduct? It will save time.

Here my signature on a file is interpreted to be as token of having seen the file. That is all. In another place also, it has been said that the signature means the token of having seen the file as said in the other reference to signature being a token of his having seen it. That means my signature when I sign without a comment, is interpreted as my having seen the file. But when it comes to the so-called advice that Saeed Ahmed gave me to publish parts of the Shafiur Rahman Tribunal report (statements which had already been published by newspapers there also I have only signed but, My Lords, a very different interpretation is given. It is said, "He has agreed. Now why can't there also be the same interpretation, that it is a token of my having seen it? But this is only example in relation to what is going to come.

Paragraph 464: Here also I would like to make one statement on the question of conspiracy. Here it says that after the altercation in the National Assembly on the 3<sup>rd</sup> of June, 1974, I made Masood Mahmood responsible for execution of the order already given to Mian Abbas. So it contradicts the contention that this altercation, or this exchange of views was the reason, the motive for my having become so angry and agitated that I wanted to rub off the rubber. Here they say I have already given this

order before June 3, 1974 to Mian Abbas. So the motive here does not start after 3rd June, 1974. This is the judgment in relation to conspiracy My Lord.

The second point is that the evidence, beginning with 464, proves the strong attacks by Ahmad Raza Kasuri, prosecution No. 1, on the principal accused and his reaction as well as reaction of his followers. When in the F.I.R. it is put to him by Mr. Justice Waheeduddin there may be other reasons that this reason may be but there are other factors also have you excluded all other motives. Mr. Justice Alleem asked: 'Have you excluded all other motives?' Mr. Justice Waheeduddin said. But this can only be a reason. It does not stop there.

In this Islamabad F.I.R. he gives four possible motives to Agha Safdar. He gives to the Shafiur Rahman Tribunal four possible motives for his virulent attacks. There are four possible motives. Then when he brings a privilege motion on the Islamabad incident, he mentions no motive. But the Islamabad privilege motion comes after 3rd of June. It is the closest to the 3rd of June. November 10th is the farthest from the 3rd of June. After the 3rd of June comes the privilege motion of 24th of August. He does not ascribe any motive either in his FIR or in his statement under section 161 to Agha Safdar whose co-investigator, Nasir was in the court but he was not allowed to be put that question. He says this is over-ruled although in other cases, such questions were permitted. And that, in the privilege motion he makes no mention of this. That also has to be read in terms of motive and in terms of F.I.R. that was lodged on the 10th of June. This is for 464.

I would like to draw Your Lordships' attention to paragraphs 366, 367, 368, 369, 370, 371, 372, *i.e.* from 366 to 372. I start with 362. An objection was raised on Evidence Act Section 32. Now, I am explaining that there is an exception to the rule of hearsay and the evidence of Bajwa can be taken into account as an exception. Their Lordships have mentioned two instances of the exception, (1) when the statements was made by such a person in the ordinary course of business or in the discharge of his professional duties and (2) when the statement, if true, would expose him to criminal prosecution. Now, on the basis of that and incidentally in quoting the cases Their Lordships have referred to Shahnaz Begum against all the honorable Judges of the High Court of Sindh and Baluchistan, which was not held in camera although she was the complainant against the whole High Court of Sindh and Baluchistan.

Well, that is beside the point. But the question which arises here is that he says here that under 371 these illegal acts of Bajwa, (he is referring to with a view to saving the actual offenders from legal punishment). The threats would have exposed him to prosecution u/s 406. Bajwa would have been exposed for his so-called interference subsequent conduct u/s 506 of the Penal code and in 372 it says that the deeds for Bajwa would have made him an abettor.

Now, my point is that if Bajwa, a subordinate of Saeed Ahmed, working under Saeed Ahmed, working directly under Saeed Ahmed and under his instructions; if Bajwa becomes liable for Whatever his activities in the subsequent conduct to be punishable under 509 and to be an abettor, in other words he is a co-conspirator, he is an accomplice and, therefore, his evidence u/s 32 comes under exception; if this applies to Bajwa, I say

to Your Lordships, this applies with much greater force to Saeed Ahmed Khan who has been regarded as an independent witness. It is so firstly, because Saeed Ahmed Khan is his superior and Bajwa is working directly under him. So, the presumption is he is working under the instructions and directions of Saeed Ahmed; he is not working on his own. Moreover, Saeed Ahmed has already spoken about the opening of files in December 1973. Then he has spoken about his imaginary conversation in June 1974 that after I had finished the long discussion with him, I asked him do you know Ahmed Raza Kasuri?

My Lord, the Chief Security Officer, who has been in the police, I.G. Police, Additional I.G. Police, a real old hand and what Your Lordships would rightly call a bad egg but so many bad eggs have been laid in the last months, I do not know, which hen is there to lay such bad eggs that I have seen laid in the last 18 months) that this bad egg and this nosy Parker, who goes about shifting into other departments, into everything else, what is happening here, and I keep telling him, do not interfere in the foreign affairs, do not interfere in other departments, I got complaints from the Foreign Ministry, do not interfere in the provincial governments, and he does not know Mr. Ahmad Raza Kasuri who is supposed to be a political rival of mine, who is supposed to be a great menace to me? My Chief Security Officer says, 'I do not know him'. Innocently he says, 'I did not know him in 1974'. But he opens a file on him in December 1973. And Saeed Ahmed is generally in the National Assembly; he does not know a member of the National Assembly who the High Court says attacked me day in an day out in the National Assembly and outside the National Assembly and Mr. Saeed Ahmed Khan, the Chief Security Officer, says 'I do know him". All these people have tried to exculpate themselves. Each one of them has tried to exculpate himself and inculpate others.

Masood Mahmood says he meets me almost every day. Masood Mahmood says that when I travel to Multan he is with me in Multan, when I travel to Quetta he is with me in Quetta. He is with me wherever I go, because he is the FSF, he is everywhere. He says he has access to me. 'I have the green telephone, I use the green telephone'. Why should I introduce this element, this foreign element into what the Special Public Prosecutor the late Mr. Anwar describes, as "a close circuit crime". A very close circuit crime by the very nature of it. If I was to be criminal, I would not just throw the crime around like that and say, "Go and remind him that I gave him a message about Ahmad Raza Kasuri.

Bajwa, liable in 509, liable as an abettor, liable as an accomplice, coming within the exception of the Evidence Act section 32 and, on that basis, he is a criminal, but Saeed Ahmed Khan, his boss is made an independent witness, in spite of the fact that he opens the so-called file, gives message and not only that, is more deeply involved in the subsequent conduct, so to speak. How he is an independent witness! An exceptional witness. He is a tainted witness and one tainted witness cannot change another tainted witness. If Bajwa is a criminal, he is included in the crime, and then Saeed Ahmed Khan is a bigger criminal.

I am a Muslim in name but Melvin Rupert Welch is a Muslim, a good Muslim. Melvin Rupert Welch Sir, now after all.

خدا کے لئے نام تو بدلو۔ کہیں تو مسلمان کا نام لکھو۔ میلون روپرٹ و ویلش خود کو  
لکھو اور نہیں تو لکھو اور میلون روپرٹ و ویلش۔

### Rupert Welch

Melvin Rupert Welch is a Musulman, a very good Muslim and he is accepted straight away as a very god Musulman and the Judgment relishly keeps saying Melvin Rupert Welch, four times they have used his full name Melvin Rupert Welch.

If it is a Rupert of Hensaw or someone like Melvin Rupert Welch, I am glad that at least there is one Welshman in the whole of drama. This one Welshman - God knows from where he came into the thing also is not a criminal, a corroborator. He is a good man. But he tells Masood Mahmood that he will do criminal things because he is afraid that he might be held for anti-state activities if he did not oblige.

Saeed Ahmed is a conspirator if there is a crime, if Bajwa is a conspirator. But I go further Your Lordships. I say not only Saeed Ahmed and Melvin Rupert Welch and Bajwa come in terms of this category but I would like to invite your attention in this connection to Asghar Khan in paragraph 222 in which Asghar Khan tells Waris to go to Saeed Ahmed in Islamabad, Mohammed Waris, who is made in-charge of investigations.

There is conflicting evidence on this. Some say that he was already in the charge before Saeed Ahmed arrived; others say that Saeed Ahmed put him in charge, but that is not the point First of all, this Asghar Khan shows indignation in the hospital and then in the earlier reference he says 'it is a blind murder case, how it can be investigated?' Then he completely collapses. He immediately tells Waris you go to Islamabad; you have been called by Saeed Ahmed Khan. He is in charge of the investigations, you go. He also becomes a party to the crime and asked for his explanation for not going. Now in the next paragraph Wakil Khan also becomes a conspirator. He also becomes a corroborator and an accomplice.

Now the question is, My Lords, there are two approvers and approvers' evidence is always tainted. It has to be reliable, not only reliable (even if it is reliable), it has to be sufficiently corroborative. The two approvers both go as far as opening the door of section 10 is concerned. Then we come to Saeed Ahmed. Apart from the other contradictions and absurdities on the face of the record, Saeed Ahmed has shown that he is the corroborator because of the reference made to Bajwa. He is not a subordinate to Bajwa. They are working together.

It is not that the one subordinate does, as has been said by the State counsel that conspirators need not know each other. But there must be an agreement. There must be *actus reus*. Conspirators need not know each other if the agreement itself is *actus reus*. The test is if all of them are moved by the agreement. Because if the agreement itself has become *actus reus* then the test is a very exacting test for them. The question arises of

Saeed Ahmed Khan also being tainted as are Bajwa and, of course, Melvin Rupert Welch.

I will just take a minute on 385, when Raja Nasir Nawaz is brought into the dock. I am not allowed to prove Agha Safdar and why Agha Safdar was not called. We have gone into all that. My point here is, according to my reading the burden of proof is being shifted on me in this paragraph. How as it being shifted on me? He was not allowed to prove this document through prosecution witness 23 for two reasons. Firstly, identity of handwriting of the Deputy Superintendent of Police was established. It would not have proved that the statement was really made by Ahmad Raza Kasuri. It would be necessary for the principal accused to prove by legal evidence the fact that the statement was made by PW 10. In the end, answer is proposed to have been recorded. Second ground was that the witness did not produce the originals. So, this is my comment on 385, My Lord.

Now I come to an important matter, My Lords, which is on paragraph 402. 402-the learned Public Prosecutor objected to the admission in the evidence of Photostat copy exhibit No. 3/16-D. The document was admitted in evidence subject to the objections.

This is a report of Saeed Ahmed Khan dated 29-7-75 that Ahmed Raza Kasuri had a meeting with him and requested for audience with the principal accused. My endorsement is: 'He must be kept on the vails, he must repent, he must crawl, before he meets me. He has been a dirty dog and he has called me a mad man. He has gone to the extent of accusing me of killing his father. He is a lick, he is ungrateful, let him stew in his juice for some time. Then there is another endorsement of the same date signed by the principal accused as reading. 'Please file' and addressed to the Private Secretary. The judgment goes on to say in 565 that this is a forgery. Now I would like to speak on this document because this is my document.

*Honourable Chief Justice:* Yes, yes.

*Mr. Zulfikar Ali Bhutto:* This is not the only file relating to a matter of this nature about a man in the Party, the complainant, where I have endorsed the file to Saeed Ahmed Khan but said it should be returned to me. When I have sent a file to him on him (Kasuri), I have not said "take action" or something like that. I have said, "see it and return it to me".

Now, I think, it is in two places, but definitely in one place where he has written to me, where I asked, after perusal return to me. Why return it to me? First of all, My Lords, the complainant did not occupy any position in Government. He was a MNA. There were many MNAs. He was not a Minister; he was not a Minister of State, so there was not a connection between him as far as Government is concerned but only as far as the party is concerned. That is number one reason why I did not send the file to an official, or wanting to send it to him to read it, but asking back for it. So, I had second thoughts and I said to myself, why send it to him? It is a Party matter. I know the subject. For six/seven months Saeed Ahmed and Bajwa have been pestering me that Kasuri wants to join the Party As a matter of fact, there were other people making similar efforts. There

were many emissaries coming on his behalf, saying he would like to rejoin the Party, that there was a misunderstanding.

I was not giving that kind of importance to the initiative taken by Saeed Ahmed or Bajwa. There was Izzat Hayat Khan, there were others. Why should I mention names? There were many people he was sending. As a matter of fact, at one stage, he even said that he was rendering a service to the Pakistan Peoples Party by remaining in Tehrik-i-Istiqlal, because he was holding it from going into N.D.F. or rather UDF. I sent the reply back thanking him for his meritorious service. I had it conveyed to him that I did not mind if they joined the UDF.

It was strictly a Party matter. Even in the Party, I did not know whether to put it up in the Central Committee, because in the Central Committee there was great dislike for him. They thought he was unbalanced, and they thought I had given him too much boost and that I was always trying to protect him. So I was in a double mind, whether to send the note or not to this man Saeed Ahmed because he was not the only one concerned. Secondly, it was strictly a Party matter. I was in double mind whether to even take it up in the Central Executive Committee of the Party because it had been taken up before and they always rejected it. They said it was good riddance, etc. So this is how I subsequently said "please file". It has been said inks have been changed. My Lords, I have not used a pen for many years. I use that felt pen. Two or three of them lie on the table. I pick them up, use them. On all my files you will see felt pen notings. You can call for any of the files. Since these felts came into operation, about three or four years ago, I found them more convenient. You can throw them away when it is finished. So all the files, if you call for them, without exception, you will find the nothings generally in felt. So it may be that two felts were lying on the table. I might have put the earlier one, thought it over about sending the file to Saeed Ahmed and may be used the other one to write "please file". I might have used the same. I have given this information since ink has been mentioned. But then, why didn't you test it to see if the ink has been erased?

No My Lord, the point is that if I wanted to establish an alibi if I want my life to depend on this one document, if I had a guilty mind, certainly I would not be placing solely my defence on this one obscure document which is such that I would have in that event used very sedate words. This is spontaneous. I would not have called him a licker, or dirty dog, or something like that. I would not have used such words if I had to produce it before not only this honorable court but in any court. I would have tried to use the best language, if it was in my mind that it would be needed, or may possibly be needed in any court. You can see from the spontaneity of the words that there is no question of my trying to rely on this one little straw; that if I had a guilty mind, the only thing I have with me, only thing I carry, the only precious possession to save my life is this, and this is also not the original document. Why should not then I take the original document? Maybe I sent it to the Party Secretariat, I do not know. I mean now these things appear important in terms of the case. At that time it was not a matter relating to the highest principles or interests of the State.

*Honourable Chief Justice:* But then could you recall from where did the Photostat copy come?

*Mr. Zulfikar Ali Bhutto:* Photostats were kept, because it was a Party question, it was not a government question, entirely a Party question, whether he should rejoin the Party or not. It is not a question covered by the Official Secrets Act.

*Honourable Chief Justice:* No. No. The question was, Mr. Yahya Bakhtiar also argued it at some length.

*Mr. Zulfikar Ali Bhutto:* I sent it to the Party Secretariat, most probably I am of the view, but I can't say emphatically. I am almost ninety per cent sure that I sent this to the Party office.

*Honourable Chief Justice:* This Photostat has come from the Party office now?

*Mr. Zulfikar Ali Bhutto:* Yes, yes, I sent them because, Sir, having a national Party, it is not only that the province itself must be told, the other provincial chiefs also, some who are concerned have to be kept informed. Your Lordship asked the question why was the endorsement made to Pirzada and to the Speaker, and one other Minister from Punjab, Meraj Khalid. The answer is very simple. Because Sheikh Rashid was in general charge of the Party in terms of bills, things of official nature. Pirzada and Meraj Khalid were told to keep the members humored if there were any problems. So they had to be kept in touch so this was also in that sense. If I had considered that this document is going to save my life, this is going to come to my rescue, on this everything will depend or demolish, it would not have been in this form and in this shape and it would not have been so worded. And I would have kept it.

*An Honourable Judge:* And I think for a Prime Minister to expose such a document will be embarrassing.

*Mr. Zulfikar Ali Bhutto:* Yes, exactly.

*An Honourable Judge:* Because the language itself will show the obnoxious....

*Mr. Zulfikar Ali Bhutto:* Yes, yes, of course. Crude language is used, harsh language is used. Why not? We do use languages. You and I have used them, Sir. That is the first point. My second point is that it is said that I have taken these away. Now here also, I would just briefly say, the coup took place at about 1-30, 2-00, or something. Mumtaz Ali Bhutto and Pirzada were with me. They left, I went into my room. Hardly I had put off the light, my two servants who are from Larkana came and they said: I put on the light and I said, what is it?

And when I opened the curtain, they were hovering all over the place. Now, at two o'clock at night, everything is closed. I don't have safes and I don't keep such documents with me. Nobody is in the house. Then at 2-30 or quarter to three there is a telephone call between the Chief Martial Law Administrator and myself. And he very kindly pays me

very great compliments and says, within three months I will be saluting you again. And he tells me: 'would you mind if you are inconvenienced for tonight? Tomorrow we are sending you to the Government House at Murree.' It was already tomorrow. So I laughed: I told him. 'But you know, we are already in tomorrow. And secondly all my four children, (one came only that day) they only arrived today, one came a day earlier, I said can I have a few hours with them? I said can I have a few hours with them? I did not say: 'No I do not want to go' I said. "If you want, I am prepared to go now wherever you take me.

I prefer revolutionary justice. I wish they had indulged in revolutionary justice. That would have been much better. But well, they did not do it. And the question is now; I did not say that I want to stay. I said if you want to take me, you may, but this is the position. He said: 'No, no, you can stay'. Now in that situation, I called my children. "Some were in the Guest House. They had just come. I had an hour or two with them.

Then I attended to some files. There were about 25 files. Because I always believed in disposing of everything before the next morning, no matter how long that took. In my whole life, there was only one file that I did not dispose of. That was conviction for death. I did not sign that. That was the only one that I did not sign, but in my career as Foreign Minister for eight years and as President and Prime Minister, never have I left a file for the next day, unless it has to be referred to another Minister. I would not do it. I would sleep only after that. But this I said, no, I won't sign. So I was working on the files. Then after that, I had some breakfast or lunch. Some people then came to see me, my Military Secretary came, others came, and my ADCs came. Pirzada's daughter was phoning, I was trying to console her. All these things were happening. I was thinking of the future of Pakistan.

That was the only document I was thinking of at that time. There was no other document I was thinking at that time! This was the only document on my mind, because I know what is going to happen in the days ahead. And my whole mind was engrossed with that. Where was the staff? Some of them were shaking, frightened. The police and the army going with them wherever they went, even up to the bathrooms. My Lord, who is going to find this obscure document all of a sudden in that time, and secondly, the White Paper itself says that Mr. Bhutto believed in his infallibility or indispensability so much so that he left all documents in tact. He left them for posterity or history, the White Paper says that and the White Paper is an official document to which I have replied, yes, I have nothing to hide.

But if I wanted to take any papers, I would have taken papers relating to elections. Because that was always in my mind, that on some election pretext, if the strike was to come, it would come on that pretext. So I have said in my rejoinder. And on that, My Lord, why don't you kindly allow it to be published? So many slurs have been thrown against me, stigma and it is a relevant document, it is connected with this case. It is connected with FSF. And why should it not now see the light of day? I would request you, consider it favorably.

**Honourable Chief Justice:** Mr. Bhutto, if it had come straight to us, it might have been a different situation. But for eight judges, one thousand copies were already printed by the time it reached me. So that was the circumstances.

**Mr. Zulfikar Ali Bhutto:** You know me. We all have our own characteristics. Some never forget the words used up to the dying hours. It was mentioned here as smuggled document My Lord, again humiliating insults. I say this because I never concealed that I was writing it. In the whole month of Ramazan I wrote this document under very trying conditions and circumstances. The White Paper was in front of me. The guards were all around me and I had said in the Supreme Court rejoinder from the beginning and faithfully I believe it is relevant and it was relevant. I was not trying to smuggle a love letter out to anyone. I was not smuggling at all, leave alone....

**Honourable Chief Justice:** Where was it sent then?

**Mr. Zulfikar Ali Bhutto:** I am just telling you. The point is this; the question is that, I am very particular, meticulous on these things because I do not want to be a cheap Charlie, that I was doing smuggling of documents. When my wife and children come, I do not want them to be searched. It is the greatest dishonor that they should be searched. We have our own code of conduct. They are old codes of conduct. Mr. Ghulam Mustafa Jatoi once claimed that his house was searched. I took my whole family in what we call in Sindhi *Mairl* to apologize. I was the President of Pakistan and I took my whole family, my children, both my wives to his house as the President of Pakistan to apologize because this is the greatest insult to us. I am going to smuggle documents. No, they were wrong. They were corrected also in front of these people who are watching all the time. Otherwise they would go and tell. I would not hide things like that. It was going out for copies for eight judges. But we have got great enthusiasts, very fanatical Party workers, very dedicated Party workers. One of them, I am sure, or someone also who was told to do this business of either Photostatting or filling or something, (When eight people burnt themselves to death, after all it is not joke, and there are many others; you feel; these people burnt themselves), this person in good faith might have gone ahead.

And secondly, My Lord, the practice of first showing it to the honorable court may be the correct practice but it has been a recent practice. When Mr. Brohi filed his affidavit against me in the Supreme Court in Begum Nusrat Bhutto case, he first released it to the press. No, released that whole document to the press with great pride. And I have seen in the High Court of Sindh, with my limited practice, this was done. In Tamizuddin Khan's case, in other cases, it was done.

So it was not a *mala fide* thing that we were trying to do, something which was illegal or wrong. It was the practice. But Your Lordship's point of view, we do not want to give in up; I accept so many. My Lord, Mr. Justice Chauhan, in the High Court in my detention case, may remember that I had filed a long affidavit of 100 pages where I had been accused of working against the security of Pakistan. My Lord, Mr. Justice Chauhan had said that it should not go out. No, All right, we held it. But this document has a very great relevance to this case. If you, in your better mood, would release it, I would appreciate it.

**Honourable Chief Justice:** No, no. Mr. Zulfikar Ali Bhutto: Could we have some break?

**Honourable Chief Justice:** If you are not ready to continue, we may meet again. So we meet at 11-30 a.m.

The Court re-assembled after short break.

**Mr. Zulfikar Ali Bhutto:** One minor point I forgot to mention to Your Lordships in relation to Bajwa. If Bajwa is tainted, then Saeed Ahmed Khan is more tainted. In that sense only one thing is that if the agent is tainted and the principal is not tainted, then how does it apply in my case? That *ipso facto* the principal is tainted because the agent is tainted. A reverse standard has been applied.

Now Your Lordships I would ask you to kindly refer to paragraphs 513 and 514 in relation to the privilege motions. One of the privilege motions is 514 which Kasuri filed on the 29<sup>th</sup> of November in which he said about attacks by PPP workers. I think Your Lordships will be able to find out the real object why repeatedly I am being made the target: "At the behest of Mr. Bhutto, at the behest of the Prime Minister", without any substance, without any evidence. And the link-up of another politician with him in this respect. On this, my resignation is sought: "He must resign". Their object, first of all, is to give the impression that I am capable of doing this. But the real object is to put pressure that I should resign. So this is the while scheme, the whole effort. The whole object of all these various things from December 1971 to unnecessarily connect me.

I will now try to establish to Your Lordships that I had been protecting him all along and that the irony of it is that he turns the tables on me. I have been keeping people at bay from him because by temperament and otherwise (talking about temperament) it is his temperament that people used to object to and I have always tried to pamper him and tried to look after him. It is very ironical that now he turns all that against me and he shows the reason: he has not got office. He is hankering for an office, some office; so and so have become Ministers, so and so have become Ministers of State; why don't you give me something; I have been with you for long. I said, "You do not deserve it". Then, when he finds it not possible to get that office and all that, then this kind of quasi blackmail. Forward Group? What Forward Group? Raza Group? It might have come in a few newspapers. Would Your Lordships remember today there was a Raza Group? And who were the members of that Forward Block?

Your Lordships from 569 to 579 - eloquent and effective defence of Mr. Qurban Sadiq for his client. Now, My Lord, here he is defending his client no doubt, but the cases are overlapping. Mian Abbas is supposed to have taken instructions from me, as if he is one of the main actors in the drama. So, there is some overlapping whether there is motive, whether there is no motive, whether there is conspiracy. Now Mian Abbas, when he was arguing his case in the court, pleaded effectively that Mr. Bhutto does not have a motive. In defending himself it became more or less necessary for him to defend my position as well. He was told: "If you are trying to exonerate the principal accused, do you know the

consequences on your client; what they will be, I am giving another attribute of bias apart from the "Muslim" one, of the "principal accused" and everything else."

To stop him from arguing his client's case by threatening him that if you are going to serve Mr. Bhutto from this case, then it is going to all fall on your client's head. So, you better restrain yourself. And he said, "Do you follow the implications, Mr. Qurban Sadiq what you are doing by pleading this? He said, "Well take head of it". In 579, Mr. Qurban Sadiq has said that if I wanted such an act to be done. God has given me the capacity and the power to get someone from Larkana to do it. I say, why someone from Larkana? From Larkana, from any part of the country, I have got enough support that if I want such a dirty thing, such a terrible thing to be done, I want to commit a murderous assault, I would not engage reluctant partners who are reluctant from the word 'beginning', and from the Federal Security Force.

As I said yesterday, I am not a rootless phenomenon. I have got very deep roots in this country and very great commitment to people. In these circumstances I would ask Masood Mahmood who is perplexed and horrified? I would go to Mian Abbas whom I have never met in my life? I did not know his name till 1976, that there was a man called Mian Abbas. All right, Ghulam Husain who says, no. Ghulam Husain was all the time exculpating himself when the pressure has been put on Ghulam Husain and he has been ridiculed then he goes to Lahore. Now what an incentive that you have failed in Islamabad, as, I think, one of Your Lordships has said how did he become a chicken if he was a commando....

*An Honourable Judge:* No, I said chicken-hearted.

*Mr. Zulfikar Ali Bhutto:* How did he become chicken-hearted? A 14-years commando and now if he keeps a chicken-heart, he says I am chicken-hearted, now do not let me do this. But it is insisted that no, you go to Lahore and you phone me and will I phone you.

So much suspicion between them and he is going to do and commit a heinous murder? With all this suspicion, with all the failure and with all the fact that he felt sorry for him, Ghulam Husain says the same thing, Arshad Iqbal says the same thing. His job, this and that, they were threatened. Rana Iftikhar says the same thing; Ghulam Mustafa says the same thing. All of them say the same thing.

And then the beauty of it is, they say that apart from the fact that we were threatened - now, after all, I was not an impotent Prime Minister, I had my powers, I had my influence outside the administration, completely outside the administration - I choose these chicken-hearted people who are all the time reluctant, dragging their feet and who feel sorry for someone who is old, who feel sorry for someone who is handsome and who feel sorry for someone for some other reason.

They telephone, re-confirmation, confirmation and then the threat, there is a super-team waiting for you. Now, Sir, if the super-team is waiting, why should not I use the super-team? Now, after all, if I have to choose the FSF as was put to me that I have to utilize the FSF, I say here, in addition to that, why should I? There is no need for me to, and the

question is that why after all, then, if there is the super-team? On top of it, the super-team would not only do the job but the super-team will also eliminate them.

*Honourable Chief Justice:* Yes, this is..

*Mr. Zulfikar Ali Bhutto:* And then the super-team has not been put up as witnesses. Ghulam Hussain has named 3-4 people. Now, if there has to be a super-team they should have been brought as the prosecution witnesses, that, here they are, to show not only this team but the super-team sitting on top of it. Mark, the question is this! I do not just have to go to Larkana and other places. I know our people. There was one instance where a woman came with 'mehndi' on her hands, smiling and all that with a young son of 21 and she said, 'Mubarak. Mubarak, Mubarak'. I said *Mubarak! Kaisi Mubarak?* She said

بدلہ لیا ہے۔ انتقام لیا ہے اپنے باپ کا اتنا چھوٹا تھا اور میں منھائی آپ کو دینے  
آئی ہوں میں نے کہا کیا کہہ رہی ہو۔

I said this thing is not done in this century, I want to engage a lawyer for you, for your son, handsome young man and I felt sorry. She said, engage a lawyer! No, we are going to celebrate and you should be proud, Bhutto Sahib that you have got such men under your command. Well, I have got men under my command who will put 'mehndi' on their hands and 'surma' in their eyes and say, we have done it. Why should I go to these people and say for God's sake do this, such a dirty thing and commit this sort of crime? I am not a murderer. I want to do away with this sort of thing. I have done away with Sardari system for that reason; I have tried to control and finish these evil practices.

Now, from the judgment I would like to briefly draw Your Lordships attention, (and I would not read it even) to paragraph 15 of Mr. Justice Shafiur Rahman's Report. Now, let us define also here while dealing with this paragraph 15, that there is another matter regarding subsequent conduct. We keep on subsequent conduct. I think Mr. Justice Shafiur Rahman, began his Tribunal's hearings on 7<sup>th</sup> December 1974. Yes, My Lord, and Saeed Ahmed Khan claims that I telephoned him from Larkana in the first week of January and I said 'What are you doing' You go and take charge of the investigation'. A month later the thing occurred to me? One month later when the whole thing is in the High Court of Lahore or other place has proceeded with the hearing?

My name was being badly bandied around. One of my Ministers told me, "Your name is being mentioned, they are just dragging it and making political football out of it, are you not concerned?" I said yes, but I am not involved; it is all right, I am not involved, why should I be concerned? Let them go on.

I did not say to Saeed Ahmed Khan, "I am worried, I am concerned." He says I telephoned him and it is so simple to say that. He said I rebuked him or I was angry with him on the telephone. I never telephoned Saeed Ahmed Khan. He might have phoned me himself the very fact that he says he was in Rawalpindi shows I did not telephone him. If I had telephoned him this would not have been mentioned as to where he is, because if the person was not in Rawalpindi, then my ADC would say, "Sir, he is

speaking from Multan” or “He is speaking from Karachi”. So I did not phone him. He must have phoned me. I say go. *Jao dekho kya ho raha hai?*

Why not? You have to look to what is happening. He comes to Lahore. He puts Waris in charge, who is supposed to be already on the job; Ahad, who is claimed to be a very upright DSP. Then he comes to me and sends some note about certain parts which have already appeared in the papers. My Lord, they have already come in the papers. What contribution is the note going to make?

Then 7.62 Chinese weapons. The whole world knows that our Pakistan Army has Chinese weapons; our Civil Armed Forces have Chinese weapons. Ammunitions are there. FSF and so many of our units have Chinese weapons. So, what, if it is 7.62? How does it automatically, straightaway go into the FSP or into any ‘*khata*’ or that, it is my ‘*khata*’ even if it goes to FSF. So what was that alarming thing? He was trying to show off. “Don’t you know that JADO has this ammunition? What is this JADO or ‘Jadoo’. I do not even know what is this JADO or ‘Jadoo’. I am sending someone to Jado and to Bara and Darra Adam Khel to see these things.

It is a drama; Saeed Ahmed wants to show his importance, writing a letter to the Defence Secretary. He knew it; he could have phoned me and said it is 7.62. So what? What does it prove” 7.62. “I was perplexed when I got the letter” he says; and then the Prime Minister said to me, don’t try to be clever with me; I will see the report. After I have seen the report I will decide. Now, is it not a normal thing to say?

Why are you so anxious, what is the problem? Let me see the report. When I allegedly told him, “why are you trying to be clever with me he says that he replied, “there is a general consensus that the report should not be published”. Why? “Because there is a practice not to publish these kinds of report. There will be a demand, “he says,” to publish the Hamoodur Rehman Report. There is an obsession for the last seven years to publish your report or not to publish your report. So, it will become a precedent, he argues.

I think, the High Court - I am not attributing anything has brought everything of the Shafiur Rehman Report on the record except the report itself. They might have also believed it will create a precedent for Hamoodur Rehman Report to be brought out.

He gave many reasons: “Sir, it will have adverse affect on demand for Hamoodur Rahman Report. There might be demand for Mr. Hamoodur Rahman’s Report”. “Adverse” does not mean adverse against me. It will be adverse, but if it will be adverse, it does not mean that it will inculcate me. It will have a general adverse effect on the Administration. This was his view. So, that is why I said, “why you are wasting my time? You discussed this very matter yesterday.”

It was in this sense that he was told that you are wasting my time. You had given me a long lecture that if this report is published there might be demands for publishing other reports like the Rawalpindi Conspiracy Case and this case and that case and all the rest. Multan, there was some firing in Multan and there was a demand whether that report

should be published or not. So, that all will be packed up and we will be opening a Pandora's Box unnecessarily. All these reasons he gave, it was his view that will be adverse. The findings are not such that are adverse against me. 7.62 does not make it adverse against me.

It has been said that my name has been mentioned in the FIR. I have tried to submit in my own limited capacity that this does not mean anything. I have not mentioned this that and the other, on my very motive.

He says that it is in the FIR and FIR is therefore very important, very conclusive. Then he says, it has been said by the other side that I have become "restless". How do you know I have become "restless"? I don't get restless so easily. What is it that makes me restless? It is not as though a steamroller is coming or some great movement being led. I have become restless! First of all there is no need for me to become restless. Secondly, restless to the point of wanting to eliminate him? He has become restless and, therefore, he wanted elimination! And why "elimination"? Because these words are used in the document which came before the Supreme Court in Begum Nusrat Bhutto's case relating to validation of Martial Law. It has been shown there that General Tikka Khan, the then Chief of Staff, talking about the insurgency in Baluchistan recommend that a very effective and very powerful insurgent who had killed many army officers and jawans, should be ambushed and we are trying to "eliminate" him.

I say well, either admit there was an insurgency or there was not an insurgency. If there was no insurgency, then you can say this is cold blooded murder; but if there was an insurgency, there actually now you know the extent of the insurgency the operations, how wide scale they were. It was a recommendation or information that we are going to eliminate him. There is, was a war or a semi-war, or a civil war, or an insurgency in Baluchistan. And he (the person concerned) is still alive.

The question of 'restless' and therefore 'eliminate' does not arise. The object is to eliminate me by a process of elimination. A very confessing accused is Mian Abbas. He does the merry widow waltz all the time. With his statement everyone gets into the process of elimination of my elimination. But elimination is on the other side. So, the question is no FIR, no restlessness and no elimination.

It has been argued before Your Lordships to take a look at the conduct of the accused. And how? What is the question of conduct? Then he has said to give two or three reasons that no one else had the motive. Again, it is the elimination process. No one else, he says. Why should I know how many people have a motive or not? I know that he used to always complain to me about his problems in Kasur, his rivalries, his protection from this man, protection from that man, FIRs lodged, others like Mean and Toor. Out of all those people, no one else has a motive. Only I have a motive in this. And that should be taken into account by a process of elimination, that nobody else has enmity with him, therefore nobody else has motive! No chalan was presented. The case went untraced.

My Lord, this is not the first case that has been untraced. The first Prime Minister of Pakistan was shot in this city of Rawalpindi. I do not think an FIR has been lodged, I

might be mistaken. But if I am not mistaken, I do not think an FIR was lodged when the great and important leader of this country was assassinated. Not only was he assassinated in broad daylight, in a public meeting, but the assassin was shot by Najaf Khan and Najaf Khan was promoted. Not only was Najaf Khan promoted but no investigation was permitted. Then in the end, feeling the pressure of Parliament, someone from Scotland Yard, a Mr. Urene came for a short while. Mr. Urene gives a report from Scotland Yard saying that he received no cooperation. Begum Liaquat Ali Khan was crying hoarse, "What has happened, where is my husband's FIR, where is my husband's investigation?" But she was packed off as an Ambassador for life.

If this case has not been traced, I should not just be buried in the name on that automatically. As I said yesterday, what the Romans do, we do not do, we do what the Romanians do. Here I cannot be responsible for the lapses or other defects of these people if the case is left untraced I would like to know how many cases in these eighteen months have been untraced? That list is also being made. The sands of time are moving on and accountability is being made in the mind of men. We will also see how many cases have been untraced.

My Lords, I had many critics. Mr. Bakhtiar mentioned Rao Khurshid and said that although Rao Khurshid had attacked me more pungently than others, I was magnanimous enough to give him a ticket without his even applying for it. Rao Khurshid was not the only one who criticized me. Wali Khan and Asghar Khan made speeches declaring that a bullet found the head, that a bullet did not recognize the Prime Minister. Those were the kind of speeches they used to make, that the walls of the Prime Minister's House could be broken. Such kinds of speeches were made in Charsadda and other places, I was not frightened. He could make the speeches. Others could make them. It did not affect me.

All sorts of innuendos have been made and wild charges pressed by them. The name of Khawaja Rafiq has been mentioned. Believe me, My Lords; I did not even know that a Khawaja Rafiq existed. I know now that he belonged to Nawabzada Nasrullah's PDP, but I did not know the gentleman. I did not know him until I was told that a certain politician, Khawaja Mohammad Rafiq, was shot. That might have been my ignorance, but I had never heard the name of Khawaja Mohammad Rafiq.

They have mentioned the attacks on Wali Khan. When Wali Khan went to Dir (where the alleged attack on him took place) he took with him the Khan of Jandul, who was reputed to be a terrible tyrant, after fifteen years. The Khan of Jandul was sent to Lahore during Ayub Khan's time, and kept in exile. Wali Khan was taking him back. There was a lot of tension. People were sitting in "Morobas" and declaring, "We won't allow this man back".

I warned Wali Khan of the tensions and advised him to postpone taking the Khan of Jandul back or else to go well protected because the peasants were up in arms. The attack was not on Wali Khan, the firing was on the convoy. This is the question of the first "attack" on Wali Khan. The other "attack" took place in Charsadda, where he was going in a jeep and got caught in a cross firing between peasants and landlords. I told

him he could choose whomsoever he wished as the investigating officer for the case. He asked for Arbab Hidayatullah who is, who was, very close to him. I appointed him. I said, "Let him investigate".

Then they have said that Asadullah Mengal was killed. This is very serious. My Lords, we fight, certainly we fight but certainly we have a level of fighting. The insurgency was most unfortunate but we do not stoop to such levels as imputed. My Lords, they know it. They know very well that this is not our method of fighting. By mentioning Ataullah Mengal Khan's son, they are doing themselves great harm. General Tikkah Khan knows the whole story and I do not want to go into it. But why do they involve me in their little pricks and games and tricks? I am not a fool to eliminate the son of a very important tribal chief who is a Mengal and a neighbor of mine.

Despite the insurgency in Baluchistan, I treated their sons well. Marri's sons came to meet me at Ziarat. We had a fourteen or eighteen hour conference. I left the conference to meet them. In spite of the fighting, they addressed me as "Uncle" and I was overwhelmed by their generosity: to call me "Uncle" in spite of all the trouble. Sterling people say sterling things. I was a little embarrassed that here we were fighting the Marris and these two were so poised. They said: "Uncle, our car had been taken in custody in Karachi, could you take it?" I said I sent messages to Bizenjo that I wanted to release his son Bizen because Bizen was like my own son. I told him, 'my fight is with you, my fight is not with Bizen'. After the trouble, Bizen came to see me before I left for Afghanistan. He paid tributes to me and told me that I had managed to control the insurgency. I asked him not to because it was an unfortunate chapter. I said it was closed and we were back to square one and that we would start afresh. It had been an unnatural situation. He was amazed that having succeeded so much, I had recognised it as unnatural.

We have our code of fighting. We do not fight at this level. Sardar Mengal knows already, he has his spies everywhere. I am prepared to have a tribal *jirga* to determine whether I am in any way responsible.

What about Sherpao? Sherpao was like a son to me. They say I had a hand in Sherpao's murder. Aftab is a man of code. Aftab Sherpao would not cooperate or be in the Pakistan Peoples Party if his brother had been killed by Zulfikar Ali Bhutto. Sherpao is his brother. Killed for the Country. He belonged to my Party.

How many murderous attempts were made on me? Did I arrange these too? Attacks were made in the tribal area, in the Marri-Bugti area, and aside from the two examples of my own and that of Sherpao, Khan Achackzai....

*The Chief Justice observes that this is not on the record. Mr. Bakhtiar submits that the Special Public Prosecutor was allowed to argue on it although there was no evidence when he argued. The Chief Justice says that the conviction was not based on these facts.*

**Mr. Zulfikar Ali Bhutto:** On a number of occasions you have said "we will go by the record". You have asked me here in the interest of justice. Justice is higher than the

record. Lord Denning has given his definition on equity in a most recent case. I have come here on the plea of equity and the plea of justice, which the Court has kindly accepted. The record of the High Court is defective, tampered, tailored and manipulated and boycotted by me. There are great gaps in the record. In the judgment, order given on the 5th of November it has been said, "in view of the Supreme Court judgment", which was on the 10th of November: There are such paralytic infirmities in that record. If you ask me to go by on the tight rope of that record alone, then, My Lord, I would submit that it will be an unnecessary hindrance.

*An interchange follows before Mr. Zulfikar Ali Bhutto resumes:*

**Mr. Zulfikar Ali Bhutto:** It was mentioned in the High Court that snakes were sent into the meeting of Khar at Tajpura. Why be more loyal than the king? Khar is still identifying himself with me to the extent that he has gone away to London. If I had sent snake charmers to Khar to kill him or do something of that sort, he would not be with me shoulder to shoulder. I had sent snakes to Khar he would have been in the snake pit with others. He would have had a grievance against me, he would not have gone to the extent of having his property confiscated and he sitting in London if I had been sending snakes to his meetings.

### **DALAI CAMP**

Much has been mentioned about the Dalai camp. My Lord, one of the so-called, inmates of the Dalai camp, Irshad belonged to PPP and applied for a PPP ticket in August 1977.

Then there is the question of Tari. Tari is very relevant because Tari has filed cases against me, after the imposition of Martial Law in the High Court. A suo moto case was also registered which Mr. Justice Zakiuddin Pal heard in Murree in which Tari had made a statement. It is with me. I do not want to mention it.

Now here is a man whom I did not want in the Punjab Government because of certain weaknesses in him. He was a slur on the Punjab Government. I had him removed from the Punjab Government because of his weaknesses and as a result of that he developed this hostility. In the privilege motion, Kasuri says that some of the attacks on him were instigated by Tari. He wanted the National Assembly to summon Tari. Tari has a grievance against me because I have removed him from the Government of Punjab. He thinks that I had harmed him and he has gone and filed cases against me under 307 and 312, and yet, in his privilege motion, Ahmad Raza Kasuri says that most of these attacks or, some of them, have been engineered by Tari because Tari had been threatening him and phoning him. Therefore, Tari should be summoned.

**Honourable Chief Justice:** I think that at that time Tari was in the Government.

**Mr. Zulfikar Ali Bhutto:** My Lord, I was persuading Khar to remove Tari from January 1972 and there were many meetings on that. Mian Anwar Ali, then D.I.G., was the first man to even mention the name of Tari to me. I said who is this Iftikhar Tari? He said he is bringing a very bad name (to PPP). Since January 1972 I was trying to persuade Khar

to leave him. Tari knew all along that I had wanted him out, because of his weaknesses, from the Punjab Government.

In Saeed Ahmad's statement it has been said that he was sent to put the investigation on right lines only for public consumption. Then why does he call himself innocent? On the one hand Saeed Ahmad's role was mala fide. Then this statement that he had been sent to put the investigation on the right lines for public consumption. Then why persist to the end in saying that Saeed Ahmad is innocent? Yes, I would doubt Saeed Ahmad. If his statement was for public, consumption, it could not be bona fide.

It has been said here that in criminal cases the importance of FIR can never be minimized. Mr. Justice Waheeduddin says in answer to it that all the F.I.R. says is that the reason for the attack was the speech of Mr. Bhutto.

Then Your Lordship, the Chief Justice, says, 'What exactly is the significance of the last para in the FIR? Is he accusing Mr. Bhutto for further firing or is he saying that the attack was made because of Mr. Bhutto's speech? Mr. Justice Waheeduddin again repeats that the incident of 3rd June 1974 in the Assembly is mentioned only as a reason for the attack. Mr. Justice Haleem asks whether this move excludes all other motives.

Then a question is asked by Mr. Justice Patel. He says in FIR regarding the Islamabad incident Kasuri does not give a motive. Mr. Justice Patel asks: "why not"? The answer given is, "but he was bewildered" and so I must be bewitched. This is no answer. You are bewildered! He should have been more bewildered when his father died rather when there was some firing in the air in Islamabad.

Mr. Justice Haleem observed that motive is the basis of conspiracy. If the motive is abolished, if motive is destroyed, if the motive is gone, the basis of conspiracy itself falls. The answer is yes': if the motive is put in the scale, the prosecution must prove it. If not proved, it must suffer.

The main person on motive is the complainant himself. Your Lordships have observed that in a conspiracy motive is important. It cannot be a decisive and conclusive factor but motive is an important factor. Therefore, I have taken so much time on motive, otherwise I was not going to waste Your Lordships' time like that. Since motive is important and there is only one person really who has given a motive I would like to examine, with your permission, the prosecution witness 1's deposition on motive.

*Interchange on whether the ground has been covered.*

**Mr. Zulfikar Ali Bhutto:** Now, My Lord, Ahmad Raza Kasuri has said that up to December 1970 our relations were good. Our relations deteriorated from the beginning of 1971. Why did they deteriorate? He says, he suddenly realized that I had become power-hungry. How had I become power hungry? He mentions two or three things. He mentions the Peshawar press conference. It was the press conference, the 28<sup>th</sup> speech about which I have mentioned. Then he goes to the Karachi speech *ادھر ہم ادھر تہم* business of March 14<sup>th</sup>. He mentions the PPP strike as another reason. After PPL strike, he says

that he did not sign the Constitution. He went to Dacca, he then comes to the 3<sup>rd</sup> June, speech of mine.

ادھر سے ہم ادھر سے تم ملا کر ایک حکومت بنائیں

Kasuri comes to a subjective conclusion that I become power-hungry. If he means that in politics, the object of politics, of the political parties, is to get majority by democratic means and come into power that is no offence. This is the whole exercise. Some people come to power through the backdoor but we would always come through the front door. Why should he object of a Party was trying to get into power?

My press conference in Peshawar: I have not used the word 'boycott' at all. I have said that we are trying to, or pressing to get more time for negotiations before going to the Assembly, as the Legal Framework Order Stipulates that you frame the Constitution in 120 days or we are going to dissolve the Assembly. If that is the condition then there were two consequences or factors; one was the complete dichotomy between the two points of view, which could not be reconciled in 120 days. Secondly, generally these issues are really thrashed out outside, in terms of general agreement, like we did in the 1973 Constitution, and like others have done. That was the only thing that was asked.

The Lahore speech, I have already mentioned and I do not want to waste time; Karachi <sup>ادھر ہم ادھر</sup> I have got the whole press conference of mine in which the next day I have elaborated fully and contradicted it. I said, (Mind my speech; my Urdu is not good, because Pirzada Sharifuddin was my Urdu tutor in Bombay) the press conference explains it. But the question is that I said. Make a grand coalition.

Why did I say we should make a grand coalition? Not that I wanted to share power at all costs. I told Mujibur Rahman very simply that, look here, your Six Points structure is not a federation, it is a confederation. It is actually a union between two States that you are proposing in your Six Points. For God's sake you come down, make it into a federation. Take out the foreign exchange formula - that the provinces will have their own foreign exchange virtually their own embassies with all that business and foreign trade. So, I said, you take that out, and we will sit in the opposition in a federation. You agree to a federation and in the federation we will sit in the opposition with great pleasure.

But if you are going to have a confederation, then in that case a confederation cannot be with a minority party from the other side. In that case in the confederation you must have a government with the majority party of the people of West Pakistan. The majority of the people of Pakistan must attend as equals in a confederation of two sides. You cannot have a confederation, turn the tables and impose East Pakistan rule on West Pakistan through this confederation by picking up two or three people from the minority and thereby have this domination.

It is a very simple proposition and I have held it consistently. I tried my best to have him agree to a negotiated settlement. He did not agree and that is a long story. We came back. But this is the point; it is not a question that I was power-hungry. It was a question

of trying to bring him down into a federal structure and to make him abandon a confederal structure. But what has not been said, mind you, it has not come on the record and you might technically throw me out of the court.

But, after all, this Mr. Ahmad Raza Kasuri has attended meetings of all the Pakistan Peoples Party MNA's in Karachi. In Clifton, there is an Institute of Engineers where he has taken an oath in presence of all PPP MNA's that my position is absolutely correct; it is in the national interest. He has made a long speech there praising me for it, saying that this is the only answer and this must be done. I do not know whether it is on the record, or not.

*Honourable Chief Justice:* When was that, before December 1971?

*Mr. Zulfikar Ali Bhutto:* Afterwards, My Lord afterwards, after ادرہم ادرہم

*Honourable Chief Justice:* But that was in March, 1971.

*Mr. Zulfikar Ali Bhutto:* My Lord, March 14<sup>th</sup> was my speech, supposed to be a Party speech, which is distorted. This was before we were going for the final negotiations with Mujibur Rahman.

*Honourable Chief Justice:* 25th March or 21st March.

*Mr. Zulfikar Ali Bhutto:* But he came and he made the strongest speech. I would now take you to the other side.

*Honourable Chief Justice:* But did you not question him in the cross-examination on this point.

*Mr. Zulfikar Ali Bhutto:* No, no, no.

*Honourable Chief Justice:* When he brought this, this ادرہم ادرہم

*Mr. Zulfikar Ali Bhutto:* My Lord, I admit, My Lord, I said that it may not be on the record. I have certain great difficulties when, I think, my honour is more important than something coming on the record. Every time I tried to get up, I know what happened to me. So, I did not try on many occasions, I did not get up because I did not want to be insulted.

There were people in the Pakistan Peoples Party who were supporting Six Points and they became Ministers. Malik Jafar used to write articles in the Pakistan Times in Support of Six Points.

*Honourable Chief Justice:* He seems to be sitting here.

*Mr. Zulfikar Ali Bhutto:* He used to write articles in favour of Six Points, that we should accept Six Points.

*Honourable Chief Justice:* I see, and still continued to be in your Party.

*Mr. Zulfikar Ali Bhutto:* And became the Minister of State, so there political differences arise. These are not personal difference. People have different points of view. He became a Minister.

Now, about Nasser Bagh, My Lord, he has contradicted himself about Naseer Bagh. On the one hand, he has said that Mr. Bhutto told us to have this strike; he has said it is his statement. And on the other hand, he has said that I did not want PPL to be abolished. I was very angry with them and therefore they did it. But who were those people sitting in Nasser Bagh? There were three of them, Ahmad Raza Kasuri, Mukhtar Rana and Abdul Hafiz Kardar. Now, if I was so angry with them I would not make Kardar a Minister of Punjab. He was sitting in the same Nasser Bagh and I made him a Provincial Minister straightaway. If I was so angry and upset with them, I would not make Kardar a Minister.

And the question that campaign “*Nahee*” camp “*Chaloo*”. This is also a lie. It was a bye-election. You know these bye-elections came after my Party had swept the polls, with an overwhelming majority. Bye-elections become a kind of formality after those elections. Mian Mahmud Ali Kasuri was contesting the seat that I had vacated. It was a small bye-election. I went to Lahore just to show suggested that we will just make a procession. When we came to the site, there were three people at the most, four people with placards which might have read camp and not campaign. I did not go. I said I will come after I have finished with this procession. Why not? They are in my Party I will come to them. After finishing with the procession I went to them. They said, “Come on get up, let us go home”. They were all feeling very hungry and all were very happy because they got a face saver. They found a face saver and they came out and it was over. How Kasuri has converted that small incident into a big issue that I did not want this and he said I took out my pen to resign. Then Kasuri said he went to Dacca which irritated me. Now, My Lord, why should it irritate me? He went to Dacca. I did not stop people from going to Dacca. I said that we will not attend the National Assembly session at Dacca. Assembly session had been postponed. So, if he goes to Dacca what difference does it make to me?

*Honourable Chief Justice:* Did he go after the....

*Mr. Zulfikar Ali Bhutto:* Yes, yes, when the postponement takes place, after my Lahore speech on 28th of February, very soon thereafter. First the postponement takes place. He goes to Dacca after that. I did not care if he takes *rasgulla* or *gulab jaman*. He had not gone to the Assembly. My point was not to go to Dacca, that you do not go to Dacca come what may, I only said we will not as a Party, go to Dacca to the Assembly unless there is an agreement between us. So, he goes to Dacca. It makes no difference to me at all. Now, My Lord, his four adjournment motions. Also very briefly. In the four adjournment motions, first of all he has mentioned Tari. I have discussed Tari is terms of Tari could not be the person who would go by acting on my behalf.

**Honourable Chief Justice:** But Mr. Bhutto since you are not going into these details, the impression we had was that Tari was then a Provincial Minister, that Tari was trying to intimidate him or pressurize him, but I got mistaken. I think, Mr. Awan would know better. It is not a stage when Tari had already gone out of power and favour. He was still a Provincial Minister.

**Mr. Zulfikar Ali Bhutto:** My Lord, My Lord, you are angered with a boss when he is about to throw you out, not after you have been thrown out.

**Honourable Chief Justice:** May be possible, quite right.

**Mr. Zulfikar Ali Bhutto:** Psychological factor is

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ہے۔ میرے پیچھے پڑا ہے۔

**Honourable Chief Justice:** But then if he had come to know that he might be trying to come back into favour.

**Mr. Zulfikar Ali Bhutto:** No, he knew very well, he knew very well because he was trying to lobby, and my point is how I am involved even then?

**Honourable Chief Justice:** I am only commenting on this that he did say in Parliament that Tari has sent it back to me.

**Mr. Zulfikar Ali Bhutto:** Finished. Then I am not involved in it.

**Honourable Chief Justice:** Quite right.

**Mr. Zulfikar Ali Bhutto:** Then, My Lord, the other privilege motions about receiving threatening calls. The High Court judgment says that Mr. Bhutto alone has got many supporters who might get worked up. I do not know whether there were threatening calls or no calls. About the Islamabad incident he says he does not want to attribute any motive to anyone. And as I said earlier, this comes immediately after June 3<sup>rd</sup> speech. Thank God I was not a Sikh to take out a *Kirpan* outside the National Assembly like Tara Singh took out in Lahore. If I had taken out a *Kirpan* then I do not know where I would have been today. The question is that he says I am not responsible.

**Honour Chief Justice:** But you know the disastrous consequence of taking out the *Kirpan*?

**Mr. Zulfikar Ali Bhutto:** What happened to Tara Singh and what happened to Khizer Hayat is a different matter. But it was a speech and he did not attack me at all in any way on the matter. Only in the final speech when Zahur Illahi and he himself come out in this fashion, and he demands my resignation, showing his real objective.

After Islamabad comes Quetta. Quetta also is very strange. I am not in the picture at all as far as Quetta is concerned. Masood Mahmood first says he gave the message on the

telephone and, on the telephone said to get rid of this man and to get rid of that man! Afterwards he says something different to reconcile it. No, no I reminded him on the telephone. I was in Quetta on the 29<sup>th</sup> of July. The Prime Minister was in Quetta on 29<sup>th</sup> July. Ahmad Raza Kasuri comes on the 13<sup>th</sup> of September and I am going to remind him in July that Ahmad Raza Kasuri is coming on 13<sup>th</sup> September. Then he reconciles his earlier contradiction by saying no, no, the intimation was given orally to Welch and thereafter he was reminded on the telephone. But it does not mean anything that he met me. If he met me, he met me as an officer.

What establishes the fact that I gave him any instructions the fact that I gave him any instructions about this man, to involve Melvin Rupert Welch into the matter? I do not know the man properly. I had only heard his name once from Ataullah Mengal that there was an officer called Melvin Rupert Welch. Secondly, My Lord, Welch, what does Welch say? Welch says he was well guarded. He was guarded in Imdad Hotel. He says he tried to put off Masood Mahmood. It is between Masood Mahmood and Welch. Two tainted witnesses. And he has tried to put off Masood Mahmood. He says that they might charge me with anti-Pakistan activities. I mean the man is such, a chicken hearted person, the expression used for Ghulam Hussain. This fellow is ice cream. He says he was afraid of being victimized. Then what will he say now with the social realities of today? If that is the impression he got from Masood Mahmood that he will be victimized then today the same man would not get a different impression. If you touch the person on a threat and that intimidates him, then what about today?

The question apart, from all the places, Quetta, where an insurgency is going on in 1974? What was my attitude My Lord? I was trying to minimize the insurgency. I was saying no, no, no, it is not so bad. All this is foreign propaganda. It was said to minimize it. Now the question is even when the attack was made on me by Langa? It was about the same time. I said nothing should come in the press because I do not want to give the impression that there is more of insurgency. And then there was firing and all sorts of things from Marriabad. But now I would choose Quetta? (Of course, if a perverse interpretation is taken one can always say Quetta would be the ideal place as it was said in the High Court because there was trouble in Quetta) Trouble in Quetta but not for an MNA from Punjab? So much trouble that an MNA from Punjab gets shot or an MNA from Sindh gets shot or an MNA from Frontier? Quetta would be restricted - Quetta to the Baluchs, if Baloch had to be involved or someone from Baluchistan. But I would be the last person ever in saying Quetta would be the place if I were to choose a venue in the whole of Pakistan, that Quetta could be chosen as a venue for this kind of trouble. Secondly, whether it is chosen or not chosen, I am not in it and I have nothing to do with it.

One more point: these confessing accused say that the first shot was fired by Rana Irshad in the air. Kasuri says the first shot hit his dynamo. Now, you can say he did not hear the first shot. I am a professional in a way as far as "*shikar*" is concerned, not this kind of thing. You cannot hear the first shot hitting the dynamo? You can hear the first shot, in my opinion, and that is all. But I am just mentioning the contradiction. "The father is wearing a bush-shirt." A bush-shirt, it is said. And Lahore can be warm in

November. It is not that it cannot be cold, but they say that it was so cold that they had put all the glasses of the Car. Then all he was wearing was a bush shirt?

Now, My Lords, comes the background; I won't go into details. The attack on 2<sup>nd</sup> May 1971. He says "pro-Bhutto" elements were responsible. I would humbly submit with all due modesty that in the Peoples Party there is no such thing as pro-Bhutto and anti Bhutto elements. I am in full command of the Peoples Party even now. There is no grouping in the People Party. There is no Chatha Group and Pagara Group and such in the Peoples Party. It is a revolutionary party. It is a solid party of the masses. It has always been under my command.

They say pro-Bhutto groups attacked you; pro-Bhutto groups did not attack you. What about the people in Kasur with whom you have differences, problems and difficulties? These Yaqoob Maans, Toors and others, who thought that after your election in 1970, (he got elected on Peoples Party ticket) as "founder Member"... Founder member is also a misconception. The party was officially launched at a small meeting. The founder members were five six people, Mr. J.A. Rahim, myself and others, who sat down and decided that we must have a party.

Anyway, Kasuri says "I was elected on the Peoples Party ticket. Well, on whose strength were you elected? You tell me whether any one of you have ever been elected before in any of the Assemblies since Minto Morley Reforms, even to the local bodies? And you say "I was elected." Was anyone else ever elected from Kasur from your family to the National Assembly? Provincial Assembly? Mian Iftikharuddin used to get elected from that constituency. Then there was an Arain Sardar, Ahmad Ali, who used to get elected.

He is the one who has got power hungry. He is the one who does not know how to stand on his feet. He is suddenly bewildered. He suddenly gets the feeling that he is a big man! So much so that in some horse show, during the Martial Law of Yahya Khan, he went to General Tikkah Khan who was then there. He said to him, "you know I am a member of the National Assembly, there are so many Brigadiers and Generals sitting in front of me, I take precedence." So all those Generals and Brigadiers were made to move and this man had to come and sit and take his position as MNA-elect. He feels very proud. Then the way he was abusing police officers. He was abusing police officers. One senior police officer came to me, he told me, Sir, this monster who has got elected, he is abusing us. For God sake, spare us from his abuses. He has just become an MNA". So he was the one who got power hungry, and I was protecting him all along I am not power-hungry. Power is hungry for me.

This attack on the 2<sup>nd</sup> of May was done by his opponents. I had nothing to do with it, and I was not even mentioned in the FIR. I saved him from it. This "behest" expression was not used there. I had to suspend him because.... actually, the public prosecutor has said several times that it was the last straw on the camel's back. Last straw! This camel is not from Florida. This camel is from the deserts of Sindh. There is no last straw on him. What last straw? There was no question of the last straw. He was becoming impossible to everyone, and then I merely suspended him. They wanted me to throw him out, expel him, everything else. I said, no, I will suspend him. He only gets suspended.

Then, My Lord, he says that his loyalty is first to the country, then to the party and then to the leader. Let us judge this loyalty (I am talking about his veracity). In 1970 he becomes a member of Pakistan Peoples Party in the National Assembly. He joined Peoples Party in 1967, he gets suspended, all right. That is not his fault. Then he leaves the Pakistan Peoples Party. He is expelled, thrown out. He joined the Tehrik-i-Istiqal. He wants to make a 'forward block' in Pakistan Peoples Party. He wants to make a forward block in Tehrik-i-Istiqal. He is thrown out of Tehrik-i-Istiqal. He has differences with Asghar Khan, (for which I don't blame him). Then he rejoins the Pakistan Peoples Party. Now this man who says he owes loyalty first to the country, then to the party, then to the leader, in his short and distinguished career of five to seven or ten years, three times he has come and gone from parties! This is his concept of loyalty.

And then he says: "I made a strategic plan"? (actually what he meant was a tactical plan, not a strategic plan. Well never mind. He says he makes a strategic plan. Why? I come to key from his point of view-not because Mr. Bhutto is President but because Mr. Bhutto is Chief Martial Law Administrator. Because Mr. Bhutto is Chief Martial Law Administrator, he could have summary punishments he does not say kill him.

Who is the Chief Martial Law Administrator today? Who has influenced him? If that has been his only criterion and his only basis for forgetting his father's death, (because he tells Saeed Ahmed, how can I cooperate with my father's murderer). Then if you cannot cooperate with your father's murderer, then why Chief Martial Law Administrator. This is the key. This is the fear in the man's mind: of the Chief Martial Law Administrator. So now when this case has been re-investigated; it has been re-investigated because there is a Chief Martial Law Administrator in the Country. If there had been only a President now, he would have "shown his teeth again." But he cannot show his teeth to a Chief Martial Law Administrator, according to him. He stands condemned by his own words.

He has resuscitated and reiterated this case now after three years because there is a Chief Martial Law Administrator. All right, he made a tactical decision. He said he had made a tactical decision. A tactical decision does not mean you should go on the flying trapeze and overdo it. Tactical تعمد ہے you take refuge in تحریک فکر قائد عوام he joins it. I don't know about it even. Why overdo it?

The question of the Mexico visit arises. He sends a big report to me stating you are the statesman, the "scholar statesman". Then he invites my wife (and of course now he may say that she came on her own). Well, if he wants to say that, let him say that, but he was begging and inviting her all the time. At the reception he makes statements that his sister has come, who has honored him. It is her home. All right, if you joined for a tactical purpose, then stay as a dignified man, a self-respecting man. Save your skin, come and sit in the back benches, come and show your presence. That sort of thing. But why overdo it? And go completely berserk by your demonstration of loyalty? He says it was done to deceive me; I am not such a naive person. I was getting reports as he says that he wants to take revenge. Then I also know him.

He says that he made peace with me because I became CMLA. And I say that this is the basis why he has again tried to resurrect this case and bring it against me. Because there is a CMLA today also.

Then My Lord, the other attack regarding Toor and the firing is a cross-case. There is a case against him for firing and Toor goes and hides. And Kasuri tells the policeman, to forcibly bring him out. So it is the other way round. He is throwing his weight against other people. That case is still pending in the magistrate's court. There is an attack on him where all right, if I am after his blood, as he claims: then why should his brother Khizer Hayat get a hundred-injuries? I have got nothing against Khizer. Why should Khizer get hundred-Kasuri says, hundred-injuries? After all, the attacker could not have mistaken the identity after inflicting hundred blows to him? He must have seen that this is not Ahmed Raza, this is Khizer. There are family enmities; he must be some one local. Why should I do it? All right, Ahmed Raza Kasuri, but Khizer?

Now, My Lord, Kasuri was even expelled from Government College by the Chancellor, He was expelled from Government College for being a rowdy man. He was thrown out from Government College, expelled by Nawab Kalabagh, who was a very good administrator. Then not only that, he has been thrown out of the Turkish-Pakistan Association. He was thrown out of Tehrik-i-Istiqal.

This is the temperament and character and conduct of the main prosecution witness. He has contradicted himself. He has confessed to threats and intimidations on him of Martial Law. He is frightened of Martial Law, frightened of the Chief Martial Law Administrator.

It is very strange that he cannot recall when he first met me. He first met me when. I left the Foreign Ministership. At Lahore I got a mammoth reception. I did not see him. He was there taking photographs. I was surrounded by people. After that I went to Nawab Kalabagh. He had invited me to lunch. After the lunch I went to Fallettis, where I was staying. The whole place was crowded, people everywhere. One fellow was shouting and screaming: "I want to be your guard; I want to follow you; I want to give my life for you; shouting screaming at the top of his voice. I asked him, "what is your name?" He said, "My name? I am even related to you." I said, how are you related to me." He said, "your brother-in-Law Naseemul Islam who is the son of Badrul Islam, his mother and my mother are related." I said,

بابا بہت دور کی بات ہے، بہت دور کی بات ہے

So: "I do not know when I met him; I do not know how I met". He comes and does all this "khushamad", talks about relationship. He wanted once to be my guard. Yes, inner circle! Inner circle of sycophants! Not inner circle of political hierarchy. If he wants to have that privilege of being in the inner circle, he can only call himself the inner circle of sycophants, but not the inner circle of anything else.

The man was of no consequence, as General Zia himself said in his interview to *Keyhan International*. General Zia himself told *Keyhan International* of Tehran that "Kasuri is nobody. What is repulsive is that Mr. Bhutto stooped so low as to arrange murder of a nobody, a certain Kasuri.

"But allow me to proceed further." Had Mr. Bhutto arranged for the murder of some one like Mr. Bhutto, I might have understood the forces that compelled him to do such a deed. In one year you can see the perspective of that whole thing.

"If somebody had arranged the murder of a person like Mr. Bhutto. I can understand the force which had compelled to do such a deed." So, Mr. Bhutto. Because he represents the powerful progressive forces, the reactionary forces would like to see the elimination of Bhutto. If I am eliminated, he understands that. It would be serving some interest, some class interest, and some interest of bourgeoisie, some interest of the capitalists, some interest of the 22 families, and some interest of the coterie. He can understand the murder.

Kasuri finally proves his point when he asked: "How have you implicated Mr. Bhutto in the F.I.R.? He answered, '*This is my style!*' Now we are going by style in implicating me for murder! That is my style of implicating," he says. That is his prose. He writes like that. So we have to go by his style. Not only that. When he is asked about other incidents, he says I gave my scrap book. I handed over my scrap book. On another incident when he is asked for concrete and tangible evidence, he throws all the volume of the National Assembly: "I gave them all the volumes of the National Assembly." This is not the way of interrogation. You are asked a specific question. It is a criminal case; it is a murder case; and he says that yes he is satisfied. In one case he says it is his style; in another case he says that I gave my scrap book and in the third case he says I gave all the volumes of the Assembly.

First of all, My Lords, I have no motive, no reason whatsoever at all to do away with this man. I am sorry that his father is dead. When Rao Rashid phoned me, my reaction was: "Why? How has it happened?" Or something like that. I did not know that there were two people sitting in the car. He told me that Mohammad Khan of Kasuri is dead. Why? Who did it or something like that was my spontaneous reaction? I felt sorry for him. I do not know why I should want to kill him or even Kasuri. I am not going into the probable consequence. But the question is that why should I kill Kasuri?

My level of political antagonism is much higher, of my political rivalries, my political differences. When they have been on the national level, they have been at the highest national level. If they have been on the international level, they have been at the highest international level. I have not picked small quarrels, small fights, small things, If I did not have priorities of such nature, I would not have come back to my country after Oxford in 1953 and become the first elected President by 1970.

I tried to serve this boy. Believe me; I tried to be good to him. I tried to train him, like I tried to train so many others. I wanted justice to be done. What have you done? Why have you mentioned my name? Why have you allowed this to be done politically? I

promoted these people when their time came. And all of them. Not just one of them, I promoted all of them. I knew not one of them. With all their false evidence, they have not said that I approached any one of them. I was told of Ahad. I did not know who Ahad was. I did not know who even Malik Waris was? Saeed Ahmad sending notes. My room used to be full of notes because I wanted information about the provinces, what is happening in the country, about labour and everything else. I was all the time on the march, going to places, making public speeches, contacting the people, mobilizing the people, galvanizing the people. I knew the news, international affairs, all the rest. I used to work literally night and day. So why should I involve myself in that murder I have got no motive Not a scintilla of evidence can show that I have any motive to kill this boy. I wish him well even now. As far as the motive is concerned, it is absurd, unbelievable. He has lied himself, My Lord. He has talked about tactical position, strategic position, changing teeth. I have gone into all of them. I tell you truthfully that this thing is really such a fantastic story and really I am grateful in a way because he has over-killed.

At one stage Your Lordship rightly said that suppose the case is established fully, then the question of political mala fides will not come because we will decide on the merits of the case. My Lord it is conceivable that a false case can be a perfect case. It is conceivable, it has happened. False cases have become perfect cases. I am not talking about Agatha Christie novels. I am talking about the Law Reports.

Thank God, in their excitement, in their hurry, in their venom against Bhutto that a person like Bhutto should be done away with because he represents progressive forces; in that hurry, in that excitement, in catching, '*pakro*' bring Masood Mahmood, bring so and so, their excitement their venom their inexperience and all to get me, get me, it has been a case of over-kill. If some three or four people who are very bright very brilliant had got together sensibly in a room my God, they might have done it. They might have made a false but perfect case, especially in the circumstances of Martial Law. God has saved me. God has come to my rescue.

I saw yesterday in an hour, that whatever your views, I was being heard. I am not a judge. I cannot judge what is in your mind but objectively I see that you are giving me a patient hearing. Thank God, at least I have had a say. After one year I have been, at least, heard. We are very sentimental people. Now that you have done this favour to me now that you have conceded my right to speak and be heard, you can hang me. I had no motive to kill this man or to have him killed. My fight is with big people on big issues.

## CHAPTER Three: THE THIRD DAY

### On Masood Mahmood's testimony:

*Mr. Zulfikar Ali Bhutto:* Prosecution witness number two Masood Mahmood claims I told him to be on the right side of Vaqar. What was the point of my telling him to be on the right side of Vaqar? They are all civil servants. They belong to their tribe. No question arises of "being on the right side of Mr. Vaqar."

I have made it clear that it is entirely a formal meeting with him upon his appointment. What he says here shows that he is telling lies. To corroborate that he is telling lies. To corroborate Ahmed Raza's prophetic vision and version of the FSF, Masood Mahmood has said that in some meeting I told him to swell the crowds and also to break up opposition meetings. But he has not said so in his original statement. On the contrary, in that he has given the charter and the functions of FSF. His later statement was an improvement to marry with what Ahmed Raza Kasuri had said. The marriage was so complete that he almost reproduced the words, which Ahmed Raza Kasuri had used. Masood Mahmood makes this improvement in the Court on the so-called three oral directions of mine, which he says were given to him. When further questioned in the High Court about public meeting in Rawalpindi, he denies knowledge on the size of the crowd. He says 'I do not remember.' However, everyone knows- and it can be checked up- there were at least two lakh people in the meeting. Masood Mahmood says there were 1,000 people of FSF. Now, how can 1,000 people swell a crowd of two lakhs? Here also he has shown that he is not a reliable witness.

Masood Mahmood says that the Prime Minister would call me frequently, and he would also speak to me on the telephone. You cannot objectively evaluate what is "frequent". It is basically a subjective opinion, unless, of course, it is happening everyday. But he says frequent, let us take his word for it that we met frequently. If we met so frequently then I would be meeting him every day. There would be no need for me to tell Saeed Ahmad Khan to give him a message.

My Lord, the June 3<sup>rd</sup> speech of Kasuri: Masood Mahmood dilates on the June 3<sup>rd</sup> speech. He says in the High Court, that I said that I was fed up with the obnoxious behavior of Mr. Kasuri and Mian Abbas knew all about his activities. He says; "The Prime Minister further told me that he had given directions already".

Now, My Lord, this is one of the vital things, he has not said in his earlier statement. He neither said this on the 24<sup>th</sup> of August, nor has he mentioned this on the 14<sup>th</sup> of September. And it is a very vital statement. It is not a statement easily forgotten while making the original statement. In Court he improves by saying that I called him immediately, two days after the June 3<sup>rd</sup> speech and told him that his predecessor had already been given instructions and that I want to see Kasuri's bandaged up or dead body. Masood Mahmood did not say any of this in his earlier statement.

## INTERCHANGE OF CONTRADICTION BEING ON MATTER OF TIMING

Let us generalise the position. I will generalize it to this extent that every material statement that Masood Mahmood has made in the High Court, almost everyone, is an improvement or a new statement. Without going into any particular one, we make a general statement of principle that any improvement or omissions raises the question whether the two can stand together? as this Honourable Court has asked. The two cannot stand together because Masood Mahmood has taken refuge behind the words "I was not asked this question" On every material aspect of the points, whether it is his discussions with Welch, whether it is his discussions with me, whether it is what he has told Main Abbas, he says "this question was not asked of me"

Masood Mahmood has been in custody, a questionnaire has been given to him. Apart from the questionnaire, he has been told to say whatever he wants to in his forty days in Martial Law custody. He gets arrested on the 5th of July, the same time as we get arrested. After forty days, in August, I think 13<sup>th</sup> or 14<sup>th</sup> August, he makes the statement. Not only that, he asks for the services of a stenographer (I don't think I will have the temerity to ask for the services of a stenographer when I was coming before this Honourable court, taking into account my surrounding circumstances). He asks for a stenographer. He asks for Abdul Haq, Abdul Haq whom he takes with him to London, his favorite officer. And he gets Abdul Haq the man who played the role between him and the authorities. He also says he had peace of mind because he was relieved from all these responsibilities, tensions and strains under which he was suffering. He has all the time in the world. He has his stenographer. He has his adviser Abdul Haq. And yet he leaves out all the material aspects of the points both in this August and September statements? As one Justice of this Honourable court has very rightly said, he is taking the investigating authorities for a ride He has taken them for a ride and I think he is taking them he knows how the colors of a rainbow change": What have I done? On the contrary see my statement",

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He has taken them literally for a ride. He comes to the High Court knowing full well that in the High Court this will be considered as an omission.

His confession, or his statement as an approver, is not a full and complete disclosure and falls on that defect. Of course, Ghulam Hussein's is much worse. Ghulam Hussain admits that not only did he not make a complete disclosure but that it was a falsehood because Mian Abbas told him to save my skin' Ghulam Hussain says, I told lies there, and now, in the High Court, I am making full and complete disclosure". That same defect, lacuna, applies to approver No. 1. So both approver No. 1 and approver No. 2 stand self-condemned. They are liars. They have admitted that they are liars. At one stage Mr. Justice Safdar Shah asked, "When is the full and complete disclosure to be made". During the discussion on it, it emerged that every time it had to be made at the

first opportunity - and not at the subsequent opportunity. You cannot choose the timing of making a full and complete disclosure. That is not the law of the land.

Full and complete disclosure must be made at least when you are being pardoned. Even then he has not made a full and complete disclosure. Not only has he not made a full and complete disclosure but he has spoken about peripheral things. He has not spoken about the fulcrum of the case. Masood Mahmood himself said in the High Court that earlier two statements had incorrect things.

My Lord, in this connection, you can see the falsehood he has uttered regarding Welch's talk. Not that I am directly concerned, but this is impeaching his veracity. He has first said that he told Welch from Rawalpindi - and then tries to improve it and says, "no, no, I told him in Quetta". Your Lordships will see that he professes every ignorance about the Islamabad incident. But the point is that if the man has been given this assignment, how is it that he does not know about the Islamabad incident? How it is conceivable that he should not know of the nexus between Islamabad and Lahore? Or that who was employed in the Islamabad incident? Or the ammunition and weapons used in the Islamabad incident. (One person calls it a blue jeep; another person calls it a green jeep)? He professes complete ignorance. All he says is, "*I had a hunch*".

My Lord, you cannot go by hunches. Hunch is a colloquial expression: I have a hunch; I have a sixth sense. I have a premonition. That cannot form evidence. Not only does Masood Mahmood not know anything about Islamabad, but he does not know Ghulam Hussain at all. Yet it has come on record that there was a red light outside his room and he was inside with Ghulam Hussain for a long time. He says he does not know Ghulam Hussain but it has come on record that Ghulam Hussain was his favorite. Masood Mahmood says he does not know Inspector Ghulam Hussain, the arch planner and killer of the whole affair, the main person who is going to execute this crime. He does not know him! He does not know Ghulam Hussain! He does not know the other confessing co-accused - although it has also come on the record that one of them was his body guard! Ghulam Hussain has said that he was on duty in the National Assembly for a long time. Masood Mahmood says that whenever I went to the National Assembly, which I visited quite frequently, he was also always there. And still they do not know each other, Ghulam Hussain and Masood Mahmood?

He does not know Ghulam Hussain. He does not know the confessing co-accused. As pointed out very poignantly and effectively by this Honourable court, then what did he know? What was his assignment? He does not even know the plan! He was asked, "After all did you have any vague notion of the plan?" He has no idea that there is a plan, not even a rudimentary part of the plan. He says that he is just told to go and remind Mian Abbas and that is the only task given to him.

Masood Mahmood says he is ordered to go and tell Mian Abbas whom he finds in complete equanimity and in full awakeners. Mian Abbas tells him the matter is already under control in my hands, I am looking after it; you do not bother about it. There is a legal and moral responsibility on Masood Mahmood as Chief of the Force, especially

when he is such “conscientious man” such a “God-fearing man” that he tells me. “I am a God-fearing man and this cannot be done”.

According to him I threatened him. I lost my temper or said something in a loud voice, which is all fiction. If he was getting involved in a criminal conspiracy he must have some conception of the plan, some knowledge of what is happening, especially if he is the head of the Force. But no, he is non-chalet about it. He is careless about it. He does not bother to find out about the plan and yet he is the main link in the conspiracy!

Let us go to the incident itself the Lahore incident. Masood Mahmood is living in the Rest House in Multan, a canal Rest House. And I am staying with Sadiq Hussain Qureshi, at the White House in Multan. Masood Mahmood says that I gave him a call at 6-30. This is also an improvement. It is so vital that if he had forgotten everything else in his earlier statements, he should not have forgotten this. It is out of question for him to have forgotten, as he later says, that I called him at 6-30 in the morning and what I told him, in colorful” language. I was not in the headquarters and did not have a direct telephone in the first place, nor did I know where this man was living. Secondly, at 6-30? the ADC and others came at 6-30 and not that I am rising at 6-30. There were times when I worked right through the night through 6-30, 7-00, 8-00 or 9-00 and then went to sleep. I would not be so uncivilized as to get up at 6-30. It was out of question.

As a matter of fact, this is corroborated by Rao Rashid in his affidavit filed in the Supreme Court where he says, “I phoned the Prime Minister at 8-30 and the ADC told me to ring up after an hour, 9-30”. Rao Rashid was also in Multan, because he was the IG Police. I was in Multan, and therefore he had to be in Multan. The factual position is that Rao Rashid was the first one who informed me about the incident of Lahore. Masood Mahmood says I called him at 9-30 and in the presence of Sadiq Qureshi, told him non-chalantly, I believe so and so.

How can I call him at 9-30 and tell him this? And how can I telephone him when I have given you reasons on the inability to be able to telephone, and that also on open line. Suppose the open telephone is available to me. My Lords, I tell him all this on an open line. When I told my Ministers to use the secret phone, it is in the White Paper it mentions that he cautioned Rafi Raza not to talk on the open telephone because these are not safe. Now, if I tell my Ministers to talk of secret phones, I, would be discussing a crime, a murder on the open telephone even if I had one in the room-which I did not when the secret phones are available to me, the best secret phones, the safest secret phones? I could have waited for some time to be able to get him on the secret phone and talked to him on the secret phone. But if I was going to call him, why should I even talk to him on any telephone about the crime in question? I would have told my ADC, “Call Masood Mahmood”. I would not do both. But the main point is that I would not use an open telephone. Using an open telephone would be an absurd, stupid thing to do. Therefore, I say he is telling a complete lie.

He is telling another complete lie when he says I called him to Sadiq Qureshi’s house. This has been born out by Manzoor Hussain, his driver. Manzoor Hussain has been brought into play very much about giving a lift to Ghulam Hussain from Lahore to

Rawalpindi. Manzoor Hussain has been especially re-employed by the Government; he was thrown out. He is brought back, re-employed. He is brought in as a credible witness, as an important witness to corroborate Ghulam Hussain. Now, if Manzoor Hussain is right on Ghulam Hussain, then he must be right on Masood Mahmood. And in the case of Manzoor Hussain the Court tried to rescue him and said "Is it not possible Masood Mahmood could have driven the car? It was a court question. Manzoor Hussain said, No because the keys were with me."

More than that, Hanif Ramay is on the calendar of witnesses of the prosecution. At one time a very important member of my Party, and the Chief Minister of Punjab who falls out, as happens in Politics and joins the Muslim League. When he leaves Muslim Leagues and forms a Party of his own. I have no influence over him in that sense. The prosecution kept him sitting for 2 to 3 days. My Lords, the first day he was not brought. The second day or the third day he was "won over". It has been rightly asked by this Honourable court, "Show how he was won over." You cannot just whimsically say he has been won over. You must give some evidence of it. You say he was won over because perhaps he wanted to speak the truth. I do not know. But first you bring him into your list of prosecution witnesses and then say he has been won over? My Lords, you should see how much he has been "won over" by his latest television broadcast. It was critical of my policies. Since he left the Government, he has been critical, consistent with his broadcast. So, the question of winning over does not arise.

Regarding Masood Mahmood's statement that he talked to me on phone and met me: it is not there in his earlier statement. It is not correct. It is an improvement after the case has been cooked and fabricated. Not only that. My Lords, Masood Mahmood further says that he came to Rawalpindi the same day and I summoned him again. I do not see the necessity if I had already had a meeting with him in Multan. Well never mind. It is not true that I summoned him again in Rawalpindi. But Masood Mahmood claims that he saw me again and told me that the idea conceived in your mind and carried out at your behest. It is not possible for me to be a party any more. He absolves himself. He is a clean upright man. It is not true, it is incorrect.

My Lords, if I am so keen, that heaven and earth may fall, the sky will fall, but Ahmad Raza must be out and, I have no other source but the Federal Security Force and Masood Mahmood says he is not going to be a party then he would not be in FSF till the 5<sup>th</sup> of July, 1977. If the FSF is the only source available to me and if, come what may Ahmad Raza is to be eliminated, and if I have brought Masood Mahmood, or brought "X", into this post for this specific purpose, then how is it conceivable that the same man remains in the post until the coup of July 5<sup>th</sup> right from the time he makes this defiant declaration, this Churchill with a Churchillian ring? Not only does he stay on but claims that I become his enemy after 11<sup>th</sup> November 1974. If I became his enemy, that rules him out as an approver. If he is my enemy, then he does not qualify to become an approver. So, there also he disqualifies himself from being an approver.

This man says that I tried to poison his food, I tried to threaten his children, and I tried to do all sorts of things to harm him. But the contradiction arises because he does not say so in his earlier statement, firstly. Secondly, if the man's wife and children are

threatened, he gives another reason, also, for it. He says that in the election of January 1977, there were certain opposition leaders who had said in their statements that they will hang him upside down. He said yes, they said it. He admits that there are other opposition leaders who used to say that we are going to deal with this man. So who is threatening his wife and children? Am I threatening his wife, his children? While he remains in FSF as Director-General? Is the opposition doing it or both of us are doing it? If the Government and the opposition are both bent upon doing these things (which he claims) then there should be no difficulty. But nothing of the kind happened.

He goes on foreign tours. I gave him permission and he wanted to go. He goes on a long tour to the best of countries; Belgium, France, England, Japan, Not only that, he goes on his treatment and he takes his wife with him. I permitted him to take her. He said "I am a sick man. I want my wife to accompany me' this wife whom I supposedly wanted poisoned or harmed. I said, "Yes, take her, if you want. You are sick". He wants to take Abdul Haq also. So, he goes with Abdul Haq and with his wife.

This might look unusual to others. But I did allow many to go abroad, (including Moulvi Mushtaq, Chief Justice, of Lahore High Court who wanted to go to Camo in Italy, for a conference. I was inclined in that direction. Why should I not be helpful? There were many cases of that nature. He says I am sick. Naturally, if you are sick, you should take rest, nothing unusual or abnormal about that. But, My Lords, he makes a grievance out of the fact. In Ziarat, on the one hand, he says he was not all that sick. On the other hand, he says, I am so cruel that, I told him to go to Lahore and return to Ziarat the next day. My Lords, he says that he got a mini stroke in Ziarat. He can call it a mini, but it is a stroke, number one. He says he lost hair in one part of his moustache. He says it affected his eyesight and he lost his hearing in one ear. But the funniest part of it was that I was sitting in Ziarat and I see him without a moustache. I asked him what had happened and he said his moustache fell off. How didn't you inform anyone? He says I do not know, but, Sir, I am very ill, my moustache fell off. He said to me, "I am very sick, kindly let me go to Lahore for one day. There is a specialist in Lahore, whom I want to consult". I said, "No, why do you want to go for one day only? In this situation, go for a longer time". He says Mr. Byroad (the American Ambassador) is coming to see you tomorrow and there is something else happening. So, I will return". "Suit yourself as far as I am concerned", I said, "you not only go to Lahore, you go abroad straightaway, if you want, and get yourself treated because this is serious". He says, "No, I have got a very good doctor in Lahore. I have got my relations there. I will first go to Lahore and get a tentative view and then, if I am unwell then also I will come back, I will take sedatives and come back". I again said, "Suit yourself, but from my side, you are welcome to go anywhere you may like".

Now this is the position. But in this case he says he was not all that ill. He says, "I am not ill. It is an exaggeration".

He suggested to me, "Sir you know that there is an agitation going on. We are setting telephone calls. You have got sons (they were here on the holidays) and daughters, (one of them was here), let FSF look after them. Let us have one jeep or one guard", I said No, why should it be? "No Sir, it must be done now". I said all right you might be right in

good faith. So, I entrust my life, the security of my children to this man and I threatened his children and his wife! It is a ridiculous contradiction, if I may be permitted to use the word.

Now, I go back a little bit to say about the questions asked about Commander Ibrat (which is the PLD reported case, a Sindh reported case). The question has been raised: Then why has a man like that as FSF Director General? Fair enough. Why have a man like that? But I ask a counter question that if this is so, why was this man in Dacca? He was SSP Dacca. As for Ibrat we had read about it in the papers. Yesterday you asked that question about Ibrat. My Lord, if you go into such question then there is a very long list. There is Qurban Ali Khan. He was the D.G. of Punjab - What all he did! Why he did in Lyallpur?

You have to choose from your society and not only from your society but from your Services. If Masood Mahmood had been suspended or thrown out from the Government at the time of Ibrat then he would have been out of Service. But no action was taken against him either after Ibrat or after the Dacca firing. Not only that. On paper Masood Mahmood had a very good record. One has to go by the record, as Your Lordship says. See his service record. Even Masood Mahmood claims in his statement that Mr. Aziz Ahmad, a very experienced person and civil servant, who became Secretary-General and Cabinet Secretary had given him very good report. I think he also says Asghar Khan gave him good reports.

We went by the record. In that situation, if you have a process of elimination, then you won't find ever amongst all the policemen that kind of ideal person. His appointment is that it was not favored. It was on merits as far as we are concerned, and nothing else. He was not brought for a special mission or a special job.

In the court, in order to attack his veracity, a question was asked about whether he knew a man called Manawar Ali Khan. He said "yes, Manawar Ali Khan was with me as a student. Then he was with me in the Air Force". And then he is asked: "You know this Manawar Ali Khan"? He says, "Yes, I know him because of that". "Do you know what his job is" He says "I do not know his job". "Have you met Munawar Ali Khan?" "No. I have not met Mr. Munawar Ali Khan". Without trying to be scandalous (after all we all have got families) the next question was asked, to attack his veracity: You do not know Munawar Ali Khan's job, you do not meet Munawar Ali Khan, you have not met him since the Air Force days, and you have no contact with him, how is it that you married his wife?" He has to be either a Rasputin or a Bengali to be able to do that. He does not meet the man, he does not know the person and yet he pulls the eggs out of the nest, and the crow is sitting on top of it. But the court does not allow this question to be asked. It says the question scandalizes the lady. We do not want to scandalize the lady, certainly not. But it is a murder case. I am being charged with capital punishment. I am being charged with the crime of murder and of being hanged, and we cannot attack the veracity of the main man, the person who accused me of murder and is the principal witness the main approver? We cannot attack his veracity, scandalize his wife or say she is not of good character. We may be bringing the lady in but we are attacking your truth fullness, your capabilities to excel yourself in telling lies.

The question was not allowed. It was said this question cannot be put. It was explained in what circumstances the question is being put. They said we are not going to bring in the name of any ladies. My contemporary at Oxford, Jeremy Thorp, (he was at Trinity, I was on Christ Church) is feeling some difficulties. He is facing a prosecution. Well, what questions are being asked? What absurd questions are being asked? And I can say if I can be of any Defence, that Jeremy Thorpe was not that kind of man at Oxford. If he was, I would have known. However, that is beside the point. It is absurd that we should not be able to put this question have for justice. First of all we were not given an opportunity to properly cross-examine Masood Mahmood. Moreover, when he is asked a question on cross-examinations on why he had left out these crucial statements of Multan and Rawalpindi he gives a long lecture. He gives a very long lecture in which he goes to the extent of alleging that I said to him, if need be, I would kill my own son Mir Ghulam Murtaza Khan Bhutto, my son and heir, of whom I am gratefully proud of a gallant, brave, young man at Oxford. I have trained him. And I told this man that I would kill him?! My Lord, there is a limit to try and depict me as some kind of cold-blooded murderer who would kill his own son. I have brought him up with my own hands. And that statement is not discarded; it is put in an envelope. And that boy will give his life for me. It is an uncalled for remark. It is a false remark. I have not discussed Mustafa Khar like that with him either. So he has told a lie even on Mustafa Khar only to link me.

*Honorable Chief Justice:* That may be no.

*Mr. Zulfikar Ali Bhutto:* Because I have treated Mustafa Khar like a family member.

*Honorable Chief Justice:* Yes, apparently you were displeased with his misbehavior.

*Mr. Zulfikar Ali Bhutto:* There is also political background to it. There is a big story about that. Let us leave that out. It is not relevant to the record. I was not displeased with him. He used to see me. He used to come and stay with me in those days in the Prime Minister's House. He used to go on *Shikars* with me. Because there was another factor involved in that. That was another entirely political matter. Even I had said it about Mustafa Khar, which I did not, I would not have said it about my son in any context. The proof of the pudding lies in the eating of it. What is Mustafa Khar's attitude today? We are human beings. We have Pakistani temperament; what is Mustafa Khar's attitude today? What inducements have been given to him? This is not on the record? He has filed an affidavit and he has said what kinds of inducement were given. A member of the Government at that time goes to London and has two discussions with Mustafa Khar and Mustafa Khar refuses those offers and inducements. The question does not arise for me to have said such things about Mustafa Khar to Masood Mahmood. But if it does arise, it does not arise for my son, even if it was by way of an analogy. My Lord. So this point that the man has gone to that extent. Who was Masood Mahmood that as Prime Minister I would be giving such dramatic examples to a subordinate?

*Honorable Chief Justice:* We note the point that he is lying.

*Mr. Zulfikar Ali Bhutto:* Lying with a Capital.

*Honorable Chief Justice:* All right. We note it.

*Mr. Zulfikar Ali Bhutto:* My Lord, I have argued on the question of his veracity, his character and his ability to lie. Secondly he has disqualified himself as an approver because of his enmity with me, his self-proclaimed enmity. Moreover, he has not made a full and complete disclosure of material and key answers to questions. I go in the same connections, and take the train further to his-false claim regarding Munawwar Ali, to the remarks about Khar and Mir Ghulam Murtaza Khan. Third comes the question that he does not know Seth Abid.

Seth Abid is related to him. Seth Abid is known to be a smuggler and he was wanted by the Government. All this is on record. He come from Kasur. Seth Abid's brother sends food to him in the camp jail in Lahore. But Masood Mahmood says he does not know whether Seth Abid has come back: "I do not know whether he is being given permission to start a Bank in Pakistan". He does not know anything about the man so closely related to him, who is married to his sister as well. After, all, he should know something about it especially when it is such a famous case, well-known case. For two years, we were trying to get hold of this smuggler and he disappears from Pakistan. He returns to Pakistan when Martial Law is imposed and he gets pardon. All his cases, all are wiped out and cases go untraced. He becomes clean. Seth Abid becomes clean. And this man does not know whether he has become clean?! His have been withdrawn. He has been rehabilitated. He has been exonerated. He is made a respectable citizen again and he has got permission to open his Bank His income-tax cases have been taken out. But Masood Mahmood does not know.

Masood Mahmood wife is a cousin of Mrs. N.A. Faruqui, Khan Bahadur Qayyum's daughter. Masood Mahmood's says he does not know N. A. Faruqui, an Ahmadi of Lahori sect. Begum N. A. Faruqui, whom I also know from my Bombay days. They are a nice people. He does not know that N. A. Faruqui was the Chief Secretary of West Pakistan Cabinet Secretary, holding very high offices and not just an Ahmadi of Lahori sect. but a very important one. Begum Faruqui and Masood Mahmood wife are sisters or cousins and he says, "I do not know".

What do you know then? You only know that I told you to kill my son Mr. Ghulam Murtaza! That is all you know! You do not know Seth Abid! You do not know anything about the conspiracy! You do not know anything about the plot! You are not involved! You do not know Ghulam Hussain! You do not know anyone. You do not know anything! You are so innocent! And you become the main approver! Approver must have also the knowledge. He must have participated. He must be a party. He must be a part and parcel of the drama.

Now, My Lord, he is asked questions about his custody, and it is a natural question to ask for in the achievements of the present regime. This is the first time that civil servants have been taken immediately when Martial Law has been declared. Next time, perhaps,

the judges might also be taken. Who knows! But this time civil servants have been taken into custody for the first time when the Martial Law was declared. Amongst the civil servants, he was the first to be taken into custody. He goes to Abbottabad. He is interrogated by a Major-General's team, Major-General Kaloo is interrogating him. There are two teams interrogating him. He has admitted that in Mr. Justice Zakiuddin Pal's Court in the contempt case. He has tried to mystify the issue by saying "higher authorities". He was asked: "By authority you mean the Martial Law authorities". That is all there on the record.

If I am a "compulsive liar", he is a congenital liar. The question is that he has told such lies. He says he does not know about the team. He is not aware of it. He gives a hundred-page letter making "a clean breast". Why to the Chief Martial Law Administrator in the normal course of justice? This is what has been supposed to be against me". Why have you imported Saeed Ahmad Khan, when I had not imported Saeed Ahmad Khan. "Why have you imported Saeed Ahmad Khan into investigations? These investigations are carried on by S.H.O's, by police and utmost by the Punjab Police?" Why then should Masood Mahmood's letter, written with the assistance of a stenographer and running into a hundred pages be addressed directly to the Chief Martial Law Administrator? And at a time when the Chief Martial Law Administrator is upto his neck with national problems and other questions of the country? Having taken over the administration there must have been many more pressing problems that should have been engaging the attention of the Chief Martial Law Administrator. But why should the Chief Martial Law Administrator is injected into this case if the question of Saeed Ahmed Khan having gone to Lahore and these fictitious telephone calls made are relevant in this case? If that is the position, here it is much more relevant, much more germane to ask the question: Why then could be not write it to some Deputy Martial Law Administrator, or to a sub-Martial Law Administrator or someone further down or to the FIA?

The pattern is the same. Rao Rashid is also approached by some Major General, M. Abdur Rahman Khan. He tells him that if you involve Mr. Bhutto in this murder case, election case, we are going to keep you in service. Saeed Ahmed has also written a 30-page letter to the CMLA so, all of them have been asked, been told that the CMLA is interested to have replies to these questionnaires. Why" But as I said, I do not want to unnecessarily go into these question of other people. I have given the assurance and I am a man of my word. I am not going to scandalize individuals.

Now, going into the question of pressures being put on Masood Mahmood. He is a sick man. He is a heart patient. He is a hypertension patient. He has come back with special equipment of spectacles, with a hearing aid. All these factors I am bringing into consideration. For my Defense I am not trying to attack someone else, but showing that in spite of these factors, and stenographers and his Abdul Haq, he does not mention all these material questions

In short I am putting two and two together. Masood Mahmood has not been an approver. You cannot categories him as an approver because he has himself said that from 11<sup>th</sup> Nov. 1974, I was his bitter enemy, trying to kill his family, wife and children.

Secondly, he cannot be an Approver because he says that he has no knowledge at all of the plot or of the people. I am trying to prove that he is a liar on the face of it. Therefore, I mentioned Manawar Khan, N.A. Farooqi, Seth Abid, and Mir Ghulam Murtaza Khan. It is in this context of the chain that I have said that he writes a hundred-page letter

Of course, during Martial Law it can happen, because Martial Law is Martial Law. Your Judgment on Martial Law, I say, it is a positive judgment. But the other day. My Lord, you said that we have validated Martial Law. You have not validated a blank cheque, you have not given.

*Honorable Judge:* No, no, no.

*Mr. Zulfikar Ali Bhutto:* Your validation is in very logical terms, in terms of how you have defined and limited the scope of necessity and put the power of judicial review there. I think, if your judgment is followed correctly, it may be very crucial in saving this country. In this judgment you have given a flower to them, a bouquet, and if they want to trample on that bouquet and flower that will be a great national tragedy. But if they treat it as a flower should be treated, it might render a service to finally saving this country, which is in a very precarious position. But what will they do with this bouquet, which you have given them? Are they going to throw it, trample on it as they unfortunately appear to be doing?

## CHAPTER FOUR: THE FOURTH DAY

Before requesting Mr. Bhutto to resume his submissions, the Honorable Chief Justice observed that as perhaps some of the ladies and gentlemen present may have seen a news in the Pakistan Times, the widow of the late Nawab Mohammad Ahmed Khan had sent his Lordship a telegram requesting that her son, Ahmed Raza Kasuri be given a hearing because Mr. Bhutto had made some vile allegations against them which would go unattended, unrepresentative and that had she not been lying ailing in Service Hospital for treatment, she would have come personally to the Supreme Court to make a request in this regard. His Lordship remarked that although he appreciated the feelings of the widow of the deceased, as far as the court was concerned her son had appeared as a witness, and that was about all and that he had otherwise no locus stand to make any submissions at this stage as a party to the case.

His Lordship further observed that as a witness Mr. Kasuri had had the fullest opportunity to say whatever he had to say and that there was no question of any witness being allowed to address the court. This was the right of the accused or the counsel for prosecution and Mr. Kasuri, as a lawyer, ought to have advised his mother not to send any such telegram, because it served no useful purpose. Commenting on Mr. Kasuri's presence in court, his Lordship expressed the confidence that being an advocate of this court, Mr. Kasuri was aware of the etiquette and the practices of the court and that no matter what an aggrieved in both senses, namely the one put on trial and the one whose father or husband had obviously been murdered, even though the aggrieved family merited all the sympathies, that did not entitle them to address...

Mr. Ahmad Raza Kasuri attempted to interject at this point, but was made to observe silence.

At this juncture Mr. Irshad Qureshi, counsel for the co-accused rose to request on behalf of his clients that they be given a chance to speak for themselves after Mr. Bhutto had concluded, remarking that they would confine themselves to the case, general Defense, the Federal Security Force and themselves.

At this an Honorable judge observed that there would be no hearing now and that Mr. Qureshi's clients did not stand on the same footing as the complainant in this case, as they had admitted their guilt and were confessing a crime. The Honorable Chief Justice observed that Mr. Bhutto should be allowed to start asked Mr. Bhutto to continue.

*Mr. Bhutto resumes:* My Lord, before I endeavor to make my submissions on the trial, there are two small matters overlapping from yesterday's discussion to which I would like to draw your Lordship's attention.

The one relates to privilege motions. Yesterday evening I thought over the matter of privilege motions and tried to recall them. As I said yesterday the position about privilege motions is that the House is virtually inundated with them and with adjournment motions. There is a Committee of the House to deal with such motions. Once the Speaker thinks that there is a prima facie case, he refers it to that Committee. The Committee goes into the case, which comes up then to the House itself. So, it passes through two stages.

In relation to the four privilege motions mentioned, I concentrated my mind on them and recalled that the Speaker had said to me that, first of all the person moving the privilege motion was out of court and it would be more appropriate for him to move an adjournment motion. Secondly, a privilege motion was restricted to whether there was an interference preventing the member from attending the House, something to the effect that a privilege had been blocked, because a member was coming, his train was stopped, he was arrested and could not fulfill his duty by coming to the House. As there was no question of his privilege being blocked or of his not being able to come to the House in that sense, for the very fact that he moves his privilege motion shows that he is in the House and his privilege has not been blocked, it was said that it would be more appropriate for him to move an adjournment motion.

It was also the view of the House that if the National Assembly, a political body essentially, were to go into these matters it would be interfering with the investigations, because the privilege motions were moved after both the FIRs had been filed. One privilege motion was moved after the Islamabad incident, the other after the Lahore incident. Actually the House would then have been accused of interfering in the course of justice and the investigation of the case.

The second matter My Lords, relates to the question of motive and conspiracy. Your Lordships have given me abundant time for which I am grateful, but my observation now is on the finality of it. There is a fundamental contradiction in the sense that when it comes to motive, the prosecution case is that it is a long-standing history which actually culminates on June 3rd. Yet, they themselves say that the conspiracy starts subsequent to June, and thereby discard the theory of pre-existing conspiracy. If the conspiracy starts after June, the motive starts after June. I say that there is a fundamental contradiction in the prosecution case when it says " We disclaim any existence of pre-existing conspiracy. We say that Mr. Bhutto was agitated or was angered by what was said on June 3rd and as a result of it the conspiracy came into being. I am referring here to your Lordships' observations of yesterday, regarding Kasuri's speeches and his accusations over a long time. I thought it was necessary to mention this in that connection.

So, My Lords, coming to the trial when I was taken to Lahore on the 24th, again with an incomplete Chalan, a fact, which has already been mentioned before Your Lordships as also the applications, and motions made relating to the competence of the court, the question of the next hearing came up. I believe, according to Criminal Procedure Code, seven days is the minimum time provided, so seven days were given. At that time my senior counsels were before your Lordships in the Supreme Court in an important writ

petition and an advocate, who was not engaged by me, but happened to be a member of my Party, got up and said, "Even after Mr. Bhutto has made a request" - one of my counsels must have made it in an application - "for three weeks' adjournment, it should be granted".

There was unnecessary sensitivity over the words, "even after Mr. Bhutto" and the Acting Chief Justice exclaimed, "So what? What do you mean by even after Mr. Bhutto?" The very use of the words even after Mr. Bhutto caused irritation and annoyance. I wanted to out short the unpleasantness. To stop it, I told Aftab Gul to sit down, saying that as far as the timing is concerned, the court had said that if I needed more time, they would grant me more time and that I had confidence in the court in relation to the starting of the case.

On the 25<sup>th</sup>, that is, the next day, nothing appeared in the press regarding this matter. But what was said by my counsel in the Supreme Court appeared in the Pakistan Times of the 25<sup>th</sup>, namely, that I had submitted a petition to your Lordships saying that I feared that I would not get a fair trial and that I did not have confidence in the impartiality of the Acting Chief Justice. On the following day, the 26<sup>th</sup>, there was an item in the Pakistan Times, stating that I had expressed the fullest confidence in the trial court.

My Lords, I have expressed my fullest confidence, not once but on two occasions here. The question is I did not express my full confidence there. What I said was in the context of the altercation that took place over, "even after Mr. Bhutto". So, I got up and drew the attention of the court to the item in the Pakistan Times of the 26<sup>th</sup>, for it seemed very strange and anomalous that, on the one hand, I had instructed my counsel to take up the question of my lack of confidence in the trial court before the Supreme Court and, on the other hand, I should be taking this position of expressing the fullest confidence in the trial court, thereby embarrassing my counsel, embarrassing myself and also contradicting my instructions.

I reminded the court, therefore, that it was in view of the intervention of Mr. Aftab Gul and what was said in that connection that I had expressed confidence, to which Mr. Justice Mushtaq Hussain said, "Well, we are not responsible. What comes in the newspapers is not our responsibility. We know that this is what you said yesterday, when you made that intervention about confidence".

But in spite of all that, the three weeks needed by us were not granted. My counsels were engaged in the Supreme Court. I had been arrested since the 5<sup>th</sup> of July, ostensibly in protective custody, but in solitary confinement. Then I was released on the 28<sup>th</sup> of July and again re-arrested on the 3<sup>rd</sup> of September in Karachi in very harrowing circumstances. I was released only for three days and was again back in jail. So, if an adjournment had been granted, it would have been only fair and right. It was not done and the date of 2<sup>nd</sup> of October was fixed for the case to begin.

The case did not begin on the 2<sup>nd</sup> of October, not because the Court did not want to begin the case, but because certain documents, which were necessary for beginning the

case, were not provided by the prosecution. The case was, therefore, adjourned to the 11th of October, not because of our request for time, but because of the nonavailability of the documents.

Prior to October 11, 1977, Mr. Ghulam Ali Memon had submitted two applications on motions or motion applications in the Honorable High Court. One of them definitely had important constitutional bearing on the matter with which we had been dealing and I had made a request that I should be permitted to supplement my arguments in this connection. In the open court I was told that I would certainly be given this opportunity and that I would be allowed to speak for hours and hours.

I was given this assurance again on a subsequent occasion, when I was told, "You will be allowed to speak for hours and hours and we have already told you that you will have full opportunity". This was not said in camera trial, this was said in the open court, with all the advocates and others present in it.

On October 8<sup>th</sup>, when Mr. Ghulam Ali Memon concluded his arguments, I rose to speak. I was abruptly and rudely told to sit down. I was told that if I needed a stenographer, a stenographer would be made available to me and that I should say whatever I had to say in that application or representation of mine and that the court would give an order on the following day.

Now, My Lords, these were constitutional matters, they were very important and urgent matters. They were summarily tried and the other side was not even given notice. And then, apart from that, on the 8<sup>th</sup> I was told that I can dictate whatever I have to say on these matters to the stenographer. After that I very politely told the court that in view of the two assurances given to me on two separate occasions in the court that I would be able to address the court on these constitutional matters and now being suddenly told to write to the court, which would anyway pass the order on October 9, 1977, what would I be able to tell the stenographer in that process? I would have wanted to make my submissions.

My Lords, here also two orders were passed which are in themselves contradictory. On the one hand they say no such assurance to address the trial court was given, on the other hand they say they gave an assurance, the only question being whether the assurance was for a written submission or a verbal submission. That is all. Now, the open court heard on two occasions that I was told that I would be allowed to speak as Your Lordships have now given me this opportunity. I was given this assurance, but it was not fulfilled. Then, my Lords, on October 9, the application was summarily dismissed and the case proceeded on the 11<sup>th</sup>.

Yesterday, the question arose as to why a certain matter had not been raised in the High Court, which was the place where such matters should have come up. In this connection My Lord, I would again like to refer to the construction of the dock. Apart from the fact that there was no justification for erecting a dock and putting me behind that dock at one stage I was under the impression that during Mr. Justice Young's time a dock was erected, but I have found out now that in the Lahore High Court a dock has never been

erected, only a witness box was erected but apart from all these things, the construction of a dock posed a physical impediment.

As it is, on my left sat the Superintendent of Police (first) it was SP Zaman and after that Zafrullah) and on my right sat an Intelligence Officer, either from the Special Branch or from the DIB. They were all ears. Even if I would speak to say 'good morning' or "Assalam-o-Alaikum", they would put their ears forward. At one stage I was writing something on the record of 342, and I found them both peering into it. I could not even sit and write or sign. They were like vultures on both sides of me and apart from these two vultures all the time with me; I was not close enough to my counsels to be able to give them instructions as the case proceeded.

This is borne out by the fact that when my wife was lathi-charged in Qaddafi Stadium on December 17, 1977 and I was trying my best to get in touch with my counsels, I could not do so. I was trying to talk to Miss Talat Yaqoob, who was there, but the distance was so much that she could not follow what I was saying because my voice could not reach her. I tried to get Mr. Awan, but he could not hear me either. This is a graphic example of the gulf and the physical impediment between me and my counsel, which made it impossible for me to give the kind of instructions, which you're Lordships said, should have rightly been given then.

*At this point, the Honorable Chief Justice interjected to ask if Mr. Bhutto was referring to the cross-examination of Mr. Kasuri, which had come under discussion on the previous day. Mr. Bhutto replied in the affirmative, at which the Honorable Chief Justice observed that since Mr. Bhutto was meeting his counsel in jail and since it was notified that such and such a witness would be in the box on the following day or the day after, the presumption was that Mr. Bhutto would have given his counsel the necessary instructions.*

**Mr. Bhutto resumes:** My Lord, what I am saying is that I was handicapped, that I was made to suffer unnecessarily, which was not according to the conventions and the traditions of that court. And then I was coming to this very point, which Your Lordship has made. It can be said that I was giving instructions, but as far as such instructions are concerned, one can only give them regarding that which is likely and possible. One cannot give instructions on something, which is in the imagination of the person who is going to make all kinds of allegations. With the best of imaginations one could not have conceived some of the statements that were made. Had they been based on concrete facts, then one could have anticipated them. But they were not based on concrete facts. Some fantastic and imaginative things were said. I could not have given prior instructions on them. Moreover, My Lord, in view of the attitude, which was adopted by the complainant in his examination-in-chief, it was all the more necessary to give on-the-spot instructions, to point out statements, which were outright figments of his imagination, to point out total falsehoods. In order to do so, it was necessary for me to be close to my counsel. If his statements had any bearing with reality, then of course, I could have been asked why I did not anticipate them and give certain instructions, But if they did not, then...

Mr. Ahmad Raza Kasuri interrupted the proceedings at this point to complain that a certain gentleman standing behind him was preventing him from talking to his counsel. At which the Honorable Chief Justice reminded Mr. Kasuri that although the court had the greatest sympathy for him, his mother and his family on the humanitarian plane and that even Mr. Bhutto had said he was very sorry when he learnt about the demise of his father, as a lawyer and as a responsible person and a former parliamentarian Mr. Kasuri should know that this was a State case and that the State had engaged two very competent lawyers who were sitting there and who had argued the case for seven weeks and that the court would appreciate if he could control his feelings and emotions.

*The Honorable Chief Justice then enquired from Mr. S.M. Rahman, Advocate-on-Record for the prosecution if he would be willing to receive instructions from Mr. Kasuri. Mr. Rahman replied in the negative and stated that he was representing the State and not Mr. Kasuri.*

*The Honorable Chief Justice then informed Mr. Kasuri that the person standing behind him was there to keep order in the court and requested him to refrain from interfering at this stage as it did not serve any purpose. Reiterating the court's feeling of sympathy for Mr. Kasuri, the Honorable Chief Justice observed once again that Mr. Kasuri had said in the witness box whatever he wanted to say in support of his case or allegations and that although Mr. Bhutto's counsel had had full opportunity to cross-examine him, as an accused Mr. Bhutto had a right to speak and that the other accused had also requested and that the court had agreed in principle to give them each a few minutes. The Honorable Chief Justice further added that if Mr. Kasuri felt too overwhelmed and wanted to leave the court, the gentleman standing behind him would assist him in doing so.*

*Referring to the Security Officer standing guard on Mr. Kasuri, the Honorable Chief Justice asked him not to interfere with Mr. Kasuri's freedom of movement or expression as long as he did not interfere with the working of the court.*

**Mr. Bhutto resumes:** My Lord, I genuinely expressed my feelings about the death of Mohammad Ahmad Khan Kasuri in this court. Otherwise, I am not the kind of person who would send a telegram of condolence without feeling. Both my wife and I sent telegrams of condolence to his family when the death occurred. I did not know the whole thing was going to be thrown on me subsequently. We sent our telegrams of condolence and, if I am not mistaken, my cousin Mumtaz Ali Bhutto also went to offer condolences. My Lord, after all, feelings are there, feelings are there for both sides. If a person is harpooned into a false and fabricated case and convicted for capital punishment, he also has feelings.

The point here is that Your Lordships will now appreciate even more so that at one stage when I got up to try from the dock to approach Mr. Awan to tell him something on a matter which I thought was absolutely necessary for me to contradict, the complainant, who was then in the box, turned to me, having been a member of my Party and, above everything else, I having been his Prime Minister, he turned to me and said, "You shut up, you sit down, you accused, you murderer, you have no right to talk in the court". This happened in the High Court. Now, if he had been told by the court that look here don't interfere, you are in the witness box, if he has got up to give instructions, you cannot shout him down and call him an accused and a criminal and say that there is

going to be revenge. All that the Chief Justice said was, "You mean Qasas?" to which Kasuri said, "Yes, My Lord, there will be Qasas".

*Mr. Rahman interrupted at this point to say that the thing about Qasas had been said later and also remarked that the dock had been put up, as on the 8th a press conference was held during the interval by Mr. Bhutto and that Mr. Bhutto was all the time in communication with his counsel.*

*The Honorable Chief Justice observed that the position had been explained by Mr. Batalvi, Senior Counsel for the prosecution and Mr. Yahya Bakhtiar, Senior Counsel for the Defence and that nothing really turned on it. His Lordship further remarked that he was not sure whether any objection could be taken in law, because even the England phrase, now you are in the dock', which was idiomatic in sense, only meant that the person to whom it was addressed was open to some criticism or was answerable for something. His Lordship added that this must have possibly hurt Mr. Bhutto's sensitivity.*

**Mr. Zulfikar Ali Bhutto:** My Lord, I have given the assurance that I am concluding today, but if there are many such performances and improvements by continued interruptions then.... The English language is rich with metaphor and if you are going to reduce it to a literal language, which you are doing, this implies taking up time unnecessarily....

*The Honorable Chief Justice interjected again to remark that Mr. Bhutto had obviously felt hit or indignant at that time.*

**Mr. Zulfikar Ali Bhutto:** My Lord, I do not want to waste my time because I have more important things to say. I do not want to go into this question. Here, I would like to say, not because it is a question of any importance, but because it is a question of truth fullness, that I gave no press conference. My Lord, I was sitting where I was told to sit, otherwise I would have been immediately taken away into another room. The same SP's were there. I just sat in my chair where I was and I was not asked to leave. It so happened that some foreigners and even some Pakistanis passed by that way. They asked me how I was feeling and some other questions of that nature. This informal discussion was reported by them. I was not even aware that they were press correspondents. Now, there are so many press correspondents here. If somebody here comes and asks me about my health, naturally I would answer. So, it was not that I had held a formal press conference.

To continue with my arguments, My Lords, it has been said that as a tactical device to impede the course of justice, I took the position that the Chief Justice of the Lahore High Court had animus against me and was prejudiced against me and that, in effect, there was no prejudice, no animus in the matter. Now, I would not like to go into submissions already made by Mr. Yahya Bakhtiar, but I would like to say something in this regard, because Mr. Yahya Bakhtiar has been involved in this matter in the sense that it has been attributed to him that he transported his venom against the Chief Justice into my mind.

My Lord, I have very great respect for Mr. Yahya Bakhtiar. He is like a brother to me, but I would just like to ask, was Mr. Yahya Bakhtiar a member of my Cabinet or was I a

member of Mr. Yahya Bakhtiar's Cabinet that I should be influenced to that extent by him? I was his Prime Minister, he was my Attorney General. He was not my Prime Minister and I was not his attorney General that I should have been so much of a plaything in his hands. On such a fundamental question I would naturally decide my own fate and my own future. I would naturally decide on my own on a matter in which my life, my prestige, my honor, my reputation, my political career are involved. So, I don't see why Mr. Yahya Bakhtiar was unnecessarily brought into this matter. It would not be fair to Mr. Yahya Bakhtiar to hold him responsible for all this.

*At this point an Honorable Judge observed that factually Mr. Yahya Bakhtiar said that he advised Mr. Bhutto, but whether that advice was accepted or not was a different question.*

**Mr. Zulfikar Ali Bhutto:** Sir, a good administrator is judged by the fact that he rejects ninety per cent of the advice given to him. So, My Lord, these were my submission in respect of Mr. Yahya Bakhtiar. I owed Mr. Yahya Bakhtiar a moral responsibility to clarify this matter.

Now, as far as my own position is concerned, I have here also tried to be very ethical. I could try to be very ethical. I could have, on concrete terms, quoted former Ministers, Law Minister, Sheikh Khurshid, even though he is dead. I could have quoted the Chief Justice of the Sindh High Court, Tufail Ali Abdur Rahman, on this subject of bias. If I had really wanted to go into historical chronology, I could have started from 1963 when the Chief Justice was the Law Secretary and a very important situation arose in Dacca. But I did not bring this up because I thought, why now, why go into 1963? There is enough on the record to prove my point, why mention incidents, which took place in Dacca in 1963?

Nonetheless, My Lord, there is a link between Dacca 1963 and the fact that the same Chief Justice tried me subsequently in my detention latter. I would have liked to hope that this was a coincidence, but I don't regard it as a coincidence. After all, the High Court, even in 1963, must have had about 25 judges or so. Out of these 25 judges, it was the Chief Justice who tried me in Lahore Camp Jail in camera - I seem to be the one to attract camera very much, for in the Lahore High Court I was again tried in camera. Of course, My Lord, in 1963 I was the petitioner, but the Bench that was constituted had the Chief Justice on it because of that factor of Dacca 1963. Then also, a very unpleasant altercation took place on the very first day of the hearing. I was a younger man then and I left the court because of the remarks Mr. Justice Mushtaq Hussain made and was brought back to the court by my lawyer, Mahmud Ali Qasuri.

This case itself was not decided in court and I was set free as a result of a general demand of the public for the release of all political detents, including Sheikh Mujibur Rahman who was being tried for conspiracy. The point is that I did not even bring all these things into any one of my applications because I thought it was best to forget them.

We come thus to the resolution of August 3<sup>rd</sup> 1977 of the Central Executive Committee of the Pakistan Peoples Party. My Lord, at that time, although these investigations were

taking place, we were unaware that this criminal case was going to be lodged against me. Even if we can be said to have known that, we did not know who was going to try it. As a matter of fact, initially it was not being tried by Justice Mushtaq Hussain and the four other judges; it was being tried by two other judges of the High Court.

Without any knowledge or reference to a case where Justice Mushtaq Hussain would be trying me for murder, the Central Executive Committee passed a resolution saying it did not have confidence in the impartiality of Justice Mushtaq Hussain, who had by that time been appointed Chief Election Commissioner. We had thus already expressed our complete lack of confidence in his impartiality

In reply to the Central Executive Committee resolution, Justice Maulvi Mushtaq Hussain gave a press Conference saying that he did not need to take issue with parties or to enter into a dialogue with them. The question is that the PPP did not want a dialogue. No dialogue was asked for. We simply said that we did not have confidence in the impartiality of the Chief Election Commissioner. So the answer given, really evaded the problem.

Then there is also the question of what Mr. Pirzada told me in the Kot Lakhpat Jail regarding certain prejudicial remarks of Justice Mushtaq Hussain and although as I said the other day, I readily accept what My Lord Mr. Justice Nasim Hasan Shah had to say in this respect, the fact is that Mr. Pirzada was prepared to file an affidavit and it was I who said that I did not want an affidavit to be filed. What I am trying to show here is that all these things happened before the case started, before we knew that there was going to be a case, and before we knew that Justice Mushtaq Hussain was going to constitute a Bench and that he was going to preside over the Bench in this case.

Then, My Lord, on November 5<sup>th</sup> 1977, I filed an application on the press conference that was given by the Acting Chief Justice regarding the case. This application is on the record and you have seen it, so I will not go into it, except to point out that it is unusual for a presiding judge to give a press conference in any form on a case before him.

However, what I would like to mention now before Your Lordships is that, in this press conference, the Chief Justice gave virtually full assurance of the trial being an open trial. He said that I would be tried in the full light of day and according to the common law traditions. He said that precautionary measures had been taken to tape the proceedings and that I had twice had an opportunity to verify the proceedings. This was factually incorrect in that the tape was not played before me. The Chief Justice also expressed the wish that Amnesty international would make an appearance to see how fairly the trial was being conducted.

In view of this press conference, I would like to know how and from whence the secret trial? After all, I heard the prosecution for two and a half months or three months. For two and a half or three months I sat in silence, and then when my time came, when my opportunity for defense came, why then at that point in time was the trial arbitrarily converted into a secret trial?

The reasons have been given as, first of all, statutory powers. Your Lordships have statutory powers, but statutory powers are judicially exercised, they are not arbitrarily exercised. There would be no value to the statutory powers if these powers and legal powers were to be arbitrarily exercised. What then would be the difference between a law and a non-law? Before passing such an order, the court has to look into the objective necessity of passing such an order, to see whether it is passed on a valid basis.

But what grounds did the High Court give? It said there was danger of my scandalizing the court and repeating scurrilous allegations against it. My submission before the Supreme Court is that these grounds are too vague. If I had to repeat some scurrilous and scandalizing allegations, no harm would have been done to the court. Greater harm was done; greater canalization was created by turning the proceeding into a camera trial. So, by taking this action, the court was not the gainer, the court was a loser by trying to shut me out in this matter.

My Lords, here in this Honorable court, here in the Supreme Court, a further reason has been given for trying me in secret. Here, it has been said that a man who utters the words that a crisis of jurisprudence will be created if he is to be prosecuted, should be tried in camera. So, now at this final stage, a new reason has been attached for holding the trial in camera.

My Lord, apart from the Chief Justice's prejudice which was recorded before the court, when the trial started, it is worth mentioning that the Chief Justice also became a kind of investigating agency against me during the course of the trial. When one of the co-accused got up and, without any relevance to this case, made a statement about some bombs and explosives lying somewhere ostensibly for the purpose of blowing up the headquarters of the Jamaat-i-Islami, the court immediately gave permission to the investigating officer to go and enquire into the matter.

I would like to ask how it was the responsibility, how it was the function of the judge who was going to judge my case, who was going to pronounce the final verdict to become an investigating officer, or to permit an investigation of this nature while he was trying this case? He could have said to the counsel for the co-accused to tell his client to file an FIR in that matter, as Your Lordships did in the Supreme Court when I referred to some matters, which were not related to the constitutional petition. Your Lordships said, no, this is not before us. You can go to another court; you can go to the proper forum. But this was not done at the trial court.

Now, My Lord, apart from becoming an investigating officer against me, it is on the record that the Chief Justice also became a complainant against me. My Lord, the question is that sometime words are spoken in a lighter vein and, moreover, when it was suggested that I was supposed to have wanted Mr. Justice Rizvi to be bumped off and the words 'Chief Justice' were used instead of 'Mr. Justice', it was the Chief Justice himself who said in referring to his own self, "ابھی چیف جسٹس کا وقت نہیں آیا" ("The time of the chief Justice had not come yet.") It was very pleasant to see him with a smile on his face for the first time, so I also said in jest, "آپ کا بھی آئے گا" ("Yours will come too.")

*The Honorable Chief Justice remarked here that Mr. Bhutto had not also told them on the previous day that their time will also come, but that they did not mind it, nor have they lodged any complaint.*

**Mr. Zulfikar Ali Bhutto:** No, My Lord, first of all I immediately apologies if you have taken it amiss; it was in jest and then I said it in the context of Martial Law. You see, long ago I had said to Mr. Aziz Ahmed, I had predicted that if there were one more Martial Law this is the third one it would lead us to disintegration or take us to the brink of disaster. I had said that a fourth Martial Law would wipe this country out altogether and it was in this sense that I said the other day that next time not even the judges would be spared by the Martial Law.

But coming back to the Chief Justice, when I said in a purely jovial spirit, ("Your time will come too. The time of all Muslims comes.") "آب کا بھی وقت آئے گا۔ مسلمانوں کا سب کا وقت آئے گا" He flew into a rage and told the SP on duty, Zafrullah to file a complaint against me.

My Lord, another thing which I would like to mention here is that certain orders were passed in which the word fabricated, used by me with reference to this case, was put in inverted commas. The question, My Lord, is that a person is innocent until he is proven guilty and therefore, he has the right to say that the case against him is false and fabricated until the contrary is proved and not the other way round.

In this matter the benefit of the doubt has always been given to the prosecution. When there has been talk of evidence, it has always been the evidence of the prosecution whether the prosecution has proved its case or not. In that context to put the word fabricated in inverted commas is an exposure if not a betrayal of the state of mind of the trial court.

My Lord, my next point relates to my illness. I think it was on the 11th of November that I fell ill. My medical history is naturally known. Doctors who have been attending to me in the past know I get attacks of influenza and malaria. I am a rural man, so mosquitoes bite me. Malaria is a chronic ailment with me. What sometimes happens in my case is that the malarial and influenza) attacks coincide and this in turn upsets my colon and puts me off completely. It has often been said that if Napoleon had not developed his colon trouble at Waterloo, he might have won the battle of Waterloo.

This colon trouble which afflicts some people is very strange sometimes it passes immediately but sometime it becomes absolutely unbearable and takes far more time to go. On this particular occasion I had an attack of influenza plus malaria plus my colon trouble. Moreover, I was locked up in a room which was hardly conducive to recovery, there was open ventilation and it being winter I was exposed to the cold and the wind, which aggravated my condition further. My temperature rose to 102-103 and I was really in very bad shape.

In view of my illness, an adjournment of two days was granted. Given my serious condition two days constituted hardly any adjournment. Then it was said by the court

that as a matter of grace one more day would be granted. My Lord, I needed time to recover. One more day was not sufficient. Although not only my personal doctors, but even the jail doctors and the Superintendent said that I was not well enough to attend the court. The case proceeded without me and fifteen important witnesses, including Welch, Asghar and Vakil Khan, were examined and cross-examined in my absence. When one is sick, it is all the more difficult to give any instructions, so these witnesses can be said to have been examined not only in my absence, but also in the absence of instructions from me.

When many witnesses had been examined in my absence, the Chief Justice asked Mr. Awan how I was feeling. Mr. Awan told him that I was very weak but that I would probably be able to attend the court on the 6th. It was then that a Medical Board was constituted by the court to come and see me. By that time I had already told Mr. Awan that I was recovering, that my temperature had gone, but that I felt terribly weak I could not even go out in the court-yard to have a walk and I wanted a little time to regain my strength so that my faculties could function properly.

After all, I had seen what happens when there is a paralysis of faculties, in terms of the judgment of Mr. Justice Munir and Mr. Justice Kayani and I did not want that there should be a paralysis of the faculties on both sides. But then the Medical Board, constituted of government official turned up, so I said I am alright and I attended the court.

But what happened when I attended the court? I attended the court on the 6th and on the 7th the court passed the great order that henceforth we would sit from 8 O'clock in the morning till 4 30 in the evening every day including Thursdays and that the case would proceed on that basis henceforth. My Lord, I saw in Kot Lakhpat Jail. With all the security arrangements, it took almost an hour from Kot Lakhpat to the High Court, which meant getting to the High Court, which meant getting up at 6 am in the morning and returning to Kot Lakhpat Jail at 5.30 in the evening, after a tedious day without even a lunch break.

What instructions could I possibly be expected to give in those circumstances, especially since I had been ill for three weeks? I fail to understand what crime had been committed by us for this extraordinary measure to have been taken and when my counsel presented an application requesting that the normal court hours be adhered to this was thrown in his face not entertained, not looked at, just thrown in his face and it was said that the same timings would continue.

Now, the interesting thing is that I was not in the custody of the court when it suited the honorable Chief Justice and I was in its custody when it suited him. When I wanted to see my wife and daughter, I was told, you are not in our jurisdiction, and we have nothing to do with you. Yet, when it came to punishing me, the Chief Justice saw fit to order the DSP of kot Lakhpat Jail to accompany me every day so that he could give me on the spot exemplary punishment under the Jail Manual in case I commit contempt or some such thing. And how would one commit contempt? By staring at the Chief Justice, by looking at the Chief justice.

*The honorable Chief Justice intervened here to observe that this had not been said to Mr. Bhutto, but to Mr. Awan, who had defended himself.*

**Mr. Zulfikar Ali Bhutto:** No, My Lord, it was not said to me, but it set a precedent because if that is to be the definition of contempt, it would be very difficult for a person not to commit contempt.

My Lord, the next thing is the question of being given an opportunity to be heard. This question arose on the 6th of December, when it was being discussed whether Mr. Justice Shafiur Rahman's report should be admitted in evidence or not. According to us this was an important piece, so we wanted to have a discussion. We were told by the court to go and have our discussion in the corridor. We went out but were back in two minutes as the corridor was swarming with FIA men and no discussion was possible.

My Lord, here I would also like to clarify something which has been said in the High Court Orders. It has been stated in one of these orders that at one stage when I was speaking I said that I had been subjected to insults right from the beginning of the trial and that these insults would be settled and that in saying so I thumped the table. Now, My Lord, I am not the kind of person who will deny something which is factual or which is correct. In my opinion, My Lord, it was not a question of having been ultra sensitive in politics. The question was simply that of culmination of insults, and this is subjective for everyone has his own history of having been subjected to insults. If some poor underprivileged person has been insulted from the time of his birth, obviously his level of accepting insults will be Different.

It is unfortunate that in our society, in every society, there are people who have that kind of an existence where it is a way of life to be insulted. But here it must be taken into account that I had not been in a situation where uncalled for and avoidable insults had been unnecessarily and in gratuitously heaped upon me. It was in that context that I said, to the court, as I have said to Your Lordships also, that I was not there to protest against the sentence to be given. I said you are here to dispense justice; you are here to pass a Judgment. You can pass any judgment you like, but why do you want to insult me? I said, is it also a part of the Penal Code that when you want to convict a man for murder, then you must persistently insult him all along the trial?

In that connection I did thump the table because I did not know that thumping a table is against court etiquette and because this had been my practice in Parliament. Yesterday, or day before yesterday also, by mistake, by habit, I thumped the table while speaking and then I apologized. When I appeared in the Supreme Court in Begum Nusrat Bhutto's case I thumped the table in making my point. I did not know this was against the rules and nobody told me either. So, in the same way I thumped the table in the High Court, not realizing that it would be construed as contempt of court.

As I mentioned yesterday, I am not a rootless phenomenon. People have been traumatically affected by what has happened to me. There has been an agony in the people. I know that. I am their leader. They are not going to just say, well, nothing

happened, a cup of tea was taken and all is well in the world. It was in that sense that speaking in the High Court, I give a graphic evaluation of the position; it was not a threat in any sense. All I said was that people are watching when insults are being heaped on me unnecessarily.

When my wife's blood was spilled in Gaddafi Stadium, people from my district Dadu and other places took her blood from the hospital and put in on the "*chadar*" of "*Qalandar*" and vowed that they would not allow this kind of thing to continue. This was their reaction. Now, when Mrs. Gandhi has been arrested, five people have died. She has been arrested for two days. Two days is nothing and yet people have died, people have been arrested.

If there was no Martial Law, if Martial Law is lifted tomorrow, you will see what will happen. Because of the Martial Law, because of the existing social realities, where the whim is the law, where you are not allowed to speak, the reaction of the people is contained. So, there too I was expressing what the people feel. I was going to settle scores with anyone in any way. But lips did become dry all the same.

My Lord, the other point that I would like to take up is the question of "I do not remember". "I do not remember" is not only the theme songs of the prosecution witnesses, who do not remember something which they said only two months ago, but remember something which happened there years ago, but "I do not remember" is also the theme-song of the order passed on the application of the 18th of December.

My Lords, the judges at least have a tape for their facility. So much capital has been made out of the tape. BBC and other correspondents have been told that the proceedings were tape-recorded as a double precaution. And even though I was refused the tapes because of the Evidence Act in the case of Mohammad Boota, a part of the tape was played in court to correct the evidence on the record. If the tape could be played for correcting the evidence of Mohammad Boota, surely it could also have been played for my application of 18 December. But what were we told, "...there are so many passages in the application, how are we expected to remember? We do not remember." Five Judges are sitting and they do not remember. After all, it was not just one judge who could have said that he does not remember.

My Lord, this persistent theme of "I do not remember", reminds me of something which I read in Mr. Nixon's recently published Memoirs. In one passage relating to the Watergate investigations, Mr. Nixon, who is himself a competent lawyer, says that in order to get out of a predicament one can always say, "I do not remember", at which either Haideman or Dean laughs and tells him that "I do not remember" means, "I am telling a lie". Subject to correction, because I read the book some time ago in the death cell, I think Haideman or was it Dean cell thinks Haideman or was it Dean, also mentioned some ruling of the Supreme Court of the United States in this connection and tells. President Nixon that if this advice is given to the plumbers who went into Watergate, the matter will not be over with "I do not remember" for there is a logical deduction with the court derives from the words "I do not remember".

When the court re-opened on the 9th of January and I was, coming out of the room in which I was made to sit before going to the court, I was informed that I was wanted inside the chambers. Understandably taken aback, I went in and saw all the five judges sitting there. They had made a court out of the chambers. The Chief Justice told the SP, Zafrullah, who was accompanying me; to sit down. There was another chair, so I also sat down. He immediately shouted at me to get up and said, "You are an accused. You are not supposed to sit." So, I was an accused and was not supposed to sit down. I stood up. Then I was asked if the application was mine and if I had signed it. I replied in the affirmative and was told to argue it.

My Lords, the question here is that I had never been called to the chambers before, I had never seen the court sitting in the chambers, nor did I know the laws on the subject. The prosecution counsel were not there the other co-accused were not there, the confessing accused and their counsel were not there. I was called alone into the chamber and asked to argue my application. I explained I could not do that. I could not argue it. I could supplement it and I could elaborate certain points. Then my lawyers were called and given a hearing of hardly five or ten minutes. Mr. Awan mentioned two or three cases, including wall Khan's case and others. When I wanted to supplement certain points, I was told, "You are a strange person; some time you say you want your lawyers, some time you say you want to talk yourself. Make up your mind."

I asked His Lordship where the contradiction lay. I had earlier said that my lawyers should be permitted to argue the legal points and I would like to make some supplementary observations. At this the Chief Justice retorted, "You know this is not Mochi Gate; you are not to make a political speech". I knew it was not Mochi Gate. I wished it was Mochi Gate. But it was not; it was the Chamber of the High Court.

Till that time I did not know the category under which my application fell, so I said, "*... if it is to be heard in Chamber, it must be heard in the presence of others for it not to be a secret Chamber trial*". I was then told that this application was an application in motion and that depending on the practice of different High Courts it was the practice in certain High Courts to hear such applications in the Chambers. I got the point, but the fact is that there were other applications in motion, many of them.

We had made such applications from the very beginning and they had all been heard in open court. Why this application was also not heard in open court? My Lord, it was a very important application asking for the transfer of the case. Why it was not heard in open court? And if it had at all to be heard in the Chamber, why did it have to be a secret Chamber trial?

Another interesting thing that I would like to point out here relates to the order passed on my application of November 5<sup>th</sup> 1977, in which, as already mentioned, it was said that the High Court would hear the application after the trial is over. My Lord, when the record was given to us, it was noted that in the order of November 5<sup>th</sup> 1977 the Supreme Court judgment of the 10<sup>th</sup> of November was quoted. The question is how one can quote the Supreme Court judgment of November 10<sup>th</sup> in the order dated November 5<sup>th</sup>. This shows the extent to which the record is faithful to the reality and the factual situation.

My Lord, now I come to January 24<sup>th</sup> 1978, when I was to answer questions under section 342. In the very beginning when I began my submissions, I said that I would not speak on those aspects of the case which had a direct bearing or were relatable to my defence, my main interest being bias and mala fides. At this I was given an assurance by the Chief Justice in open court that I would have all the time to speak on these two subjects when the final question, "Why this case against you?: is posed. On that assumption, on that basis, I proceeded to answer in a limited form.

*An honorable judge asked Mr. Bhutto as to what he had in mind in not answering the other questions.*

**Mr. Zulfikar Ali Bhutto:** My Lord, as far as I was concerned I had boycotted the main trial as of January 9<sup>th</sup> 1978. I had to go to the High Court because I was not a free agent. Well, My Lord, on the 25<sup>th</sup> of January I was given the assurance that I would be allowed to address the court for as much time as I wanted and on the 25<sup>th</sup> of January I find that I am taken to an empty court and a secret trial, I was absolutely at sea. I was bewildered. No order had been passed, no order had been shown, and no notice had been given. I was not aware of my rights, I was not aware if this was legal or not. A totally different impression had been conveyed to me on the 24<sup>th</sup>; on coming to court on the 25<sup>th</sup> I found myself in an entirely new situation. Naturally I protested and asked to consult my lawyers.

A long discussion was held, the central theme of it being whether I should be permitted to consult my lawyers when I had withdrawn their Vakalatnamas. The point is that I wanted to consult them on the legality of a secret trial. Finally, I was allowed to consult my lawyer. Mr. Yahya Bakhtiar came and I asked him to quickly write an application on the impropriety of the closed trial as I wanted to submit this application on the same day before going back to Kot Lakhpat. Yahya Bakhtiar told me that he could not give me any advice on the matter until he had seen the order on the basis of which this action had been taken.

So, we applied for the order. This was not given to us on the 26<sup>th</sup> or the 27<sup>th</sup> but was given when I was taken to the court on the 28<sup>th</sup> after a two-day break. Then also I was given only the order of the 24<sup>th</sup> passed on the 24<sup>th</sup> and that of the 25<sup>th</sup> was refused me on the grounds that the trial was secret - "You understand, Mr. Bhutto how can we give it to you? You should understand that this is a secret trial".

I should understand that the trial is secret. To my amazement, I found that it was secret only in terms of what I had to say. Everything that was said by the confessing co-accused during the course of trial, which continued to be held in camera right up to the end, was not only reported but was given publicity on the television and radio.. The trial was secret only as far as it concerned my person, secret to the extent that I should not even be given the original order of the 25<sup>th</sup> of January, of which I learnt only through the Pakistan Times report that a subsequent order had been passed.

My Lords, the Chief Justice told the BBC that this trial was being conducted according to the Common Law traditions, according to the traditions known to the British and that it was being conducted in the full light of day. My Lords, I would like to know how according to Common law traditions this trial could be converted into a secret trial.

My Lords, when I insisted that none of the requirements whereby a trial may be converted into a camera trial according to Common Law traditions and according to what Hallsbury has said, namely that a trial may be converted into a camera trial under the Children's Act or where there is fear of disturbance, were present in this case, one of the Judges remarked, "Why are you persisting in demanding that this trial should not be a secret trial? What is unusual about it? The public is not going to pass the judgment; we are going to write the judgment.

My Lords, I told the honorable Judge that was an unusual observation to make. I knew that they were going to write the judgment, but there had been a legal struggle for an open trial and I had always been taught that justice was not a cloistered virtue. What I did not understand was why the trial should arbitrarily be converted into a secret trial when only my turn to speak remained.

The order of the 24<sup>th</sup> of January stated that the trial would be held in camera because I was going to make scurrilous allegations against the court. The point is that what I said then had been said before. It was not new and if that was the reasoning then the trial should have been conducted in secret from October 11<sup>th</sup> 1977 because my allegations about bias had been made before that. My Lords, I wanted to bring out the objective facts about bias. Bias can be objective; it need not be subjective. Why should it have been assumed that I was going to scandalize the court? When I had not even spoken a word, why should the court have jumped to this conclusion and converted the trial into a secret trial?

My Lords, the order of the 24<sup>th</sup> is defective on the face of it. This order itself does not justify the legality of the secret trial. This was pointed out to the court and so on the 25<sup>th</sup> a subsequent order was passed, which seemed to have been brought in line with what I had said about secret trials according to Common Law, and stated that disturbances were feared in court.

My Lords, the High Court of Lahore was a virtual fortress. Some of you live in Lahore. You must have seen. It was a barricaded place, the roads were barricaded, and the whole place was swamped with policemen, women police and army officers. It was not even possible for the advocates to gain access to the court. How could it have been possible for anyone to create disturbances?

Now, My Lords, this is the Supreme Court, but you see the precautions that are being taken. This is my fourth day here and you can see the escalation of the new faces, the brilliant new advocates who have come back from England, having qualified from the Lincoln's Inn or from Gray's. That court too was full of these brilliant new advocates, whose faces gave them away as plain clothes policemen and CID. The question, therefore, of disturbances did not arise. This was mentioned in the order of the 25<sup>th</sup> to

meet one of the conditions cited by me as being the prerequisites for a secret trial according to Hallsbury. Thus, we see, My Lords that the order of the 24th was legally defective and the subsequent order of the 25th was not based on correct facts.

Where was the full light of day, in which the Chief Justice had promised to conduct the trial? Not only was the trial not conducted in the full light of day, it was conducted, on the contrary, in a very dark midnight. Even the Press was completely blocked out. On the 28th two orders of the 26th and the 27th were provided to me and I was asked to continue. I was asked to answer question 54. I replied that I was still on the question of the illegality of this trial, which had become null and void long ago and was now completely illegal. At this Mr. Justice Aftab said to me, "*What has your speech got to do with the question that I have put to you? You answer my question*".

My Lords, I had too much respect for the Judges to tell His Lordship that I was answering his question in the sense that I was saying that he had no right to ask me this question because he had become *functus officio*. I was trying to tell him that he had no right to put this question to me any more because these questions had now become redundant and irrelevant. So, I just smiled and continued to speak on the illegality of the trial.

My Lords, I mentioned before Your Lordships in reference to the record of my submissions before the High Court that there are lacunae in the record. Now the point is that when I was speaking, I noticed that not all that I was saying was being taken down. So, I said to the stenographer, " (please take down what I am saying) and was told, "Why should he write? Who are you to tell him to write?" My submissions were relevant, but they were excluded. When the record was shown to me I asked for permission to check it up with the tape. This was simply a subtle way of saying that I suspected the record was not a correct reproduction. This permission was not granted and on the 7th of February I was compelled to say that there are many gaps and lacunae in the record, that it is an incomplete record and do not reproduce what I have said.

My Lords, on the basis of this submission I have been termed a "compulsive liar". There is no instance throughout this trial where I have been found to be telling lies. The whole record is before you. It was simply for pointing out that there are serious; there are fatal gaps in the record of my submissions that the former President and Prime Minister of Pakistan have been branded a "compulsive liar".

What a fine reputation this gives to Pakistan that it's President and Prime Minister, elected by the people, is a "compulsive liar". Where, My Lords, in this court of law was there any ground for the court to come to such a conclusion? Is this, then, not an expose of the prejudice of the whole Bench?

My Lords, I do not want to tire you but taking into account the court's insistence to give all the benefits of the doubt to the prosecution, taking into account the factor of my illness and the treatment meted, is there one aspect, one element of this whole trial, from its inception to its end, and even after when it becomes *functus officio*, where prejudice of the Bench has not been shown?

The court has gone far enough to hold me a “Muslim in name”. Actually, Sir, if you go into the question of my being a “Muslim in name”, then I am a stateless citizen for the constitution or the law provides only for a Muslim and for minorities. It does not provide for this animal called “Muslim in name”. I do not know how many more can now be put into this category of stateless people and if we are to be stateless people, where should we go? Canada, Australia or are we to fight for a new state?

My Lords, having concluded the aspect of the trial relating to bias, and I would like to be enlightened here if there is any field in which bias has not been covered, I would like to dilate on the extension of this bias for, as I said earlier, I am covering bias in its most comprehensive sense. Here, I would like to mention the Chief Justice’s personal insistence that I should be taken immediately to the death cell.

My Lords, on the 17<sup>th</sup> of March, a day before the judgment was to be announced, the Superintendent of Kot Lakhpat Jail came to me at night and informed me that I would be required in the court the following day as the judgment was to be delivered. Now, My Lords, certain orders relating to ban on political activity, some exercises which had been taking place in the High Court, three or four days before the judgment, army presence and other things like that were indicative of what was to come.

In the jail itself there were clear indications that all was not well in the State of Denmark, floodlights were being put up, towers were being erected, sirens were being put and on two or three occasions inspections were made. So, when the Jail Superintendent came to me, he sat with me for quite some time and tried to cover up all the extraordinary activity that was taking place. When I kept quite, he tried to console me and said, (“Have faith in God”) خدا پر ایمان رکھیں. Naturally, “خدا ہی پر ایمان رکھیں گے اور کس پر رکھیں گے” (I’ll have faith in God, in whom else can one have faith). But the point is he was trying to console me and then he said to me, “But if the worst comes to the worst, I want to assure you that orders have already been passed that you will remain where you are.

My Lords, I smiled at his effort to prepare me for the worst, for he had not been in court to hear the observations, indications given earlier which told me so clearly, we are just waiting for that final day when with lust in our eyes we will see you hang till you die. So I just smiled and said nothing, but he continued to tell me that it had been recommended by the jail authorities that I be kept in the same place and this had been approved by the IG Prisons, the Home Secretary, Punjab and the Martial Law Administrator, General Sawar for according to the Jail Manual a condemned prisoner had to be segregated and not necessarily sent to the death cell.

My Lords, on the 17<sup>th</sup> I was told that the *status quo* would remain the same, that I would stay exactly where I was for after all I had been the President and Prime Minister of the country.

On the 18<sup>th</sup> when I returned from the court, Yahya Bakhtiar came to see me. He was very upset. I told him not to worry, for there was God still above us. Then I played badminton with my attendant for an hour or so and after that I went to sleep. My Lords,

at 5.30 p.m. or so the Deputy Superintendent of the Jail came to me with a very small, guilty face. I could see from his face that something was up. I offered him tea for I had just asked for a cup for myself, but he declined and told me that it was an unpleasant duty and he was ashamed to do it, but he had been ordered to take me immediately to the death cell and that they had already got into a lot of trouble for not having taken me there when I returned from the court 11.15 or 11.30 a.m. and now the Additional I.G. Prisons had been sent to ensure that I am taken to the death cell. So, I was dragged to the death cell.

My Lords, the reason I point all this to you is not that it matters to me in that sense, but because here in the Supreme Court factually incorrect statements have been made. It has been said that I was given three rooms with a courtyard and was not segregated, that the term "death cell" is a misnomer. Well, My Lords, if it is a misnomer, then surely there was no need to shift me from where I was to this other place called the death cell, where I was kept locked for 23 hours a day.

In point of fact, there was no need for having shifted me, there was no necessity, for even if the Jail Manual has to become so important that it supersedes the Constitution of the country discretionary powers exists in the Jail Manual to segregate a person who has been convicted according to the circumstances. If this discretionary power is not to be exercised for a person who has held the highest office in the country, who has been Head of State, Head of Government and the Leader of the Country, which other superior or divine person with divine blessings is going to be held worthy of this discretion?

My Lords, in undivided India prominent persons, Pirs and politicians are known to have been convicted and sentenced to death. They have never been sent to death cells. In this Province itself, a zamindar of Dapkalan, who was son-in-law of the famous Sir Fazle Hussain was convicted but was not put in a death cell. I, My Lords, was not only put in a death cell but commandos were also sent to frighten me. Twice they came in the night of the 21<sup>st</sup>. I remember, because it was Allama Iqbal's Anniversary. I enquired about this from the Deputy Superintendent, who wanted to know how I knew. I could hear their boots, I replied. The poor simpleton, caught unawares, smiled and said emphatically,

”لیکن انہوں نے تو بوٹ اتارے ہوئے تھے“

("But they had taken off their boots".) All right, they wanted to throw me in a condemned cell. Now, their lust should be satisfied.

Shakespeare says in "Twelfth Night":

*If music be the food of love,  
Play on.  
Give me excess of it.  
That surfeiting, the appetite  
May sicken  
And so die.*

Now their appetite has sickened, it has surfeited. Why should it not die now? Is it so insatiable? But the harassment continued. In May, I was shifted to Rawalpindi. Believe me, My Lords, without exaggeration; it was as if Shivaji was being brought into Aurangzeb's camp, as if I was a foreign captive.

The courtyard was full of soldiers. They were hovering all over the place, even in the corridor. The corridor was full of refuse, one could hardly stand there. Then there were six cells - the death cell, a bathroom and four other cells. These four cells had fly-proofs, the death cell was completely exposed, not even a fly-proof. It was summer, it was hot, and my whole face was full of flies and mosquitoes. The rooms of the guards had fly-proofs. I'm glad about that. I could at least have been given one too. I have still not got it. Then, My Lords, the bathroom was completely open and I was expected to go there with people marching up and down all the time.

Until, Your Lordships came to my rescue, I just refused to eat. Not that it was a hunger strike as such; it was just that in those circumstances, I simply could not eat. Then Your Lordships intervened and some facilities were accorded, in the sense that a "chick" was put up for the bathroom a switch was put inside my room to regulate the light which used to be on, all the time, before that, a telephone which had been placed outside my cell and which used to ring incessantly, was removed, the number of people in the corridor was reduced. But re-encroachments again started after a few days. I would hardly come out in the corridor that I would be told to go in as my time was up. So, I decided not to come out at all.

After all, my self respect was more important. I could not submit myself to every indignity. Neither did I want to keep on complaining, but in June, I fell ill and General Shaukat, an Army General, not a PPP man, was sent to see me. He had tears in his eyes when he saw me. The room was full of dust, the springs of the bed were jutting out, my back was examined, and it was in terrible shape and had scars on it. When he went the bed was changed. And so this question of maltreatment continues.

In contrast, the confessing co-accused has been given all the privileges, all the facilities. They are next-door, so I can hear them; their families come and go, I can hear the sound of music, laughter. As far as I am concerned, even the ordinary facilities are denied me. My Lords, a great deal has been constantly said about nobody being above the law. I do not want to be above the law. But I want my legal rights. I want to be under the law, but I don't want to be under the law, but I don't want to be underground the law. I have been put underground the law, while the confessing co-accused have been given all the facilities they want. I think an application has come before Your Lordships regarding the misbehavior of one of them here in court on the 19th. My Lord, not only did he misbehave, but apart from that he said, and people heard him say that they had been involved in a false case and if the police was rude to him he would speak out the truth. He said this in this court and he was heard by the people.

*The honorable Chief Justice intervened to point out that the confessing co-accused would be speaking the day after Mr. Bhutto finished.*

**Mr. Zulfikar Ali Bhutto resumes:** Yes, Yes, My Lord, and I will also tell you why they have been brought here. Although they have had their full say in the High Court and all that they said has been published. Because Your Lordships have given me permission to speak here, they have been brought here to neutralize me. I will tell Your Lordships exactly what they are going to say: the FSF was a terror force, they were helpless, and they were not free agents. Your Lordships will hear a diatribe on FSF, a diatribe on me and of course, they will plead for mercy.

One of them has sent Your Lordships a petition from jail, stating that since he is going to his God, he would like to make a clean breast of things. My Lord, if he is going to his God, then why ask this court for mercy for his life? This, in itself is a contradiction. He is going to his God and would like to speak the truth. Surely, he is not going to God Almighty, the Creator, he is going to some small god, with a small "g". If he is going to his God, then why does he want to fall at the feet of the court, why does he want mercy from the court, why does he want his life to be spared? He wants his life to be spared, by taking the life of an innocent man? If this is how it is done, fair enough.

Next, My Lords, as I said on the first day, I would like to deal with the question of the mala fides of the regime and the prevailing social of the regime and the prevailing social realities. In this context, I would first of all like to make it clear that our political standards, political norms are of such a nature that we do not believe in going outside the scope and sphere of these political norms in a political struggle and political encounter. Moreover, having been assured by the honorable judges that if I can succeed in destroying the case on the merits, then the question of mala fides will no longer be necessary and being convinced that the case has been smashed to smithereens, that the case does not even stand on hollow legs, not even on clay legs, I do not find it necessary to go into the mala fides to the extent earlier envisaged by me.

My Lords, I know that you will not accept this position but nonetheless I would like you to at least take judicial notice of the fact that a *coup d'etat* against the elected Government itself is a presumption of mala fide. My Lord, I would like you to at least consider my submission that when there is a *coup d'etat* against the legal, elected, democratic, legitimate Government, when there is an extra-constitutional arrangement, when the Constitution is abrogated or suspended, that in itself becomes the basis of mala fides. In connection with the mala fides of the regime, I have tabulated some of the references on record both in the foreign press and internal press, certain statements...

The honorable Chief Justice interjected to observe that as far as the honorable Chief Justice and his learned brothers were concerned, they were determined as far as humanly possible to decide the case on the basis of the record before them and the submissions addressed by both sides and not on the basis of any interview given by any extraneous authority whether inside or outside Pakistan. The honorable Chief Justice added that they would not even like to read such statements.

**Mr. Zulfikar Ali Bhutto:** I am glad, My Lord that you do not want to read such statements. They are very poor quality statements, very poor quality in terms of political appreciation and evaluation. So, I am glad you will not waste your time.

My Lords, on the question of social realities, I would like to say this much that a very ironical and a perverse double standard has been applied. Actually, I am reminded of that famous play "Annie, get your gun" - I do not know whether Your Lordships remember it. The entire situation can be summed up by a song in "Annie get your gun", which says, "Anything you can do, I can do better".

It has been said that I amended the Constitution, overlooking the fact that these amendments were through the National Assembly of Pakistan and through the Senate and were not unilateral as they are being termed. They were constitutional amendments. What kind of amendments are being made today in violation of the Supreme Court judgment? These amendments are a gross disservice to the country and will contribute to the country's breakdown. I shudder to think of the amendment on separate electorates. My Lords, we operated under the umbrella of the Constitution. Where is the Constitution today? Wherein lies the validity of these amendments?

My Lords, President Yahya Khan suffered from the misnomer that he had a Legal Framework Order, which controlled everything. I told him that once the Assembly comes, he will be out of the picture because the Assembly will be sovereign and the legal Framework Order will then become a vestigial organ and will have no relevance. So also today, whatever laws are passed, they will have no relevance for the coming Assembly. The moment the coming Assembly passes the first Resolution or the first Act, declaring its sovereignty, everyone else will be out of the picture.

Then, My Lords, it has been said that there were Special Tribunals in my time. What kinds of Tribunals are being set up today? Apart from Military Tribunals, Disqualification Tribunals are being set up with power to disqualify politicians for a period of seven years. Tribunals in which the investigating authority forms part of the deciding authority. My Lords, the thing is that PRODA came and PRODA was before the Judges of the High Court, but poetic justice was such that those who were PRODAed, PRODAed those who PRODAed them. Those who were EBDOed, they EBDOed those who EBDOed them. Now, if one is to go by the tradition of Pakistan those who are going to disqualify will, Insha Allah, disqualify those who will disqualify them.

My Lords, in this case, in the light of the situation, I am not trying to be a politician to have a quid pro quo, but I would like to request you to allow me to sum up in terms which I do not think will be in any way outside the ambit of what Your Lordships think appropriate. My Lord, on the first day Your Lordship held that the prevailing situation in Pakistan or the prevailing conditions in the region are not relevant to the case and that I should not go into them. I accept the position, but request you, nonetheless, to permit me to point out to Your Lordships, with my limited experience of the state of affairs that has prevailed in our country, in our region and internationally.

I can assure Your Lordships that we are in a very precarious position, objectively speaking. I am not making any subjective comments, but objectively speaking, the nation is in a very delicate and a very precarious situation and the longer the present

state of affairs prevails, and the more difficult it will be to find a viable solution. My Lords, the question is not as to what the solution of the crisis is, because there are a number of stereo-typed solutions. Some people have been harping on elections, some on roundtable conferences.

But solutions are also to be measured in a time-span. After some time these solutions also become out of date and obsolete. Some solutions, if they had taken place in Iran, a year or two ago, could perhaps have averted the present situation and crisis. So, some times good solutions slip out of hands through events. General Yahya Khan gave Pakistan a Constitution after the dismemberment of the country. So, the point is that if elections are to be relevant, if they are to be material, they are only relevant and material in a time-span, as originally envisaged in Your Lordships' judgment. Outside the time-span, I fear upheavals of the kind Nehru wrote about in his book, "Discovery of India", etc. You see, Nehru was obsessed with the fear that 20 to 25 years hence the sub-continent would go through a blood-bath.

In view of the surrounding circumstances, I find that we are in a very delicate situation and I say this without any vested interest that the sooner the people become participants, the sooner the people are mobilized for the supreme defence of Pakistan, for the supreme defence of the unity of Pakistan, the better it will be, because Martial Law de-marginalizes the nation. It is a breach, not a bridge. My Lords, I speak as a patriot, without casting aspersions on anyone's judgment or decision. My Lords, nobody has remained for million years, Caesars have come and gone;

Hitler spoke of a thousand years and within ten years was surrounded by ashes and rubble. The people being the main repository of power, it is important that power be delegated to them soon and without further procrastination.

*The honorable Chief Justice interjected here to remark that it was not within their domain to give this advice in this case.*

**Mr. Zulfikar Ali Bhutto:** I know, My Lord, but supposing the case comes to the Supreme Court. I am sowing the seed of that "conspiracy".

My Lords, coming back to the determination of this case before you, I would simply like to say that Your Lordship knows very well that justice is indivisible, justice is absolute. There can be bargaining in politics, there can be bargaining in trade, but there can be no bargaining in justice, for either a person is innocent or he is not innocent. In politics a via media or a compromise solution can be found, in legal determination there is no compromise solution or via media solution. Subjective feelings of extraneous factors do not come into play.

Your Lordships may well remember the very famous Anderson case, when the war was going on and Lord Atkins said that even when the drums of war are on, it has to be decided whether the man should be set at liberty or not. It was a dissenting judgment which later on became the judgment.

Either I am innocent and the case has not been established beyond reasonable doubt or I am not innocent. Other considerations, other factors, do not come into play. I have the fullest confidence in Your Lordships and I am certain that Your Lordships will uphold the majesty of law, and will never turn into the matron of Martial Law.

My Lords, Mr. Yahya Bakhtiar was given ample opportunity to quote poets and (verse) but before I conclude I would like to cite a verse of Ghalib of which I used to be very fond:

رنج سے خوکر ہو انسان تو مٹ جاتا ہے رنج  
مشکلیں اتنی پڑیں مجھ پر کہ آساں ہو گئیں

I used to be very fond of that but My Lords, Ghalib is wrong. Ghalib is wrong.

یہ فطرت ہے کہ مشکلیں اتنی پڑیں کہ آساں ہو گئیں۔ آساں نہیں ہو سکتیں۔  
آپ ان کو برداشت کر سکتے ہیں۔ آساں نہیں ہو سکتیں۔

Now that Your Lordship has given a direction to improve on Urdu, I am trying to be more eloquent in Urdu. My Lord, when one is in a death cell, matters occur to one which has never occurred to one before. I find 'Saraiki' language to be one of the best and sweetest languages in the sub-continent and I would like to end with these words of a Saraiki song which says:

”درداں دی ماری دلڑی علیل اے“