

BANGLADESH

Trial of alleged killers of Sheikh Mujibur Rahman and his family members

1. Introduction

Six people, including ex-army officers, are currently facing trial in Bangladesh on charges of involvement in the killing of ex-president, Sheikh Mujibur Rahman, and most of his family members - including children - on 15 August 1975 during a coup. Fourteen others have also been charged in the same case but they are being tried in absentia. Investigations into the case - which had not taken place in the past - started in August 1996 and court proceedings began in early 1997. Court hearings were adjourned in May 1997 pending the outcome of an appeal for the withdrawal of charges against one of the accused.

Amnesty International welcomes the investigation of past human rights abuses and violations - including those committed in the context of the 1975 coup- but urges the Government of Bangladesh to ensure that the accused do not themselves become victims of human rights violations. In this regard, Amnesty International is urging the government to ensure that the accused are not subjected to torture or other cruel, inhuman or degrading treatment; that their trials at all times conform to international fair trial standards; and that they are not sentenced to death.

One of the defendants, Zobaida Rashid, has alleged that she has been subjected to torture in police custody. Amnesty International urges the Government of Bangladesh to institute an independent and impartial investigation to establish the truth about these allegations. Should the allegations be substantiated, the government must ensure that those found responsible are brought to justice without delay.

2. General Background

On 15 August 1975 the then president, Sheikh Mujibur Rahman - father of the current prime minister, Sheikh Hasina Wajed - and most of his family members including children were killed in their family home by a group of army officers during a coup. Kondaker Mushtaq Ahmed - now accused of being one of the people responsible for plotting the events that led to the killings - succeeded Sheikh Mujibur Rahman as president.

In a related incident, four leaders of the Awami League (the ruling party then led by Sheikh Mujibur Rahman) were subsequently arrested. They were the then vice-president Syed Nazrul Islam, prime minister Tajuddin Ahmed, ministers M. Mansur

Ali and A H Muhammad Quamruzzaman. On 3 November 1975, the four men were killed in high-security Dhaka Central Jail allegedly by some of the coup leaders who hours later reportedly fled to Libya following a counter-coup and the imposition of martial law.

President Kondaker Mushtaq Ahmed promulgated the Indemnity Ordinance in September 1975, which granted impunity to those involved in the 15 August killings. General, later President, Ziaur Rahman (November 1976 - May 1981) enacted the Fifth Amendment to the Constitution which legalized all arbitrary measures taken by the government between 15 August 1975 (the date of the killing of Sheikh Mujibur Rahman and his family members) and 9 April 1979 (the date martial law was lifted). They were “deemed to have been validly made, done or taken and shall not be called in question on or before any Court, or Tribunal on any ground whatsoever”.ⁱ This amendment encompassed the Indemnity Ordinance and was seen to have granted constitutional indemnity to the killers of Sheikh Mujibur Rahman and his family members.

For over 21 years, neither of the incidents were investigated, and no one was brought to trial for their involvement in the killings.

3. Recent political developments and the move to probe the 15 August and 3 November 1975 killings

February 1996 elections, boycotted by the major opposition parties, were won by the ruling Bangladesh National Party (BNP) led by then Prime Minister Khaleda Zia, but with a low turnout. In March 1996, the BNP government amended the constitution - with a two-third majority in the parliament - to allow for elections under caretaker governments. The BNP government resigned and a caretaker government was appointed. Fresh elections were called in June 1996. The Awami League (AL) won the majority of seats and its leader, Sheikh Hasina Wajed, was sworn in as Prime Minister. Former Chief Justice Shahabuddin Ahmed was elected President.

Soon after coming to power in June 1996, Prime Minister Sheikh Hasina Wajed announced that the suspected killers of former President Mujibur Rahman and his family members would be arrested and brought to trial. However, since it appeared that no one could be charged with these killings under Bangladeshi law because of the Indemnity Ordinance, the government moved to repeal the ordinance in the parliament.

Amid reports that some ex-army officers allegedly connected with the killings in 1975 had left the country soon after the Awami League came to power, the government reportedly instructed the police to arrest those still in the country under the Special Powers Act (SPA) which provides for administrative detention on broadly formulated grounds. The government's swift use of the SPA on coming to power created disquiet within the legal community in the country even though many supported in principle the move to try the killers of Sheikh Mujibur Rahman and his family members. Some observers saw it as a major departure from a position declared by Sheikh Hasina Wajed who, when in opposition, had termed the SPA a “black law” that should be repealed.

Police arrested about a dozen ex-army personnel between August and November 1996, including an alleged coup leader Colonel (retd) Faruq Rahman, and a former state minister, Taheruddin Thakur. They also detained Zobaida Rashid, wife of Lt Col (relieved) Khandaker Abdul Rashid, one of the absconding accused. But most of the coup leaders, who had been given diplomatic assignments by successive governments, had gone into hiding and had subsequently failed to return to Bangladesh. The government sought the help of Interpol in tracking them down and sought extradition of some of the accused. So far, no extradition has taken place. At least two of the accused, Col (retd) Faruq Rahman and Col (retd) Abdul Rashid, who is one of those absconding, had reportedly told foreign journalists about their involvement in the events.

In November 1996, the Parliament passed the Indemnity (Repeal) Act. The BNP and Jamaat-e Islami (two of the opposition parties) were absent during the vote but their presence would not have stopped the passage of the repeal act since the government has a clear majority.

The Indemnity (Repeal) Act paved the way for the trial of those involved in the 1975 killings. However, it was challenged in the High Court by the families of two ex-army officers charged with the killings. They argued that the "Indemnity Ordinance" had become a statute of the Constitution and could not be repealed by a simple majority in the parliament - as had been the case; but that it should have been repealed by a two third majority as is normally required for constitutional amendments.ⁱⁱ In January 1997, the High Court rejected their writ petitions. It maintained that since the Indemnity Ordinance had not been itself constitutional, its repeal does not require a two-third majority; it ruled that "the Indemnity (Repeal) Act, 1996 (Act No. 21 of 1996) is a valid piece of legislation and it is not ultra vires of the Constitution".ⁱⁱⁱ

4. Arrests

On 13 August 1996, three ex-army officers, Lt Col (relieved) Syed Farooq Rahman, Lt Col (relieved) Sultan Shahriar Rashid Khan and Maj (retd) Khairuzzaman were arrested and sent to the Dhaka Central Jail. They were issued with a detention order under the SPA for 30 days. Police said their arrests followed intelligence reports that the three had been involved in acts of sabotage; and that searches of their homes had uncovered firearms, duplicate Bangladeshi passports and foreign currency. Police said criminal investigation relating to the alleged possession of illegal items had begun against all the accused. Observers believed that investigation on these charges may have been a measure to keep the accused in detention while the government was preparing a bill to lift the legal barrier against their trial in the Sheikh Mujibur assassination case.

The first official announcement by police that the killing of Sheikh Mujib and his family members would be investigated came several weeks after the arrest of the three prisoners. Police announced that a First Information Report (FIR)^{iv} has been filed on 2 October 1996 by Mahitul Islam, resident personal secretary to President Mujibur Rahman at the time of the coup, against 14 people whom he accused of involvement in the killing of Sheikh Mujibur Rahman and his family members. The case was filed under Sections 120 (criminal conspiracy), 302 (murder), 34 (all persons liable for acts done by several persons in their assembly), 149 (all persons liable for acts done by one person in their assembly), 324 (voluntarily causing hurt by dangerous weapons), 307 (attempt to murder) and 109 (abetment) of the Bangladesh Penal Code - some of these charges may carry the death penalty. Police said the FIR had been brought to the attention of the authorities who instructed that investigation should commence. The accused included: ex-President Khandaker Mushtaq Ahmed, ex-information minister (in the cabinets of both President Mujib and President Mushtaq) Taheruddin Thakur, as well as army officers Major Jalil, Major Rashid, Major Shahriar, Major Pasha, Major Shariful Hossain, Captain Kismat, Major Rashed Chowdhury, Risaldar Moslehuddin and Col Farooq Rahman.

Meanwhile, the government announced that there was no legal barrier to the investigation of the jail killing of 3 November 1975. In late September 1996, police officials stated that a CID (Criminal Investigation Department) officer had found an official file containing documents relating to the jail killings. They said the file contained important information including statements by the then Inspector General of Prisons Nuruzzaman and his deputy, Khandaker Abdul Awal made on 5 November 1975. They said the case on the jail killings which had remained closed from the date it was filed in November 1975 had been re-opened on orders of the Chief Metropolitan Magistrate on 9 September 1996 following a request from the CID^v; that since that time three of the prisoners, Col Farooq Rahman, Col Shahriar Rashid and Maj Khairuzzaman have been investigated on suspicion of involvement in the jail killings.

On 3 October 1996 Taheruddin Takhur was arrested in connection with the jail killings but police said he was also implicated in the Sheikh Mujib assassination case. On 3 November 1996, Zobaida Rashid, wife of *Lt Col (relieved) Khandaker Abdul Rashid* was arrested from her home in Dhaka on charges of possessing her husband's firearm and involvement in the killing of Sheikh Mujibur and his family members. Her lawyer argued that the weapons recovered had legally-obtained licenses, that she had not been involved in the assassination at all, and that she was being "held as a hostage by the government for securing the surrender of her husband" who is believed to have gone abroad. On 19 November 1996 police announced that Lt Col Mohiuddin has been placed on a seven-day CID remand in connection with the 15 August 1975 and 3 November killings.

Lawyers of the first three prisoners [Lt Col (relieved) Syed Farooq Rahman, Lt Col (relieved) Sultan Shahriar Rashid Khan and Maj (retd) Khairuzzaman] challenged their detention under the Special Powers Act before the High Court. The court ruled in late November 1996 that their detention under the SPA was without legal authority and ordered their release, if they were not wanted in other cases. Other prisoners were also believed to have challenged the SPA detention orders, and to have obtained court rulings that they should be released if they were not wanted in other cases. By late November, police were investigating cases in connection with the 15 August and 3 November 1975 killings and on that basis refused to release the prisoners. Fresh SPA detention orders continued to be issued, apparently to ensure the continued detention of prisoners. There were, for example, reports in September 1996 that the original SPA order under which the first three prisoners were to be detained for one month had been extended by a further three months.

In February 1997, Zobaida Rashid told the court that she had been forced by the police to sign a “confessional” statement under duress and withdrew that statement. She alleged that during her 9-day period in police custody in November 1996 she had been given electric shocks, was made to lie on a cold bare floor, and was denied sleep for prolonged periods. She was allegedly denied any medical treatment during this period. Zobaida Rashid was eventually released on bail on 3 April 1997 on order of the High Court. Her lawyer had argued that she needed treatment for her medical conditions in an “open atmosphere”.

5. Court proceedings

In January 1997, the CID prepared a chargesheet in relation to the killing of Sheikh Mujib and his family members. Police officials said the charges were being brought on the basis of the 2 October 1996 FIR as well as their interrogation of the detainees. The chargesheet named.

Six people who are already in detention:

- 1. Lt Col (relieved) Syed Farooq Rahman*
- 2. Lt Col (relieved) Sultan Shahriar Rashid Khan*
- 3. Former state minister for information Taheruddin Thakur*
- 4. Lt Col Mohiuddin Ahmed*

5. Capt Hon Abdul Wahab Joarder

6. Begum Zobaida Rashid, wife of Lt Col (relieved) Khandaker Abdur Rashid

And 14 additional people as the accused wanted in the case:

1. Lt Col (relieved) Khandaker Abdur Rashid,

2. Maj (ret'd) Bazlul Huda,

3. Lt Col (ret'd) S H M B Noor Chowdhury,

4. Lt Col (relieved) Shariful Huq Dalim,

5. Lt Col (ret'd) Mohammad Aziz Pasha,

6. Lt Col (relieved) A M Rashed Chowdhury,

7. Maj (relieved) S K M Mohiuddin Ahmed,

8. Risalder (ret'd) Moslehuddin alias Hiron Khan alias Moslemuddin alias Rafikul

Islam,

9. Maj (relieved) Ahmed Shariful Hossain,

10. Capt (relieved) Kismet Hossain,

11. Capt Hon (ret'd) Nazmul Hossain,

12. Capt (ret'd) Abdul Majed,

13. Dafader Marfat Ali,

14. Mohammed Abdul Hossain.

The chargesheet also named ex-President Mushtaque Ahmed, Mahbubul Alam Chashi, Risalder Syed Sarwar Hossain, and Capt M Mostafa Ahmed as the accused who have already died. Seventy four other names appear as witnesses in the chargesheet.

On 20 February 1997, the six prisoners were presented to the court of Additional Chief Metropolitan Magistrate to record their confessional statements. Amnesty International received several reports that an atmosphere of intimidation had been created

during the hearing by Awami League supporters who had been shouting at the accused and disrupting the court proceedings. The government appeared to have taken notice of this and in March Bangladesh Attorney General, K.S. Nabi, said the trial of the six prisoners would be held in a court at the Dhaka Central Jail compound for security reasons. He said: "It is not a trial in camera, it is being held inside the jail only for security reasons". The Special Prosecutor Sirajul Haq said the authorities wanted everything about the trial made "public."^{vi} Lawyers, journalists and some family members were reportedly allowed to attend the court after security checks by the police.

On 8 April 1997, police sources announced that the court dealing with the case had framed the charges against the accused. These were: conspiracy to kill former president Sheikh Mujibur Rahman along with his family and relatives, execution of the plan and attempts to conceal and destroy evidence. Five of the six prisoners appeared in court that day and pleaded not guilty. Zobaida Rashid - already released on bail - did not appear; her lawyer told the court that she was ill. Following several days of pre-trial hearings, the court set 21 April 1997 as the trial date after indicting the 20 alleged coup plotters. The judge told the defendants: "We are here to ensure justice of a murder case under the laws of the land and the accused will get maximum protection and facilities as far as the law allows." Each of the 14 defendants to be tried in absentia were believed to have been appointed a lawyer by the courts to ensure they were defended at the trial.

On the first day of the trial on 21 April, the trial was suspended after a "no confidence" application against the judge was moved by Zobaida Rashid's defence lawyer. The High Court rejected the motion, saying it was not moved properly. Defence sources said they intended to move the application again.

On 30 April, District and Sessions Judge, Kazi Golam Rasul, adjourned the proceedings for one week after another defence lawyer pleaded for suspension until her two pending petitions in the case of her client, Col Farooq, were cleared by the High Court. On 4 May, Bangladesh's High Court suspended all trial proceedings for one month pending the outcome of an appeal challenging the framing of charges against Zobaida Rashid.

6. Impunity and human rights

In December 1996, Amnesty International held a seminar on impunity and human rights in Dhaka, seeking to raise awareness about the issue of impunity in Bangladesh and the need to bring to justice perpetrators of human rights violations at all times and without exception. During the seminar, Amnesty International highlighted that perpetrators of human rights violations under previous as well as the present government continue to

enjoy impunity; that victims could be ordinary citizens or members of any political party, including the Awami League or the BNP.

Amnesty International believes that the phenomenon of impunity is one of the main contributing factors to the continuing pattern of human rights violations the world over. Impunity, literally the exemption from punishment, has serious implication for the state of human rights protection in a country. By bringing criminal charges against perpetrators of human rights violations, the government sends a clear message that such violations will not be tolerated and that those found responsible will be held fully accountable.

If extrajudicial executions, torture and other grave human rights violations are to be brought to an end, Amnesty International believes that all governments must fulfil certain fundamental responsibilities. First, there should be prompt, thorough, impartial and independent investigations conducted according to international standards into all allegations of human rights violations in order to determine responsibility. This principle should apply wherever the perpetrators happen to be, wherever the crime was committed, whatever the nationality of the perpetrators or victims and no matter how much time has elapsed since the commission of the crime. The results of such inquiries should be made public. Secondly, those found responsible for human rights violations should be brought to justice before a civilian court without delay. Thirdly, their trials should follow internationally established fair trial standards. Fourthly, amnesty laws or indemnifying provisions should not be allowed to prevent the emergence of truth and accountability before the law through a fair

judicial process. Amnesty International take no position on pardons after conviction, but it does insist that in each case of human rights violation, a judicial process is completed and the truth is revealed.

Amnesty International welcomes the repeal of the Indemnity Ordinance to facilitate investigation into past human rights violations - including those committed in the context of 1975 coup. However, it reiterates that it is the government's responsibility to ensure that at no times should any of the accused be themselves subjected to human rights violations.

7. Amnesty International recommendations

1. Amnesty International is aware that as of late May 1997, there has been no substantial hearing of the case due to repeated adjournment of the hearings on procedural points raised by the defence. However, it urges the Government of Bangladesh to ensure at all times that these trials conform to the internationally established fair trial standards.

2. Amnesty International is urging the Government of Bangladesh to ensure that the accused are not sentenced to death as this would violate their most fundamental right, the right to life. Amnesty International opposes the imposition of the death penalty at all times and considers it to be an ultimate form of cruel, inhuman or degrading punishment.

3. Amnesty International urges the Government of Bangladesh to institute an impartial and independent inquiry into allegations by the accused that they have been subjected to torture and ill-treatment. Should these allegations be substantiated, the perpetrators should be brought to justice without delay.

Endnotes

i. Constitution of the People's Republic of Bangladesh, Fourth Schedule, 3A.(1)

ii. The petition before the High Court states: "Since the Indemnity Ordinance No. 50 of 1975 was protected and saved under paragraphs 3A and 18 of the 4th Schedule of the Constitution, the same cannot be repealed by simple majority of the members of the parliament."

iii. Supreme Court of Bangladesh, High Court Division, Dhaka: Judgment given on the 28th of January, 1997

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- iv. A statement by a complainant on the basis of which police initiate criminal investigations.
- v. According to reports, Khandaker Mushtaq Ahmed had constituted a judicial inquiry commission on 5 November 1975 to investigate the jail killing. The commission was headed by Justice Ahsanuddin Chowdhury of the Appellate Divisions of the Supreme Court and included Justice K M Sobhan and Justice Syed Mohammad Hossain. The latter has already expired. Justice Sobhan is quoted in the Bangladeshi press as saying the commission had not held any meetings at all.
- vi. *AFP, 5 March 1997.*