Bhutto's Murder Case Revisited

Retrial Plea on Fresh Evidence of a "Conspiracy within Conspiracy

By: A. Basit

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پاران ايم ايڇ پنهور انسٽيٽيوٽ آف سنڌ اسٽڊيز، ڄامشورو.

Bhutto's Judicial Murder: it must be undone to prevent the recurrence of managed verdicts from captive Courts.

On 4-4-1979, Z.A. Bhutto, the Prime Minister of Pakistan for over 4 years, was executed by hanging in the Rawalpindi Jail. This execution took place pursuant to the award of a death sentence on him and four of his co-accused, all Federal Security Force employees. A unanimous verdict of guilt without any mitigating circumstances was returned by a five-member Bench drawn from senior Judges of the Lahore High Court. The decision in question was announced by the Trial Court on 18-3-1978. It was confirmed by the Supreme Court in its capacity as the Appellate Court on 6-2-1979 by a majority of four to three Judges. Paradoxically, on 17-3-1979 all seven Supreme Court Judges proceeded to unanimously reject an application for Review of the aforesaid Judgment I Which, inter-alia, sought the award of the lesser penalty of life sentence on the ground of a closely divided Appeal Court. This Murder Trial and Execution has been, perhaps, the most controversial judicial verdict in the entire History of Pakistan. The time has come to revisit the case to assess its merits and implications.

In the Bhutto Murder Trial, the burden of the Prosecution was to establish a murder conspiracy for which no direct evidence was available to connect the master-mind with the actual occurrence. In the night intervening between 10th and 11th November, 1974, at around 12:30 a.m. some unknown and unseen persons had actually fired their weapons at the car of a maverick Member of Parliament, Raza Kasuri, to cause the death of his passenger father. The murder occurrence happened as the Car No: LEJ 9495 slowed to negotiate a traffic roundabout in Shadman, Lahore. It is nobody's case that the passengers in the car were the target. The actual deceased was an unintended victim in an ambush mounted to kill Raza Kasuri himself who was driving the car at the time of occurrence. None of the assailants was arrested at the crime site. It has so happened that the claim of Raza Kasuri to have been the maker of the First. Information Report to the Police has been accepted without any critical evaluation and against official record. According to a Press Statement dated 4-4-96 made by Habibur Rehman, the then Chief of Intelligence Bureau, Punjab and later, an Inspector-General of Police for the Province, an elder brother of Raza Kasuri had actually telephoned the Civil Lines Police Station to formally convey the information that unknown assailants had fired at the car of his brother which had seriously injured their father An entry to this effect was duly made in the official record of this Police Station. It is settled law that it is this entry which is to be treated as the FIR in the Bhutto Murder Case. This record is still available. The name of Zulfikar Bhutto is not mentioned at all in this piece of information. Even from the written Report handed over by Raza Kasuri to Police Superintendent Asghar at the United Christian Hospital, Lahore, it is quite clear that the author has no significant clue about the identity of the assailants. He was not able to

state any fact in this document which might have helped the Investigation Agency to trace any culprit. Allegations against Zulfikar Bhutto were ostentations and rhetorical.

Be that as it may, the credit for the First Report on Crime has been arrogated by Raza Kasuri himself whose claim on this point has not been seriously questioned even though it is open to doubt. He insisted on making a written statement which has been recorded verbatim and treated as the First Report for purposes of investigation and Crime. In this Reports, the complainant did make a specific allegation against Zulfikar Bhutto himself. Raza Kasuri named him to be the one person entirely responsible for the preplanned attack. He ascribed the motive to "political rivalry". For this assertion, there is collateral support in the recorded interaction at the floor of the National Assembly and Privilege Motions moved by him. However, the subsequent conduct of the complainant who had insisted to join the political Party headed by the accused himself somewhere in 1976 is palpably inconsistent with this ascription. On this aspect, the explanation offered by the complainant has also to be taken into account. He claims to have adopted a strategy of appeasement to avoid further distress at the hands of an unscrupulous Prime Minister. The discordant feature here is the belated stage of Bhutto regime at which this was done; only an year away from the date of Zulfikar Bhutto's removal from office and while his power was visibly on the wane. A massive Civil disobedience movement with unprecedented demonstration of street power had been in the offing for a long time. In June-July, 1977, this long-simmering campaign had reached its climax. One finds it difficult to believe that Raza Kasuri made his protestations of loyalty to Zulfikar Bhutto at the stage when he actually did only to protect himself. This conduct is more congruent with the hypothesis that he himself did not believe that Zulfikar Bhutto was personally responsible for the murder of his father and the he had accused him in the first place main to create a lever to bargain with him.

As it appears to a detached observer, the prompt nomination of the incumbent Prime Minister in the First Information Report is a circumstance which tends to inculpate the nominated accused. It is unfortunate that no serious attempt was made to bring the earlier Report entered in the Daily Dairy of the Civil Lines Police Station Lahore on the judicial record of the murder Trial. This damaging lapse on the part of the Defence has reinforced the claim of Raza Kasuri that it is his written Statement rather than the oral statement of his elder brother, Khizar Kasuri which is entitled to be treated as the FIR, the starting point of the Police Investigation into the Crime. On this assumption, an entirely different perspective emerges. Here was a man who had personally witnessed the agony of his real father's death in the Hospital premises just a few minutes ago at 2:55 a.m. while reporting the occurrence at 3:20 a.m. Here was a man who had refused to make any oral statement to the local Police unless the name of Zulfikar

Bhutto was recorded therein as the main accused. Here was a man who had taken the precaution to prepare a written complaint to the Police in which the main burden of guilt was laid on Prime Minister Bhutto. It is the one feature which Zulfikar Bhutto had to answer and explain and which he has not been able to do adequately. The crucial question is as to whether there is any explanation for this feature of the murder case which would tend to exonerate Zulfikar Bhutto? We believe there is a perfectly natural and plausible explanation which was entirely missed by the Bhutto Defence Team even if they had omitted to rely on Khizar Kasuri's Report which did not mention any criminal role for Zulfikar Bhutto. This is the type of person who was making the complaint: Raza Kasuri himself. The tenor of the Report has a nexus with the known traits in Raza Kasuri's personality.

Is Raza Kasuri the type of person who could act theatrical even at a time like this? He is definitely a poser but was he a neurotic person to this extent? An exploration of the past conduct of Raza Kasuri tends to reveal him as an individual with serious personality disorders. He is the type who could go to any length to draw attention to himself --- a publicity--- starved, second-rate politician who had a tendency to compulsive behavior when it came to retaining public focus.

Unfortunately, no evidence has been adduced in the murder trial to highlight this relevant facet in his neurotic-compulsive personality. He has not even been cross-examined on this hypothesis. In the absence of material on this aspect, the promptitude with which he nominated the Prime Minister of Pakistan as the main accused in his father's murder has retained its persuasive value even though it was likely to dissipate in no time if the window to facts was to be kept ajar only for a little white on the personality of Raza Kasuri himself. It has been taken as an important indication of veracity associated with spontaneity. Quite to the contrary, it could as well be only a compulsive urge to acquire notoriety as has been Raza Kasuri's characteristic reactions on many crisis occasions in his private past. His public behavior at the time of the hijacking of an Indian aircraft Ganga' by Kashmiri freedom-fighters reveals the inner pattern of his real personality and is therefore, evidence relevant to facts-at-issue in the murder trial. He has a tendency to tag on to public figures by hook or by crook and is also prone to making sensational assertions about them. This is quite in keeping with his over-all character. Attention should have been drawn to a series of earlier episodes which fell in this pattern. The most logical reaction for a publicity crazy person such as Raza Kasuri in the peculiar circumstance of this Case would have been to nominate the most charismatic and powerful person in the Pakistan as the killer of his father. Of course, Raza Kasuri had not seen Zulfikar Bhutto actually shooting at his Car on that fateful day. The nomination of Zulfikar Bhutto in the First Information Report is admittedly nothing more

than a suspicion on his part. Obviously, expression of a suspicion is a far cry from a genuine eye-witness statement the man in the street has been permitted to be unduly impressed by it because he was not informed with sufficient skill that the accuser was a known me galomanic who could go to any length to draw attention to himself.

One has to admit that Bhuttos' defence team did not have the foggiest idea that the most plausible explanation of the spontaneity and promptitude with which Raza Kasuri had nominated Prime Minister Bhutto was his inner compulsive urge to acquire and retain public focus. At best, Raza Kasuri was expressing a suspicion against a prominent political personality. He could have had no personal knowledge of any specific conspiracy on his part. Undue importance has been attached to something which could be shown to be a characteristic gimmick on his part. With the passage of time, the specific nomination of Zulfikar Bhutto and the prompt lodgment of this first information report with the local police became a Deathtrap for him.

The manner in which the written complaint was lodged with the Senior Superintendent of Police, Asghar Khan has become a massively misconstrued fact of Bhutto's Murder Case. It is this feature alone which tilted the balance against the main accused therein. This was the element in this particular case which could be manipulated against Zulfikar Bhutto to an extent that even the man in the street would see him as a truly guilty person. A cursory study of the massive Martial Law - sponsored publicity shows that full propaganda advantage was squeezed. The impact on public opinion had gone beyond the expectation of string-pullers. The decision of the Martial Law Regime to prefer a Murder Trial before a Full Bench of the Lahore High Court to a Treason Trial before a Military Court can be understood in the context of an assessment that the public could be swayed by adroit manipulation of the circumstances attendant on me registration of the Crime Report and its bare contents. It is precisely this that did happen.

Even if not a case of no evidence, there is not sufficient material on the record of the Bhutto Murder Trial to justify the conviction of any accused person. The Court has conducted propaganda, not a genuine judicial exercise, to return the guilty verdict. This can be shown quite easily. However, a moderate amount of fresh evidence will clinch the issue that Zulfikar Bhutto was entirely innocent.

Indeed, it is possible to prove that Zulfikar Bhutto has been subjected to judicial murder even on existing court record. Courts have not judged Zulfikar Bhutto. They have assassinated him. There was a conspiracy between Ziaulhaq, the Chief Martial Law Administrator and the Judicial Arm of the captive state to liquidate

Zulfikar Bhutto, the deposed Prime Minister. For this purpose the process of Pakistani Law and Courts was abused.

There is a two-fold premise to support this assertion. First, the intrinsic features of the incriminating evidence are inconsistent with the guilt hypothesis. These have been deliberately finis-construed. Second, state resources and governmental authority has been abused to manufacture and procure incriminating evidence. This reinforces the presumption of innocence available to Zulfikar Bhutto. The need to frame a person betokens absence or failure to collect incriminating evidence against him. This is precisely the situation in the Bhutto Murder Case. He is to be treated as innocent because it can be shown that he was framed.

We now proceed to revisit this case. The attention of the reader is invited to some admitted facts of this murder Trial from which correct inferences have not been deliberately drawn to the great jeopardy of the accused persons. To begin with, one bullet was extracted from the right cerebral hemisphere of the murder victim during the Postmortem Examination and 24 empties were collected from 4 different spots at the site during police investigations. These recoveries have been exploited to reinforce the hypothesis advanced by the Prosecution that the ammunition as well as the weapons employed in this murder occurrence were such as were used in routine by the military and para military forces such as the Federal Security Force. The tell-tale marking on the recovered cartridge empties is 661-71. There is ample evidence to show that this ammunition was issued, inter alia, to an armed militia set up by Zulfikar Bhutto called the Federal Security Force.

However, these empties were not attempted to be matched with the machine and sub-machine guns issued to the third Battalion of the FSF stationed at Lahore while Bhutto was in power.

On 24-7-1977, just twenty days after Zia had removed Bhutto from power, the Federal Investigation Agency proceeded to arrest two Federal Security Force employees, namely, Arshed and Iftikhar on the suspicion that this very outfit had been involved in a bomb-blast at the Lahore Railway Station premises. This was on the occasion of the visit of an Opposition Leader, Asghar Khan. Only two days after their arrest, these two potential convicts made a full-blown confessional statement before a local Magistrate in which Zulfikar Bhutto was involved in the Raza Kasuri murder case to the hilt. Fractional truth has been mixed with gross concoction in these half-true confessions. However, these two tragic characters stuck to their recorded confession at all stages ---- Trial, Appeal and Review.

Investigations in the Bhutto Murder Case are stated to have been 'triggered' by these 'chance' disclosures. Thereupon, the FSF Third Battalions guns at Lahore were tested for matching them with the recovered empties. However, the Arms Expert found that the empties did not match with the FSF guns. Obviously, the benefit goes to the accused. However, confronted with this striking discrepancy, the Prosecution took the stand that the crime empties themselves had been replaced.

It is significant to mention that even so, the mark 661-71 which links the FSF to the murder occurrence was retained on the incriminating material. This makes replacement theory hard to believe. After all, what was the sense of replacing the original empties with fake ones if the nexus marking was still to be preserved? No reasonable person can be persuaded to accept a hypothesis as preposterous as this.

The simple inference is that the author of the recovery Memorandum which has been exhibited in the evidence as Exh. P.W. 34/4 had weak eye-sight and either he attempted to read the inscribed marking on the case of the empty shells without his spectacles or that his glasses needed replacement. We regret to note that the crucial inference recorded by the Trial Court in Para 490 of its judgment in support of the replacement theory of the crime empties proceeds on this preposterous basis. It does not at all march with the facts noted by the same Court in Paras 263,287, 405, and 417 and 424. This is a vivid illustration of the perverse and wanton abandon with which incriminating inferences were drawn from innocent data to the great jeopardy of the person who has been billed as the Principal Accused throughout the judgment.

On a deeper scrutiny, whatever tangible facts have emerged on the trial record tends to destroy the foundation of the Murder Conspiracy Theory itself. Unfortunately, the Defence Team for the accused persons failed to take full advantage of this aspect. On the other hand, they labored on an abortive hypothesis, i.e. the attempt to disprove the issuance of such weapons and ammunition to the accused FSF employees.

On the prosecution case itself, the 'Killer Squad' within the Commando Group of the Federal Security Force should have been so marshaled as not to leave any trace of official involvement in the occurrence. Quite to the contrary, evidence floats on the surface of the Investigation record that this did not happen despite ample opportunity. Masood Mahrnood, the Director-General FSF, who appeared as an Approver, deserved to be separately tried on the additional charge of sheer incompetence if he had indeed failed to anticipate and eliminate even the obvious nexus between the recoveries from the spot and his own "Killer Team".

There is no evidence whatsoever that the marriage ceremony at the house of Bashir Ahmed was the precise occasion for which the murder conspiracy was hatched at any high level. On the other hand, it appears that the sight of the parked car owned by Raza Kasuri at a late hour of the night was the occasion for Iftikhar, Arshad and Mustafa co-accused to make hurried preparations to implement a standing order to the effect that Raza Kasuri had to be 'liquidated' whenever a suitable occasion presented itself. The manner in which the attack was botched shows that the planning for it was both precipitate and at a low level, i.e. their own. It is not at all consistent with the methodical operations of a systematically conceived plan executed by a properly trained death squad of a Commando outfit which had been specially selected and sent into the field to achieve this very target. Coupled with this circumstance, the type of weapon and the ammunition which is proved to have been used in the occurrence in question are quite sufficient to exclude the possibility of a conspiracy at any high level on the part of any official agency which could be shown to use them in routine. A different type of weapon and bullet could be as lethal for the purposes of putting the complainant to death. Unless it could be shown that Masood Mahmood was either a person of very low intelligence level or an incompetent planner to an extraordinary degree or else out to sabotage his own conspiracy assignment, it would not be reasonable to infer that any military or par-military formation to whom this type of weapon was issued in routine (which is an easily ascertainable fact) would use it pursuant to a proper methodical Plan to murder an ordinary civilian.

Once again, on the probabilities of human conduct, the complainant should not have succeeded in getting the Report made by him registered with the local Police if FSF officials at the upper echelons had been actually involved in the murder conspiracy. It would have been a simple enough precaution to issue instructions to the Head of the Lahore Police to avoid/refuse to register such a First Information Report. Indeed, the usual tactic is to have a tailor-made Information Report registered first so as to pre-empt the genuine Report. The most solid indication of a pre-plan at the official level would have been the lodgment of a prompt First Information Report by a prompted and controlled individual. This is precisely what did not happen in the Bhutto Murder Case. This is precisely what has not been sufficiently proved in the defence of Zulfikar Bhutto and for which fresh evidence has now become available.

Evidence is available to establish that no preparatory work was done to prevent the lodgment of a Report such as the one on which basis the deposed Prime Minister was eventually condemned to death. If Zulfikar Bhutto had planned to get Raza Kasuri murdered, he certainly had the sense as well as the power to ensure that a suitable candidate was nominated in the First Information Report as the accused person. This Crime Report is to be recorded on the narration of

the first person who happens to contact the area police officer and who does not necessarily have to be the son or a relative of the murdered individual. It does not need much ingenuity or resource to have made these minimal arrangements.
The true significance of observations made by Hameed Bajwa (Chief Security Officer) and Zulfikar Bhutto which have been reproduced in Para 493 and 493A of its judgment has been deliberately missed. Indeed, these marginal notations have been twisted to the disadvantage of Zulfikar Bhutto in a manner which does not behove a Trial Court. By themselves, these two notes yield enough bases for a positive inference as to the innocence of the person who was the Prime Minister at the relevant time. In particular, the extorted utterance of Zulfikar Bhutto show genuine bewilderment at the grotesque manner in which the Chief Executive is being helplessly sucked into the vortex of a criminal case. The characteristic touch of sardonic petulance is truly poignant as much as it is pathetic. It is ironic to read criminal intent in it as the Trial Court has done.

Asghar, the then Superintendent of Police, nicknamed 'Halakoo Khan', has been a stern officer of reputed integrity throughout his career in the Police Force. However, he was also known as a robot that always did what his superiors asked him to do. He was a discreet, disciplined and obedient Police Officer --- the type of officer who could be relied upon to execute all types of commands efficiently without betraying confidence. There would have been being no need to replace him with a more "trustworthy" Police officer. The litmus test of conspiracy would be prior instructions to him to ensure that no Report such as has been actually lodged would be registered by the Police. The very fact that a First Information Report which specifically nominated the incumbent Prime Minister as the main accused in a crime which attracted the maximum penalty was ever registered by a Police officer on the dictation of a complainant destroys the hypothesis of a Conspiracy Theory for murder at the level of the Chief Executive of Pakistan. Asghar would have been in no position to do so had the Chief Executive of Pakistan actually wanted that the Crime Report in question should not be registered which tended to involve him in the murder occurrence.
This Police officer has been duly produced by the Prosecution as its own Star witness. Significantly, he has not stated in his examination-in-chief that any instructions not to register the criminal case were ever received by him. Unfortunately, the team of Counsel put in the field by Zulfikar Bhutto was quite clueless on the most crucial aspects of the murder trial. It failed to see the true potential of Superintendent Asghar for Defence purposes. As a result, testimony which could positively rebut and demolish the prosecution case has not been elicited from him notwithstanding extensive questioning spread over hundreds of full-scape typed pages. Had the cross-examiner asked a single question as to whether this witness had ever received any instructions on how to deal with the demand to register a Crime Report in which some political opponent of the Prime Minister might have tried to involve him, it would have come on judicial

record that this possibility was never contemplated at least by Zulfikar Bhutto even though there had been previous attempts to do so.

This witness had made no move on his own to seek instructions on how to proceed in the matter prior to the registration of the crime report (F.I.R.) registration. Had such a question been asked, the probable answer would have gone a long way in establishing the Defence version, i.e. non-involvement of any official agency in the murder episode.

Interference in Police investigations by Hameed Bajwa and Saeed Ahmed has been noted by the Trial Court in Para 214 of its judgment. In para 216 thereof, much has been made of the statement of Asghar Khan that since he was not free to interrogate Zulfikar Bhutto on motives of murder, there could be no worth-while progress. Had he been asked a relevant question in Cross-examination, it would have come on record that Zulfikar Bhutto was quite prepared to join the investigation and had issued specific instructions that "police should investigate this case as any ordinary murder case so that opposition may not exploit it." A more damaging piece of evidence for the Prosecution story from the lips of a Prosecution witness is difficult to imagine. On a retrial, this is what this particular witness is likely to assert. He may also be prepared to identify the line of transmission of this specific instruction with the ultimate source as the accused Prime Minister himself.

It is now well-known that a message to this effect had reached Asghar Khan via Rao Rashid, the then Inspector-General of Police. This gentleman was actually summoned as a Defence witness but has not been permitted to depose. The need to hold retrial is all the more urgent as this particular witness as well as many others like him have already reached a ripe old age. It is a pity that Rao Rashid was not permitted to appear as a defence witness while Asghar Khan was not asked the questions which should have been asked to get at the truth and to lay the foundations for an effective Defence. Had this been done, the elaborate mass of contrived evidence collected to show that Zulfikar Bhutto had tried to divert the Police Investigation from the lines indicated in Justice Shafiur-Rehman Enquiry Report would have blown over like so much chaff that it actually is.

It is true that the ordinary Police did not play the role prescribed by law in the investigation of this particular case at subsequent stages till it was picked up and revived by Zia's Martial Law in the autumn of 1977. This is nothing unusual for the Punjab Police. On the other hand, it is quite in keeping with its character. Saeed Ahmed. Hameed Bajwa and Masood Mahmood do appear to have meddled with the investigation from time to time in quite a clumsy way. However, this was mainly on peripheral issues, e.g. keeping the publicity of the case down to the minimum to "protect" the name of the Prime Minister. On this

aspect, Para 103 of the Trial Court Judgment provides sufficient basis to exonerate Zulfikar Bhutto. It has been exploited as proof of the involvement of handpicked Zulfikar Bhutto agents in the affair and, therefore, of his personal guilt. However, the probability is overwhelming that meddling was done by the underlings on their own initiative with the object to curry favour with the 'master.'

On a deeper scrutiny, furtive gestures on the part of this 'Dirty Trick Team" is by itself the most eloquent testimony that the source of real power, Zulfikar Bhutto, was neither much perturbed nor concerned in this affair... This is not how things would have moved had a murder plan conceived by the 'principal accused' misfired in the manner in which it has done in this case. The record only shows that Zulfikar Bhutto was quite perplexed at the egregious incompetence of his own "special staff" to achieve worthwhile results even in simple tasks.

The hard fact is that at no stage during Zulfikar Bhutto's tenure in office the investigation ever handed over to any Federal Agency although this transfer could be made under existing legal provisions. Ironically, Zia's Martial Law Administration is responsible for a Federal Agency taking over the investigation of this murder case on the pretext of unearthing the Dirty Tricks role of Federal Security Force during the Bhutto regime. A strong case can be made out that investigations in the Bhutto Murder Case have not been finalized by the local police which is the agency designated by law to do so. Strictly speaking, all the findings recorded by the Federal Investigation Agency are without jurisdiction.
Zulfikar Bhutto had many faults one of which was to keep unscrupulous and crooked sycophants on a long leash. He has paid quite dearly for this failing. He should have ensured that no one meddled with the police investigations in this particular case the fault for which could be easily ascribed to him at any subsequent stage. Zulfikar Bhutto has gained nothing by these clumsy interventions. All this proves is that he has been irresponsible in the extreme. At the same time, it goes to show that the crime itself cannot be ascribed to him. Fortunately, Rao Rashid, the Inspector-General of Police, Punjab at the relevant time, is a truthful person whose word deserves implicit trust. He has maintained an independent political posture subsequent to his retirement from service. If Zulfikar Bhutto wanted to deflect investigation of the murder case away from him, Rao Rashid should have known about it more than any one else. It has been stated earlier that he offered to enter the Witness Box but was not permitted to do so by the Trial Court.

As for deflecting the course of police investigation, there is concrete evidence on the judicial record to the effect that Zulfikar Bhutto learnt about the murder occurrence while on a tour to Multan. However, the convicted Prime Minister did not at all evince any unusual or even ordinary interest in the matter. Except

for a casual off-the-cuff remark, Zulfikar Bhutto did not even bother to make a significant comment to the sensational news which ultimately was to be the ostensible ground for his arrest, trial and conviction on a capital charge. This cannot be the conduct of a person who had conspired to get Raza Kasuri murdered which plan had so miserably misfired. Of course, even the basic story of how Zulfikar Bhutto tried to get Raza Kasuri killed is more a Laurel and Hardy stuff than a genuine thriller. It would be difficult for a person of ordinary intelligence to accept it as true. The secret agents allegedly put by him in the field to kill Raza Kasuri have acted as so many don Ouxoites tilting at the wind-mills. The capacity of Zulfikar Bhutto to "fix" his targets is not open to serious doubt. If anyone even was, he was the "go-getter". The killing in this murder case is entirely out of character with the Principal Accused.

The stage has arrived to note that this is a case in which pardon was given to two approvers, namely Masood Mahmood, the Chief of the Federal Security Force and Ghulam Hussain, an Inspector under him. Under the law, an Approver is made if it is not possible to elicit the true facts of a criminal case in any other way. All the six persons who were to be tried with Zulfikar Bhutto had already made detailed confessions. The real challenge was to find independent corroboration for these extensive narratives. Rather than do this, the narratives of two out of six were selected and offered as corroboration for the confessions of the other four. This is an implicit admission of total failure to find any significant corroboration from substantive incriminating evidence against the only person being genuinely tried-Zulfikar Bhutto. The only plausible explanation for having two approvers is the childish faith of the prosecution that the Statement of one approver will corroborate that of the other. It appears that evidence was being adduced for propaganda effect rather than any intrinsic merit. It is not possible for a person of ordinary intelligence even to entertain the hypothesis that Masood Mahmood could be a truthful person after reading the eleven and a half sentence digest of his evidence contained in Para 59 of the judgment of the Trial Court. Masood Mahmood is an Ahmadi and members of victimized minorities make shaky witnesses. They are prey to many extraneous pressures. It appears that Zulfikar Bhutto and Zia-ul-haq both found him a convenient tool for this very reason. A rootless person like Masood Mahmood is not likely to be a dependable witness. He is likely to bend in the direction of men in authority which he has done.

Ironically, the most solid item which tends to prove the innocence of the accused Prime Minister is the overkill done by the Martial Law Regime itself. A circumstance which appears on the face of the record is that everyone who happened to be made a co-accused with Zulfikar Bhutto had "confessed" to his crime as stated in the Charge-Sheet 'voluntarily' and 'in the Court' and within a few days of the inauguration of the Martial Law Regime. As noted earlier, this is a circumstance of crucial significance for the ultimate outcome of the judicial trial

itself. An over-anxious Zia-ul-haq wanted to "make sure" that the accused Bhutto would look as guilty as he was to be held to be by all the Courts in the judicial hierarchy of Pakistan. There can be no other explanation for all the five co-accused making identical confessions except their deliberate procurement by the Martial law Regime. It is too much of a coincidence. Massive external factors were at work to make all the accused persons in the case behave as they actually did.

There is overwhelming evidence for a rigged Trial Paragraphs 318 to 324 of the Trial Court Judgment contains a repudiation of the 'confession' obtained from Abbas accused under duress and inducement. It makes compelling reading. It is submitted that rigging of the Murder Trial is not consistent with the guilt of Zulfikar Bhutto.

Not much doubt remains that Bhutto Murder Trial was rigged after it is noticed that this very Abbas was made to reiterate his repudiated confession before the Supreme Court. The behavior of Abbas in doing so is extraordinary human conduct. He first makes a confession during the investigation which is recorded by a Magistrate. He then repudiates this confession during the Trial before the High Court. Thereafter, he is made to own it up again. He applies to appear personally before the Supreme Court and when he gets the chance, he reiterates his guilt rather than protest his innocence. Abbas is a sorry spectacle, indeed. So are the Trial and the Appeal Courts who have witnessed this spectacle with utter passivity.

Let us now examine the conduct of the other three co-accused of Zulfikar Bhutto, Arshad, Iftikhar and Mustafa. One can understand the conduct of an Approver in making the confession: his life is spared. Barring a few odd-balls and these too in very special circumstances, no accused person facing the death penalty is likely to confess to his capital crime before a Pakistani Court, if properly advised. The most glaring lapse on the part of the Trial Court in the Bhutto Murder case is its failure to satisfy itself that the confessional statements being made before it were not procured by massive inducement proceeding from the Chief Martial Law Administrator himself who would have been the direct beneficiary of a guilty verdict on the deposed Prime Minister.

Minimum requirement for a fair trial in Bhutto case was to treat all the confessing accused as 'approvers' and permit them to be cross-examined by the main co-accused. It is true that this point was neither raised nor urged before the Trial Court. However, incompetence of Counsel is not an acceptable ground for the Death Penalty. Indeed, there is something more than this in this particular affair. Irshad Ahmed Qureshi, Advocate, the Counsel for the three FSF employees, had conducted his cross-examination throughout the Murder Trial

with the singular purpose of reinforcing the Prosecution case against Zulfikar Bhutto to the jeopardy of the interest of his own clients. This Defence Counsel had been acting as a Special Assistant to the Public Prosecutor. He had fully justified the expenditure from the public exchequer incurred in payment of his professional charges so far as the interest of the Prosecution were concerned. However, there is no guarantee that all the payments made to him had been faithfully entered in the public record. No Prosecution Counsel is ever so anxious as he had been to ensure that no piece of incriminating evidence against any accused is inadvertently omitted. In these circumstances, it would have been reasonable for the Trial Court to infer that the accused persons were getting a raw deal from their own Counsel.

The Bhutto Trial Court had turned a blind eye to something very wrong which was taking place under its very nose. This Defence Counsel for the three co-accused was trying hard to prove the guilt of Zulfikar Bhutto for which purpose he was also proving the guilt of his own clients. A Court with a conscience would have paused to ponder over this unusual spectacle. A Retrial is justified on the sole ground that the manner in which the Federal Security Force employees were behaving during the Trial proceedings was such that the possibility that they were acting under future inducement to involve the Principal Accused even at the cost of jeopardy to their own real interest could not be excluded. At the very least, these accused persons should have been cautioned that their own Counsel had failed to advise them against making a plea which could have got all of them convicted on a capital charge without further ado. This should have been done as soon as the senseless plea was raised.

It is surprising that not even one out of the five Judges who composed the Trial Court ever saw anything suspicious in the most extra-ordinary stance which all the three accused had adopted of their total guilt as charged. Surely these learned "lords" knew that the command of the superior was no defence to a criminal charge in an ordinary court of law. It was the duty of the Trial Court to explain the implications of this plea as soon as it was made. Trial Court should not have remained unmoved when it could plainly see that the accused persons had been misguided into making it. It should have been clearly visible to the Trial Court that the Defence Counsel was not discharging their professional obligations to the accused persons in their care. This is particularly true of Irshad Qureshi, Advocate, who had been engaged at state expense. Throughout, this gentleman has served the anti-Bhutto campaign conducted in the Courts by the Martial Law Regime rather than the short as well as long term interest of the accused persons he was engaged to defend. There can be little doubt that lie was a Prosecution Agent in the Defence Team. He has literally led his clients to the gallows. He should have been stopped from doing so.

On 3rd of April, 1996, the same Irshad Qureshi, Advocate arranged for a Press Conference in the course of which he has made important disclosures as to his role in procuring false confessional statements from the three accused person he was assigned to defend at the Trial. This Counsel has voluntarily opted to abandon his professional privilege and has spoken at length about the pressures and inducement through which the three FSF employees were defrauded into sticking to their Confessions to the end of the Bhutto Murder Case in the Supreme Court of Pakistan. In the report of this Press Conference carried by daily 'Jang' of 4th of April 1996 which incidentally was the Death Anniversary of Zulfikar Bhutto, the aforesaid Counsel has named a Deputy Director, F.I.A who is still serving and who had arranged for the next of kin of the confessors to be taken to Rawalpindi for a face-to-face meeting with General Faiz Ali Chisti to receive an assurance that Zia's Martial Law Regime would duly reward the services rendered by them to achieve the objective of fabrication of evidence to justify the award of a death sentence on Zulfikar Bhutto.

So far as could be ascertained, Irshad Qureshi, Advocate still has close links with Jamat Islami which quasi-religious organization was being used by General Zia as the political arm of his Martial Law Regime. There are reasons to believe that Federal Security Force accused had been directed to engage this Counsel on the basis of a "secret undertaking of ultimate exoneration" given to them. Now, this very Counsel has endorsed the plea of Retrial in the Bhutto Murder Case. He has gone to the extent of asserting that the whole affair of fabrication of false evidence will stand sufficiently exposed only if General Faiz Ali Chisti was made to join police investigation. In our view, another person who should be made to join these investigations is Irshad Qureshi himself. Having himself made a Press Statement, he is in no position to claim any privilege in relation to any fact which is within his knowledge and which tends to show that confessions made by the accused persons whom he represented were proved by inducement and were otherwise false.

In the presence of the Court Confessions by all the co-accused, on the surface, Bhutto does appear to be quite guilty, beyond the shadow of a doubt. While the Courts have tried to underplay them, this is the feature which has had a maximum impact on public opinion. The man in the street was made to believe in Bhuttos' guilt mainly because all his Co-accused had made confessions and were sticking to them. However, on closer scrutiny, this very feature is also too much of a coincidence to be accepted at its face value. On the other hand, it betrays Zia's conspiracy against Bhutto. Had the defence made the effort even at the pre-trial stage, it may have discovered evidence to establish that all these 'Confessions' had been procured pursuant to a design by the Regime of the Usurper. In any case, it was the duty of the Trial Court to satisfy itself that the Court confessions in question were voluntary. The possibility that these had been

procured by massive inducement should not have been excluded from consideration as it actually was. Be that as it may, Bhutto should not remain condemned for all eternity for the incompetence of his Counsel who could not see that the Court confessions of his co-accused were palpably induced. Unfortunately, not even an attempt has been made to demonstrate to the Trial Court that this was so. This could be done quite easily. The Defence Counsel of the confessing co-accused were a living proof. On each day of the prolonged Trial, they provided palpitating evidence to this effect in ample measure. A fair Court should have seen this itself. It is pathetic that the Defence Team put in the field by Zulfikar Bhutto never raised or pressed this point as should have been done. They kept on piling one trivial point after another till they themselves could not see the wood for the trees. The censure against Defence Counsel D.M. Awan is well-deserved although not for the reasons recorded in the judgment.

To cut a long story short, evidence as to attempts to procure false confessions for the purpose of the Bhutto Murder Trial is available in ample measure. Reference may be made to Para 171 of the Trial Court judgment. Amongst other straws in the wind, Ijaz Hussain Batalvi, a prominent Appeal lawyer who was drafted by the Zia Regime to act as a Prosecutor in the Bhutto Murder Trial in association with M. Anwar, Advocate, was regularly taken to the Jail at the dead of night to invigilate all the prisoners. Secret meetings were arranged in the Jail between the accused FSF employees and this particular Prosecutor. This was done more to keep them in line. These sessions were held in the dead of night with the utmost secrecy to create an impression in the minds of the prisoners that the State took them seriously and was letting them in on an important secret. All this was by design and calculation. We are in a position to prove that these secret meetings did take place between this Prosecutor and the victimized company of the deluded confessors. Jail employees can point out the precise site where this happened and the dates and the time thereof. This feature of the case when put in juxtaposition with other attendant circumstances would lead a reasonable person to infer that Zia had acted through Brig. Bashir to procure false confessions from all the four co-accused to be made before the Trial Court. This was a part of the 'deal' which was struck on the basis of overwhelming inducement. This is a significant aspect of the case which has been entirely kept out of consideration by the Trial Court to cause miscarriage of justice. Incriminating evidence is only manufactured where the prosecution case has no legs of its own to stand upon. A plea of Re-trial ought to be sustained as indications to this effect have become available in the form of pieces of evidence to be presented before a Court.

From what we have been able to ascertain, Zia convinced the Federal Security Force accused employees that their only chance for survival was to put up with the charade in the Court and to keep quiet until the stage of Mercy Petitions

which was a matter entirely in his discretion. These four prisoners were convinced that after being convicted, all except Zulfikar Bhutto were to be given free pardon by Zia. Much else was also promised to them to compensate them for a few months in Jail.

The manner in which these persons were held incommunicado after the rejection of the Appeal and Review by the Supreme Court and the speed with which they were rushed to the gallows thereafter does indicate that Zia had made special arrangements that their side of the story could never be told to the public from their own lips. These four convicted persons were treated in the manner in which they had actually been precisely because Zia had a skeleton in his cupboard.

One wonders at the naïveté of the five-member Trial Court who looked at these pathetic creatures in the Accused Dock every day of the trial without once feeling the urge to explore the real causes of their intense desire to implicate themselves ever so deeply at every step. Bhutto's Conspiracy to murder is a moot point. However, Zia's Conspiracy to arrange for the judicial murder of Bhutto can be easily spelled out from the record of the trial Court itself.' There is much substance in the tongue-in-cheek point made in a dissenting Judgment of the Supreme Court to the effect that, besides the one for which the accused were being tried, there may well have been yet another conspiracy in the case.

Overwhelming evidence can now be produced to prove the existence of this parallel conspiracy. This is the main premise of the Retrial Plea.

Legal Opinion asserts that now it is in a position to establish that Brigadier Bashir was in charge of the Zia's personal mission to have Zulfikar Bhutto murdered through the instrumentality of the Pakistani Courts which had been captured by the Martial Law Regime --- the Get Bhutto Hanged Operation'.

This is a case of judicial Murder --- pure and simple. The Trial Court has been manipulated to render the guilty verdict. Everyone has done his sordid bit --- the Judges, the Special Public Prosecutor, the Defence, Counsel, the Approvers --- even the Co-accused. It has been a massive charade led by the Chief Prosecutor, Ijaz Batalvi.

If Ijaz Batalvi has the courage to deny this assertion, he is invited to do so in which event solid evidence can be made available to rebut him. He cannot be permitted to set up the plea of privileged professional communications to avoid giving testimony in the witness-Box. While undertaking the trips to and from Jail, the learned Barrister was permitting himself to be used for the 'extraneous' purpose of fabricating and procuring false evidence in a criminal case which carried the Death Penalty. This is no professional conduct. Indeed, it is

misconduct which may have given rise to criminal liability for the learned Counsel in question. A lawyer cannot hide behind his robes after he has swept the path with it which has led someone to the gallows. In a recent Interview, the former special Prosecutor rejected all suggestions of wrong-doing with a great deal of vitriol in his expression. The gentleman got so worked up as to abandon the veneer of civility and to hold out threats of actual physical violence to his interlocutor on the personal level. This is most unusual conduct. It is symptomatic -of a guilty conscience. Ordinarily, Ijaz Batalvi is the epitome of grace, serenity and culture. If a mere suggestion to this effect could shake him up so as to make him lose his cool and self-control, internal tension related to his role in the Bhutto Murder Trial many well be the hidden cause. For those who know and respect Mr. Batalvi, as this scribe does, he is, indeed, a tragic figure. The present state of mind of Ijaz Batalvi is a living testimony to the innocence of Zulfikar Bhutto whom he helped murder judicially. For this deed he is now paying with an inscrutable and persistent sickness in his Soul. Ijaz Batalvi is a Contemporary Lady Macbeth as he well should have been. Not all the waters of the Arabian Sea may be able to wash the blood off the fringe of the Robe of this Prosecution Counsel.

Ijaz Batalvi may yet make a unique contribution to the cause of upholding the Rule of Law in the Bhutto Murder case. We call upon him to uphold the noblest tradition of the profession of Law by coming to the help of a victim of miscarriage of justice at a stage when all including his Prime Minister daughter appear to have abandoned him. We beseech him to make a complete clean breast of it all before he fades from the scene. For the sake of truth and Pakistan, this Journal calls upon this famous criminal lawyer to exclude all other considerations and to come out with the raw truth on his otherwise withered lips. A number of jail officials are still alive to testify to the tactics used to induce and coerce these innocent persons into making false confessions. However, we would rather hear truth from the hallowed lips of Ijaz Batalvi himself rather than from Jail employees and such lower breeds. Of course, it is a sorry state of affairs in which even a counsel of Mr. Batalvi's eminence opts to become a pawn in the hands of a semi-literate dictator half-crazed by intense survival anxieties. Anyhow, now that this prominent lawyer is coming close to the end of his innings in the Courts having held his secret long enough, nothing would behove him better than to exit with 'truth and nothing but the truth' on his lips. In a macabre culmination, the entire band of deluded confessors were made to swing on the gallows to destroy the prospects of truth ever coming out at any later stage. We invite Ijaz Batalvi to have the last laugh on Zia-ul-haq by telling the true story of the false confessions at the Retrial of the case. We also hereby Petition the National Assembly to pass an Act of Immunity for all witnesses who may appear in the Bhutto Murder Case Re-trial. We want Ijaz Batalvi to be the main beneficiary thereof, but urge him to step in the witness-box even if this

cover is not available. He may well re-gain in stature what he lost at the trial by consenting to play 'dirty tricks' for the Martial Law Prosecution. One of the duties assigned to him was to monitor the state of mind of the confessing accused throughout the Trial. It would be with the heaviest of hearts if this Journal was left no option except to lead evidence to prove this point. Ijaz Batalvi, Advocate, may not know the real truth about the actual crime. However, the fact that the Murder Trial was rigged is in his personal knowledge as he played quite a full role in doing so. It is best that he should own up to it. If he does this, there would be no need to produce any additional evidence to secure an honorable acquittal for Zulfikar Bhutto on his retrial. He is too big a man to grudge vindication of the innocence of a dead man, prick as it would the cocoon of self-righteousness into which he has withdrawn.

Evidence is accumulating by the day that at least the death verdict of the Lahore High Court if not the rejection of the Appeal and the Review by the Supreme Court in the Bhutto Murder Trial was a managed affair. Evidence in the form of an extra-judicial confession to this effect made by late Brigadier Bashir Ahmed, the Chief of Staff to the then Martial Law Administrator, Punjab has now become available. Next we proceed to lay all material facts gathered so far on this aspect before the public.

At the time when the "preparatory work" for Bhutto Trial was done, the man at the helm of affairs in the Punjab was its Martial Law Administrator namely Lt. General Muhammad Iqbal Khan. He was a ram-rod straight soldier who would not have consented to become a party to low-level conspiracies hatched by Zia-ul-haq. Perhaps, Zia-ul-haq could not even muster the courage to suggest rigging of a Court Trial to this crisp, no-nonsense Formation Commander. Shrewdly, Zia played the Araeen Card. He recruited Brig. Bashir to act as his pawn without the knowledge of the aforesaid General Iqbal and over his head. It is thus that Zia-ul-haq proceeded to directly hold out false inducements to all the four framed-up accused, *i.e.* Mian Muhammad Abbas, Sufi Ghulam Mustafa, Rana Iftikhar and Arshad Iqbal. Resultantly, all the co-accused of the deposed Prime Ministers were made to make false confessional statements in the Trial Court under threat and inducement. However, all of them except the two approvers who still survive wanted to expose the conspiracy when it became clear to them that they had been betrayed in a most atrocious manner.

For many months, Irshad Qureshi, the so-called Defence Counsel hid for fear of his life from the wrath of the relatives of the convicts after they were hanged. It is pertinent to reveal that some relatives of the convicted employees approached Ihsan Lilla, a lawyer associate of D.M. Awan, Advocate (a prominent Member of Zulfikar Bhutto Defence Team) to move a formal application before the Supreme Court to repudiate the concocted Confessions. We have it from the lips of Abid

Hassan Minto, Advocate, whose credentials are unimpeachable that he saw Lilla keeping vigil for him outside his Model Town, Lahore house around midnight while Rao Rashid, the former Inspector-General Police, waited in a parked car. Minto was asked to act for the convicted FSF employees with the specific instruction to get the effect of their false confessions nullified. He consented to be engaged as their Defence Counsel. However, before Minto could take any signification steps, Brig Bashir got wind of these developments and wielded the carrot and the stick to once again make all reluctant confessors toe the line. Tragically, they fell in the trap once again from which they could never retrieve themselves thereafter. Only one co-accused namely Abbas managed to file a Written Statement in the Supreme Court to retract his confessions. However, he was made to withdraw it during the Court proceedings and to re-affirm his guilt. Others simply did not have a chance to repudiate their Court confessions in writing at any stage despite their intense desire to do so. It was made sure that they did not have even the ghost of a chance right until their execution. In the event, each one of them was hanged by the neck till he was dead. Nevertheless, it has become possible to prove the innocence of Zulfikar Bhutto by collecting evidence that false Court confessions were procured from the convicted persons. This is a good ground for Retrial which is amply recognized by the Law of Pakistan.

Whether or not Bhutto was guilty as charged is the crucial question. He deserves to be acquitted on proof being produced that the Murder Trial itself was rigged. A criminal conviction remains liable to be set aside if sufficient fresh evidence becomes available, to the effect that incriminating evidence was fabricated for the exclusive purpose of production during the Trial proceedings and that it was actually produced. Law does not permit even a guilty person to be sentenced on fabricated evidence. This is the essential premise for seeking Re-trial in Bhutto Murder Case.

There is credible evidence that even Supreme Court verdict was pre-determined. Aftab Gul, Advocate, a Cambridge graduate and a Test Cricketer, is the son-in-law of a retired Judge of Lahore High Court, Mr. Justice Atta ullah Sajjad. He has narrated a dinner-table conversation which took place before the conclusion of proceedings in the Supreme Court and in the course of which. Mr. Justice Nasim Hassan Shah who later became the Chief Justice of Pakistan and who sat on the Supreme Court Bench hearing Zulfikar Bhuttos' Appeal has made an extra-judicial confession about its outcome being prearranged. The context of this admission was the discussion on the quality and impact of the personal presentation made by Zulfikar Bhutto before the Supreme Court which had evoked great public interest at the relevant time. Mr. Justice Nasim Hassan Shah is reported to have stated that Zulfikar Bhutto had delivered a "mesmerizing speech" while addressing the court in his own defence and had convinced his

colleagues about his innocence. In the conversation which ensued, he confided to this exclusive audience that the Punjabi Judges of the Supreme Court Bench had consulted amongst themselves, and agreed that the life of the Lahore High Court Judges who had sentenced Zulfikar Bhutto to death may be seriously endangered if Supreme Court were to impose even the lesser penalty of life imprisonment on him. Martial Law Regime had convinced the Punjabi Judges through the good offices of Mr. Justice Maulvi Mushtaq Hussain himself that if Zulfikar Bhutto was not actually hung, he would soon emerge from the Jail with even greater charisma and, revengeful as he was, he would make sure that each one of the Lahore High Court Judges who had dared to subscribe to the death verdict would be paid back in the same coin. Mr. Justice Shah regretted that they had no real choice in the matter of sentence to be imposed on Zulfikar Bhutto. The personal survival of the Judges who had signed Zulfikar Bhutto's death Warrant wighed as a factor with the Supreme Court to sustain their guilty verdict. The participants in the memorable Supper who still survive are Javed Iqbal, Sardar Iqbal, Aslam Riaz Hussain and, of course, Atta ullah Sajjad, the gracious host. Each one of them has been a Judge of the Superior Courts of Pakistan and each one of them has a duty to confirm as to whether or not Aftab Gul is telling the truth. Truth may come out of the Horses' mouth itself. He is likely to drink when brought to the trough.

We regret to note that none of the heirs of the body of Zulfikar Bhutto has come forward to clear his name from the murder conviction. It appears that his own daughter Benazir Bhutto has been ill-advised that such moves may back-fire politically. Thus, everyone appears to have forgotten about the victim of a miscarriage of justice. In these circumstances, this Journal has taken the initiative to collect evidence, documentary as well as oral, which it will continue to do till the logical end of having achieved a Bhutto Murder Retrial.

Many promising lines of investigation have opened up. Initially, in the expectation that the Death sentence pronounced on the condemned accused would eventually be commuted, a number of Mercy Petitions were made. However, as soon as the makers of the false confessions realized that Zia-ul-haq had cajoled them into putting the noose around their own necks, frantic pleas to honour the secret commitment were made even before the Martial Law Dictator himself. None of them had any effect. It is clear in retrospect that the so-called 'confessors' could expect no latitude from Zia once his own purpose had been served.

An intriguing feature of the case is that this shattering disclosure was never made before the Supreme Court, or for that matter, before any other court. Abbas came close to revealing the underhand deal to the Supreme Court but he also stopped short when permitted to personally appear before. This is the area

where additional evidence can be produced by way of a formal application. Enquiry has revealed that Irshad Ahmed Qureshi, Advocate, the Counsel who represented the three low-ranking employees of the F.S.F. had been requested more than once by the convicts to move a formal application before the Supreme Court which would narrate the arrangement finalized by Brigadier Bashir on behalf of General Zia in return for confessions involving Zulfikar Bhutto and which was meant to obtain a direction to be treated 'at par' with the two approvers. They wanted Ziaulhaq to deliver on the promises and to be set free. He did nothing except inform Brig. Bashir about it on each occasion to draw appropriate reward for himself. A three-page manuscript written from the Death Cell and addressed to Qurban Sadiq lkram, Advocate, by Abbas accused was smuggled out with great difficulty and placed in the hands of this Counsel for immediate action. In this, the distraught convict had also disclosed the 'under-hand deals'. He also wanted his Counsel to move an application to have him summoned before the Supreme Court so that he could narrate how Zia-ul-haq had managed to obtain the false confession. This Counsel was left with no option except to place a written request to this effect on the Supreme Court record. Simultaneously, he set out to persuade his client to not to do any such thing before the Supreme Court when the time carne. Once again, this psychologically-shattered convict meekly confessed to his guilt when he finally appeared before the Supreme Court pursuant to his desperate entreaties. To bring about this result, Brig Bashir had been at work, as he admitted to General Iqbal, to 'revive the delusion'.

As an obvious reward for his abetment role, Zia raised this Defence Counsel to the Bench of the Lahore High Court at an appropriate time where he has served for many years with little distinction. He would be the first to agree that he did not deserve to be elevated to the Bench on merit which was beyond his wildest dreams. A pertinent question is to be asked: was this elevation not a reward for services rendered at the rigged trial? Could Maqbool Sadiq Ikram, Advocate, ever have become a Judge of the Lahore High Court had he not got his client Abbas to eat up his own words by making him withdraw the repudiation of his tailored confession? From the professional point of view, there is not much merit in the performance rendered by the Counsel for the accused Abbas in the Bhutto Murder Trial. He made his own client go back to the confession from which he had withdrawn in the first opportunity available to him before the Trial Court. This is not an achievement of which any self-respecting Defence Counsel can be proud. Pakistani public was aghast at the climax in the Supreme Court when Abbas utilized the opportunity of personal appearance to embrace once again the retracted and repudiated plea of guilt. The words which actually fell from his lips before the Supreme Court sound quite unconvincing after his considered and persistent stand before the Trial Court. The inference from this episode which would conform most closely to the probabilities of human conduct is that

a specific commitment was made to Abbas once again that he would be permitted to go Scott free even after he had made this damaging retreat. Brig. Bashir has owned that he had conveyed a firm undertaking from no other than Zia-ul-haq, duly sanctified by a solemn oath, that his mercy petition would be accepted. If the word of Brig. Bashir is to be believed, Appellant Abbas was given the impression that he would be placing Zia-ulhaq in his personal debt by reverting to his confession in a dramatic public gesture. Only if he would tar his own face black once more, Zulfikar Bhutto would have the rug pulled from under his feet. Of course, this was a false impression which was deliberately created. For the moment, it appeared the best option for survival to appellant Abbas which he took with fatal consequences.

There is evidence to prove that until the last moments of their life, the confessors were kept on tenterhooks as to whether or not the firm but secret undertakings given by Brig. Bashir on behalf of Gen. Zia to the effect that none of them would come to any harm would be honored. This is exactly what they conveyed to their near and dear ones which can be easily ascertained. There is no plausible explanation for this conduct except massive official inducement to prevent the three employees of the Federal Security Force from spilling the beans pre-maturely. They had been held incommunicado ever since the award of the death sentence by the High Court which itself is an unusual circumstance worth investigating. Their next of kin are prepared to testify that all the accused persons had been promised release and substantial rewards which mirage kept beckoning to them even from the brink of the gallows.

It is quite pathetic to narrate that throughout their sojourn in the Condemned Prisoners Cell, Jail officials were persistently asked by all the three accused if "the secret message" from Zia had arrived. No secret message was ever sent by anyone from any where. The Condemned Prisoners were made to live in the Cuckoo-land. The promises made to them were never meant to be kept. However, the hope was kept alive in each of the co-convicts till the very last of their breath that their Release Order was in the pipe-line. Zia has been quite a swindler in his life. He even swindled the four FSF employees of their lives with quite a cheerful face. In his intimate circle, Zia used to narrate this anecdote with quite a bit of relish. He spoke of "poetic justice" being done to them. Of his old "lord and master Zulfikar Bhutto", he used to say that he fell into the Well he had tried to dig for Sheikh Mujib. It is in the statements of General Yahya Khan that Zulfikar Bhutto had attempted to persuade him to get Sheikh Mujib killed. Zia derived his justification and solace from what Zulfikar Bhutto wanted to be done to his rival Sheikh Mujib per the testimony of General Yahya. As we see it, this is an admission of the innocence of Zulfikar Bhutto from the criminal charge in this particular Trial. It is possible to lead evidence on this point.

Zia did not have a good track record of keeping his promises with anyone. For services to be rendered to make sure that Bhutto was hanged, Brigadier Bashir was, inter alia, promised his promotion to the rank of Generalship. Even this innocuous promise was broken though the Brigadier's promotion was due and deserved on merits. From this the inference is irresistible that Zia did not wish to retain a co-conspirator in the armed forces, if he could help it. In his turn, Brigadier Bashir was made to quit the Army by dangling before him the carrot of Chairmanship of one of the biggest corporations in the nationalized industrial sector --- the Ghee Corporation of Pakistan. Of course, Bashir had no choice except to do as told. As Chairman of the Ghee Corporation, Brig. Bashir was 'trapped' into accepting massive bribes. Significantly, this incriminating evidence was never used against him. Only he was being constantly black-mailed by no other person than Zia himself. Record is available to prove that Zia had directed the preparation of a 'corruption dossier' on this hapless Chairman. The point to ponder is that Executives appointed on the management Board of bodies such as Ghee Corporation serve on the pleasure of the Federal Government. Why should Zia, the "Monarch of all he surveys" of his own time, go to the length of directing the preparation of a "Corruption dossier" on a mere Chairman of a statutory Corporation which was constantly brandished but never used? Bashir was never charged; only constantly threatened. Bashir could have been removed by Zia with one stroke of his Martial Law pen. On the other hand, whenever the two met face to face, Zia would exude fake warmth while talking to Brig. Bashir in his characteristic double-speak. This conveyed the message that secrets must be kept or else things could go very wrong. A time did actually come when Bashir who was even otherwise a highly-strung man, came near to the breaking-point. Evidence is available to establish that Bashir sought legal advice to shield himself from this oppressive black-mail. However, contents of these communications cannot be revealed having been made in the course of professional engagement. Be that as it may, there is enough collateral material to support the assertion that Brig. Bashir was removed from the Army and thereafter made the subject-matter of a 'Corruption Dossier' on account of his sordid and conspirational role in "Get Bhutto Hanged" operation.

Even today, the "Corruption Dossier" is available in the official archives which contains enough material to justify putting Bashir on a regular Trial. By all accounts, this is an unusual document. Reportedly, tapes of, corruption conversations' exist. Sophisticated electronic gadgetry was employed with great dexterity to record even Bedroom pillow talk. There can be little doubt that military intelligence apparatus was used. Seen in context, the extraordinary attention devoted to Brig. Bashir to collect incriminating evidence of all types from the period of his tenure as Chairman of the Ghee Corporation was an attempt to ensure that the subject kept his lips sealed on matters pertaining to his tenure as Chief of Staff of the Martial Law Administrator, Punjab. These methods

have eminently served their purpose. Bashir never dared speak up. Throughout, the psychological pressure generated by the threat of 'exposure' and 'trial on corruption charges' had prevented this officer from revealing the true story of the procurement of false confessions in the Bhutto Murder Trial through his own instrumentality. This pressure has worked even when Brig. Bashir had become totally disillusioned with Zia and regarded him as the 'most evil living man iii the world.'

Prior to the day on which he finally succumbed to these inscrutable but nevertheless overwhelming pressures and died of a massive heart attack triggered by acute anxiety, Brig. Bashir reportedly made a clean breast of the whole affair to Gen. Iqbal who was then the Chief of the Joint Army Staff. It would be recalled that Brig. Bashir had by-passed this very Gen Iqbal to establish a "secret working relationship" with Gen. Zia. This was done over the head of the aforesaid Martial Law Administrator, his own immediate "Boss" in the Headquarters located in the Assembly Chambers Lahore. Reliable evidence is available to the effect that after making this extra-judicial confession to General Iqbal, Brigadier Bashir had sought his forgiveness for the betrayal. An attempt was made to seek confirmation of these facts through a neutral source to which the General had orally confirmed that he had indeed forgiven Brig. Bashir on the personal level. However, out of a sense of military duty and a misconception as to his obligations under the Official Secrets Act, General Iqbal had refused to sign a sworn statement when requested to do so by the Editor of this Journal. Had this General been summoned by a Court of Law to depose to the facts relating to the conduct of his Chief of Staff at the Martial Law Headquarters in procuring false and perjured evidence for the Bhutto Murder Trial, he would likely have done so. Unfortunately, during the life of Gen. Iqbal, appropriate steps to seek retrial were not initiated by the heirs of the condemned Prime Minister, one of whom is now the Prime Minister herself.

There are reasons to believe that General Sharif, a potential Commander in-Chief who was 'eliminated' by Mr. Bhutto from active service, may also be in a position to testify as to what had transpired between General Iqbal and Brigadier Bashir relating to the role of the latter in procuring false confessions for the Bhutto Murder Trial. Another two important witnesses who may be in a position to state relevant facts are retired Generals Arif and Jilani. The former, a poet and an author of a book on Zia's Martial Law period, has been the Chief of Staff to the Chief Martial Law Administrator and, thereafter, Pakistan's Commander-in-Chief for some time. Gen. Jilani, long-time head of the Inter-Services Intelligence, Defence Secretary and later a Governor of the Punjab, is the man who had played a pivotal role in the acquisition of materials and know-how which enabled Pakistan to attain nuclear capability. Both these officers have shared a long and intimate friendship with the late General Iqbal who died of back-bone cancer in

late 1994. It is quite likely that the deceased General has confided certain facts relevant to the Bhutto Murder Retrial to his two surviving friends who even otherwise know more about it than they are prepared to acknowledge in public. People like them only speak when summoned to the Court and put under oath by it. Furthermore, it is the Army elite of this level whose word will count.

For those who feel that the guilty verdict in the murder trial pronounced on Zulfikar Bhutto and his four co-accused is a miscarriage of Justice which has to be undone for the sake of upholding the Rule of Law in Pakistan, the time to wait for the heirs of the convict to act has ended. The remedial process must be set in motion while the potential witnesses are still alive. This Journal subscribes to and endorses this view. It is prepared to support any group of concerned citizens who may step forward to take the much-delayed initiative, if no response is forthcoming from the heirs of Zulfikar Bhutto. After all, substantial public interest is also involved. The whole judicial system in the country is at stake. This is even a weightier consideration than vindicating the innocence of the wronged Prime Minister who was put to death by the superior courts of Pakistan in deliberate cold blood.

A charitable view of the prolonged default made by the heirs of Zulfikar Bhutto in seeking Retrial has also to be taken. It has been ascertained that whenever they consulted their legal advisors in the matter, which was done quite frequently in the past, they were told that the death sentence having been already executed, the whole matter has become a past and closed transaction. They were also advised that if the issue was revived, it might give a fresh lease of life to the controversies about the verdict which has since became dormant. It is in these circumstances that these persons - have been persuaded to follow the policy of accepting the inevitable and letting the sleeping dogs lie. They were made to dread an imaginary boomerang. Obviously, Convict Bhuttos' family has a power-orientation for whom retention of control of the Federal Government may be a more pressing consideration than vindicating the honour of a deceased ancestor. Fortunately, others do not have such constraints.

As we see it, honorable individuals have been moved by rare intensity of passion to sacrifice even their lives to register their protest against the guilty verdict on Zulfikar Bhutto. This is not an ordinary matter to be conveniently forgotten with the passage of time. The series of 'Human Torch' sacrifices made by the now forgotten P.P.P. workers is by itself a good enough ground for Re-trial. Even now millions of Pakistanis treat this guilty verdict as miscarriage of justice procured by induced confessions and managed Courts. The authority and prestige of Superior Courts has sustained a body blow from which it has yet not recovered. A Re-trial of Bhutto in the Murder Case is necessary even to restore public confidence in the judicial system existing in Pakistan.

There is a tiny myopic school of thought which takes the dogmatic position that no criminal case can be revived if the victim has undergone the sentence regardless of how unwarranted it might have been, in the first place. On this point, the principle is that as crimes never become time-barred and no rigid limits can be placed to exclude a fresh investigation by a properly constituted Investigating Agency, all superior Courts also have the inherent powers to do Complete Justice whenever good grounds are presented to them to the effect that a person who can still be proved innocent has been held guilty. If one is in a position to show that the person raised to the gallows pursuant to a sentence awarded by Court was innocent and deserved to be acquitted, the fact that the sentence has been executed is no ground to withhold or deny the declaration of his innocence. Sometimes dead men stand in need of exoneration more than the living.

Take the case of the Bhutto family itself. Even if Benazir were to raise a hundred monuments to "Shaheed Bhutto", the legal position that he is a convict will not change unless the guilty verdict is annulled in accordance with the process of law prescribed for it. Of course, law jealously safeguards the sanctity of a final judgment and does not permit anyone to interfere with it lightly. At the same time, it is not possible to prohibit a convicted person or his heirs to show at any stage on which fresh evidence has become available to them that the sentence awarded was a miscarriage of justice. As soon as a convict is in a position to show that he has been victimized, he has a right to be heard. This applies equally to the situation of an executed convict. In all countries where the Rule of Law prevails, prisoners have been acquitted after a life time in prison. There are recent cases of posthumous acquittal. The reverse of the doctrine of 'autrofois acquits' does not apply to the case of a convict who can prove fresh grounds for his innocence. Even the dead have their fundamental rights.

The Bhutto Murder Trial: getting to the bottom of the Case.

Sufficient time has now passed to take a balanced and detached view of the mass of evidence available on the record of the Trial Court. The murder occurrence and its attendant circumstances in the Bhutto case need to be objectively reconstructed. It is intended to discover the truth at the bottom so far as it is possible to do so. We proceed to state a chain of propositions which will narrate the events and also cover the point that miscarriage of justice has taken place in the manner in which this Trial was conducted. This will also project our plea for Retrial for which the ground of fresh evidence is either available or can be made so with a reasonable amount of effort in a reasonable period of time.

1. Bhutto set up the Federal Security Force as a fascist organization to harass and even kill his opponents. There is little doubt that Dirty Tricks was its Charter. The possibility that Khwaja Rafique and Dr. Nazir, known political opponents of Bhutto, were killed by this outfit cannot be entirely and safely excluded. However, this sinister, organization really never got off the ground. In particular, after botching up the assassination attempt on Raza Kasuri's life, Zulfikar Bhutto appears to have interdicted all such operations in future. Ironically, rather than be given the credit to have muzzled it up, Zulfikar Bhutto paid with his life for an ill-planned murder scheme conceived and directed by Mahmood Masood in order to curry favour with him. While there is overwhelming evidence that murder was indeed committed by the three Federal Security Force employees who were sentenced to death, it was not done either with the knowledge and consent of Zulfikar Bhutto or at his instigation. Masood Mahmood, the approver who got away, was mainly responsible for it in his desire to be more loyal than the king himself. He is the main culprit. His pardon needs to be revoked for having suppressed truth. He also deserves a real Trial by the proper Courts and not the captive Courts of Martial Law Regime.

2. Raza Kasuri is a poser, a compulsive publicity-seeker, an obnoxious megalomaniac --- Bhutto's mirror image to a more distorted degree. Bhutto disliked him intensely. His outburst on the floor of the National Assembly does tend to show that Bhutto had a motive to harm him. Keeping in view General Yahyas' Statement as to how Zulfikar Bhutto tried to persuade him to have Mujib murdered while in custody, the possibility that he may have done some loud thinking about liquidating Raza Kasuri cannot be eliminated. Of course, compared to Bhutto, Kasuri was a political non-entity. However, Bhutto was the type of person who found even minor irritants like Kasuri "intolerable". It is quite in character

for Zulfikar Bhutto to have toyed with some extreme proposals even qua Raza Kasuri. Bhutto had never been a stable person himself at any stage of his turbulent life. He had lots of kinks which he carried to his grave. One of them was to surround himself with all sorts of shady characters such as Saeed Ahmed and Masood Mahmood. For this fault, he has paid with his own life.

3. Masood Mahmood had the mentality of a gangster. He was a totally immoral and unscrupulous operator. He could go to any length to please his master for the time being. It appears that he picked up a casual cue from Zulfikar Bhutto whereupon he issued Standing Orders to the "Killer Squad" in the Commando Group of his Federal Security Force to put Raza Kasuri on the "Death List". This appears to be the limit of Prime Minister Bhutto's involvement in the matter. It is unlikely that Kasuri's murder was ever planned in any formal, proper sense at any sophisticated level --- with Bhutto issuing an express command or sitting in any strategy session. Casual remarks made by him in off-guard moments appear to have been picked up and registered by Masood Mahmood, the arch - typical sycophant subordinate functionary without any conscience. He made his own plans and issued his own orders. Robots like him have one-point life-agenda which is to curry favour with their Pay-master.' Mahmood "read his master's mind" and played the dirty trick which he thought might please Zulfikar Bhutto. This is too slender a thread to hang the deposed Prime Minister with. There is no evidence that Mahmood's Master was even pleased with what he did. He did not think it worth-while. None of the established circumstances of this criminal case synchronize with pre-concert or pre-knowledge on the part of Zulfikar Bhutto. He cannot be hanged for having entertained bad ideas.

4. Arshad, Iftikhar and Mustafa had the "Death List" and also the Standing Orders to knock off various individuals on it as and when the opportunity presented itself. It appears that this foot-loose gang decided to try their hand at the killing game when they casually saw Kasuri's car standing by the road-side in circumstances where it was clear to them that in a little while, he would have to drive slowly past a near-by Traffic Round-about in Shadman, Lahore. It was a Murder Plan put together at the spur of the moment in the late night of 10th November, 1974 after someone had spotted the Kasuri Car parked outside the lawn of a house where a marriage Qawwali function was being held. The Security Force gang already had arms and ammunition. The execution of the plan shows atrocious absence of attention to detail. This roaming death squad did not inform any superior before going ahead with it. They botched it up so bad that they did not even care to remove the crime empties from the scene

which have provided the clue to the nexus between the Federal Security Force and the Crime. It is doubtful if Ghulam Hussain, a trained Army commando of fourteen years experience, or Abbas had anything to do with this murder occurrence. Ghulam Hussain was brought in as he had made an earlier attempt on the life of Raza Kasuri at Islamabad, and was cast in the role of a participant in a series of episodes, all of which were sought to be projected as links in the conspiracy chain. His eye-witness testimony is tailor-made to prove conspiracy which betokens an artificial role owned up by him under the cover of the approver status. There is no reason to doubt his word that he deliberately missed his target on the two occasions that he had him in sight. Abbas does not appear to have been a part of the FSF Mafia "inner circle" although he may have had access to its plans. He was a dithering old man who could not make up his mind whether to confess or resile even as he was being taken for his last walk to the gallows by the minions of Zia, the arch conspirator. He had the good sense to retract the confession at the first available opportunity. However, he was defrauded into withdrawing it before the Supreme Court by the self-serving exertions of his own Defence Counsel.

5. General Zia got the information about the involvement of Arshad, Iftikhar and Mustafa in the murder of Raza Kasuri's father from the Federal Security Force dossiers which had fallen into his hands after his capture of power on 5-7-1977. These three FSF employees were arrested on instructions received from the Chief Martial Law Administrator himself and not on the basis of any chance evidence on which the Federal Investigation Agency had stumbled during the investigation of the Lahore Railway Station Bomb episode. This is just a cooked-up pretext. Ghulam Hussain's name was added to the array of the accused precisely for the purpose of producing an eye-witness of the chain of episodes from which conspiracy could be spelled out. Had he actually participated in the Shadman ambush and had he really wanted to kill, the outcome might not have been as amateurish as it has been. If there was a conspiracy, it was Zia's conspiracy to murder Bhutto under the cover of a judicial verdict. He had planned it early enough after usurping power. He is liable to be tried for Bhutto's murder even posthumously.

6. There was no alternative for Zia except to liquidate Bhutto. It was either he or Zulfikar Bhutto in the same grave and he tried his best to put Bhutto there before Bhutto could push him in it. From the very first day Zia took over power, *i.e.* 5-7-77, he planned for it in quite a systematic manner. However, his options in this matter were quite restricted. Bhutto could not be killed in Police or Jail Custody. Bhutto also could not be kept in detention for long. The only available course of action was to get him

sentenced to death from some type of Court which had the jurisdiction to award the death sentence, i.e. a murder or a treason charge. Mainly on account of good ingredient-mix and promising prospects, Zia chose Lahore High Court and the murder charge. There were too many risks in executing a death sentence pronounced on Zulfikar Bhutto by any Military Court even on a Treason charge. On a deeper analysis of the options available to him in removing Bhutto from the field, Zia went for the only practical option there ever was ---- procuring a death verdict from an ordinary Court on a murder charge. It is to the abiding discredit of the judicial system in Pakistan that Zia could undertake and carry out such an exercise with effortless ease. More than miscarriage of justice, it is the shame of the lapse on the part of the Trial Court which has become the National Legacy of Pakistan. The only mitigating circumstance is that Superior Courts of Pakistan were made captives by the Martial Law Regime at the relevant time.

7. Zia managed to get Zulfikar Bhutto murdered judicially. For this purpose, he procured confessional statements from all the co-accused. He also made fool-proof arrangements that all the deluded accused would stick to them till the very end and till each one of them was hanged. Zia managed everybody --- the Judges, the Special Public Prosecutor, the Defence Counsel, ---- even the Accused Persons themselves. He did manage well but not well enough not to leave traces behind. There is an ample trail of traces which now needs to be located and worked back to their original source. Brigadier Bashir had conducted "Get Bhutto Hanged" Operation under the direct instructions and supervision of Zia himself. Thereby, Lt. General Iqbal, the then Martial Law Administrator, Punjab was by-passed. Towards the end of his life, the aforesaid Army officer regretted his great lapse and made extra-judicial confessions about incriminating material having been fabricated for use in the Murder Trial of Zulfikar Bhutto. By itself, this is sufficient basis for holding a Re-trial in the Case.

8. Subtle pressure was maintained throughout on all the Bhutto co-accused to stick to their confessions. False promises of pardon and rewards were held out to each accused. Each one was told that he would be freed on a Mercy Petition after Zulfikar Bhutto had been hanged and rewarded beyond his expectations. Each accused remained under this impression throughout the pendency of the judicial proceedings. Evidence has now become available on this point through the extra-judicial confessions of Brig. Bashir, who was the main tool for this purpose.

9. Three Bhutto case co-accused were provided with a selected Counsel on state expense whose duty it was to cross-examine the Prosecution witnesses to strengthen the Prosecution case and in particular to fill in the lacunas and repair the dents made by the cross- examination of Counsel for Zulfikar Bhutto. They were allowed Cross-examination after Bhutto's Counsel despite obvious jeopardy to the only genuine accused in the Trial who was seeking to establish his innocence. This went on till the end of the managed Trial which has vitiated it beyond cure.

10. Abid Hassan Minto, Advocate was approached by Rao Rashid, a former Inspector-General of Police Punjab through Ihsan Lilla, Advocate (an associate of Bhutto Defence Counsel, M.D. Awan) to take steps for repudiation of the Court. Confession obtained from Federal Security Force employees under massive inducement. Brig. Bashir has confessed that he took illegal steps to frustrate this move. Only Abbas had broken the halter at the initial stages of institution of Appeal in Supreme Court. However, the effect of even this desperate exculpatory statement was quickly nullified by a fresh confessional statement obtained from him and placed on record. This was due to the illegal pressure manipulated by Brig. Bashir at the behest of General Zia, the Chief Martial Law Administrator. For services rendered, Qurban Sadiq Ikram, Abbas's Defence Counsel, was later raised to the Bench, an elevation which was not deserved on merit. It can only be explained as a reward for services rendered to the prosecution in Bhutto Murder Trial.

11. Ijaz Hussain Batalvi, the Special Public Prosecutor in the Bhutto Murder Trial, was drafted to monitor all the co-accused while in jail custody. Evidence is available to establish that he used to go to the Jail at the dead of night to take his 'tutorials'. This is most surprising conduct ---- indeed, positive misconduct on the part of one who has acquired a formidable reputation as an intellectual Lawyer with a literary flair. In the peculiar circumstances of the Bhutto Murder Case, clandestine liaison between the main Public Prosecutor and the confessing co-accused would betoken a conspiracy to fabricate incriminating evidence. If Ijaz Batalvis' Jail visits are proved, this would be inconsistent with the voluntary character of the court confessions of the co-accused and co-convicts of Zulfikar Bhutto, the so-called principal accused. On this basis, mistrial can be shown to have taken place.

12. The proceedings of the Composite Trial Court was an illegal cosmetic exercise. Guilty verdict was procured from all five Judges of the Lahore High Court in an illegal and impermissible manner. Mr. Justice Mushtaq Hussain took it upon himself to act as the Monitor of the Panel.

All Members of the Trial Court were kept under twenty-four hour security surveillance. This transformed good judges into putty-stuff. While this may be a part of the explanation, it is still worth our while to investigate how a unanimous guilty verdict was actually managed from the five member Bench of the Lahore High Court. The behavior ---- or the lack of it --- of the other four Judges is, indeed, shocking. Mr. Justice Mushtaq Hussain had a special relationship with Mr. Justice Aftab Hussain; Urdu-speaking being one of the bonds. However, despite the political orientation of Mr. Justice Zaki-ud-din Pal, a Muslim League Stalwart, one did not expect the docile -performance rendered by him. The case of the other two Judges, namely, Mr. Justice Gulbaz and Mr. Justice M.S.H. Quraishi is truly baffling. Both of them are bold men with a live conscience.

It is difficult to believe that they were overwhelmed with the merits of the prosecution case to an extent that they did not want to say anything except "I agree" at the time of judgment-writing. These gentlemen have guardedly projected a version of what happened to them but it requires further confirmation. If they really wanted to, they could have lodged an effective protest. They were made passive for reasons which need be explored in detail. One finds it difficult to believe that the whole pack of such good Judges could have been led by their noses by one assertive Chief who had been sold out to the Martial Law. Other factors also appear to be at play. This exemplifies what damage a .dictatorial regime can do to Superior Courts in countries where the roots of the Rule of Law are yet not firm. Some Judges on this composite Trial Court may now be prepared to disclose what went on in the Judges' Chamber after the public Trial used to come to an end. We want to reconstruct the events particularly after Aftab. J had prepared the draft of the unanimous Judgment. There might well have been more than one such draft. It has been ascertained that no joint session was held at the end of the Trial to discuss evidence and to take votes. At least one Judge was not permitted to write a separate Note. Other relevant facts are likely to be disclosed if the surviving Members of the Trial Court are put in the witness-box and cross-examined at length.

13. The fact of the matter is that four out of the five members of the composite Trial Bench behaved as silent spectators as Mr. Justice Mushtaq Hussain carried on an ugly conflict interaction with Zulfikar Bhutto throughout the Trial proceedings day after day. One of these four judges had been noticed by the Supreme Court for having put words into the mouths of a prosecution witnesses. Another one had been an active worker of the Muslim League, an opposition Political Party before his

elevation. Indeed, the conduct of all the Judges of the composite Trial-Court had been quite unusual and not at all in conformity with the established judicial norms. In these circumstances, a jurisdictional objection as to the establishment of the composite Trial Court takes on added substance. In Pakistan, there is no jury Trial. Our laws contemplate that all Murder Trials will be conducted by a Single Judge. It has been prescribed that the Death sentence pronounced by the individual Sessions Judge is to be laid before a Division Bench composed of two High Court Judges for Confirmation. In Zulfikar Bhutto Case, there were no compelling reasons for radical departure form the prescribed procedure to be applied *mutatis mutandis*. On transfer of the murder Case, a Single Judge of the Lahore High Court could have conducted the trial and in the event of a death sentence having been awarded by him, the record could have been laid before an Ordinary Division Bench for confirmation. On the surface, the constitution of a large Bench to hold the Trial tends to minimize the role of a single Judge which appears to ensure the benefit of the accused. However, in the absence of rules as to how the Composite Trial Court was to make the decision and by elimination of the confirmation stage, setting it up has proved that it was only a cosmetic exercise for the assassination Plan master-minded by General Zia. This Journal has a serious suspicion that the Trial Court was constituted with the assurance that Mushtaq, J. would be able to produce a unanimous guilty verdict which was a foregone conclusion. Zulfikar Bhutto had expressed his lack of confidence in categorical terms by moving more than one Transfer Application. On this point, Zulfikar Bhutto's conduct had matched his words. Having brought it on record that the Court was biased, he had refused to participate in its proceedings throughout his famous Boycott. It is true that he made a few rhetorical flourishes towards the end of his speech before the Supreme Court which is inconsistent with his previous conduct. Notwithstanding the effusive gratitude, it is justifiable to conclude that this particular accused never accepted the impartiality of the Trial Court. Miscarriage of justice has taken place by not transferring the Trial from the Court headed by Mr. Justice Mushtaq Hussain to some other Court, particularly in the face of this boycott. Justice has not been seen to be done. It has also not been done in this case.

14. Chief Justice Mushtaq Hussain entertained and displayed massive bias against Zulfikar Bhutto, the main accused. Bhutto had personally superseded him in the matter of promotion to the post of Chief Justice of the Lahore High Court. The Peoples Party had virulently criticized rigging reports issued by him in his capacity as Chief Election Commissioner under the Martial Law Regime. Significancy, his bias had actually come out in his conduct of the trial in many apparently trivial but otherwise

symptomatic ways. For instance, the Presiding Judge got a Cage-like Dock specially prepared to put Zulfikar Bhutto for his appearance in the Court. He frequently traded verbal insults with the caged accused. His behavior was overtly over-bearing. Ultimately, Mr. Justice Mushtaq persuaded the author-judge to set-up a smokescreen of Islam and by exploiting this cover, to put quite a few paragraphs in the Judgment whose sole objective was to belittle and even degrade Zulfikar Bhutto as a political leader. The Judge in question also tried to expose Bhutto's pretension as Champion of Islam which is not a proper judicial function. Whatever the merit of this exercise, even he should have known that it was outside the scope of a criminal Trial. In any case, one fails to understand why the other three Judges had put their signatures to the unexpurgated text in a robot-like manner. The Supreme Court has found these paragraphs offensive and has ordered their deletion from the text of the Judgment. Attention has already been drawn to the conduct of these other three Judges on the Trial Court which needs to be investigated more closely than has been done hitherto. From the vantage-point of a Historian, it is clear that there was much merit in the Transfer Application made by Zulfikar Bhutto at an early stage of the Trial. It is wrong law to permit a Court as tilted and biased as the one in Bhutto's Murder Trial to preside over a Trial which could culminate in the award of a capital sentence to an accused person before it. An excellent case can be made out that miscarriage of justice has actually taken place which needs to be remedied by holding a fresh Trial.

15. Indications are that four out of the seven Judges of the Supreme Court were also 'managed'. They have laid wrong law on all the main points of the case ---- Motive, Approver, Accomplice, Corroboration, and the effect of the Confessions of the Co-accused. Indeed, the law, laid down by them is so wrong that no reasonable Court in the world can endorse their eccentric views or accept them as precedent. This is not the situation of each Judge having his own perspective in appraising evidence. On the other hand, wrong law has been deliberately applied to maintain a conviction which no proper Court would do in a right frame of mind. There is little point in showing hypocritical deference to those Judges who have committed such grave lapses which no Judge of ordinary sense is likely to commit. Of course, opinions can differ on issues involving appreciation of evidence and even application of legal principles. However, this is a case where the four Judges of the Supreme Court of Pakistan associated with the majority view are not entitled to the benefit of doubt that they may have drawn wrong conclusions from the recorded testimony by bona fide mistake. Except for Court Confessions by all the co-accused including two approvers whose effect has been under-played, there is no tangible evidence of any conspiracy and none at all of any

nexus between murder and Zulfikar Bhutto. Thus, there is not much evidence to be appraised on these crucial aspects. In this view of the matter, the errors appearing in the majority judgment are not that of drawing wrong inferences from factual data but those of application of legal principles to a fact situation with transparent perversion. For an independent observer, the conclusion is irresistible that all the four Supreme Court Judges who have returned the guilty verdict have done so by deliberately disregarding the absence of incriminating evidence from the judicial record. In other words, the errors in the Judgment are deliberate. This is malice in law. For the purposes of retrial, this matter needs to be investigated. For instance, Mr. Justice Nasim Hassan Shah had initially expressed his reluctance to subscribe to the majority view. There had been hectic activity in the upper echelons of the Martial Law hierarchy to persuade this particular Judge to go to the Hanging Corner which thereby became the majority view. Someone has to find out someday how this learned judge was won over to the side of Mr. Justice Anwar-ul-Haq whose role in the Supreme Court was a duplicate of the role played by Mr. Justice Mushtaq Hussain at the High Court level. Again, the cue made available by the remarks of Mr. Justice Nasim Hassan Shah at the dinner-table of Mr. Justice Atta ullah Sajjad after the "mesmerizing speech" of Zulfikar Bhutto before the Supreme Court need to be explored further. The possibility that Supreme Court has sustained the death sentence to save the Lahore High Court Trial Bench from the demonic fury of an exonerated Bhutto cannot be entirely excluded.

16. It has already been noted that the errors in the majority Judgment of the Supreme Court are so massive as not at all to be consistent with the hypothesis of a bona fide mistake. In our assessment, the four Supreme Court Judges in question have rendered their Judgment in breach of their judicial oath. The ulterior purpose for which this was done appears to be to facilitate the continuation of usurpation of State power by General Zia who had exploited his position as commander-in-Chief of the Pakistan Army to depose Zulfikar Bhutto, the main accused of this Case, from the office of the Prime Minister of Pakistan. If Zulfikar Bhutto had been acquitted, he might have regained this office in which event Zia might have had to pay for his treason with his own life. Indications are that the aforesaid four Supreme Court Judges were drafted by General Zia to do a hatchet-job --- judicial murder of his rival. It appears that Zia used both the stick and the carrot on them to make them do what he wanted them to do. These Judges might be immune from Prosecution for Murder but there is no immunity against recording their guilt. This must be done to prevent others from following in their foot-steps. They have set a bad example which needs to be nullified.

17. This is a situation where at least three co-accused of Zulfikar Bhutto who were sentenced to death do appear to have committed the murder of Raza Kasuri's father much in the manner described by them in their confessional statement. However, to the extent that attempt is made to personally involve Zulfikar Bhutto in it, the stuff is obvious padding. For Zulfikar Bhutto, a number of grounds for Re-trial are available. Inter alia, Federal Investigation Agency had no jurisdiction to take over investigations as it did after the advent of Martial Law. Next, the Trial Court set up to try Bhutto was not warranted by law. Besides massive bias, its conduct is also vitiated by mala fide. Further-more, even Article 270-A of the Constitution is not available to validate the verdict in Bhuttos' Murder Trial or to protect it from being set aside as a nullity. This last ground deserves to be examined at some length separately in the sequel.

In the eye of 1973 Constitution, Bhutto Trial is even otherwise not protected by the interpolated Article 270-A of the Constitution without which it is a nullity.

On 5-7-1977 when Zulfikar Bhutto was deposed, he was continuing in the office of the Prime Minister of Pakistan in the period subsequent to the holding of the Second General Elections under the 1973 Constitution. The Result of this exercise was not acceptable to the Combined Opposition who had alleged massive electoral fraud and was sponsoring a civil disobedience-type agitational campaign for fresh elections. Zulfikar Bhutto had opted for snap polls while quite a few months still remained available to him from his first tenure as Prime Minister. In any case, he had yet not been elected the Prime Minister for the fresh 5 year term in accordance with Article 91 (2) and (3) of the original 1973 Constitution. However, in his capacity as the undisputed leader of the Party who had swept the allegedly rigged polls, he was the most likely candidate for the post of the Chief Executive. Be that as it may, it is not possible to deny that Zulfikar Bhutto had every right to hold and continue in the office of the Prime Minister of Pakistan on the day on which he was actually removed from it. He is also entitled to be treated as the Prime Minister-designate for the fresh five year term.

Whatever the truth in the allegations about the People Party having rigged the 1977 General Elections and however serious the flaw in the 1973 Constitution for not making any adequate provision to cope with the extraordinary situation brought about by the confrontational crisis of the 1977 Summer, it is not possible to assert that the manner in which Zulfikar Bhutto was removed/deposed by General Zia, the Chief of the Army Staff, can be justified in terms of any existing constitutional provision. On these premises, the inference cannot be resisted that Zulfikar Bhutto continued to remain the incumbent in the office of the Prime Minister until his death. Admittedly, he has never been removed from this office in the manner contemplated by the Constitution at any time. It is asserted that in the eye of the true Constitution of Pakistan, Zulfikar Bhutto was the Prime Minister of Pakistan as long as he lived. He was as much a Prime Minister on 5-7-1977 as on 4-4-79 when he was raised to the gallows by a usurper regime. The period of Deviation from the Constitution extends from 5-7-1977 to 31-12-1985. Keeping this stretch of time out of reckoning, the earliest date on which Zulfikar Bhutto becomes "answerable" to any Pakistani Court for any crime committed by him while holding the office of the Prime Minister is 1-1-1986. It is only after this date that any Court of Law would acquire the jurisdiction to summon Zulfikar Bhutto to answer a murder charge. The point sought to be made here is

that the Court which tried Zulfikar Bhutto for Murder had no jurisdiction to do so either on the date of commencement of trial or termination thereof. No Court can try an incumbent in the office of the Prime Minister so long as he retains such character in the eye of the Constitution. In this case, Article 248 of the Constitution had come into play. It gave protection to Zulfikar Bhutto against criminal proceedings particularly on the basis of the Prosecution story projected before the Trial Court. This Article does not give comprehensive or perpetual immunity to a Prime Minister for all crimes or civil wrongs committed by him while he is actually in occupation of office. Only such alleged crimes are covered which have been purported to be done in the discharge of functions attached to the office of the Prime Minister. Furthermore, the cover afforded by it is restricted to the period in which the target individual continues to hold the designated office. So to speak, an express mandate can be spelled out for postponing the initiation of any Court proceedings against a Prime Minister till the stage when he no longer occupies the office of the Chief Executive. The policy considerations for this temporary abeyance are easy to understand.

The idea in affording limited immunity is to enable the Prime Minister to concentrate on his job without being distracted from involvement in criminal and civil cases. It is in the public interest that a person who can command the confidence of the majority of Members of the National Assembly is held immune from Court process for the duration of his tenure only. Obviously, this provision enables the Prime Minister to devote his time. And energies whole-heartedly to public affairs rather than be bogged down in his personal litigation. The real significance of this substantive provision is properly brought out by considering it in the context of Article 248 (2). The scope of protection afforded to the 'President' and the "Governor" appears to have a broader sweep. In the theory of 1973 Constitution, 'President' and 'Governor' are high profile offices whose incumbents cannot exercise any executive authority and are bound to act on the advice of the elected Chief Executive. Their real value is symbolic. They are symbols of the unity and dignity of the State. In so far as executive authority cannot be exercised by them, the protection against court cognizance afforded to the President and the Governor is exclusively meant for personal crimes and civil wrongs committed by them as private individuals. Here, the policy consideration appears to be to protect the prestige of the office to enable the incumbent to live up to his symbolic role. Dignity of the symbolic role can only be preserved by keeping the incumbent immune from criminal prosecution of all type even for personal crime and tort. As against this, a Prime Minister will only be entitled to the immunity if the acts complained of have been purported to be done by him in the discharge of functions attached to his office and not otherwise. Thus, a Prime Minister will be liable to criminal prosecution if it is alleged that he has injured or murdered some individual in the pursuit of his personal vendetta. However, the same Prime Minister would be entitled to remain immune from

public prosecution if it Is alleged that he has given sanction to a proposal to have one of the important enemy agents secretly assassinated through a State Agency on his subjective assessment that doing so is in State interest. Of course, on a Trial being eventually held, the Court may arrive at the conclusion that such a murder plan was not in State interest and was only a pretext to score personal revenge and thus not an act even in the purported discharge of official duties. On this basis, there would be no legal impediment in the way of the competent Court to visit the defaulting Prime Minister with maximum and even exemplary penalty. However, by the same token the Court can also record a finding that enough data was available to the Prime Minister to decide to cause the murder of an individual who was posing a serious imminent threat to national security. Overriding public interest is the plea on which even ordinary crime can be justified by the holder of the constitutional office so long as he holds the office. In this situation, the decision to execute the murder plan is to be treated as an act in the discharge of duties attached to the office of the Prime Minister. The decision to withhold Prosecution or to withdraw from it is an integral part of sovereign power in all States and is to be traced to the exclusive domain of the political Executive. It shall be seen that the eventual determination of the judicial forum before which the case is laid for adjudication is not the significant feature in the situation. What is important is that in a case such as Zulfikar Bhutto's where the Prosecution stand itself is that State apparatus was used to murder a person on the direction of the Chief Executive; no Court had the jurisdiction to take cognizance of the offence so long as the accused person occupied the office of the Prime Minister of Pakistan. On the prosecution story itself, the decision to cause the murder of Raza Kasuri was taken by Zulfikar Bhutto in his capacity as the Prime Minister of Pakistan. In this view of the matter, no Court in Pakistan had jurisdiction to ask him to answer for it so long as he retained the office of the Prime Minister of Pakistan. Theoretically, Validation under Article 270-A may have protected the guilty verdict from being a nullity if some Martial Law Order was involved. Fortunately, is not the case here.

In nut-shell, Zulfikar Bhutto's trial took place on charges relating to his decision to get a rival murdered purported to be taken by him in exercise of powers vested in him as the Prime Minister of Pakistan. This may quite be a crime for which he is liable to be tried and sentenced even to death at an appropriate stage. Ultimately, this plea may not be sustained but it is available for him to take and be protected against all criminal trials for as long as it could be shown that he is entitled to be treated as the Prime Minister of Pakistan. In the long run Zulfikar Bhutto may also not be heard to say that he is entitled to commit a crime if this is in the supreme national interest of Pakistan as assessed by its Chief Executive. This is a point touching the merits of his defence which will be adjudicated after his Trial commences at the proper time. He may take neither of these pleas and may simply deny his involvement in the occurrence as he has actually done. All

this is not relevant. The case for retrial can be based on the simple proposition that on the day on which he was charged for murder and asked to defend himself against the charge, he was still the incumbent in the office of the Prime Minister of Pakistan. So he was in the eye of 1973 Constitution even if the Martial Law Regime had deposed him. Whatever Martial Law had done when it held the gun is of no avail or validity now that 1973 constitution stands restored. If Zulfikar Bhutto is the Prime Minister of Pakistan in the eye of 1973 constitution on the day he was charged, Article 248 intervenes to rescuer him from the Trial. Any trial held in contravention of it is no Trial. No Martial Law power has been used to overcome or override the protection available to Zulfikar Bhutto not to be answerable to any court in terms of Article 248 so long as he continued to retain the office. On the face of the charges made against Zulfikar Bhutto, he is entitled to the protection of Article 248. Even Article 270-A is not available to protect the proceedings of this Trial or the findings recorded therein.

The Essential Re-trial Plea in a Capsule Form.

The Bhutto murder trial is a big ugly blot on the fair name of Pakistani Courts. It is an evil ghost which may continue to haunt the judicial system unless specially exorcised. Fresh evidence has become available which is sufficient to indicate the line for further investigations. It is already late and it may be too late if we were to wait for the heirs of the victims of miscarriage of justice to step forward to seek retrial. Pursuant to the commitment of this Journal to uphold the Rule of Law, it seeks the cooperation of like-minded people to initiate the remedy for the victimized Prime Minister. This is the best way to save Pakistani Courts from History's verdict of contempt. During a period of deviation from the Constitution, the usurper regime captures Courts as much as it does the other State apparatus. Of course, the Courts which tried Bhutto and heard his appeal were not the Courts established by the true Constitution and operating within its framework. In a real sense, these were captive Courts. There is a lesson here for all Pakistanis to learn. Martial Law in all types and forms is to be resisted and rejected at all costs. It also captures the Courts and corrupts them. The fountain of Justice is polluted ---- as has happened in the Bhutto Murder Trial. This was no proper judicial Trial and the verdict rendered therein was no proper verdict. On the other hand, it was a charade put up to arrange for Bhutto's execution to ensure Zia's personal survival and continuation of usurped power. In other words, this is a case of judicial murder pure and simple. For once, let it be said as it is. Having said it, let the Pakistan Bar demand a re-trial of Bhutto Murder Case on the ground of fresh evidence even if no Bhutto heir steps forward to set the annulment process in motion. This is the only way to vindicate the innocence of the wronged Prime Minister as much as the honour of Pakistani Justice. The Plea is made and deserves to be sustained in public interest itself.

An urgent Plea to all the Heirs of Zulfikar Bhutto

1. Regardless of how perverse it is, the guilty verdict pronounced on Zulfikar Bhutto will subsist unless proper steps are taken to get it annulled by proper Courts in the proper way.

2. The effect of the guilty verdict cannot be adequately nullified by calling the murdered Prime Minister a "Shaheed" and reiterating the emotive expression endlessly. Control over the electronic media is a transient phenomenon and may soon pass away. Naming a Party as "Shaheed Bhutto Party" will also not achieve the object. Even monuments will not matter or count.

3. Law does prescribe the method and procedure for getting a wrong verdict set aside. Quite often, Justice is miscarried in the Courts. Law has prescribed the method and the procedure to undo the wrong. Cumbersome and tardy as these are, these may yet not be side-tracked or by-passed. There is no practical alternative. Any expediency-oriented advice to the contrary is misguided.

4. The only effective way to get the perverse guilty verdict annulled is by seeking a Re-trial on the ground of fresh evidence. This should be done without any further delay. Potential witnesses are already quite old and may not remain available for long.

5. On an objective assessment, this Journal finds that there is ample evidence to justify Re-trial and a solid case exists for reversal of adverse findings. To-day, Pakistani Courts are not as captive as these were during Zia's Martial Law Regime. Zulfikar Bhutto does appear to be innocent in this particular case. He does appear to have been framed. We have faith that even in Pakistan Truth does prevail in the end and the innocent are vindicated. While risks may be there, it is worthwhile to take them.

6. In this case, the innocence of Zulfikar Bhutto alone is not at stake. The honour of Pakistani Justice is also involved. A Prime Minister was deposed and then murdered judicially. Pakistani Courts must also have another chance. A Re-trial is in the supreme Public Interest. Bhutto heirs have a duty to set the process in motion. A whole Nation looks up to them to take the first step.

Please take appropriate steps to vindicate the innocence of a wronged Prime Minister before it is too late. In any case, Public interest demands a Retrial.