IN THE SUPREME COURT OF PAKISTAN
(Advisory Jurisdiction)

Present:
Mr. Justice Qazi Faez Isa, CJ
Mr. Justice Sardar Tariq Masood
Mr. Justice Syed Mansoor Ali Shah
Mr. Justice Yahya Afridi
Mr. Justice Amin-ud-Din Khan
Mr. Justice Jamal Khan Mandokhail
Mr. Justice Muhammad Ali Mazhar
Mr. Justice Syed Hasan Azhar Rizvi
Mr. Justice Musarrat Hilali

REFERENCE NO. 1 OF 2011
[Reference by the President of Islamic Republic of Pakistan under Article 186 of the Constitution]

In Attendance:

On behalf of President: Mr. Mansoor Usman Awan,
Attorney-General for Pakistan assisted by
Ch. Aamir Rehman,
Additional Attorney-General,
Malik Javed Iqbal Wains,
Additional Attorney-General,
Raja M. Shafqat Abbasi,
Deputy Attorney-General and
Ms. Marium Ali Abbasi, Advocate.

On Court Notice : Mr. Khalid Ishaq, Advocate-General, Punjab, assisted by Mr. Sanaullah Zahid, Addl. AG.
Mr. Hassan Akbar, Advocate-General, Sindh assisted by Qazi M. Bashir, Addl. AG.
Mr. Amir Javed, Advocate-General, Khyber Pakhtunkhwa, assisted by Mr. Sultan Mazhar Sher Khan, Addl. AG.
Mr. Asif Reki, Advocate-General, Balochistan assisted by Mr. M. Ayaz Swati, Addl. AG.

For the LRs of the
Late Zulfiqar Ali Bhutto : Mr. Farooq H. Naek, Sr. ASC, assisted by Messrs Iftikhar Shah and Sheraz Shaukat Rajpar, Advocates.
(on behalf of Mr. Bilawal Bhutto Zardari)

: Mian Raza Rabbani, ASC, assisted by Mr. Zeeshan Abdullah, Advocate.
(on behalf of Ms. Sanam Bhutto, Ms. Bakhtawar Bhutto and Ms. Aseefa Bhutto)

: Mr. Zahid F. Ibrahim, ASC, assisted by Mr. Altamash Arab, Advocate.
(on behalf of Ms. Fatima Bhutto and Mr. Zulfiqar Ali Bhutto)

Amicus Curiae : Mr. Manzoor Ahmad Malik,

Kismat Khan Zimri
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Hon'ble former Judge,
assisted by Mr. Ansar Nawaz Mirza, ASC,
Mr. Haider Rasul, ASC and
Mr. Shahryar Riaz, Advocate High Court.

Mr. M. Makhdoom Ali Khan, Sr. ASC,
assisted by Mr. Saad Mumtaz Hashmi, ASC.

Mr. Khalid Jawed Khan, ASC.

Ch. Aitzaz Ahsan, Sr. ASC,
assisted by Ms. Zunaira Fayyaz Siwia, Adv.
and Mr. Qaiser Nawaz, Advocate.

Mr. Assadullah Khan Chamkani, ASC,
assisted by Mr. M. Tariq Khan Hoti, ASC.

Mr. Salahuddin Ahmed, ASC,
assisted by Mr. Ehsan Malik and
Mr. Aman Aftab, Advocates.

Complainant	:	Mr. Ahmed Raza Khan Kasuri, ASC. (in person)
For SCBA	:	Mr. Ali Imran, ASC.
Dates of Hearing	:	12.12.2023, 8.1.2024, 20.2.2024, 26.2.2024 27.2.2024, 28.2.2024 and 4.3.2024.

Opinion

In the course of performing our core duty to administer justice 'in accordance with the Constitution of the Islamic Republic of Pakistan and the law', we (judges) are bound to 'do right to all manner of people, according to law, without fear or favour, affection or ill-will.'[1] There have been some cases in our judicial history that created a public perception that either fear or favour deterred the performance of our duty to administer justice in accordance with the law. We must, therefore, be willing to confront our past missteps and fallibilities with humility, in the spirit of self-accountability, and as a testament to our commitment to ensure that justice shall be served with unwavering integrity and fidelity to the law. We cannot correct ourselves and progress in the right direction until we acknowledge our past mistakes.

2. The advisory jurisdiction, under Article 186 of the Constitution, requires this Court to render an opinion on any *question of law* of public

[1] Oath of Office for Judges of the Supreme Court and the High Courts, prescribed under Articles 178 and 194 in the Third Schedule to the Constitution of the Islamic Republic of Pakistan.

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importance referred to by the President. To us, the question of law, in essence, is whether the requirements of due process and fair trial were complied with in the murder trial of Mr. Zulfiqar Ali Bhutto ("Mr. Bhutto"), the former Prime Minister of Pakistan, by the trial court (the Lahore High Court) and the appellate court (the Supreme Court). This question we approach and answer considering whether the trial court and the appellate court attended to and dealt with the requirements of due process and fair trial.

3. The reference filed by the President of Pakistan has provided us an opportunity to reflect upon the proceedings of the trial, conviction and death sentence of Mr. Bhutto, under the regime of the military dictator General Zia Ul Haq. The reference was filed during the government of the political party founded by Mr. Bhutto but the successive governments of other major political parties carried forward this inquiry and did not opt to withdraw the reference. This collective interest reflects the widespread desire of the people of Pakistan to seek the opinion of this Court on whether Mr. Bhutto was afforded a fair trial and due process for his trial for the murder of Mr. Muhammad Ahmed Khan Kasuri.

4. With the able assistance of the eminent legal minds of the country, we for the reasons to be recorded later and subject to amplifications and explanations made therein, render an opinion on the referred questions in the following terms:

Question (1)

Whether the decision of the Lahore High Court as well as the Supreme Court of Pakistan in the murder trial against Shaheed Zulfiqar Ali Bhutto meets the requirements of fundamental rights as guaranteed under Article 4, sub-Articles (1) and (2)(a), Article 8, Article 9, Article 10A/due process, Article 14, Article 25 of the Constitution of the Islamic Republic of Pakistan, 1973? If it does not, its effect and consequences?

Opinion

(i) The proceedings of the trial by the Lahore High Court and of the appeal by the Supreme Court of Pakistan do not meet the requirements of the Fundamental Right to a fair trial and due process enshrined in Articles 4 and 9 of the Constitution and later guaranteed as a separate and independent Fundamental Right under Article 10A of the Constitution.

(ii) The Constitution and the law do not provide a mechanism to set aside the judgment whereby Mr. Bhutto was convicted and sentenced; the said judgment attained finality after the dismissal of the review petition by this Court.

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Question (2)

Whether the conviction leading to execution of Shaheed Zulfiqar Ali Bhutto could be termed as a decision of the Supreme Court binding on all other courts being based upon or enunciating the principle of law in terms of Article 189 of the Constitution of the Islamic Republic of Pakistan, 1973? If not, its effect and consequences?

Opinion

Referenced questions do not specify the principle of law enunciated by this Court in the *Zulfiqar Ali Bhutto case* regarding which our opinion is sought. Therefore, it cannot be answered whether any principle of law enunciated in the *Zulfiqar Ali Bhutto case* has already been dissented to or overruled.

Questions (3) and (5)

Whether in the peculiar circumstances of this case awarding and maintaining of the death sentence was justified or it could amount to deliberate murder keeping in view the glaring bias against Shaheed Zulfiqar Ali Bhutto?

Whether on the basis of conclusions arrived at and inferences drawn from the evidence/material in the case an order for conviction and sentence against Shaheed Zulfiqar Ali Bhutto could have been recorded?

Opinion

In its advisory jurisdiction under Article 186 of the Constitution, this Court cannot reappraise the evidence and undo the decision of the case. However, in our detailed reasons, we shall identify the major constitutional and legal lapses that had occurred with respect to fair trial and due process.

Question (4)

Whether the decision in the case of murder trial against Shaheed Zulfiqar Ali Bhutto fulfils the requirements of Islamic laws as codified in the Holy Quran and the Sunnah of the Holy Prophet (SAW)? If so, whether present case is covered by doctrine of repentance specifically mentioned in the following Suras of Holy Quran:

> (a) Sura Al-Nisa, verses 17 and 18; Sura Al-Baqara, verses 159, 160 and 222; Sura Al-Maida, verse 39; Sura Al-Aaraaf, verse 153; Sura Al-Nepal, verse 119; Sura Al-Taha, verse 82; as well as (b) Sunan Ibn-e-Maaja, Chapter 171, Hadith No. 395.

What are effects and consequences of doctrine – Re: Repentance

Opinion

We were not rendered any assistance on this question, therefore, it would be inappropriate to render an opinion.

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(Qazi Faez Isa)
CJ.

(Sardar Tariq Masood)
J.

(Syed Mansoor Ali Shah)
J.

(Yahya Afridi)
J.

(Amin-ud-Din Khan)
J.

(Jamal Khan Mandokhail)
J.

(Muhammad Ali Mazhar)
J.

(Syed Hasan Azhar Rizvi)
J.

(Musarrat Hilali)
J.

Announced in open Court
at Islamabad, on 6 March, 2024.

Chief Justice

Approved for reporting

Kismat Khan Zimri

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