



RIGHTS corner



Military action could trigger human rights catastrophe



AMNESTY INTERNATIONAL

With the onset of military action against Iraq, Amnesty International demands assurances from all parties - USA its allies and Iraq - that they will respect fully the laws of war, protect civilians and ensure their access to humanitarian assistance.

"Those who have launched the military attacks must take responsibility if their action provokes a human rights and humanitarian catastrophe. We fear it will disrupt delivery of essential services and supplies to a population heavily dependent on government aid, and could trigger a humanitarian catastrophe. They must make every effort to safeguard the people and alleviate human suffering," said Irene Khan, Secretary General of Amnesty International.

"Amnesty International believes there is a real risk that many civilians, including children, might die as a result of indiscriminate attacks, or use of prohibited weapons." Amnesty International also fears that attempts by the Iraqi regime to suppress internal uprisings or, the settling of scores that could follow if the regime collapses, could lead to widespread human rights abuses.

"It is essential that the United Nations begins preparations for the deployment of international human rights monitors in Iraq as soon as the situation permits. The mandate of the monitors should address violations by any authority controlling the territory, whether Iraqi or foreign."

Amnesty International calls on the neighbouring states, and the Kurdish authorities to keep their borders open to receive refugees and displaced persons, and to give full and free access to international organisations and NGOs. "The international community must support these countries," Ms Khan stated.

Amnesty International also fears significant 'collateral damage' to human rights in the region and beyond. "There is a high degree of public anger and concern about the war. Already the freedoms of expression, assembly and movement are being threatened as increasing numbers of anti-war demonstrations are suppressed, political opponents and journalists are detained. We must resist a backlash against human rights," Ms Khan warned.

Former UN head calls Iraq war 'illegal'



Even before the strike against Baghdad, Boutros Boutros-Ghali said any U.S.-led invasion of Iraq without specific UN authorization would violate international law.

"This intervention is illegal," he told an audience in Winnipeg on 18 March 2003. He believes it also sets a dangerous example. "Other countries may use this argument in the future to intervene on the basis of this precedent."

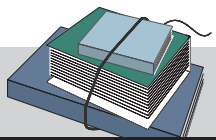
Boutros-Ghali, the Secretary General of the United Nations from 1992 to the end of 1996, fears the diplomatic struggle, and the UN's ability to play a central role in such future crises.

"I still hope that the UN will be able to overcome this crisis and that the UN will continue to play a role, even if this role is very marginal," he said.

The future role for the UN inside Iraq, he believes, lies with the country's reconstruction, the return of refugees and establishing a more benign regime. But he admits the international community has a poor record of paying the necessary attention to post-war issues.

Source: CBC news.

LAW lexicon



Administrative tribunal

Hybrid adjudicating authorities which straddle the line between government and the courts. Between routine government policy decision-making bodies and the traditional court forums lies a hybrid, sometimes called a "tribunal" or "administrative tribunal" and not necessarily presided by judges. These operate as a government policy-making body at times but also exercise a licensing, certifying, approval or other adjudication authority, which is "quasi-judicial", because it directly affects the legal rights of a person. Administrative tribunals are often referred to as "Commission", "Authority" or "Board."

Adultery

Voluntary sexual intercourse between a married person and another person who is not his married spouse. In most countries, this is a legal ground for divorce. The person who seduces another's spouse is known as the "adulterer." In old English law, this was also known as criminal conversation.

Adverse possession

The possession of land, without legal title, for a period of time sufficient to become recognised as legal owner. The more common word for this is "squatters." Each state has its own period of time after which a squatter can acquire legal title. Some states prohibit title by mere prescription or possession.

Alternative dispute resolution

Also known as "ADR"; methods by which legal conflicts and disputes are resolved privately and other than through litigation in the public courts, usually through one of two forms: mediation or arbitration. It typically involves a process much less formal than the traditional court process and includes the appointment of a third party to preside over a hearing between the parties. The advantages of ADR are speed and money; it costs less and is quicker than court litigation. ADR forums are also private. The disadvantage is that it often involves compromise.

Corresponding Law Desk

Please send your mails, queries, and opinions to: post - Law Desk, The Daily Star, 19 Karwan Bazar, Dhaka-1215; telephone 8124944, 8124955, 8124966; fax 8125155, 8126154; email dslawdesk@yahoo.co.uk; interactive email lawdesk20@hotmail.com

Star LAW report

Circumstantial evidence may be ground for conviction

High Court Division (Criminal Appellate Jurisdiction), The Supreme Court of Bangladesh, Criminal Appeal No. 185 of 1987, Mujibur Rahman and another, V The State, Before Mr. Justice Gour Gopal Saha and Mr. Justice Md Abdur Rzaque. Date of Judgment: April 1, 2002. Result: Appeal allowed.

Background:

Gour Gopal Saha, J: This appeal is directed against the judgment and order dated 31-12-1986 passed by the Sessions Judge, Mymensingh in Sessions case No. 150 of 1985 convicting accused-appellants Mujibur Rahman and Bachhu under sections 302/109 of the Penal Code and sentencing them thereunder to suffer imprisonment for life while acquitting the remaining 2 accused-persons of the charges levelled against them.

Fact of the case:

The prosecution case, in short, is that at about evening time on 4-2-1985 corresponding to 21th Magh, 1391 BS (Monday) deceased Moslemuddin came to the house of his married sister informant Khaleda Khatoon at village Sreerampur. At about 7.30 pm accused Mujibur Rahman and Bachhu came there and took away deceased Moslemuddin with them on the plea of bringing back their lost cow from the village Charvelamari and since then Moslemuddin is not traceable. On the following day, the dead body of Moslemuddin was found near the ditch of one Rahim Fakir at Charlakhdia 1/2 mile off from Char Sreerampur. It has been alleged that the accused persons killed Moslemuddin out of resentment and enmity, arising out of dispute over land properties.

Upon the aforesaid allegations, the accused-appellants and 2 others were placed on trial before the learned Sessions Judge, Mymensingh to answer charges under section 302/109 of the Penal Code. The accused pleaded not guilty and claimed to be tried. The learned Sessions Judge by his impugned judgment dated 31.12.1986 convicted the two accused-appellants under sections 302/109 of the Penal Code and sentenced them as stated herein before.

Being aggrieved by the aforesaid impugned judgment dated 31.12.1986 the appellants before us preferred the present appeal.

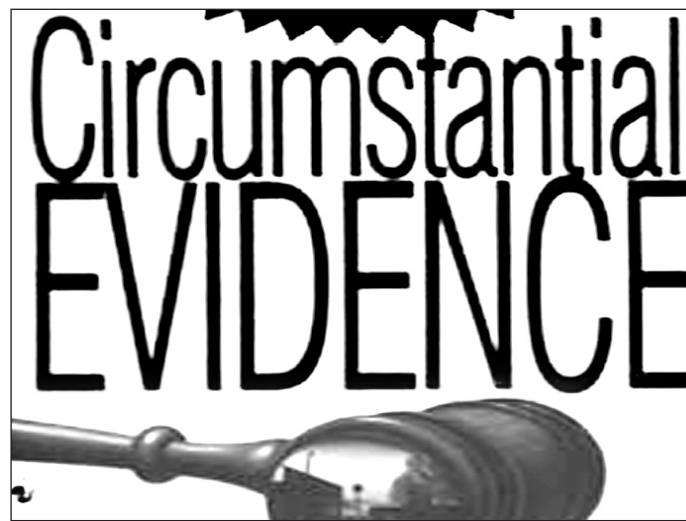
Point for determination

The only point for determination in the appeal is whether the learned Sessions Judge was justified in passing the impugned order of conviction and sentence against the accused appellants.

Deliberation

We have gone through the FIR of the case, charges framed against the accused persons at the trial, the evidence of the prosecution witnesses as well as the impugned judgment. We are now called upon to consider the legality and propriety of the impugned judgment in the light of the evidence on record. From the discussion of the evidence it is found that there is no eyewitness to the occurrence. No other witness except informant Khaleda Khatoon saw deceased Moslemuddin going away with accused Mujibur Rahman and Bachhu for searching out the lost cow of the accused persons from Charbelamari. There is no evidence on record to establish that the cow of the accused persons was lost and it could be available at village Charbelamari. So the whole prosecution case lies on the solitary evidence of informant Khaleda Khatoon in taking away deceased Moslemuddin by accused Mujibur Rahman and Bachhu from the house on the false plea of recovery of their lost cow. It is an admitted fact that there existed land disputes between the parties. It is true that the prosecution

tried to introduce a new story in the case by giving out that about 8/10 days prior of the occurrence the dispute between the parties was amicably settled so as to give an impression that as the new relationship between the parties grew up it might be possible for deceased Moslemuddin to accompany accused Bachhu and Mujibur Rahman for searching out their missing cow. This appears to be a clear embellishment. In such circumstances, it is difficult to place explicit reliance on the evidence of Khaleda Khatoon and to act on it. Moreover, deceased Moslemuddin was allegedly called away from the house of Khaleda Khatoon at about evening time. Nobody knows what happened to him during the whole night following the deceitful abduction of deceased Moslemuddin by the accused-persons. In the facts and circumstances of the case and evidence on record, we are of the view that the prosecution has not been able to prove the guilt of the accused-appellants by producing cogent and reliable evidence.



The law on circumstantial evidence is well settled by now. When there exists a well knit and unbroken chain of circumstances leading to the unavoidable conclusion that none but the accused committed the alleged offence and no other hypothesis other than the guilt of the accused can be inferred from the given circumstances, a conviction can be safely based on circumstantial evidence alone. But the facts and circumstances of the present case fall far short of the standard requirement for safely basing an order of conviction on the untidy and almost stray evidence of informant Khaleda Khatoon. The evidence adduced by the prosecution in the case can at best provide suspicion however high and probable can never take the place of legal evidence.

Decision

We have given an anxious consideration to the facts and circumstances of the case and the evidence on record but we fail to persuade ourselves to subscribe to the view taken by the learned Sessions Judge. We are, therefore, constrained to hold that the prosecution failed to prove its case against the accused-appellants beyond reasonable doubts and they are entitled to acquittal accordingly. The appeal succeeds.

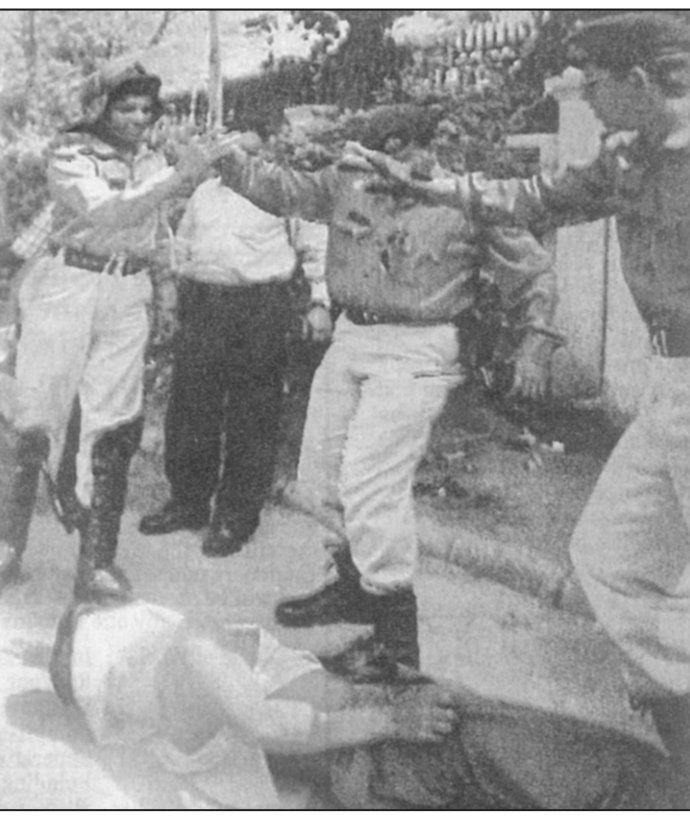
In the result, the appeal is allowed and the impugned judgment dated 31.12.1986 passed by the learned Sessions Judge, Mymensingh in Sessions Case No. 150 of 1985 convicting appellants Mujibur Rahman and Bachhu under sections 302/109 of the Penal Code is set aside. The accused appellants are acquitted of the charges levelled against them.

No one for the Appellants, Mr. SM Aminur Rahim, AAG for the State.

LAW excerpts



Law does not permit brutality



LAW DESK

Picture: Bus driver Jahangir being physically tortured by traffic police in presence of the well-fed sergeant for speeding (Bangladesh Today, March 11).

Excerpt

1. No person shall be subjected to torture or to cruel or inhuman or degrading punishment or treatment (Article 35, clause 5 of the Bangladesh Constitution and Article 5 of the United Nations Declaration of Human Rights).

2. To enjoy the protection of the law and to be treated in accordance with law and only in accordance with law is the inalienable right of every citizen, whenever he may be, and of every other person for the time being within Bangladesh, and in particular no action detrimental to the life, liberty, body, reputation or property of any person shall be taken except in accordance with law (Article 31 of the Bangladesh Constitution).

Law desk: Any kind of torture is prohibited in the UDHR of all most all the countries of the world as well as under the National Law. Bangladesh is also the signatory party to the UN Convention Against Torture (CAT). Therefore it is the duty of the government to protect its citizens from any kind of torture. What the traffic police did is clear violation of the fundamental rights of the bus driver guaranteed by the Constitution as well as the international human rights norms. Law does not permit any brutality. It is the duty of the police to arrest the offender and produced him before the court for trial. It is the court that only could punish the offender if the guilt is proved. If the police punish the offender then what is the necessity of the court? Therefore, the government and the concerned authority should take the matter cordially and take necessary steps to bring the guilty police officer to book. One such incident may overshadow all the success of the police department if he goes unpunished.

LAW letter



War for oil

President Bush and his allies are trying to wage a war on Iraq, to occupy it, to plunder its natural resources. And I am sure, if they had their way, their next target would be Iran. Iran can just be squeezed from Afghanistan in the East and Iraq in the west. If they had their way, they could be sitting on the largest Oil reserve in the world in a year from now. It has nothing to do with Saddam being a brutal, savage, dictator, it has nothing to do with human rights of the people of Iraq. They hardly care for the people of Iraq. Is Saddam any worse than any other dictators in Africa or in Middle East even in Central Asia or East Europe? No one is pointing fingers at them.

When the Bush administration tried hard to link Iraq with Al Quida, they started preparing for a showdown with Iraq without any cause. It sounds like that old story of a wolf and a Sheep. They have not found any cause whatsoever to attack Iraq, so they invented one out of the blue, that he is in the "axis of evil" therefore, should be removed!

IAEA chief and Hans Blix repeatedly said Iraq is not a threat to its neighbors anymore. It does not have any weapons of mass destruction, it can not wage a war against any of its neighbors, let alone hitting Israel, America's most trusted as such most civilised nation of the Middle East! Come on, man, don't you know that killing Palestinian babies from their mother's lap are considered civilised acts nowadays?!

Soyem Shahjahan
Banani, Dhaka.

No more discrimination against women

8th March is International Women's Day, let us remember the 1857 struggle of hundreds of women garment workers in New York who strike against low wages and horrible working conditions. They struggle for decent wage, shorter hours of work and improvement to their working conditions. The Women's struggles was a sign of hope. That still inspires and motivates many today. In 1975, the United Nations adopted 8th March as the date for celebrating International Women's Day in remembrance of the women workers struggle. International Women's day celebrate the decades of struggle for equality, respect, dignity, justice and peace. In Singapore, women workers, especially migrant women in domestic work, suffer from discrimination and abuse. Like all other workers, they do have rights to a fair and decent wage, annual leave, holiday, social security, and recognition of their human dignity. Women give birth to children, feed and care for the whole family. But this essential contribution to family and community are devalued. At working place women are urged to compete with men and with each other. Women suffer from overworked, lower pay and remain divided. Today women are requesting for the enforcement of ILO conventions (No. 100 and 111) on equal remuneration and on preventing discrimination (employment and occupation). In this respect, all discrimination against women must be eradicated. These Conventions are good documents but we must work harder to ensure their enforcement. Today, women are still denied equal payment for equal work and participation. The struggle for equality and freedom goes on for women throughout the entire region. There is the imperative need to find the courage to stand up against being the victims and passive recipients of any form of violence, under the pretext of "preserving tradition." Global Women organisations are demanding for a change of policy across the world to eradicate poverty, all forms of violence and discrimination against women. It also expressed solidarity with all women and nations struggling for more justice.

Sinapan Samy Dorai,
President, THINK CENTRE, Singapore.

LAW week



UP polls concluded

The Union Parishad (UP) elections staggered over two months ended amid a discord between the Chief Election Commissioner (CEC) and the government over deployment of army during the polls. Some 80 people were killed and over 7500 injured in the polls related violence. The Union Parishad polls began on January 25 and continued till 16 March. The Election Commission (EC) conducted elections to 4223 Union Parishads. Voting was suspended in 140 polling stations during this period which is 0.36 percent of the total number of polling centers. Voting in 87 suspended polling stations were already held and voting in the rest of 53 suspended polling stations will take place shortly. It may be mentioned that the Chief Election Commissioner Mr. M.A. Syed requested the government to deploy army during the elections, which the government turned down. Earlier, the CEC commented that the election more or less a futile exercise. He came under severe criticism by the ruling party for the comment. They also demanded removal of the CEC. However, the Election Commission is yet to estimate the total voter's turnout in the elections. Figures from the first three days show the turnout was 81.19 percent. - Law Desk.

Inmates are in inhuman condition

Prisoners in Bangladesh suffered from various diseases due to the unlivable condition in the jails. The jails are packed with about 75,000 prisoners, which is three times their capacity. Over 50,000 of them are under trail prisoners and their number is increasing to add to misery. The ten central and 55 district jails can accommodate only 24,490 inmates. The Dhaka Central Jail with its 2,632 capacity is now home to 11,000 prisoners. The jail buildings are run-down, sewerage and toilet facilities and water; food and medical supplies are at the deplorable level. In most cases, prisoners come out of jails with diseases. They contract tuberculosis, skin diseases, diarrhea and gastrointestinal disorders. Most lost weight. Over the years, the jail authorities have complained of the problems to the higher authorities. The government collected innumerable recommendations from departmental, cabinet and reform committees and commissions as a follow up. But most recommendations remained unimplemented. A jail reform commission headed by Justice AFKMA Munim was formed in 1978 and it made 180 priority wise recommendations in 1980. None of the main recommendations was implemented in 23 years. *The Daily Star, 15 March.*

Amendment to Brick Burning Control Act suggested

As the existing Brick Burning Control Act appears outmoded, the government is actively considering to amend some sections of the act to make it a more timely one. The amendment to the act will permit the brickfield owners to construct brickkiln within one kilometer of upazila and district headquarters, residential areas, towns, city corporation areas and gardens of fruit bearing trees. As per section 4 and 5 of the present Brick Burning Control Act, no brickfield owner is allowed to construct brickkilns within three-kilometer radius of any such areas. A meeting held at the Ministry of Forest and Environment discussed the matter and recommended amendment of section 4 and 5 of the act and decided to workout ways and means to amend the sections. The meetings also decided to prohibit construction of any brickfield near sensitive places like airports and cantonment and vowed to enforce the rules by issuing gazette notification. The meeting also decided to impose stricter measures so that the brickkiln owners comply with the existing laws and refrain from degrading the environment. *The Bangladesh Observer, 11 March.*

National Sports Council (Amendment) Bill passed

A bill containing the provision for election to the posts of presidents of federations under the National Sports Council (NSC) was passed by the Jatiya Sangsad. The bill provided for election of presidents of the federations according to prescribed rules or nomination of them by the government. Piloting the National Sports Council (Amendment) Bill 2003, State Minister for Youth and Sports Mr. Fazlur Rahman said the new provision is necessary to fulfill the terms of major international sports bodies including the Federation of International Football Association (FIFA). *Financial Express, 11 March.*

ERC to start functioning in June

The Energy Regulatory Commission (ERC) will start functioning in June this year under the Gas Sector Reform Project being financed by the Asian Development Bank (ADB) and the World Bank (WB). The three member commission will have one chairman and two members who will be appointed soon in pursuance of the Energy Regulatory Commission Bill, 2003 passed in the parliament providing for major reforms in the sector. The Commission aims to ensure a competitive environment for private entrepreneurs in power and gas sector, give license, bring transparency in determining tariff and protect the interest of the consumers. *Bangladesh Today, 13 March.*

Cr.P.C being reviewed to ensure human rights

An initiative to review the penal laws and the Code of Criminal Procedure now in force in the country is being undertaken by a committee headed by State Minister for Home Affairs Lutfulazzaman Babor. The objective of the exercise is to prevent custodial deaths and to ensure the rights of the citizens, including suspects and undertrial, during police interrogation, remand and judicial custody. The committee has already held several meetings. During the review of the laws governing the conduct of the personnel of law enforcing agencies. They would also examine the complex problems faced by the law enforcers in dealing with the hardened criminals and habitual offenders. Minister for Law, Justice and Parliamentary Affairs Mr. Moudud Ahmed said, as soon as the committee submits its recommendations, the government would take necessary action. The Minister also said that whenever excesses committed by the security forces were brought to the notice of the government, it took prompt action against the offenders. The law enforcing agencies and the concerned departments took punitive measures against persons involved in the violation of human rights. *Bangladesh Today, 05 March.*

Magistrate sued for demanding bribe

A case was filed against a first class magistrate and two engineer of the Power Development Board (PDB), as they allegedly demanded bribe from a defaulter electricity subscriber. Gobinda Chandra Karnakar, owner of Bina Jewelers filed the case with the court of Special District Judge. He complained that some PDB employees during a line disconnection driven by Magistrate Shamsul Alam demanded Tk. 10,000 as bribe. The PDB staff threatened to disconnect his electric line and advised him to contact with sub-assistant engineer Muzammel Haque when he refused to pay the money. The Magistrate however filed a case against the defaulter subscriber with the Speedy Trial Tribunal. *The Daily Star, 16 March.*

Law restricting tobacco use, publicity in the making

The government is going to enact a new law banning smoking in open spaces, prohibiting advertisements of tobacco products and containing its consumption. The new law to be enacted under the 'Smoking and Tobacco Products Use (Control) Act 2003, would replace the existing 'Juvenile Smoking Act 1919' and 'The Prohibition of Smoking in Show Houses Act 1952'. The Ministry of Health and Family Welfare has already drafted the law, which after completion of required formalities is now waiting for the Cabinet approval. As per the proposed law, people who would smoke at open spaces which include airport, government and non-government offices, hotels, restaurants, hospitals, clinics, educational institutions, shopping malls and other areas to be notified in the gazette, would face penalty up to Tk 10,000. All types of advertisements of tobacco products whether in the print or electronic media would be banned once the law is enacted. Non compliance of the law relating to advertisement and sponsorship would cause the offender a punishment of one-year imprisonment and/or a fine of Tk 10,000. Under the proposed law, none would be allowed to install automatic cigarette vending machine on the roads, transports or open spaces. Metropolitan magistrate or any kind of magistrate's court would be able to conduct the trials related to the proposed law. *Financial Express, 18 March.*