

'No political element in arms case against Ershad'

IN THE SENIOR SPECIAL TRIBUNAL, DHAKA.
House No. NE(E)-9, Road No. 50,
Gulshan Model Town, Dhaka.

Present: Mr Mohammad Habibullah,
Senior Special Tribunal, Dhaka.

Special Tribunal Case No. 60 of 1991.

The STATE-Versus- 1. Hussain Mohammad Ershad, Former President of Bangladesh. Charges u/s 19(a) and 19(b) of the Arms Act, 1878 read with Special Powers Act, 1974.

On behalf of the State: 1. Mr Aminul Huq, Attorney General; 2. Mr Amirul Kabir Chowdhury, DAG; 3. Mr Hasem Arif, DAG; 4. Mr Farid Ahmed, APP.

On behalf of the Accused: 1. Mr Sirajul Huq, Advocate; 2. Mr Sahadat Hossain, Bar-at-law; 3. Mr Yusuf Hossain Humayun, Advocate; 4. Mr Sk. Reazul Karim, Advocate.

Judgement
Delivered on Wednesday the June 12, 1991.

The Case of the Prosecution:

1. The present Arms Case arose out of the Ejahar lodged by Mr Shamsur Alam, Deputy Commissioner of Police (North), Dhaka Metropolitan Police, on 5.1.91 against Hussain Mohammad Ershad, the former President of Bangladesh, on the instruction of the Ministry of Home, Government of Bangladesh. The said Ejahar was lodged with Cantonment PS which recorded it as G R Case No. 276 of 1991 under sections 19(a) and 19(b) of the Arms Act read with Special Powers Act, 1974. Thereafter the police made investigation and submitted charge sheet against the former President, Hussain Mohammad Ershad under the said sections of the Arms Act read with Special Powers Act, 1974 on 26.1.91. Thereafter the case was sent to this Senior Special Tribunal for trial.

2. Thus the prosecution case as can be gathered from the Ejahar and the charge sheet is that the accused Hussain Mohammad Ershad, the former President, had been living at Sena Bhaban under Cantonment PS from 1976 to 12th December, 1990 covering his tenure of Presidency. The accused, however, resigned from the post of Presidency on 6.12.90 and he was placed under detention vide Home Ministry's order dated 11.12.90 and was shifted from the Sena Bhaban to House No. 10, Road No. 84 of Gulshan Model Town, Dhaka City.

3. On the said date the Log Area Commander, Dhaka Cantonment, formed a Board for sealing up the Sena Bhaban and for making an inventory of all articles to be found therein and posted adequate guards for protection of the Sena Bhaban. On 13.12.90 the Ministry of Home, Govt. of Bangladesh, by its Order No. Home/Pol/1/955(8) dated 13.12.90 incorporated in the said Board two more members, namely, Mr A T A M Ismail, a Metropolitan Magistrate and Mr Shamsur Alam, the present informant.

4. On the same day on 13.12.90 at about 3 pm this Board visited Sena Bhaban and opened the seal and lock of two of the rooms and delivered some wearing apparels to Mr Mustafizur Rahman, husband of the sister of Mr Ershad's wife. Mr Mustafizur Rahman, as a representative of Mr Ershad, was also a member of the said inventory board. The rooms were again sealed up.

5. On 15.12.90 the Home Ministry under its Memo No. Home/Pol./1/911 dated 15.12.90 formed an '8-Member Inventory Committee' with Mr Azizul Huq Bhuiya, the Chief Metropolitan Magistrate, Dhaka, as its Convener to replace the former Committee. The duty of this Committee was to prepare the inventory of the articles of Sena Bhaban and to dispose them. This Committee took over charge from the former Committee on 15.12.90 and started preparing the inventory on 22.12.90 and submitted its report to the Home Ministry on 29.12.90.

6. This Committee, during the course of preparing the inventory on the spot of various articles at Sena Bhaban, among other things got a good number of arms and ammunitions with and without licence as mentioned in its report which the Committee submitted on 29.12.90. The following among them were the arms and ammunition for which there was no licence: a) 1 (one) 9 mm pistol, No. 0313103078 with 100 live cartridges; b) 2 (two) 7.65 mm pistols No. 31511109 and No. 31521952 with 75 live cartridges; c) 1 (one) pistol 0.22 bore; d) 4 (four) DHBG Guns-12 bore, No. 08238 of Browning Arms Company, Japan, No. 2000541 made in Brazil, No. 67461 and No. 306639; e) 11 (eleven) cartridges of 30-06 Rifle. (f)

12 (twelve) .32 bore cartridges; (h) A total of 375 live cartridges of different bores and calibres including the above ones.

7. The further prosecution case is that of the above arms and ammunition excepting the above 11 round cartridges of 30-06 rifle the rest were handed over by said Mustafizur Rahman who was at once a representative of Mr Ershad, the accused and member of the said Inventory Committee saying that the mother-in-law of Mr Ershad removed several trunks of articles from Sena Bhaban on the eve of departure of Mr Ershad and his family from the Sena Bhaban and in one of such trunks the above unlicensed arms and ammunition along with other licensed arms and ammunition were found and that Mr Ershad told that for the above named arms and ammunition he had no licence. Mr Mustafizur Rahman handed over them to the Inventory Committee on 24.12.90 at Sena Bhaban.

8. The further case of the prosecution is that the accused, the former President, had been knowingly keeping, controlling and possessing the said arms and ammunition.

9. On the above prosecution case the police took up investigation, examined witnesses, seized the arms and ammunition, prepared the seizure list and found prima facie case against the accused and then submitted the charge sheet referred to earlier.

The Charge:
10. The case was then transferred to this Senior Special Tribunal who took cognizance and framed charges against the accused on 19.3.91 under sections 19(a) and 19 (b) of the Arms Act, 1878 triable under section 26 read with paragraph 3 of the schedule of the Special Powers Act, 1974.

The Defence Case:
11. On the above charge being read over he pleaded not guilty and claimed to be tried. From the trend of cross examination, his statements under section 362 Cr. P.C. and the DWs, adduced the further case of the defence is that the arms in question were presented to him by the President of Iraq while he visited Iraq and that he committed no offence as under the charge framed against him because being President of the country he was exempted from holding licence for the above arms and ammunition. His further case is that the above arms and ammunition when presented to the Inventory Committee on 24.12.90 that amounted to surrender of the arms within the period of amnesty declared by the Government. The further case of the defence is that the present criminal proceeding against him is not maintainable under articles 52 and 53 of the Constitution of Bangladesh. It is also the defence plea that the present criminal proceeding is with a political motive and thus motivated.

Points for Consideration:
12. On the above prosecution case, the charge framed, the plea of innocence by the accused and the plea of the defence case indicated above, the following points are taken up for determination in this judgment:

1) Whether the present criminal proceeding has been instituted with a political motive and as such mala fide?
2) Whether the present criminal proceeding is maintainable against the accused, the former President, under Articles 52 and 53 of the Constitution of Bangladesh?
3) Whether the plea of gift as regards the arms and ammunition in question is valid?
4) Whether the arms and ammunition in this case can be considered to have been surrendered by the accused during the amnesty period?
5) Whether the accused as former President of the country was exempted from holding licence for the arms and ammunition in question?
6) Whether the accused is guilty for the charges brought against him as above?

Findings & Decision:
The present Arms Case is a unique case.

13. The present Arms Case against the former President Lt General (Retd) Hussain Mohammad Ershad is indeed a unique case in the history of Bangladesh, may the whole of Bangladesh Pakistan-Indian sub-continent, and perhaps in the known history of the Presidencies of different countries in the world.

14. It is a unique case for the reason that an elected President, for the first time in this country, who had to resign from his office in the face of violent current of the nation-wide unarmed people's movement for democracy, has been put to trial on criminal charge.
15. It is again a unique case for the reason that the trial of this case is held under the ordinary law of the land in a Tribunal to try any citizen for a



Ershad says, 'I'll appeal to the higher court.'

—Star photo

charge as in the present case which has set the rule of law in practice for the first time. In other words, an ex-Head of the State as well as of Government is being tried as an ordinary citizen on giving recognition to the principle of the supremacy of law.

16. It is once again a unique case under the Arms Act as never before, in this sub-continent, a former President has been put under trial for an offence under the Arms Act. This case, therefore, has an added importance and gravity. This case is also of national importance in the sense that the whole of nation wants to know whether the said former President has, actually and in fact, by breaking the law of the land, has possessed unauthorised arms and ammunition. If, in the result, it so happens that the charge, as levelled against the said former President, becomes proved, the history of the country writes a dark chapter on the high and glorified post of the President. It will, therefore, be a melancholy chapter indeed. On the contrary, if the charge is disproved, the national history would be able to avoid a pitiful chapter as indicated above. So the trial of the case in the light of the above circumstances has added responsibility and as the senior most District & Sessions Judge and the senior most Special Tribunal of the country, I have always tried to remember this magnitude; and as a Judge it would be my un-falling duty to do justice on the consideration of the facts and circumstances, the principles of law as well as the evidences on record.

Point No.1: Whether the case is political & mala fide.
17. The learned Advocate for the defence, Mr Sirajul Huq, has submitted in his argument that the Arms Case against Hussain Mohammad Ershad, the former President of Bangladesh, is a case with a political end in view and mala fide.

18. The Attorney General Mr Aminul Huq, in his reply, however, in the argument has contended that such an argument of the defence is misleading and not based on facts.

19. It is no denying a fact that the former President Hussain Mohammad Ershad has been put to trial in response to the demand for trial by the people, but such demand was not for any extra legal offence — it was a demand for trial for any offence, if committed under the existing law of the land — and not under any specially devised law with any political motive or design. It is admittedly a case under more than a century old Arms Act of 1878. It is further to be noted here, as the learned Attorney General has put in his argument, that no political Government brought the present case against Mr Ershad, the accused, nor any political person lodged the Ejahar, nor any political person ever deposed as an witness for the prosecution in this case. On the contrary, if we look to the genesis of the case, we would see that the accused lived in Sena Bhaban from 1976 to the 12th December, 1990, covering his entire tenure of having worked as the President of the country since 1984 to December, 1990. He resigned from the Office of President on 6.12.90 on the face of people's movement and demand for a democracy and for an end to the rule by corruption. After his resignation he continued to reside in Sena Bhaban up to the noon of 12.12.90 when he was shifted with his family to the House No. 10, Road No. 84 in Gulshan Model Town, Dhaka, under an order of detention dated 11.12.90 under Special Powers Act, 1974. This order of detention has since been in operation. It has subsequently been challenged in the Hon'ble Supreme Court, High Court Division and is sub-judice.

20. Soon after his departure from the Sena Bhaban in

the noon of 12.12.90 a Board for taking possession of the Sena Bhaban was constituted on the same date by the Log Area Commander and the Sena Bhaban was taken under its possession and sealed. On 13.12.90 two more members were included in that Board and on the same date at 3-40 pm Board-members visited Sena Bhaban and found it under seal and protected by guards. On the 15th December, 1990, by an order of the Ministry of Home, a Committee was constituted consisting of 8 members including P.W. 2 as its convener in place of the former committee in order to make an inventory of the articles to be found at Sena Bhaban and for their disposal. The Committee also included Mr Mustafizur Rahman as the representative of the former President, the accused. Also included in the said Committee were P.W. 7 a Metropolitan Magistrate of Dhaka, at the relevant time, and the P.W. 3, 5 and 8. This Inventory Committee during its course of preparation of the inventory found the arms and ammunition involved in this case accept these delivered to it by Mr Mustafizur Rahman, brother-in-law of the accused (husband of Ershad's wife's sister) on 24.12.90 telling the Inventory Committee, of which he was himself a member as representative of the accused, that those were the arms in a box and that while the mother-in-law of the accused took several boxes from Sena Bhaban to elsewhere in order to take out the belongings of the accused found in one of those boxes those arms which Mr Mustafizur Rahman, subsequently delivered to the Inventory Committee saying that four pistols among the arms delivered had no licence but belonged to Mr Ershad. It is further to be available from the deposition of P.W. 2 that 11 cartridges of 30.06 rifle and other ammunition as noted in the Inventory were found at Sena Bhaban. In respect of the arms in question in this case no licence, however, was produced by Mr Mustafizur Rahman who told categorically that Mr Ershad did not have any licence for that.

21. The Inventory Committee accordingly fell in difficulty as to what to do with those unlicensed arms and ammunition and as such, the convener of the Inventory Committee, Mr Azizul Huq Bhuiya, the Chief Metropolitan Magistrate of Dhaka, sought guidance from the Ministry of Home as to the number of disposal of those unlicensed arms and ammunition. The Ministry of Home thereupon decided to Lodge an Ejahar with the concerned Police Station and instructed the Deputy Commissioner of Police Mr Shamsur Alam to lodge an Ejahar with the Thana. P.W. 12 Abdul Hamid Chowdhury, Joint Secretary, Ministry of Home and Shamsur Alam examined as a court witness have supported the above contention of starting the present case. Neither said Joint Secretary nor the said Dy. Commissioner of Police are political personalities. The learned Defence Counsel did not at all cross-examine those two witnesses on this point. The only suggestion put by the Defence Counsel to the said Joint Secretary that the present case was instituted hastily without making the accused anything on the unlicensed arms in order to condemn the accused unheard. This witness, however, denied it.

22. From the above genesis of the present arms case it would be amply clear that no political element or motivation was ever associated with the institution of the present arms case against the accused. Further to be noted here that the trial has been held by a regular court.

23. In view of the foregoing facts and circumstances of the case, the contention of the learned Defence Counsel that the present case against the

accused has been designed politically and thus it is mala fide is of no substance and accordingly not worthy of acceptance.

Point No. 2
Whether the accused, former President of Bangladesh is immune from the present criminal case — 52 & 53 of the Constitution.

24. The learned Counsel for the Defence Mr Sirajul Huq has very forcefully submitted in his further argument on the analogy of the English Constitutional Principles that 'The King can do no wrong'. The accused who was the President of Bangladesh can do no wrong. For a wrong committed by the English King or Queen, the Government is responsible and the legal proceedings civil or criminal can be maintained against the Government and not against the King or Queen personally. The King or the Queen of England thus enjoys immunity from a proceeding before any court, civil or criminal.

25. So also the President in our country, contents the Defence Counsel. Our Constitution, in recognition to the above constitutional principles, has granted the President and Vice President of Bangladesh under Articles 52 such immunity. In the present case, the accused Mr Hussain Mohammad Ershad, having acted as the President of the country for the relevant period enjoyed immunity from any court proceedings — civil or criminal and thus the present case is not at all maintainable. Mr Sirajul Huq has further argued that if any breach of law or any offence at all, has been committed by the President while acting as such, for such breach of law the Government can be sued or the President can be impeached under Article 53 of the Constitution in the Parliament and no court of law can maintain a legal proceeding against him.

26. Here at this stage let us give deep into the inherent position of a King in his Kingdom and a President in his Republic. A kingship is an institution itself. The King does not derive his power and authority from his subjects; he is the source of law and authority; power and position; glory and dignity. He is not fettered by any constitution unless he wants to be fettered. He is not to take oath for his kingship. So he is above the law and beyond the reaches of any court of law in his kingdom.

27. On the contrary, a President in a Republic, is a creation of law i.e. the Constitution. The Presidency is an Office to which he is elected by the people and accordingly, the Presidency is not an institution in the sense the kingship is. The President in a Republic is the Head of the State, a symbol of high honour and dignity and trust of the people's hopes and aspiration under a charter of agreement — the Constitution. He is thus to take oath for his office for the protection and preservation of law of the land within the frontiers of which he is to fulfill the hopes and aspirations of the citizens who are not his subjects. He is to protect and preserve the trust reposed in him by his people; he is to protect and preserve the law and not to perish and preserve it.

28. The arm of law of the land reaches to all its citizens or in other words, the law of the land is above everybody in a Republic. An offended law chases its offenders. No one is, therefore, immune from the clutches of law. Having realised such a situation vis-a-vis the high responsibility of the office of President and also having realised the fallibility in the human character and conduct, the framers of the Constitution in the Republic in order to facilitate the execution of his high responsibility by the President and to preserve the high dignity of the Office of President, the people have granted him immunity from

any proceedings in a court of law and at the same time they have cautioned that such immunity is available so long as the President holds the Office of President.

29. On the reflection of the above foundation of the Office of President, the founders of our Constitution embodies in its Article 52 the indemnity clause for the President and Vice President of the country.

30. Let us now examine the nature of indemnity bestowed on them under Articles 52 of our Constitution. Article 52 reads — 52(1) — without prejudice to the provisions of Article 53, a President or a Vice President shall not be answerable in any court for anything done or committed by him in the exercise or purported exercise of the functions of his office, but this shall not prejudice the right of any person to take proceedings against the Government.

(2) During his term of office no criminal proceedings whatsoever shall be instituted or continued against a President or Vice President in, and no process for his arrest or imprisonment shall issue from, any court.

31. In the light of the constitutional position of a President in a Republic discussed above it has been mentioned that the arm of law reaches everybody of the country equally and demands obedience, but to keep the President and Vice President of the country personally immune from the clutches of law in the due discharge of their functions and responsibility so long as they continue to be in their respective offices Article 52 has been inserted. For a wrong done by them during the course of their duties and functions the Government may be liable and this liability extends to the civil liability only, in other words, for any breach of law by the President or Vice President for which a civil liability has been occasioned, the Government can be sued by the citizens. But so far in respect of criminal liability or in other words, in respect of any crime committed by the President or Vice President while in their respective offices are concerned they are not liable to any criminal proceedings before any criminal court but with the ceasing of their being President or Vice President they are personally liable for the crime committed by them while in office.

32. The learned Advocate Mr Sirajul Huq at this stage has submitted that when the President is no longer in office, then he can be criminally proceeded in a criminal court has not been authorised by the Constitution under Article 52 but a President under such circumstances may be impeached by Parliament under Article 53. Article 53 of the Constitution provides independent only under two grounds — (1) on a charge of violating the constitution and (2) or on a charge of grave misconduct. Violation of the Constitution is quite understandable but the expression "grave misconduct" has not been defined anywhere in the constitution. Be that as it may, the whole proceedings of impeachment can be brought only when they are in their respective offices.

33. When they are out of their offices whether they can be criminally prosecuted is the question before us. Mr Sirajul Huq arguing on behalf of the President Mr Hussain Mohammad Ershad, has submitted that the nation has lost the chance for trying the accused on the present charge in the instant case taking the plea that the accused while working as the President of the country was on the one hand immune from any court proceedings, and on the other hand, though he could be impeached, but was not impeached by the Parliament, and it more so for the further reason that there is no provision in the Constitution that a President can be tried on a criminal charge after he has resigned from his office. This argument of the learned counsel for the defence is not tenable on the two accounts — firstly, the language of the Article 52 of the Constitution, if carefully examined, we find that during his term of office no criminal proceedings whatsoever shall be instituted or continued. We are to note here the wording, "during his term of office", which means that the immunity is available only so long as the President remains a President in office. So also the privilege of initiating any impeachment proceedings for "grave misconduct" in the Parliament is available when he is in office. After a President resigns he puts on the cloak of an ordinary citizen. The criminal jurisprudence teaches us that he who chases its offender, commits a crime is personally liable. The law offended, chases its offender. Having considered this aspect, it can now be safely held that if the President of our country

has committed any crime while in office though he has been immune from the criminal proceedings during his tenure of office, he loses such immunity and becomes liable for criminal proceedings when he is no longer the President. In that view there is thus no necessity to provide an enabling provision in the Constitution. The law offended by him while in the chair, will now chase him, and this is the enabling principle.

34. The above view of immunity and criminal liability finds support in Khandoker Mustaq Ahmed's Case reported in 33 DLR, page 348 and BLD 91 (Appellate Division), page 57. In this BLD decision it was the case of the present accused, who filed a Revision Case for quashing the present criminal proceedings where the Appellate Division of our Supreme Court has held that the immunity is available to the President while he is in office. Similar view has also been taken by the Supreme Court of Pakistan while deciding the case of State Vs Zulfiqar Ali Bhutto reported in All Pakistan Legal Decisions Volume-XXX, relevant page 664. Paragraph 615. Similar view has also been taken by the great constitutional authority Dr (Justice) Durga Das Basu in his commentary on the Constitution of India, Vol. O, page 103.

35. So the present case is maintainable in law against Mr Ershad, the accused.

Point No. 3
Whether the plea of gift as regards the arms and ammunition in question is valid.

36. In this case the defence has taken a plea that the unlicensed arms and ammunition regarding which the present case has been filed against the former President Mr Hussain Mohammad Ershad were received by him as gifts while he visited Iraq. The learned defence counsel has argued that Mr Ershad was a very good friend of Mr Saddam Hussain, the President of Iraq, and these arms excepting one pistol were gifted by President Saddam Hussain while Mr Ershad visited Iraq in 1985 and in 1989. In order to establish this plea the defence has filed a certificate to that effect from, no less a person than the very Ambassador of Iraq in Bangladesh, His Excellency Zuhair Mohammad Alomar. This certificate has been issued under his signature in the Monogram Pad under the seal of the Iraqi Embassy in Bangladesh. This certificate is dated 21 April, 1991. This certificate has been proved by D. W 2 Issam N Mohammad, a member of the Staff of Iraqi Embassy. This DW 2 is a non-diplomatic staff of local Iraqi Embassy. As regards the said certificate which the defence has filed as Ext. A, it is to be noted that this certificate has not been filed by observing the normal diplomatic principle and that it has not come through the Ministry of Foreign Affairs, Govt. of Bangladesh. No such certificate was requisitioned or sought for by the accused through the Foreign Ministry of Bangladesh. Be that as it may, let us now consider the contents of the certificate which is as follows:

"This is to certify that while Mr H M Ershad was the President of the People's Republic of Bangladesh, he paid official and state visits to the Republic of Iraq on four occasions. In course of these visits in 1985 and 1989 President Saddam Hussain presented him with three pistols, one in 1985 and two in 1989.

As gesture of friendship and brotherhood, President Saddam Hussain presented all these pistols with magazine and ammunition as gifts. Specifications and details of the pistols with number are given below:

1. Pistol 9 mm (TARIG BRAND) No. 0313103078 with 2 Magazine and 2 Box of Ammunition (50 Rounds in each box).
2. Pistol (TARIG) 7.65 mm No. 31521952 with Magazine.
3. Pistol (TARIG) 7.65mm No. 31511109 with 2 Boxes of Ammunition 50 Rounds in a box."

37. This certificate certifies that Mr Ershad, the accused, paid official and state visits as President of Bangladesh to the Republic of Iraq on four occasions. In course of these visits in 1985 and in 1989 President Saddam Hussain presented him with three pistols, one in 1985 and two in 1989 as a gesture of friendship and brotherhood. These gifts consist of 3 pistols which have been described very clearly in the certificate which also speaks that the pistols had magazines and ammunition with them.

38. Since this certificate did not travel through the proper diplomatic channel, it created a doubt in the mind of the court and as such, on behalf of the court, I had to write to the Military Secretary to the

President by my letter No. DJ/DA/978-E dated 4.5.91 calling for the necessary documents of Mr Ershad's visits, if any, to Iraq in the years 1985 and 1989 as mentioned in this certificate. Also requisitioned from the Military Secretary was the President's Visit Programmes for those two years and to send a competent Officer who can furnish information regarding the visits. In response thereto the Military Secretary sent Mohammad Abdul Jalil, a Protocol Officer of the President Secretariat, with the relevant papers which included a statement of foreign tours by Mr Hussain Mohammad Ershad in 1985 and 1989 and a printed programme of the official visit of President Hussain Mohammad Ershad to the Republic of Iraq from 14th to 16th August, 1989. Both these documents have been marked respectively as Court Ext. 1 and Court Ext. 2. From the said documents it will appear that Mr Ershad, the accused, did not at all visit Iraq in 1985. But in 1989 he actually visited Iraq between 14th and 16th August, 1989 of which the Ext. 2 is the detailed visit programme showing every hour of his movement and functions beginning with his departure from Bangladesh at 6-30 hours of 14.8.89 to his return to Bangladesh at 3-35 hours of 16.8.89 on completion of his visit to Iraq. In the said visit programme Court Ext. 2 there is no mention of any gift ceremony at all. Together with this it is further considered that as per Toshakhana (Maintenance and Administration) Rules, 1974 — Rule 4, Sub Rule (1), (2), (3) requires that the gifts received by the President to be kept in Banga Bhaban and a report in that respect should be made to the Cabinet Division indicating the nature and estimated value of such gifts and there should not be any undue delay in this regard. Sub Rule (3) specifically says that persons receiving such gifts shall deposit them in the Govt. Toshakhana. But in the instant case it is no denying a fact that these areas which the defence contends to have received as gifts to Hussain Mohammad Ershad as President of Bangladesh were not deposited to Toshakhana. There is no scope to deny it as because those arms were admittedly handed over to the Inventory Committee on 24.12.90 at Sena Bhaban. P. W. 2 Convener of the Inventory Committee, the Chief Metropolitan Magistrate, Dhaka and P. W. 9 Mohammad Year Ali, a Store-keeper-cum-Caretaker of Banga Bhaban, have equally told that they do not find any document or papers to show that the arms and ammunition in question in this case were at all gifts. P. W. 9 Year Ali has stated in his examination in chief that on consulting the Toshakhana Registers from 1972 to 1991 he finds no entry of the alleged arms in such Registers as gift items and he has also told in his cross-examination that no arms or ammunition are ever supplied from the Toshakhana for the purpose of display to any place.

39. Considering the above facts, circumstances and evidence that the defence plea in question were received by Mr Ershad as gifts as a President of the country is of no substance and of no validity.

Point No. 4
Whether the arms and ammunition in this case can be considered to have been surrendered by the accused during the amnesty period.

40. It is a case of the prosecution that the brother-in-law of the accused, Mr Mustafizur Rahman, who was at once a representative of the accused and on the other hand, a member of the Inventory Committee, presented the arms and ammunition to the Convener of the Inventory Committee and told that those arms were in a box and that before the departure of Mr Ershad from the Sena Bhaban his mother-in-law while taking away several boxes of different articles also took that box of arms without knowing its contents and after opening the same it transpired that it contained arms and then Mr Mustafizur Rahman on request brought back the trunk full of arms and handed over the same to the Convener of the Inventory Committee. He also told before the said Inventory Committee that in respect of the arms in question Mr Ershad told him that Mr Ershad had no licence for them. It is indeed an admitted fact that there is no licence for any of the four pistols and four guns involved in this case. These arms have been proved in the court and marked material exhibits.

Remaining part of judgement will be published tomorrow