Judgement in arms case against deposed President unique

The following is the remaining part of the judgement in the arms case of deposed President Ershad delivered in Wednesday :

The following are the meterial exhibits arm by arm:-1) Pistol No. 31511109 made in Iraq, 7.65 mm calibre.

Article Ext. X. 2) Pistol No. 180074, 7.65 mm calibre, Article Ext. XI. 3) Pistol No. 033103078, 9 mm calibre, Article Ext. XII.

4) Pistol No. 31521952,

5) DOBL Gun No. 08238. Article Ext. XIV.

7.65 mm calibre, Article Ext.

6) DOBL Gun No. Z00054 Article Ext XV. 7) DOBL Gun No. 67461,

Aritcle Ext I.

8) DOBL Gun No. B 06639, Article Ext II. 41. The learned Advocate Mr. Sirajul Hug for the accused has contended that the delivery of the above arms by Mr. Mustafizur Rahman before the Inventory Committee was indeed the surrender of the arms as per Government notification for surrender of unauthorised arms vide Home Ministry's Notification No. Misc-21/90(Pol-4)/1353 dated 15.12.90 Ext 22. This argument of the learned defence Advocate or, in other words, this plea of surrender of arms by the accused indicates that the arms were unauthorised arms and this the accused consciously knew. Be that as it may, the question is how far the delivery of the unlicensed arms in question can amount to surrender as per the above Government Notification Ext. 22. In the said Notification there are two things — one is the time limit within which the arms to be handed over and the other is the specified authority to whom such delivery is to be made. In the instant case the unlicensed arms have belen handed over within the period of amnesty. But these arms have not been delivered to the specified au thority as indicated in the said Govt. Notification. P. W. 2, the convenor of the Inventory Committee has stated in his deposition that Mr Mustafizur Rahman brought these unlicensed arms and ammunitions before the Inventory Committee for the purpose of inclusion of such arms in the Inventory because those areas were by mistake taken out of the Sena Bhaban by the mother-in-law of Mr Ershad.

So, the purpose of delivery of

the arms was crimes barely to

get them mentioned in the in-

ventory. Had there been any

intention to surrender them as

per instruction contained in

the Govt. Notificatina referred

to above, then those arms

would have belen taken by Mr

Mustafizur Rahamn to

Cantonment Thana or to anyn-

earby police station and not to

the Inventory Committee. Mr

Mustafizur Rahman being him-

self a member of the Inventory

Committee knew it quite well

that the said Committee was

intended not be function as a

receipent of surrender of

unauthorised arms. There is

evening mark of efforts taken

by the accused himself who

has earned to his credit long

experience of aministration

including running of the state

itself has not made any corre-

spondence with the Home

Ministry for the surrender of

his unlicensed arms during the

period of amnesty. The Joint

Secretary, Ministry of Home

Mr Hamid who deposed as P.

W. 12 has said in his deposi-

tion that Mr Ershad never

made any correspondence

arms. So, it is held that the al-

leged delivery of arms cannot

be considered to be the sur-

render of arms as contem-

pleted in the said Notification in order to secure an amnesty.

Point No. 5

Whether the accused as President of the country was accumpted from holding licence for the arms and am-

munitions in question. 42. Mr Sirajul Hug, the learned Counsel for the accused, has further argued that the accused at the relevant time was the President of the country and as such, under the relevant arms Rules he was exampted from holding licence for such arms and ammunitions. In this respect the said learned Counsel has arms the attention of the court to the notification of the Ministry of Home Affairs, Security Branch. The Notification number is 896-=See(2) 19th November. 1973. A copy of this notification has been filed by the accused with his written statement under section 342 Or. P. C. the learned attorney General has also filed a copy of the said Notification. This Notification has been issued under Section 17 and section 27 of the arms Act, 1978. Relying on this Notification which release to (1) personalitions as described in Golum 1 of the table and (2) nature of weapons, exempted from the liability of having a licence in respect of them and in respect of therete, the learned defence counsel has argued that as per the said Notification the President of the Republic of Bangladesh is exempted from obtaining a licence for any type of arms and ammunitions except as enumerated in coltimn 2 of the said Notification Table. The relevent enumeration is to be found under No. 1. This enumeration reads about the other exemption of arms which have not been exempted free the requirement of licence. As regards revelvers and pistols it has been noted that .455 inch or any intermediate bore" revolvers and pis-

43. The learned defence Counsel Mr Sirajul Huq has submitted that bare expression .455 inch or any intermediate bore" by itself does not bear any meaning and conception because in this expression the other and for the determination of intermediate weapons calculating from .455 inch has not been provided. So if we start free one point, namely. .455 inch we 60 not inow be which point we shall have to travel in order to find out the intermediate bore. Therefore, the learned defence counsel has implored upon the court to go back to the original table of 1924 wherein in a similar table, which has been repleaced by the present one by way of amendment, it has been mentioned"..... the pistol is and revolvers of .441 or any intermediate bore" Accordingly, Mr. Strajul Huq wants to count the intermediate bore as weapons of those bores which come in between .441 inch and .455 inch. For this interpretation the learned counsel has relied on the rule of interpretation as embodied in the maxim, "Casus Omissus." The said learned counsel argues that since one of the end for calculation is missing in the Notification of 1973, such missing point is to be taken out, if there be any, from the original rule which the present rule has sought to amend.

tols have not been exempted

from the requirement of ob-

taining a licence to be held

and possessed even by the

late the intermediate bore between .441 and .455, then for all the questioned arms the President of the country does not require to obtain a licence.

44. As against the above argument, the learned Attorney General Mr Aminul Hug has argued that the line of interpretation of the intermediate bore advanced by the learned defence counsel is a misconceived one. The learned Attorney General, on the contrary has drawn the attention of the court to the circumstances leading to the replacement of 1924 Table by 1973 Table which is the present one. Mr. Aminul Hug. therefore, has argued "that in 1973, the country, soon after the liberation war, faced acute law and order situation due to the presence of variety of arms everywhere and almost at evhand. The then Government having thus felt

draw any part of Bangladesh from the operation of any prohibition of direction contained in the said Act. Mr. Strajul Hug putting emphasis on the expression "may exempt" has argued that the whole authorisation is for introducing a rule of exemption from holding licence rather than a rule of entangling a person for licence. Mr Sirajul Huq in this argument has, however, not spoken the whole truth about section 27 of the Arms Act. The truth in this section is that the Government may exempt any person or class of persons from the operation of any prohibition or direction contained in this Act, or the Government may exclude any description of arms or ammunition from the operation of any prohibition or direction contained in this Act, or the Government may withdraw any part of Bangladesh from the operation

and accordingly, he is under an obligation to obtain licence for their possession.

46. The defence plea that the accused as President of the country was exempted from holding licence or the arms and ammunition in question has no basis in law. Such being the position, the condition of exemption from holding licence having not been available Mr. Hussain Mohammad Ershad even though was President of the country is not also entitled to a period of six months time for presenting these arms in question to any police station as indicated in column 3, paragraph 2 of the said Notification of 1973, as was also argued by the learned defence counsel.

Point No. 6.

Whether the accused is guilty to the charges brought

against him. The learned Advocate



Deposed President Ershad appeared nervous when he was going to be tribunal to hear the judgement on Wednesday. — Star photo

the need for restriction of the possession of arms introduced the present "amendment" by which the Government excluded the number .441 inch bore and many other bores as it would appear on a comparative reading of the Table of 1924 and of 1973. By the expression "intermediate bore" the learned Attorney General wants to mean the arms starting from the bore .455 inch down to the lowest bore available in the country which is .220 inch bore and when so calculated, the pistols and their ammunition involved in this case fall within the category of fire-arms for which a licence has to be obtained for their possession even by the President. The learned Attorney General has, therefore, argued that considering the background of the circumstances necessitating the amendment of Arms Rules in 1973 there is no scope for reading any omission as read by Mr. Strajul Huq and accordingly, the maxim Casus Omissus has no scope of any application in this case.

45. At this stage the learned Advocate for the defence has argued that we should then go back to the original enabling section 27 of the Arms Act. 1878 under which the rule making authority has been exercised by the Government. With reference to the section 27 of the Arms Act, 1878 Mr. Strajul Huq has argued that the Government may from time to time by notification published in the official gazette, except any person or classes of persons from holding licence for any category of arms or with-

of any prohibition or direction contained in this Act. So the argument of the learned defence counsel that in 1973-Table referred to above, the Government by such amendment can only introduce exemption of any person or class of persons from the prohibition or direction contained in the Arms Act does not hold good. The other version of his argument that the Government cannot entangle any person for the sake of the operation of any prohibition or direction of the Arms Act may be true. But the point here is that under the 1973 Notification referred to above the Government has excluded the arms under the description .441 revolver or pistol and some other variety of arms as would appear from a comparative study of 1924 and 1973 Notifications is also permissible from the operation of any prohibition or direction contained in the Arms Act. And the learned Attorney General has rightly argued that the exclusion of .441 arms has been done within the authority of the rule making power of the Government. So in respect of that exclusion the principle of casus omissus is not to be attracted. Accordingly, on a consideration of the arguments of both sides the expression .455 or any other intermediate bore of revolver and pistols to be taken to indicate pistols or revolvers coming in between .455 inch and .220 inch. The result, therefore, is that the

for the defence has further argued that there has been an embellishment of the prosecution case as in the Ejahar and as developed during the course of trial. In that argument Mr. Sirajul Huq submits that in the Ejahar there is no date of occurrence while during the course of trial the prosecution shifted to build up the case with the accusation that the accused held unauthorised arms and ammunition during his stay at Sena Bhaban presumably between 1976 and 24.12.90. The learned defence Advocate has further argued that Ejahar is the "Bible of the prosecution case" and any departure from the case as in the Ejahar destroys the prosecution case and in support of this argument the defence counsel has relied upon 31 D.L.S. case Mafu Vs. The State, page 16 and 37 D.L.R., Dhaka Bench, page 237.

48. As against this the learned Attorney General has argued that there has been, in fact, no departure from the Ejaher story of the prosecution case. The date of occurrence in the Ejaher has been mentioned at its paragraph 9 as 24.12.90 and the F.I.R. Form Ext.2 at its relevant column has noted the same date as the date of occurrence. The learned Attorney General thereupon has argued that the evidence taken by the prosecution leads us to believe that the accused during the whole period of his stay at Sena Bhaban extending over several years including the period of his presidency committed the offence as alleged. To resolve the when and how the unauthorised arms in question got their entry in the Sena Bhaban. But it is no denying a fact that those arms were taken out unnoticed by the mother-in-law of Mr. Ershad when she took out many trunks full of articles from Sena Bhaban. From the evidence of F.N.2 we get categorically that Mr. Mustafizur Rahman referred to earlier brought these trunks full of arms to Sena Bhaban and handed over to the Inventory Committee. The accused in his statement under section 342 Cr.P.C. nowhere denied it. The possession of the arms in question and their control and keeping by the former President Mr. Ershad are admitted facts in the sense that he has claimed those arms to have obtained by way of gifts and that those were brought to Sena Bhaban for the purpose of inventory on 24.12.90 and also for the reason that Mr. Ershad claims to have surrendered them on 24.12.90. From the prosecution evidence also we get that these arms have been admitted to be the arms of Mr. Ershad as because by so saying not only the questioned arms but also other licensed arms were made over to the Inventory Committee by Mr Mustafizur Rahman who was a representative of the accused former President and a member of the Inventory Committee, and who has signed the report of the Inventory Committee as such and not only that the said Mr. Mustafizur Rahman made affidavits on behalf of the accused former President before the Hon'ble High Court in the Transfer Petition under section 526 of the Criminal Procedure Code and he also used to take delivery of various personal effects of the accused former President from the Sena Bhaban from time to time. The learned defence counsel has, however, in the course of his argument once raised the question that the accused former President appointed Mustafizur Rahman to work as his representative. But in view of the above duties performed by Mr. Mustafizur Rahman on behalf of the accused former President we can hardly accept the above argument of Mr. Strajul Huq, the defence coun-

difference in approach to the

time of commission of the of-

fence it can better be under-

stood if we put our attention to

the report of the Inventory

Committee Ext.5 and the

charge sheet submitted by the

investigating officer as well as

the Ejahar. From all these doc-

uments we can very well

gather that Mr. Ershad admit-

tedly lived in Sena Bhaban

since before be became Presi-

dent and as I could gather

from the argument of Mr. Sira-

jul Hug that Mr. Ershad lived

in that house since 1976 when

he was a top-ranking Military

Officer. There has been indeed

no evidence to show actually

49. Mr. Sirajul Huq has further argued that presentation of the arms by Mr. Mustafizur Rahman before the Inventory Committee is not the same thing as the recovery of unauthorised arms. In my view, this question is hardly of hearing in the present case for the determination of the period of possession, control and keeping of the unauthorised arms by the accused former President when we consider the circumstances of the case already discussed

Now to rebut the plea of embellishment of the prosecution case, particularly, as to the manner, time and place of

occurrence, there seems to have no cloud in the prosecution case. When the above circumstances are taken together we can safely hold that there has been no departure of the prosecution case as in the Ejahar and in the charge sheet submitted by Investigating Of-

ficer. 51. So far as the F.I.R. is concerned, it is the established principle of law that it is not a substantive evidence nor an encyclopaedia of the prosecution case. In this regard we may refer to F.L.D.. 1978, Lahore, page 1285.

52. In order to establish a charge under sections 19 (a) and 19 (f) of the Arms Act, the prosecution has to prove beyond all reasonable doubts that the accused has kept the arms in question in contravention of the provision of section 5 of the Arms Act which requires that there must be a valid licence for holding of firearms. Similarly, section 19 (f) of the Arms Act also requires that one who possesses and controls any arms must do so by observing sections 14 and 15 of the Arms Act which require that such possession and control must be under a valid li cence. In the present case admittedly there is no licence valid or invalid in respect of the arms and ammunition in question.

.30-06 Rifle Cartridges: 53. In this case 11 car tridges of the above marked rifle were recovered from a room of the Sena Bhaban itself. These were not handed over by said Mr. Mustafizur Rahman. Admittedly, .30-06 rifle is a rifle which is prohibited for anybody in the country. It is an admitted fact that the accused possessed one such rifle which was gifted to Army Museum in 1987. But 11 live cartridges were recovered from Sena Bhaban between 22nd and 24th of December, 1990. The possession and control and keeping of them have not been denied by the accused. The learned Advocate for the accused has submitted that it was due to inadvertence those cartridges were left over and that did not constitute a conscious possession, control and keeping. The learned Advocate for the defence has further argued that the accused had licence for the above rifle and thus for the above cartridges. In support of this contention the learned counsel by a petition filed on the last but one day before the completion of the hearing of argument two photo copies of licence alleging to have been issued, one by the Deputy Commissioner, Mymensingh and the other by the Office of the Deputy Commissioner, Dhaka, but those were not proved by producing the original licence and thus these were not accepted for consideration. So the liability for keeping of those prohibited bore ammunitions lies solely on the accused. In respect of these cartridges and in respect of the unauthorised arms as discussed above, the charges under section 19 (a) and 19 (f) of the Arms Act stand proved by the prosecution beyond all reasonable

In the result, the accused Mr Hussain Mohammad Ershad, former President of Bangladesh, is held guilty of the offence under sub-sections (a) and (f) of section 19 of the Arms Act, 1878 read with Special Powers Act, 1974 and is thus conducted thereunder.

> The Sentence 55. Mr Sirajul Huq, the

defence counsel, in respect of awarding sentence has argued that the latest amendment dated 13.12.90 of section 19 a of the Arms Act, 1878 shall not be applicable to the present case as the accused left Sena Bhaban in the noon of 12.12.90. Relying on the article 35 of the Constitution of Bangladesh, he has further argued that the law that existed on 12.12.90 would apply. Mr Strajul Huq continuing his argument urged upon the court that the accused had no control and possession over Sena Bhaban since mid-day of 12.12.90 and accordingly whatever was recovered thereafter from Sena Bhaban did not relate to the possession and control of the accused.

56. The learned Attorney General, on the contrary, has argued that it is true that Mr. Ershad had no control over the Sena Bhaban since midday of 12.12.90, but the fact remains that the unauthorised arms and ammunition were handed over to the Inventory Committee on 24.12.90 by the representative of Mr. Ershad; and that the prohibited bore of ammunition of .30-06 rifle was also recovered from Sena Bhaban between 22.12.90 and 24.12.90. So the law as stood on 24.12.90 would apply and not the law as it stood on 12.12.90.

57. Mr Aminul Hug, the learned Attorney General, has further argued that during the course of trial evidences also came to that effect and the accused was fully aware of the case and the evidences.

58. Having examined the above arguments of both sides. the contention of the learned Attorney General is considered more pertinent to the facts. circumstances and evidences on record and thus accepted.

59. Section 19 A of the Arms Act, 1878 is the penal section for the commission of the offence under sub sections

(a) and (f) of section 19 of the said Act, particularly in respect of the pistols and revolvers and their ammunition. Further section 19 A supersedes the penal provision of section 19 of the Arms Act.

The most minimum punishment under section 19A of the Arms Act as it stood after the amendment of 13.12.90 is rigorous imprisonment for a term which shall not be less then ten years. Previous to the above date of amendment any shorter term was permissible - but not now.

61. Hence Ordered that accused Hussain Mohammed Ershad, former President of Bangladesh, is held guilty to the charges under sub-sections (a) and (f) of section 19 of the Arms Act and is convicted thereunder and sentenced to suffer rigorous imprisonment for a term which shall not be less than 10 (ten) years. It is further ordered that the period already spent in custody will be counted towards the sentence. The charging of the most minimum sentence, in my view, would

meet the ends of justice. 62. It is further ordered that the arms and ammunition in question are confiscated to the State under section 24 of the Arms Act and that those be preserved in the Toshakhana of Banga Bhaban as per rules.

> (Mohammad Habibullah) Senior Special Tribunal

Typed to my dictation and corrected by me. Senior Special Tribunal.

Steps to preserve

cattle urged A delegation representing BROTHI, a group of young people committed to ecologically and economically sustainable development met the Minister for Environment and Forests. Livestock and Fisheries Abdullah-al-Noman on

Thursday, says a press release. The delegation impressed upon the State Minister the need for a vigorous drive for cattle preservation, particularly in view of the depletion of the stock in the recent eys clone and tidal surge.

They pleaded for measures to stop indiscriminate slaughter of cattle, and increasing the number of meatless days.

ML demands withdrawal of fresh taxes

Md Ayenuddin, former leader of Muslim League Parliamentary Group has de-

the proposals for price reduc-

manded withdrawal of new taxes proposed in the national budget for 1991-92.

By Staff Correspondent Keramat Ali

He, however, appreciated tion of some agricultural in-

Stock Exchange chief welcomes budget

Accordingly, if we now calcu-

By Staff Correspondent

The Chairman of Dhaka Stock Exchange, Khawja Abdul Quddus, termed the proposed budget as pragmatic and production-oriented.

In a statement on Wednes day, he said it was not possi ble to prepare a more balanced budget than the proposed one in suche a proble...-ridden country.

The strongest point of the proposed budget is the unambiguous declaration for implementation of the denationalisation policy, he stated. He welcomed the proposal for selling government property and shares worth taka 50 crore in the next fiscal year, as it was a specific step towards the implementation of the denationalisation policy.

Shahabuddin visits ailing

Acting President Justice Shahabuddin Ahmed visited the ailing Commerce Minister M Keramat Ali at the Institute of Cardio-Vascular Diseases at Suhrawardy Hospital here Thursday morning, reports

Additional Tk 200 cr to be mobilised from income tax

Finance Minister M Saifur Rahman has said Taka 200 erore would be derived as net increase of revenue in the income tax sector in the next fiscal year, reports BSS.

Presenting the national budget at the Jatiya Sangsad on Wednesday he said Taka 78 crore would come from income tax as a result of some new measures. Administrative reorganisation and reform would yield an additional revenue of Taka 200 crore. But he said, some welfare measures would cut the revenue by about Taka 78 crore leaving a net increase of Taka 200 crore in the income tax sector.

The Finance Minister said the State Exchequer was being deprived of revenue due to administrative inadequacy. A great number of prospective assesses remained outside the tax net and even those within its purview found it easier to dodge the tax department, he

Rahman said some important reorganisation and reform measures in the income tax administration have been taken to achieve the budget

target for income tax and meet the challenging needs of increased internal resources in the coming years.

pistols including their ammu-

nition in the present case fall

within the category of prohib-

ited bores in respect of the

President of the country also

— Metropolitan —

The measures taken include setting up tax offices in the newly created districts, division of the over-burdened taxes circles, creation of an independent and effective survey zone to identify new assesses, creation of some posts of commissioners (appeals) to meet the end of justice and reorganisation of the taxes appellate tribunal.

Mr Saifur Rahman said the main objectives of the measures were to broaden tax base, encourage investment for industrialisation, harmonise tax laws with the welfare needs of the people and to strengthen the role of income tax through administrative reorganisation in the context of over-all resource mobilisation. He hoped that the new measures would enable to unearth the new tax payers and control tax evasion.

The Finance Minister proposed the withdrawal of compulsory submission of wealth statement for individual

assesses having a total income not exceeding Taka one lakh as against the existing Taka 40 thousand.

Satfur Rahman, in his bud get speech, also said that the existing surcharge levied at the rate of 15 per cent on income should be withdrawn. He said surcharge which was a distortion in the taxation system should not be continued indefinitely.

He proposed the continuation of the tax-holiday scheme up to 1995 instead of 2000. He said though the scheme was encouraging investment and industrialisation, it was necessary to reschedule the time period of this scheme for periodic evaluation of its utility and effectiveness at reasonable in-

Rahman said in the interest of revenue earning the existing exemption of entertainment allowance, an additional element of salary should be withdrawn to bring it under the purview of tax.

With a view to removing gross irregularities concomitant with the issuance of certificate for transfer of property

as alleged and helping an intending seller of not having to go through the lengthy legal formalities," the Finance Minister proposed to dispense with the existing provision in the case of transfers of immovable property located in urban areas by individual transfers and collect tax at the rate of five per cent by the registration authorities at the time of registration of transfer deeds.

Saifur Rahman, in his speech, made a proposal for lowering the ceiling of investment allowance to 30 per cent of total income or Taka one lakh which ever is less in place of the present fixed rate of one-third of the total income or Taka two lakh which ever is less in the interest of mobilis-

ing domestic resources. To encourage investment in housing, the Finance Minister proposed exemption of capital gains arising from transfer of vacant residential lands in case the gain was invested in the acquisition of new residential house property within two

Rahman also suggested for acceptance of the income tax returns filed by the public limited companies, sector corporations and nationalised banking, industrial and business enterprises as correct and complete subject to the fulfilment of certain conditions to create atmosphere for collection of revenue

Soweto Day to be observed June 16

International Day of Solidarity with the struggling people of South Africa, popularly known as Soweto Day, will be observed worldwide on June 16, reports BSS.

The day is observed in accordance with a United Nations General Assembly (UNGA) resolution adopted in

On June 16 of 1976, in the West Township

Sangskritik Jote confce today

The day-long conference and council meeting of the Sammilita Sangskritik Jote will be held at Mahila Samity auditorium in the city today

(Friday) Veteran "Gono Sangeet" performer Sheikh Lutfor Rahman will inaugurate the con-

ference at 10 am. Eminent lawyer Syed ishtiaque Ahmed will be the chief

lease said.

A cultural programme will be held at 7 pm, a press re-

(Soweto), the South African police opened fire on a crowd of demonstrators who were demanding a better education for black students, with less crowded schools, better qualified teachers, more adequate facilities and the right to choose the medium of instruction. Hundreds were shot dead and many wounded, including a great number of school chil-

The UNGA, by a resolution adopted on November 9 of 1976, proclaimed June 16 as the International Day of Solidarity with the struggling people of South Africa.

The resolution calls upon all member states to commemorate the Day in the most fitting

In observance of the Soweto

Day, the United Nations Association of Bangladesh (UNAB) in co-operation with United Nations Information Centre (UNIC), will hold a discussion meeting on June 16 at 5:00 pm at the centre premises.

Prof Salahuddin Ahmed will preside over the meeting.