

Bangabhandu Murder Trial: Dark Chapter Finally Closed

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The Appellate Division of the Supreme Court on 19th November upheld a verdict of the High Court Division that handed down death sentences to 12 former army officers in the Bangabandhu murder case, sealing the gruelling and long-disrupted proceedings of 34 years.

People from across the social spectrum in the country hailed it as a landmark verdict, closing a dark chapter in Bangladesh's past.

The long-awaited judgment has cleared the way for hanging of all 12 men convicted of the 1975 assassination.

Why delay in the trial process?

Justice was denied immediately after the assassination, with the notorious indemnity ordinance.

The Awami League government revoked the indemnity ordinance in 1996 and when challenged the AL government's action, the High Court confirmed the Indemnity Ordinance as unconstitutional.

The High Court verdict cleared the way for the trial. The case was finally filed on Oct 2, 1996 with Dhanmondi Police Station against 24 persons.

In November 1998, the Dhaka Sessions judge convicted 15 out of 19 original accused defendants to commit murder Bangabandhu and sentenced each of them to death.

Since no person cannot be hanged without the approval of the High Court, in June 2000 the case was heard by a bench of two judges of the High Court.

Since the two judges disagreed on whether 5 of the defendants should be acquitted, the case was referred to a third judge and in April 2001, the judge ruled that 3 of the 15 convicted defendants should be acquitted.

Following the High Court's decision, 5 convicted defendants then lodged appeals to the Appellate Division. Since some of the judges felt "embarrassed" to hear the case in 2002, there were no judges available to hear the appeal.

The then Chief Justice Mahmudul Amin Chowdhury then made a request to the government for judges to be appointed on ad hoc basis to hear the appeal but the government did not take any action. The then Law Minister Moudud Ahmed reportedly stated that the government was not able to do so due "to legal complexities."

When Awami League came to power in January this year, President Zillur Rahman in July 2009 appointed four senior-most judges of the High Court Division as judges of the Appellate Division of the Supreme Court, raising the number of the apex court judges from 7 to 11.

A 5-strong bench of the Appellate Division, headed by Justice Mohammed Tafazzal Islam, was constituted to hear the appeals and the apex court took 29 days to hear all arguments.

The Appellate Division rejected the appeals of five of the convicts, to have their death sentences commuted, while seven are fugitives.

Justice Islam, in his six-minute delivery, upheld the verdict of the third High Court judge made in 2001. He said the convicts were not in active service during the killings and that there was no legal error by holding their trial under civil law instead of army law.

The judge said it was not a mutiny, but a conspiracy to kill Bangabandhu. He also said the trial court and the High Court gave valid reasons for the 21 years of delay in filing of case.

The condemned men were not present in the courtroom when Justice Mohammed Tafazzal Islam presented the judgment at 11:47am.

Prime minister Sheikh Hasina said justice was served as the Appellate Division of the Supreme Court upheld the death sentences of her father's killers.

She was at her official Jamuna residence as the verdict was delivered at 11.56am, getting a call within minutes, said those who were with her.

"We got justice," said Hasina, whose mother, three brothers, uncles, aunts and cousins were killed alongside father Sheikh Mujibur Rahman on Aug 15, 1975.

What next?

The condemned men-- Syed Faruk Rahman, Mohiuddin Ahmed, Bazlul Huda, AKM Mohiuddin Ahmed and Sultan Shahriar Rashid Khan— were informed of the verdict in jail.

Article 105 of the constitution gives scope of a petition to the Appellate Division to review the ruling. They can submit a review petition within 30 days. If they win their appeal, on the other hand, the prosecution may submit the same.

"The convicts will have the scope to file review petitions. The efficacy of the execution will be halted until resolution of the petition," chief prosecution counsel Anisul Haque told bdnews24.com.

The execution of the death sentence is postponed if the defendant notifies the government

and jail authorities of the filing of a review petition.

A defence counsel, Barrister Abdullah Al Mamun, has said a review petition would be filed immediately on the rejection of the appeals.

A review petition seeks to have the appeals verdict stayed on any "error apparent on the face of the record". The 30 days are counted from the day of receiving the verdict copy in hand. 99% per cent of review petitions is unsuccessful, according to lawyers.

If their review petitions are rejected, the last resort for a condemned man is to seek a presidential clemency under Article 49 of the constitution.

Article 49 states: "The President shall have the power to grant pardons, reprieves and respites and to remit, suspend or commute any sentence passed by any court, tribunal or other authority." However, this presidential power is required to be exercised "in accordance with the advice of the Prime Minister" under Article 48.3 of the constitution.

Ordinarily clemency or mercy petition is lodged within seven days from the disposal of the review petition.

If the clemency is denied, their execution will take place between 21 and 28 days, according to the Criminal Procedure Code.

State minister for law Qamrul Islam told reporters at the Secretariat on 19th November: "It will take a month and a half to implement the verdict on completion of all legal procedures. The verdict can be executed either at the end of December or at the beginning of January."