

**FULL COURT REFERENCE BY HON'BLE SHRI C. MOOKERJEE,
CHIEF JUSTICE, HIGH COURT, BOMBAY, TO THE LATE HON'BLE
SHRI SABYASACHI MUKHARJI, CHIEF JUSTICE OF INDIA, IN COURT
ROOM NO 46, HIGH COURT, BOMBAY ON FRIDAY 28TH SEPTEMBER
1990**

Shri Bobde, Advocate General, Shri Solkar, Additional
Government Pleader, Shri Chagla, Shri Apte, Shri Damodar and Members
of the Bar :

It is my mournful duty to make reference to the untimely and unexpected death on 25th of this month of Chief Justice Shri Sabyasachi Mukharji. His death is more poignant because he departed on the very first day of the Bengali festival which marks triumphs of the Good over the Evil and also the time for home every one's coming. But he left for ever his hearth and home. To me it is almost a personal bereivement because I have known Chief Justice Mukharji for nearly 50 years.

He was a second son of the late Rai Bahadur Bijoy Bihari Mukharji, who was member of the Bengal Provincial Civil Service and had become the Director of Land Records of undivided Bengal. Late Sabyasachi Mukharji was born on 1st June, 1927. He matriculated from Mitra Institution, Bhowani pore, a well known school in South Calcutta, in 1942. I was a student of the same school and was two years junior to him. The late Mukharji was alumunus of the presidency College, Calcutta. In the year 1946, he graduated with Honours in Economics. I had read the same subject two years later in the same college. After graduation, he proceeded to England and called to the Bar from Middle Temple.

Even in his young days I was impressed by his quietness, determination and independent thinking. He had been a little aloof and continued to have a certain amount of reserve even when he joined the legal profession and later rose to the Bench. While a student at the Presidency

College, he was elected as the General Secretary of the College Union. On the eve of Independence there was prolonged unrest and there was some difference in approach between the students of our college and those of the other colleges in Calcutta. I recall that he had handled the situation with cool headedness. During that period and in his student days in England he had been close to the Congress Socialists. In the year 1949 he joined the Calcutta Bar and soon picked up good practice. He also used to appear on behalf of the Income Tax Department. His elder brother Dr. Prasanta Behari Mukherji was also an eminent member of the Bar and at a very early age he was elevated to the Bench. Ultimately became the Chief Justice of the Calcutta High Court. Both the brothers had some common traits and in other ways they were very dissimilar. The late Shri Mukharji who became a Judge of the Calcutta High Court in July, 1968, may not have in equal measure the scintillating intellectual powers of his elder brother, but he more than made it up by his quietness, sterling honesty and deep dedication to his duties. In April, 1969, I myself became a Judge of the same High court.

I recall with pleasure that in those days Judges of the Calcutta High Court formed a happy family. The late Mr. Mukharji made his name as an independent and a forth-right Judge. During this period, he was also called upon to perform other public duties. He had served as a Member of the Administrative Reforms Committee. Later on, he was one of the Members of the Finance Commission appointed in the year 1982. Shortly after he came back, he was appointed as Acting Chief Justice of the Calcutta High Court. He served in that capacity for a fortnight only and was elevated as a puisne Judge of the Supreme Court. While serving as Judge of the High Court he did not brook any interference in his work. I recall, on one occasion he had granted an interim injunction in a matter concerning the preparation of electoral rolls. The matter was taken to the Supreme Court. The Supreme Court after making some harsh observations, fixed a particular date by which the late Shri Mukharji was to dispose of the matter. Evidently he resented these directions and did not hide his displeasure in being dictated to decide the case by a fixed date. He recorded the same in his judgment.

As a Judge of the Supreme Court and later on as Chief Justice, the late Shri Mukharji acted in equal measure of ability and honesty and always exhibited in anxiety to do justice according to law. His decisions reflected his erudition and his keen sense to do justice.

In recent past there have been certain happenings which deeply moved him. His reaction also showed the true person that he was. He expressed deep anxiety to keep up judicial independence and to uphold the

rule of law. But he was not unmindful that the Judges have abiding commitment to the Society and, therefore, the Judges must remain above suspicion. His opinion was that Judges are accountable not in the manner some of the Bar Associations might think. But he acknowledges the need for maintaining the accountability and credibility of Judges. It is rather unfortunate that he passed away at a time when we are thinking of forging some machinery by which, without compromising judicial independence, continuance of great traditions of judicial independence and integrity can be ensured. Late Shri Mukharji, for the first time, had called this year a joint conference of the Chief Justices and Supreme Court Judges to discuss these issues. This year's Chief Justices' Conference was called comparatively early and Justice Mukharji appeared to be in a hurry possibly the destiny was beckoning to him. He presided over both the Chief Justices' Conference as also the Joint Conference. I was very much impressed by his quiet manner in which without being obstructive he allowed all participants to express their views. At the end, he summed up the consensus of the views in the Joint Conference of the judicial credibility. It is a matter of regret that his task remains unfinished. The late Shri Mukharji has died prematurely. His death is a severe loss for the judiciary and the country at large. The best way to pay homage to him is to continue and accomplish the things he left incomplete. We ought to achieve the object of maintaining judicial independence and at the same time to keep it beyond reproach. As he himself said in a slightly different context, we must endeavour to untangle the Judges from the difficulties which they now face.

We mourn the death of late Shri Mukharji. May his soul rest in peace. Our hearts go out to his wife Smt. Ratna Mukharji and his daughter. It may be some solace to them to know that their grief is being shared by all of us in this country.

28th September 1990

SPEECH BY SHRI A. S. BOBDE, ADVOCATE GENERAL .

My Lord the Chief Justice and his companion Justices.

Our Chief Justice of India has been suddenly snatched away from us. Till the last day he struggled to maintain the dignity of judicial process in the country. Last few months, however, he was little sad – sad like a dreamer whose ideals were questioned by unfortunate turn of events. And with that he experienced a sense of isolation which one has to endure when the values are sought to be rendered opaque. It is possible that Shri Justice Sabyasachi Mukharji will quarrel even with the angels when he meets them to see that Courts in this country continue to hold the scales even.

My Lords, a somewhat stable and predictable world of yesterday has given rise to an unstable and unpredictable world of today. And the indications are that the future will be even less like the present than the present is unlike the past. We are not merely facing a change; it is a change bordering on chaos. More than ever, we now needed the stabilising of presence of our Chief Justice in our midst.

Chief Justice Sabyasachi Mukharji was, true to his name, gentle and brave. He stood for the cause and bore the cross bravely. Perhaps, all Chief Justices from Calcutta are so. Chief Justice S. R. Das, another Chief Justice of High Court I shall not name here out of propriety.

Even in these cynical times one must ask a moral question: when shall we share our credibility with the citizens who look to Courts as the only hope ? This is what Chief Justice Mukharji was striving for. Out late Chief Justice stood out like a beacon of hope, security and integrity in public life. He represented what is best in our judiciary, and the best in our judiciary is nothing but admirable. His integrity was indeed like Ceasar's wife. He commanded without effort the affection of the Bar, the respect of the litigant and the willing co-operation of his colleagues. He was firm without being harsh; he was quick of grasp without being impatient; he was gentle without being weak; he was unbending against arbitrariness and injustice, but never shunned the great quality of mercy which must for every tamper true justice.

May his soul rest in peace.

28th SEPTEMBER 1990

**SPEECH OF MR. H. A. SOLKAR, ADDITIONAL GOVERNMENT
PLEADER, HIGH COURT BOMBAY.**

My Lords,

I associate myself fully with the sentiments expressed and tributes paid by my Lord the Chief Justice and the Learned Advocate General to the Chief Justice of India late Sabyasachi Mukharji. It is indeed a cruel irony of fate that Justice Mukharji should have met a sudden death in a foreign country away from his nears and dears. When Justice Mukharji left India on 10.9.90 to attend the conference of appellate judges in Washington, nobody imagined that the destiny will be awaiting for his life on his way back to his home. On this occasion, I remember the famous dialogue of Shakespear that "the world is a stage, a man is an actor, he plays his part and goes away". Mr. Justice Mukharji had a lucky role of judicial officer and had reached the highest place in the judiciary. However, the destiny did not allow him to complete his role.

Justice Mukharji was born on 1.6.1927 and had his early education at Calcutta. He graduated in Economics with Honours from Calcutta University and was called to the Bar by the Society of the Middle Temple, London, in 1946. He was elected General Secretary of the Presidency College Students Union in London in 1946. He also held the post of General Secretary of the Indian Socialist Group in 1948-49. After his return from London, Justice Mukharji was enrolled as an Advocate of the Calcutta High Court in November, 1946 and thereafter as an Advocate of the Supreme Court of India. He was highly respected by the members of the

Bar and had made his mark in the profession. He was standing Counsel for the Income Tax Department in Calcutta for ten years between 1958-68. He was also a member of the study team on Administrative Tribunal under Administrative Reforms Commission 1964-65.

Justice Mukharji was elevated to the Bench of Calcutta High Court on 31.7.1968 as a permanent Judge. He was appointed as a Member of the 8th Finance Commission in June, 1982. He was appointed as Acting Chief Justice of Calcutta High Court on 1.3.1983 and soon appointed Judge of the Supreme Court of India on 15.3.1983. After six years, he was appointed Chief Justice of India on 18.9.1989. Justice Mukharji had still two years to go in that office when the cruel hand of death has brought sudden end of his brilliant career.

A death of a person is a certainty but the beauty lies in its uncertainty. This is how a poet says;

Aagah Apni Mout se Koi Bashar Nahi

Saamaan Sau Baras Ka hai Pal ki khanbar Nahi.

My Lords, in passing away of Justice Mukharji, our judiciary has lost a great Judge and the nation, a great son.

At the end, I would only pray to the Almighty that the departed soul may rest in eternal peace.

28.9.1990

SPEECH BY SHRI I. M. CHAGLA :

Some 38 years ago we lost the first Chief Justice of Independence India, Sir Harilal Kania. Then, as now, the full Court met in this very hall to mourn his passing away. It was said then that the Supreme Court was in its infancy and the talent and experience of the late Chief Justice would be greatly missed.

To-day, the loss of the 20th Chief Justice will be felt no less, although for a different, though no less important reason. Apart from his undoubted talents and achievements to which My Lord the Chief Justice and my colleagues have referred, Chief Justice Sabyasachi Mukharji found himself dealing with one of the greatest threats to our judicial system, the impairment of public confidence. It was a problem he faced unflinchingly and with a sincerity of purpose and a firm resolve.

Since assuming the office of President of the Bombay Bar Association, I had occasion to meet the late Chief Justice several times. I was always received without formality, with the utmost courtesy, and most importantly, with a deep sense of understanding of the problems of the Bar and the Court. Chief Justice Mukharjee acknowledged that the judiciary was at a water-shed and he declared that he was determined to establish conventions for the future, some of which might be unpalatable and some of which he was conscious, might even be challenged. That he did not shirk

from what he considered to be the duty of the Chief Justice, unpleasant thought it might be, is proved by the bold and unprecedented action he took in the matter of one of his own colleagues in the Supreme Court.

We the members of the Bar can only hope that the reformation upon which the late Chief Justice had embarked will not be derailed by his untimely departure but will be consummated : this, I believe, is how best we can honour his memory.

On behalf of the Bar may I extend our deepest sympathies to his widow and his only daughter.

28-9-1990

SPEECH BY MR. B. P. APTE :

My Lords, on behalf of the Advocates' Association of Western India, I associate myself with the feelings expressed by My Lord the Chief Justice and my colleagues here on the sudden demise of the Chief Justice of India. His untimely death came as a great shock to the legal community and the nation has lost of leader of a very vital limb of the body-politic at a very crucial stage.

In the demise of Chief Justice Mukherjee, the legal fraternity has lost a protector and a reformer. Chief Justice Mukherjee had certain convictions about the independence of the judiciary. He wanted to zealously guard that independence and the insulated immunity for the higher and highest judiciary, but at the same time he was aware of the principle of accountability which is the hallmark of any democratic system. He believed in the principle of judicial accountability and as such had the courage of asking one of his colleagues to proceed on leave to clear the matters.

During his tenure, for the first time in the history of independent India, a machinery was sought to be created to go into matters pertaining to the credibility of the judges of the highest Courts. He has left us with the task in a way unfinished. I believe that those who follow him will be guided by the spirit and by the convictions with which he lived. Chief Justice Mukherjee had his convictions and more important, had the courage of his convictions.

People with the courage of their convictions can exercise moral authority and I may say that such persons are getting rarer and rarer. In the circumstances, this Chief Justice led us in upholding the independence of the judiciary and in making even the judiciary accountable. His loss will be felt by everybody for a long time to come. Chief Justice Mukherjee was "Sabyasachi" in every sense of the term. Etymologically, the word may mean that a person can use both his hands with equal efficacy, but as a term of art, the word means a man with versatile talents. The versatility of the talents of the Chief Justice is there in the reports to see for everybody, but the versatility as an administrator, as the leader was witnessed by us during his short tenure as the Chief Justice of the country. He came to Bombay to address the Young Lawyers Conference organised by our Association. He met the young lawyers for several hours and thereafter as the President of the Association, I had several occasions to meet him in Delhi and my experience has been identical with the experience of Mr. Chagla.

His gentleness, his informality, his candidness and his steel which he showed when he accepted or rejected certain suggestions was a matter of experience which one has only to meet him and share. It is a great loss, therefore, to the community and I believe that his spirit will guide us in the days ahead which are very crucial, which are very critical and which can determine the destiny of this country.

We share the grief of his bereaved family and pray to God that his soul may rest with eternal peace.

28th September 1990

**SPEECH BY SHRI D. D. DAMODAR, PRESIDENT, BOMBAY
INCORPORATED LAW SOCIETY**

My Lord the Hon'ble the Chief Justice,

When we have met here today on this sorry occasion to mourn the sad, sudden and untimely death of the Chief Justice of India Shri Justice Sabyasachi Mukharji, I, on behalf of the Bombay Incorporated Law Society, associate myself with the sentiments expressed by Your Lordship and my other colleagues at the Bar.

It was very recently that I had the good fortune to meet Shri Justice Mukharji for the first time at a social function hosted by My Lord the Chief Justice when he was the Acting Governor of Maharashtra. Seldom did I know that that was the last time I would be meeting him. I was deeply touched by the humility, soft spoken tone and gentlemanliness of Shri Justice Mukharji when he greeted and addressed various persons present. His smiling face and affable personality and his unassuming behaviour, though holding the pride of the place of the highest judiciary post of the country, completely disarmed me.

As already recounted by my other colleagues today, Shri Justice Mukharji was responsible for many land-mark achievements.

Though soft spoken and of affectionate nature, Shri Justice Mukharji carried the burden of his Office with strict discipline and firmness of action. He was known to be a balanced and progressive Judge and he had tactfully handled the judicial crisis. His contribution to the judicial

system could have been further enhanced but for his untimely death.

He was known to be a man imbued with tradition, culture, erudition, sound knowledge of law and deep sense of justice and fair-play.

In his death we have or rather India has lost a very independent and unbiased jurist and above all a gentleman to the core.

On behalf of the Bombay Incorporated Law Society, I extend my most heartfelt condolences to the members of his family.

May his soul rest in eternal peace.