

DECISION AND JUDGMENT

Mr. Justice Shafiur Rahman

In common parlance 'decision' or 'judgment' is the pronouncement of the conclusion drawn by the Court on the controversy involved in the matter before it. As defined in the Encyclopaedia of the Laws of England, "judgment is the determination of a Court declaring the rights to be recognized and the remedies to be awarded between the parties upon fact found by the Court or Jury, or admitted by the parties or upon their default in the course of proceedings instituted for the redress of a legal injury. According to Chambers Twentieth Century Dictionary judgment means "act of judging; the comparing of ideas to elicit truth; faculty by which this is done, the reason; opinion formed; discrimination; good taste; sentence; condemnation. "Stround says, "Judgment is the sentence of the law pronounced by the Court upon the matter contained in the record and the decision must be one obtained in an action."

2. Judgment is thus a decision or sentence of a Court in a legal proceedings coupled with the reasoning therefore. An action in law or the legal proceedings is essentially aimed at providing justice to the aggrieved persons. Justice is not something one can see. It is the product of a Judge's spirit and not merely his intellect. As Lord Denning would call it, "the nearest we can get to define justice is to say that it is what the right minded members of the community those who have right spirit within them could believe to be fair."

3. The true philosophy of an ideal judgment is inseparable from the concept of justice. In other words, the ultimate object of the decision or judgment of a Court is the dispensation of justice.

4. It, therefore, appears appropriate to know succinctly the meaning of the word 'justice'. It might be of interest and my preference would obviously be to first go to the very basic source of Islamic jurisprudence i.e. Holy Qur'an to see what concept of justice can be derived therefrom. In Qur'an, the mandate regarding justice which leaves no room for deviation is an under: -

SURA "NISA"

(58) Allah doth command you
To render back your Trusts
And when ye judge
Between man and man,
That ye judge with justice:
Verily how excellent
Is the teaching, which He giveth you!
For Allah is he who heareth
And seeth all things.

(105) We have sent down
To thee the Book in truth,
That thou mightest judge
Between men, as guided

By Allah: so be not (used)
As an advocate by those
who betray their trust:

(135) Aye who believe!
Stand out firmly
For justice, as witnesses
To Allah, even as against
Yourselves, or your parents,
Or your kin, and whether
It be (against) rich or poor:
For Allah can best protect both.
Follow not the lusts
(Of your hearts), lest ye
Swerve, and if ye
Distort (justice) or decline
To do Justice verily
Allah is well acquainted
With all that ye do.

SURA MA-IDA

(8) O ye who believe!
Stand out firmly
For Allah, as witness
To fair dealing, and let not
The hatred or others
To you make you swere
To wrong and depart from
Justice. Be just: that is
Next to Piety: and fear Allah,
For Allah is well acquainted
With all that ye do.

(42)
If thou judge, judge
In equity between them.
For Allah loveth those who judge in equity

5. The sayings of Holy Prophet are also replete with guiding principles which emphasise the need for being just and perfectly honest.

6. 'Justice' has been defined in almost similar terms in most of the dictionaries of the world. This word as it finds mention in Webster's New International Dictionary, means:

"The maintenance or administration of that which is just; just treatment; merited reward or punishment; that which is due to one's conduct or motive; administration of law; the establishment or determination of rights according to the rules of law or equity; conformity to truth or right reason; rightfulness."

In Encyclopaedia Britannica, it has been defined as:-

"A term used in the abstract for the quality of being or doing what is just i.e. right in law and equity."

In Black's Law Dictionary, it finds mention in the following words:-

"The constant and perpetual disposition to render every man his due; the conformity of our actions and our will to the law."

In Obsorn's Concise Dictionary 'Justice' means:-

"The upholding of right; and punishment of wrongs, by the law; the constant and perpetual wish to give each man his due."

7. From the above, the precise conclusion that can be drawn is that 'justice' in itself is a virtue. In essence it means constant and perpetual disposition to render to every man his due and is, therefore, an act of rendering what is right and equitable to one who has suffered wrong.

8. Permit me to say, 'Justice' is the greatest interest of man on earth. It is the ligament which holds civilized societies as nation and then civilized nations together. Wherever the temple of justice stands and as long as it is duly honoured there is a foundation for social security, general happiness, and for the improvement and progress of our race. And whoever labours on this edifice with usefulness and distinction and whoever clears its foundation, strengthens its pillars or contributes to raise its august dome still higher in the skies, connects himself in name and fame and character with that which is and must be as durable as the frame of human society.

9. Coming now to the legal fiction of the subject under discussion, I may refer to various provisions of law governing the decision and judgment. Section 2(9) of the Civil Procedure Code, 1908 defines "judgment" as a statement given by the Judge of the grounds of a decree or order. Order as defined in Section 2(14) of Civil Procedure Code 1908 is a formal expression of the decision of a civil court which is not a decree. And 'Decree' is the formal expression of an adjudication, which as far as regards the Court expressing it, conclusively determines the rights of the parties with regard to all or any of the matters in controversy in the suit.

10. Order XX Rule 1 of Civil Procedure Code provides that the Court, after the case has been heard, shall pronounce judgment in open Court, either at once or on some future day of which due notice shall be given to the parties or their pleaders. Rule 3 *ibid* says that the judgment shall be dated and signed by the Judge in open Court at the time of pronouncing it and, when once signed, shall not afterwards be altered or added to, save as provided by Section 152 or on review.

11. The accumulative effect of these provisions and the general comprehension of what has been stated above is that a judgment in Civil suit should contain:-

- (i) the concise statement of the case;
- (ii) the points for the determination of issues;
- (iii) the decision of court with regard to the issues; and
- (iv) reasons for the decision.

12. Accordingly, judgment is supposed to comprise the points for determination and the findings thereon along with the reasons for the findings. In the absence of these points it is no a judgment in the eye of law. The expression of reasons is, in fact, a demonstration that justice is done and that Judge had applied his mind to the facts and arguments in the case before arriving at the conclusion. Hence, the judgment should, not only state the evidence, but also the findings and how it supports the findings. Even an ex parte decree or order should be self-explanatory. Omission to give reasons for the findings is a material irregularity amounting to an illegality, which may vitiate an otherwise just decision.

13. Appreciation of evidence is cardinal principle of dispensation of justice. The acceptance or rejection of evidence should depend upon the consistency it has with the case of the party and on the test of cross-examination as well as its co-relation with other circumstances of the case. Instead of simply enumerating the evidence, it has to be logically weighed on the basis of well-known and well-settled principles of law. A careful analysis and appraisal of evidence is, therefore, an absolute necessity in the interest of justice. In the absence of proper reasoning even a finding of fact is open to challenge in Second Appeal. It is a matter of common sense and has been repeatedly emphasised by the Superior Courts in their judicial pronouncements that a judgment cannot be based upon the personal knowledge of the Presiding Officer or suspicion, conjectures or surmises but should be based upon the evidence on the record and be supported by it. It must indicate a judicial appreciation of the circumstances and must show that the court has applied its conscious mind to the case without fear and favour. In suits in which issues have been framed, the court has to state its findings or decisions separately on each issue unless the findings on any one or more of them is sufficient for the decision of the suit.

14. Chapter 11-A of volume-I of the Rules and Orders of High Court inter alia lays down the following guiding principles for preparation and delivery of judgments:-

- (1) When the trial in Court is over, the Judge should proceed at once or as soon as possible, to the consideration of his judgment. It is essentially necessary that he should do so while the demeanour of the witnesses and their individual characteristics are fresh in his memory. He should bear in mind that his first duty is to arrive at a conscientious conclusion as to the true state of those facts of the case about which the parties are not agreed. The oral and documentary evidence adduced upon each issue should be carefully reviewed and considered in the judgment.
- (2) The judgment should be written either in the language of the Court, or in English;
- (3) When a judgment is not written by the Presiding Officer with his hand, every page of such judgment shall be signed by him;
- (4) It should be pronounced in open court after it has been written and signed;
- (5) It should be dated and signed in open court at the time of being pronounced and when once signed shall not

afterwards be added to save as provided by Section 152 or on review;

(6) If it is the judgment of any Court other than a Court of Small Causes, it should contain a concise statement of the case; the points of determination the decision thereon and the reasons for such decision;

(7) If it is the judgment of a Court of Small Causes, it should contain the points for determination and the decision thereupon;

(8) It should contain the direction of the Court as to costs;

(9) It has been observed with concern that some judicial officers make a practice of prefacing judgments with a memorandum of the substance of the evidence, given by each witness examined which has to be referred to. This practice is irregular, when the memorandum is in addition to that made under Order XVIII, Rule 8 of the Code of Civil Procedure. All that the law requires is a concise statement of the case and not a memorandum of the evidence;

(10) Nevertheless, the judgment is supposed to be comprehensive of the requirements of the Order XX Rule 4 in that it should set forth the grounds for decision as concisely as is consistent with the introduction of all important matters;

(11) In some cases, it may be necessary to refer to or give a summary of statement of a witness but then it should preferably be incorporated in the reasons given for the decision;

(12) The reference to the findings of witnesses should invariably be by his name and number as a witness;

(13) Instances have occurred of judgments not being written until a considerable time after final arguments have been heard. This practice is open to grave objection;

(14) The judgment is supposed to be written and pronounced within 14 days of the date on which arguments have been heard and in case of violation a written explanation for the delay has to be furnished by the sub-ordinate courts;

(15) The sub-ordinate Courts are required to append to their monthly and quarterly statements a certificate of the effect that the judgments have been pronounced in all cases within a month of the hearing of final arguments;

(16) Every District Judge or a Civil Judge proceedings on leave or transfer must before making over the charge send a certificate that he has written judgments in all cases in which he had heard arguments; and

(17) Should an officer be forced to lay down this charge suddenly he shall nevertheless write the judgment in such cases and send them for pronouncement to his successor.

15. In Civil cases, an appeal is not an inherent right exercisable by a party consequent on the passage of a decree. It can be availed of only where it is expressly granted by law and in that sense an appeal is the creation of a statute.

16. Section 96 of the Civil Procedure Code provides the right of appeal from original decree unless it is otherwise expressly barred by any law. The right of second appeal is much restricted as against the provisions of Section 96 of Civil Procedure Code. By virtue of Section 100 of Civil Procedure Code, the right of second appeal is available only on the following grounds, namely: -

(a) The decision being contrary to law or usage having the force of law;

(b) The decision having failed to determine some material issue of law or usage having the force of law;

(c) A substantial error or defect in the procedure provided by this Code or by any other law for the time being in force, which may possibly have produced error or defect in the decision of the case upon the merits.

17. The statutory right of appeal confers the right of hearing the whole of the dispute unless expressly restricted and the Appellate Court has to consider controversy entirely afresh both as regards the facts or law and to substitute it by its own judgment for that of the sub-ordinate Court.

18. As far the contents and form of the judgment in appeal, Order 41, Rule 31 provides that the judgment of the Appellate Court shall be in writing and shall state:-

- (a) The points for determination;
- (b) The decision thereon;
- (c) The reasons for the decision; and
- (d) Where the decree appealed from is reversed or varied, the relief to which the appellant is entitled; and shall at the time that it is pronounced be signed and dated by the Judge or by the Judges concurring therein.

19. The term 'points for determination' means all the important questions involved in the case. The Appellate Court is required to record points for the determination so as to determine that it has dealt with the applied its mind to all the point in controversy. Like the judgment of a sub-ordinate Court the Appellate Court must also state its reasons for the decision. It is also required to opine with regard to each point and the judgment has got to be illuminative of all the considerations leading to the decision arrived at by the Appellate Court. The practice of reproducing the order of the lower court with minor or paragraphical changes is highly objectionable. The Appellate Courts must invariably apply their independent disposition instead of giving a mere resume of the judgment of the lower court.

20. The judgment of an Appellate Court may be for confirming, varying or reversing the findings of the lower court. The Appellate Court has further powers to pass any decree and make any order which ought to have been passed or made and pass or make such further or other decree or order as the case may require and this power may be exercised by the Court notwithstanding that an appeal is against a part of the decree and may be exercised in favour of all or for one of the respondent or the parties although such respondents or parties may not have filed any appeal or objection. In these terms very wide discretion is given to the Appellate Courts in order to protect the ends of justice from being defeated.

21. Unlike the Civil Procedure Code, the Criminal Procedure Code does not define "judgment". It is, however, generally understood that a judgment means the expression of the opinion of the court arrived at in due consideration of the evidence and all the arguments. In so far as the narration of facts and formulation of logical conclusions on the basis of evidence are concerned the general rules of evidence in a decision of criminal case are the same as are meant for a judgment in a Civil suit. The trial evidently proceeds on different lines with a procedure prescribed in the relevant law, such as the Code of Criminal Procedure, 1898.

22. Section 366 of the Criminal Procedure Code lays down that the judgment in every trial in any criminal court of original jurisdiction shall be explained as under: -

- (a) In open court either immediately after the termination of the trial or at some subsequent time of which notice shall be given to the parties or their pleaders; and

(b) In the language of the court, or in some other language which the accused or his pleader understands.

23. Elucidating the same provisions Rule 1, Chapter 1-H, Volume III of Rules and Order of High Court lays down as under:-

(i) In all cases, a judgment must be drawn up containing the point or points for determination, the decision thereon and the reasons for the decision. In case of a conviction, offence, the law applicable, and the punishment awarded must be entered in the judgment. In case of acquittal the offence must be specified and (if the accused is in confinement) a direction given that he be set at liberty. When there are more than one accused, the case of each should be dealt with separately.

(ii) The judgment should be written in the language of the court or in English; it should be pronounced in open court, and dated and signed by the Presiding Officer at the time it is pronounced. Except where the attendance of the accused has been dispensed with during the trial, and the sentence to be passed is one of fine only or when the judgment is one of acquittal the accused should be in attendance when judgment is pronounced. No court has power to alter or review a judgment once signed except for the purpose of revising a sentence of whipping under Section 394 and 395 of the Code.

24. General rules with reference to judgment in criminal case are contained in Chapter XXVI of Criminal Procedure Code, Section 424 whereof lays down that the rules contained in the said Chapter as to the judgments of criminal courts of original jurisdiction are to apply so far as may be practicable to the judgment of any appellate court other than High Court.

25. Besides all that has been said above, the conduct of a Judge also plays an important role in producing a qualitative judgment. The cardinal virtues in a judge as described by Lord Denning are: patience to hear what each side has to say; ability to understand the real worth of the argument; wisdom to discern where truth and justice lie; and decision to pronounce the result. The judge, on the one side, has to ascertain the facts and on the other apply law to determine the fate of the litigation. His duties are, therefore, two fold in nature.

26. To sum up the entire discussion, the guiding principles that formulate a good judgment can be resumed as under:-

(1) A judgment should not necessarily be lengthy.

(2) It should avoid repetition especially with reference to the deposition of the witnesses.

(3) It must be based on the evidence on record.

(4) It should not be based on matters within personal knowledge of the judge. It is to be based on the legal facts and not on suspicions.

(5) It should be precise and concise.

(6) There should be coherence in the judgment.

(7) Findings should never be recorded without necessary discussion of evidence and reasons for the findings.

(8) It must be delivered without any delay after the conclusion of trial and arguments.

(9) It should be comprehensive to all the points involved in the case.

(10) No findings should be given on the point, which has not any issue.

(11) Unnecessary criticism and adverse remarks have to be avoided. The criticism where it is unavoidable should be sober and in becoming language.

(12) It should not indicate the role of moral of political reformer.