

International Crimes Tribunal-1

Old High Court Building, Dhaka, Bangladesh

ICT- BD [ICT-1] Case No.03 of 2015
[Renumbered on receipt of the case from Tribunal-2]

Present:

Justice Anwarul Haque, Chairman
Justice Md. Shahinur Islam, Member
Justice Md. Shohrowardi, Member

Chief Prosecutor

vs.

(1) Mohibur Rahman @ Boro Mia (2) Mujibur Rahman @ Angur Mia
and (3) Md. Abdur Razzak

Order No. 07
Dated 29.09.2015

Mr. Sultan Mahmud

..... For the prosecution

Mr. M. Masud Rana, Advocate

.....For the defence

[Decision on charge framing matter]

Today is fixed for passing decision on charge framing matter and as such the record is taken up for order. Out of three accused persons accused Md. Abdur Razzak is being defended by State defence counsel. Accused Mohibur Rahman @ Boro Mia is the elder brother of accused Mujibur Rahman @ Angur Mia. The hearing on charge framing matter thus took place in presence of all the three accused persons. On the day of hearing, two separate discharge petitions have been filed on behalf of all the three accused persons.

At the out set, it is to be noted that the ‘formal charge’ was submitted by the prosecution before the Tribunal-2 which took cognizance of offences against all the three accused persons and then the case came to the stage of charge hearing matter. Afterwards, the Tribunal-2 transferred the case record to this

Tribunal-1 which received the same on 06.9.2015 and fixed 16.9.2015 for hearing the charge matter by renumbering and registering the case as ICT-BD Case No. 03 of 2015.

Accused Mohibur Rahman @ Boro Mia, Mujibur Rahman @ Angur Mia and Md. Abdur Razzak have been produced today before this Tribunal from prison. We deem it expedient to provide a brief context of the case, succinct arguments put forward by the prosecution and defence before this Tribunal, before we render decision on charge framing matter.

1. Introductory words

This International Crimes Tribunal (hereinafter referred to as the “Tribunal”) has been set up under the International Crimes (Tribunals) Act enacted in 1973 (hereinafter referred to as the “Act”) by Bangladesh Parliament. The Act which is meant for the detention, prosecution and punishment of persons for genocide, crimes against humanity, war crimes and other crimes under international law is *ex-post facto* legislation. It is to be noted that the ICTY, ICTR and SCSL the Adhoc Tribunals backed by the United Nations (UN) have been constituted under their respective retrospective Statutes. Only the International Criminal Court [ICC] is founded on prospective Statute [Rome Statute]. The 1973 Act of Bangladesh has the merit and means of ensuring the standard of safeguards recognized universally to be provided to the person accused of crimes against humanity, genocide, war crimes and other crimes under international law.

2. Brief Historical Background

The dreadful systematic events constituting the crimes against humanity as narrated in the formal charge allegedly occurred in the localities under the

police station Baniachang of the then Habiganj sub-division were part of horrific atrocious activities carried out in 1971 during the war of liberation directing the unarmed pro-liberation civilians in furtherance of common policy and plan of Pakistani occupation army.

The undisputed history says that atrocious and dreadful crimes were committed during the nine-month-long war of liberation in 1971, which resulted in the birth of Bangladesh, an independent state and the motherland of the Bengali nation. Some three million people were killed, nearly quarter million women were raped and over 10 million people were forced to deport to India to escape from brutal persecution at home, during the nine-month battle and struggle of Bangalee nation.

The history goes on to portray that in the general election of 1970, the Awami League under the leadership of Bangabandhu Sheikh Mujibur Rahman became the majority party of Pakistan. But defying the democratic norms Pakistan government did not care to respect this overwhelming majority. As a result, movement started in the territory of this part of Pakistan and Bangabandhu Sheikh Mujibur Rahman in his historic speech of 7th March, 1971, called on the Bangalee nation to struggle for independence if people's verdict is not respected. In the early hour of 26th March, following the onslaught of "Operation Search Light" by the Pakistani Military on 25th March, Bangabandhu declared Bangladesh independent immediately before he was arrested by the Pakistani authorities.

The 'operation' was designed to disarm and liquidate Bengali policemen, soldiers and military officers, to arrest and kill nationalist Bengali politicians, soldiers and military officers, to arrest and kill and round up

professionals, intellectuals, civilians belonging to Hindu community and students. Afterwards, actions in concert with its local collaborators belonging to Razakar, Al-Badar and the key pro-Pakistani political organisations Jamat-E-Islami (JEI) and Nejam-E-Islami were intended to stamp out the Bengali national liberation movement and to mash the national feelings and aspirations of the Bangalee nation.

The Pakistan government and the military formed Peace Committee as an 'associate organization' and number of auxiliary forces such as the Razakars, the Al-Badar, the Al-Shams, etc, essentially to act as a collaborating team with the Pakistani occupation army in identifying and eliminating all those who were perceived to be pro-liberation, individuals belonging to minority religious groups especially the Hindus, political groups belonging to Awami League and Bangalee intellectuals and unarmed civilian population of Bangladesh.

Incontrovertibly the ways to self-determination for the Bangalee nation was strenuous, swabbed with enormous blood, strive and sacrifices. In the present-day world history, conceivably no nation paid as extremely as the Bangalee nation did for its self-determination. The events alleged in the formal charge constituting the offences of crimes against humanity occurred in the localities under Baniachang police station of the then Habiganj sub-division mirror a partial scenario of totality of horrendous activities accomplished in violation of customary international law with the culpable facilitation and assistance provided by the local collaborators.

3. Brief account of the accused persons

Accused Mohibur Rahman @ Boro Mia

Accused Mohibur Rahman @ Boro Mia[65] son of late Daras Uddin and Khodeja Khatun of village Kumurshana, police station Baniachang of the then Habiganj sub-division was born on 01 January 1950 at that village Kumurshana. He studied up to class X in Baniachang Sandalpur BC High School. He was a strong follower of Syed Kamrul Ahsan, a local potential leader of Nejam-E-Islami, a pro-Pakistani political organisation and he and his brothers sided against the war of liberation and joined the local Razakar Bahini, prosecution alleges. His elder brother Kalamdhar was allegedly the chairman, peace committee of Khagaura union and younger brother Mostafa [now dead] was the commander of Khagaura Razakar camp.

Accused Mujibur Rahman @ Angur Mia

Accused Mujibur Rahman @ Angur Mia[60] son of late Daras Uddin and Khodeja Khatun of village Kumurshana, police station Baniachang under the then Habiganj sub-division was born on 10 March 1955 at said village Kumurshana. He is the younger brother of accused Mohibur Rahman @ Boro Mia. He studied up to class V in Dhulia Ghatua Primary School at Khagaura under Baniachang police station of the then Habiganj sub-division. He was a committed follower of Syed Kamrul Ahsan, a local potential leader of Nejam-E-Islami, a pro-Pakistani political organisation and he and his brothers took deliberate stance against the war of liberation and joined the local Razakar Bahini, prosecution alleges. According to the prosecution, his elder brother Kalamdhar was the chairman, peace committee of Khagaura union and his

brother Mostafa [now dead] was the commander of Khagaura Razakar camp. After liberation, he started working as a supporter of Jamat-E- Islami.

Accused Md. Abdur Razzak [defended by State defence counsel]

Accused Md. Abdur Razzak [63] son of late Toij Ullah @ Toij Ali and Khodeja Begum of village Hossainpur, Khagaura, police station Baniachang under the then Habiganj sub-division was born on 13 August 1952 at the said village. He did not achieve any education. He is the cousin brother of accused Mohibur Rahman and Mujibur Rahman. He also joined the local Razakar Bahini along with accused Mohibur Rahman, a potential follower of local leader of Nejam-E-Islami, a pro-Pakistani political organisation, prosecution alleges.

4. Brief Procedural History

After submission of the ‘formal charge’ the Tribunal-2, under Rule 29(1) of the Rules of Procedure, 2012[ROP of the ICT-2] took cognizance of offences, against all the three accused persons, as mentioned in section 3(2) (a)(g)(h) of the Act of 1973 as required under Rule 30, by its order dated 31.5.2015.

Accused Md. Abdur Razzak, one of three accused persons expressed inability to engage counsel to defend him and, as such, the Tribunal-2 by its order dated 22.7.2015 appointed Mr. M. Masud Rana, Advocate, Supreme Court of Bangladesh to defend him as State Defence Counsel at the expense of the State.

The record goes to show that on holding investigation on some atrocious events allegedly committed in 1971 during the war of liberation in

systematic manner directing unarmed civilians in the localities under police station Baniachang of the then sub-division Habiganj by the armed gang of local Razakars in collaboration with the Pakistan occupation army, the Investigation Agency submitted report finding the accused **(1) Mohibur Rahman @ Boro Mia, (2) Mujibur Rahman @ Angur Mia and (3) Md. Abdur Razzak** *prima facie* responsible for the atrocities before the Chief Prosecutor.

The Chief Prosecutor considering the nature, pattern of the alleged atrocious events and culpable participation and involvement of the three accused persons therewith i.e the same offences preferred to submit a single ‘formal charge’ with a view to prosecute them jointly.

It appears that the ‘formal charge’ submitted discloses that the accused persons allegedly actively participated or contributed or abetted to the commission of the alleged offences in the course of the same transaction and they appear to have allegedly acted in furtherance of common design and plan to the accomplishment of such offences and therefore all the accused persons may be jointly prosecuted as permissible under Rule 36 of the Rules of Procedure, 2012 [ROP of the ICT-2].

5. Deliberation and decision with reasoning

We have meticulously gone through the ‘formal charge’, statement of witnesses and materials on record. The Tribunal -2 already took cognizance of offences alleged against all the accused persons. Now we are to see whether there have been sufficient grounds of proceeding by framing charges against the accused persons. It is to be reiterated that in ICT-BD the provision that the burden of proving the charge shall lie upon the prosecution [Rule 50 of the

Rules of Procedure, 2010 (ROP of the ICT-1)] amply implicates the theory of innocence of an accused until and unless he is held guilty through trial. Besides, a person if charged with crimes as enumerated in section 3(2) of the Act shall be presumed innocent until found him guilty [Rule 43(2) of the ROP of the ICT-1].

Mr. Sultan Mahmud the learned prosecutor drawing attention to the statement of witnesses, the near relatives of victims, submitted that the accused persons were the potential followers of Syed Kamrul Ahsan, a local leader of Nejam-E-Islami, a pro-Pakistani political organisation and also they belonged to local Razakar Bahini having active and culpable association with the Razakar Camp set up at village Khagaura under police station Baniachang of the then sub-division Habiganj. Evidence to be presented in trial will demonstrate it unerringly that the accused persons were the members of local Razakar Bahini and actively collaborated with the Pakistani occupation army in carrying out atrocious activities in 1971 during the war of liberation, in furtherance of annihilation policy of pro-liberation Bengali civilians and to cripple their recognised human rights.

It has been further submitted that the events narrated in the formal charge disclose physical participation and complicity of accused persons in perpetrating the principal offences which were to further policy and plan of the Pakistani occupation army.

The learned prosecutor finally insisted on framing of charges on collective consideration of the formal charge, statement of witnesses and documents which manifestly indicate that there are sufficient grounds of

presuming that the accused persons are criminally liable for the commission of offences as mentioned in section 3(2) of the Act.

Conversely, learned counsel appearing on behalf of two accused persons and absconded accused Md. Abdur Razzak, as State defence counsel submitted that the accused persons did not belong to Razakar Bahini, that no document whatsoever has been provided on part of the prosecution to substantiate accused persons' membership in Razakar Bahini, that they were not involved with the alleged events constituting the offences of murder, rape, confinement, abduction and torture, in any manner, that they after liberation have been elected chairman of local union council for several times and that they have been falsely implicated in this case out of local rivalry, therefore, they deserve to be discharged.

In reply to grounds agitated in discharge petitions preferred by the accused persons it has been submitted by the learned prosecutor that at this stage, due to mere absence of documentary evidence, it cannot be readily inferred that the accused persons did not belong to Razakar Bahini, an auxiliary force and it may be well determined only in trial even by oral testimony and circumstances unveiled. The defence of local rivalry as taken by the defence also deserves to be adjudicated through trial only.

On going through the formal charge it appears that the accused persons have been alleged to have committed 'system crimes' which were perpetrated during the war of liberation in 1971. 'System crime' or 'group crime' committed in war time situation in fact is the upshot of series of acts and activities and an individual may not have participation to all phases of the event constituting the principal crime. It was not practicable, due to horrific

situation prevailing in 1971, to witness or experience all the phases of a particular event. At this stage, we are authorized just to see whether the materials on record *prima facie* demonstrate responsibility of the accused persons for the commission of alleged offences.

The offences alleged were perpetrated as part of systematic attack and were occurred in war time situation, it may be presumed *prima facie*, and in committing all these offences the accused persons had allegedly acted as active accomplices of the group of perpetrators in exercise of their membership in local Razakar Bahini and culpable affiliation with the local Razakar camp.

The fact that the accused persons were the members of local Razakar Bahini is to be primarily proved by documentary evidence, true. But oral evidence to be provided by the witnesses may also be taken into account and weighed together with the relevant facts unveiled in trial to prove this fact. We are not persuaded with the submission advanced by the learned defence counsel on this matter.

Therefore, at this stage, only for the reason of mere absence of documentary evidence their association with the auxiliary force cannot be readily brushed aside. In this regard, it would be relevant to reiterate that the Act of 1973 is meant to prosecute and punish not only the armed forces and the perpetrators who belonged to 'auxiliary forces', but also to prosecute and punish an 'individual' or member of 'group of individuals' who committed the offences enumerated in the Act of 1973 and nowhere the Act says that without prosecuting the armed forces (Pakistani) the person or persons having any other capacity specified in section 3(1) of the Act cannot be prosecuted. Rather, it is manifested from section 3(1) of the Act of 1973 that even any person

(individual or member of group of individuals), if he is *prima facie* found individually criminally responsible for the offence(s), can be brought to justice under the Act of 1973. Already it has been well settled.

The core thing is to be seen whether the accused persons collaborated with the local group of Razakars and locally stationed Pakistani army in carrying out alleged atrocious activities constituting the offences. At this stage, it is not permissible to arrive at any definite finding on it and as such the matter should be left for due adjudication only in trial.

It is settled that mere framing charge does not prove one's guilt. The accused persons shall be presumed innocent until they are found guilty of the offences alleged. However, now, we are convinced, on going through the statement of witnesses and materials on record, to *prima facie* conclude that there have been sufficient grounds of proceeding.

The accused persons have been implicated in this case out of rivalry, defence contends. But this is also a question of fact which needs to be decided only on trial. The materials on record, formal charge do not prompt us, at this stage, to readily scrap the allegations brought against the accused persons and as such the applications seeking discharge of the accused persons do not deserve consideration and therefore the same are hereby rejected.

On *prima facie* examination of the record, at this stage, we are to simply concentrate our attention to the allegations and facts disclosed in the formal charge as well as the statement of witnesses and documents submitted therewith. We find more substance in the submissions advanced by the learned prosecutor that the proposed charges deserve to be considered and resolved only at trial, on presentation of evidence.

A criminal trial is a voyage to inquest the truth as to commission of crimes and the role and mode of participation of persons accused of it and the task can be well carried out only on lawful evidence to be presented in course of trial. However, at this stage, formal charge, the statement of witnesses and other materials on record *prima facie* demonstrate that the accused persons enthusiastically sided with the locally stationed Pakistani army and culpably collaborated with them by their act and conduct in carrying out horrific activities of killing of non-combatant freedom fighters, brutal sexual ravishment on women belonging to pro-liberation families, wanton destruction and other inhuman acts.

Accordingly, now we proceed to read out the charges framed. We have perused the formal charge, statement of witnesses along with other documents submitted by the prosecution. We are of the view that there are sufficient and substantial materials before the Tribunal to frame charges against accused **(1) Mohibur Rahman @ Boro Mia (2) Mujibur Rahman @ Angur Mia and (3) Md. Abdur Razzak** for the offences allegedly committed during the War of Liberation in 1971 as specified under section 3(2)(a)(g)(h) of the Act of 1973 for which they are alleged to be criminally liable under sections 4(1) of the said Act. The charges are thus framed against them in the following manner.

Charges

We,

Justice Anwarul Haque, Chairman
Justice Md. Shahinur Islam, Member
Justice Md. Shohrowardi, Member

Of the International Crimes Tribunal -1

hereby charge you accused **(1) Mohibur Rahman @ Boro Mia[65]** and **(2) Mujibur Rahman @ Angur Mia[60]** both are sons of late Daras Uddin and Khodeja Khatun of village Kumurshana, police station Baniachang under district Habiganj and **(3) Md. Abdur Razzak [63]** son of late Toij Ullah @ Toij Ali and Khodeja Begum of village Hossainpur, Khagaura, police station Baniachang under district Habiganj as follows:-

Charge No. 01

[Killing of 02 Freedom fighters: Event no.1 narrated in the Formal Charge]

That on 11 November 1971 at about 16:00/16:30 hours you accused **(1) Mohibur Rahman @ Boro Mia** ,(2) **Mujibur Rahman @ Angur Mia** and **(3) Md. Abdur Razzak** being accompanied by a group of some armed Razakars raided the house of freedom fighter Akal Ali at village Khagaura under police station Baniachang of the then Habiganj sub-division and sensing it freedom fighter Rajab Ali who had been staying there attempted to flee when you accused Mohibur Rahman @ Boro Mia gunned him down to death with a rifle in your hand. Afterwards, on accused Mohibur Rahman's order, his brother accused Mujibur Rahman @ Angur Mia, accused Md. Abdur Razzak and Abdul Hamid [now dead] entered inside the dwelling hut of Akal Ali and dragged him [Akal Ali] out and brought him forcibly to Razakar camp at Khagaura where he was subjected to inhuman torture by you the accused persons, scraping the appeal from Vingraj, the wife of Akal Ali, to spare his life. During night you the accused persons and other Razakars brought Akal Ali to an unknown place where he was killed brutally and his body could not be traced out even. On the following day dead body of Rajab Ali was buried.

Thereby you accused (1) Mohibur Rahman @ Boro Mia ,(2) Mujibur Rahman @ Angur Mia and (3) Md. Abdur Razzak are hereby charged for participating , facilitating, abetting and for ‘complicity’ to the commission of offence of ‘**murder**’ as crime against humanity as part of systematic attack directed against non-combatant civilians as specified in section 3(2) (a)(g) (h) of the Act of 1973 which are punishable under section 20(2) read with section 3(1) of the Act for which you the accused persons have incurred liability under section 4(1) of the Act.

Charge No. 02

[Wanton destruction, looting and arson: Event no.2 narrated in the Formal Charge]

That on 26 October 1971 at about 10:00 hours you accused (1) **Mohibur Rahman @ Boro Mia ,(2) Mujibur Rahman @ Angur Mia and (3) Md. Abdur Razzak** being accompanied by a group of 10/15 Razakars and 10/12 Pakistani army men had attacked the house of Major General[retired] MA Rab at village Khagaura under Baniachang police station of the then Habiganj sub-division, looted households and set five tin shed huts on fire and in conjunction with the attack you the accused persons and the group by launching attack to the neighbouring houses belonging to civilians of Hindu community, carried out wanton destructive activities by looting households and setting the houses on fire.

Thereby you accused (1) Mohibur Rahman @ Boro Mia ,(2) Mujibur Rahman @ Angur Mia and (3) Md. Abdur Razzak are hereby charged for participating , facilitating, abetting and for ‘complicity’ to the commission of offences of ‘**other inhuman acts**’ as crimes against humanity as part of

systematic attack directed against unarmed civilians as specified in section 3(2) (a)(g) (h) of the Act of 1973 which are punishable under section 20(2) read with section 3(1) of the Act for which you the accused persons have incurred liability under section 4(1) of the Act.

Charge No. 03

[Rape upon two women: Event no.3 narrated in the Formal Charge]

That on 26 October 1971 at about 14:00 hours, after the attack you the accused persons participated in launching it at about 10:00 hours on the same day at the house of Major General [retired] MA Rab at village Khagaura **you accused (1) Mohibur Rahman @ Boro Mia ,(2) Mujibur Rahman @ Angur Mia and (3) Md. Abdur Razzak** guided the ‘group’ you accompanied to the house of Ahlad Mia @ Allad Mia and victim **Abeda Khatun @ Aksi**, the wife of Manjob Ali, at village Khagaura Beripar under police station Baniachang of the then Habiganj sub-division where on your active facilitation and as identified by you the accused persons two Pakistani army men committed rape upon Abeda Khatun @ **Aksi** at her dwelling hut even in presence of her ailing husband and daughter Joyful, keeping them in fear under gun point. In conjunction with the event, with the assistance of you the accused persons, two other Pakistani army men also sexually ravished **Agarchand Bibi[18]**, the younger sister of Ahlad Mia, and then you and the group had left the site at about 15:00 hours. Subsequent to the event the victims disclosed the barbaric wrongs done to them. The disgrace sustained compelled the victim Agarchand Bibi to commit suicide, few days after the event.

Thereby you accused (1) Mohibur Rahman @ Boro Mia ,(2) Mujibur Rahman @ Angur Mia and (3) Md. Abdur Razzak are hereby charged for facilitating, abetting and substantially contributing and also for ‘complicity’ to the commission of offence of ‘rape’ as crime against humanity as part of systematic attack directed against unarmed civilians as specified in section 3(2) (a)(g) (h) of the Act of 1973 which are punishable under section 20(2) read with section 3(1) of the Act for which you the accused persons have incurred liability under section 4(1) of the Act.

Charge No. 04

[Abduction, confinement and torture: Event no.4 narrated in the Formal Charge]

That on a day during mid of Bangla month Vadra in 1971 at about 10.00 hrs you accused (1) Mohibur Rahman @ Boro Mia ,(2) Mujibur Rahman @ Angur Mia and (3) Md. Abdur Razzak being accompanied by a group of 10/12 armed Razakars, by launching attack, forcibly took Anfar Ali from his dwelling hut to Razakar camp at Khagaura village under police station Baniachang of the then Habiganj sub-division, on forcible capture where he was subjected to inhuman torture and physical assault that resulted in fracture of one of his hands, by keeping him detained there for one day and one night. Afterwards Anfar Ali was brought back there from to his house in critical condition by some Razakars. Anfar Ali had to spend his life in paralytic condition and 2/3 years back he died.

Thereby you accused **(1) Mohibur Rahman @ Boro Mia ,(2) Mujibur Rahman @ Angur Mia and (3) Md. Abdur Razzak** are hereby charged for participating, facilitating, abetting and substantially contributing and also for

‘complicity’ to the commission of offence of ‘**abduction, confinement and torture**’ as crimes against humanity as part of systematic attack directed against unarmed civilians as specified in section 3(2) (a)(g) (h) of the Act of 1973 which are punishable under section 20(2) read with section 3(1) of the Act for which you the accused persons have incurred liability under section 4(1) of the Act.

Thus you the accused persons have been indicted as above for committing the offences under section 3(2)(a)(g)(h) of the International Crimes(Tribunals) Act, 1973, punishable under section 20(2) read with section 3(1) of the Act which are within the cognizance and jurisdiction of this Tribunal. And we hereby direct you to be tried by this Tribunal on the said charges. You accused (1) Mohibur Rahman @ Boro Mia ,(2) Mujibur Rahman @ Angur Mia and (3) Md. Abdur Razzak have heard and understood the aforesaid charges which have been read out in the open court in your presence.

Question: Do you plead guilty or not ?

Answer:

The charges so framed have been read over and explained in Bengali to the accused **(1) Mohibur Rahman @ Boro Mia (2) Mujibur Rahman @ Angur Mia and (3) Md. Abdur Razzak** to which they pleaded not guilty and claimed to be tried.

Let **21.10.2015** be fixed for opening statement and examination of prosecution witnesses. The trial shall be continuing on every working day until further order. Prosecution is directed to submit copy of all the documents it relies upon, for the purpose of furnishing the same with the defence, if meanwhile the same are not supplied to the defence. At the same time the

defence counsel is directed to submit a list of witnesses along with documents, if any, which the defence intends to rely upon, as required under section 9(5) of the Act on or before the date fixed.

(Justice Anwarul Haque, Chairman)

(Justice Md. Shahinur Islam, Member)

(Justice Md. Shohrowardi, Member)