

International Crimes Tribunal-1

Old High Court Building, Dhaka, Bangladesh

ICT-BD [ICT-1] Case No.01 of 2018

Present:

Justice Md. Shahinur Islam, Chairman

Justice Amir Hossain, Member

Judge Md. Abu Ahmed Jamadar, Member

Order No.03

28 March, 2018

Chief Prosecutor

Vs.

Md. Mahbubur Rahman @ Mahbub @ Mahebul

Mr. Rana Das Gupta, Prosecutor: For the prosecution

Mr. Gazi M.H Tamim, the learned State defence Counsel: For accused Md. Mahbubur Rahman @ Mahbub @ Mahebul

[Decision on framing charges]

Accused **Md. Mahbubur Rahman @ Mahbub @ Mahebul** is present before this Tribunal as has been brought from prison.

On covering up the hearing on charge framing matter on 11 March, 2018, the Tribunal[ICT-1] fixed today for rendering its decision and accordingly the record is taken up for order on indictment matter. Before we pass the order, we consider it appropriate and relevant to make a brief portrayal of the context of the case and succinct arguments advanced by both prosecution and defence before this Tribunal.

I. Formation of the Tribunal

1. This International Crimes Tribunal-1 (hereinafter referred to as the “Tribunal”) has been constituted under the International Crimes (Tribunals) Act enacted in 1973 (hereinafter referred to as the “Act”) by the sovereign Parliament of Bangladesh intending to provide provisions for the detention,

prosecution and punishment of individual or group of individuals or member or members of auxiliary force as defined in the Act responsible for the offences of genocide, crimes against humanity, war crimes as enumerated in sub section (2) of section 3 of the Act committed in the territory of Bangladesh especially in 1971 during the war of liberation. The preamble of the Act reflects this core objective.

II. Brief Historical Context

2. In all the earlier cases, already disposed of, even in rendering decision on charge framing matter, the Tribunal considered it indispensable to describe the settled historical context that heaved the Bengali nation to start fighting for self-determination and independence of the motherland—Bangladesh. Bangabandhu Sheikh Mujibur Rahman the Father of the Nation in his historic speech of 7th March, 1971, called on the people of Bangladesh to strive for independence.

3. Long 46 years after the nation achieved its long cherished independence recognizing the historic March 7 speech of Bangabandhu Sheikh Mujibur Rahman, the Father of the Nation as a world documentary heritage by the UNESCO is the stamp of enormous pride for the nation. This recognition shall act in preventing distortion of the history, the truth and the 7 March blazing speech of Bangabandhu calling on the freedom-loving Bangalees which indispensably activated and stimulated the whole nation, excepting a few pro-Pakistan people to get prepared for the war of liberation.

4. On 26th March, following the onslaught of “ Operation Search Light” by the Pakistani Military on 25th March, Bangabandhu declared independence of Bangladesh immediately before he was arrested by the Pakistani authorities.

5. It is now the settled history that in the War of Liberation that ensued in 1971 under the leadership of Bangabandhu the Father of the Nation, all people of the then East Pakistan wholeheartedly supported and participated in the call to free Bangladesh but a small number of Bangalee, Biharis, other pro- Pakistanis, as well as members of a number of different religion-based political parties joined and/or collaborated with the Pakistani occupation

army to actively oppose the creation of independent Bangladesh and most of them committed and facilitated the commission of diabolical atrocities in the territory of Bangladesh, directing non-combatant pro-liberation civilians. As a result, 3 million (thirty lacs) people were killed, more than 2,00,000 (two lacs) women were raped, about 10 million (one crore) people were forced to deport to India as refugees and million others were internally displaced. It also experienced unprecedented destruction of properties all over Bangladesh, in violation of laws of war and fundamental rights of protected civilians.

6. The Pakistan government and the occupation armed force created number of auxiliary forces such as the Razakars, the Al-Badar, the Al-Shams, the Peace Committee etc., just after the Pakistani occupation army got stationed at places in the territory of Bangladesh essentially to collaborate with them in identifying, assisting and eliminating all those who were perceived to be sympathized with the liberation of Bangladesh, individuals belonging to minority religious groups especially the Hindus, individuals belonging to Awami League and other pro- independence political parties, Bangalee intellectuals and unarmed civilian population of Bangladesh.

7. In the case in hand, the arraignments as have been pressed by the prosecution by submitting formal charge involve the atrocious attacks allegedly carried out directing the civilian population belonging to Hindu religious group by the accused persons in collaboration with their accomplices and Pakistani occupation army in the context as briefly narrated herein above.

III. Brief account of the Accused Persons

8. Before we render our decision on charge framing matter let us have a look what has been stated in the formal charge about the identity of the accused person in 1971.

(i) Md. Mahbubur Rahman @ Mahbub @ Mahebul

Accused Md. Mahbubur Rahman @ Mahbub @ Mahebul, the son of late Abdul Wadud @ Wadud Moulana and Hosne Ara Begum of village-

Bairatipara, Baimhati under Mirzapur Municipality, Police Station-Mirzapur of District Tangail was born in June 17, 1947. He studied up to SSC. In 1971, his father was the President of Mirzapur Thana Peace Committee. The accused was associated with the politics of Jamaat-E-Islami since prior to the war of liberation and maintained close affiliation with the Pakistani occupation army in 1971 in accomplishing horrific crimes directing Hindu religious community and he was a member of Razakar Bahini, prosecution alleges.

IV. Procedural History

9. The Investigation Agency of the Tribunal constituted under the Act of 1973 initiated the task of investigation pursuant to compliant register serial no. 67 dated 18.4.2016, in respect of commission of prohibited and criminal acts constituting the offences enumerated in section 3(2) of the Act of 1973 allegedly perpetrated by the accused , his accomplices and Pakistani occupation army.

10. On prayer of the IO, through the chief prosecutor the Tribunal ordered to produce the accused as he was detained in connection with Mirzapur Police station case no.05 dated 12.7.2016 under section 15(3) and 25-D of the Special Powers Act, 1974, before the Tribunal on 07.11.2016

11. On production of the accused as ordered the Tribunal sent him to prison by its order dated 07.11.2016, showing him arrested in connection with this case, for the purpose of effective and proper investigation.

12. The Investigation Officer [IO], submitted its report together with documents and materials collected and statement of witnesses, on conclusion of investigation, before the Chief Prosecutor on 02.11.2017.

13. The Chief Prosecutor, on scrutinizing the report and documents submitted therewith by the Investigation Agency, after completion of investigation, submitted the 'Formal Charge' on 11.01.2018 under section 9(1) of the Act of 1973 before this Tribunal alleging that the accused had committed the offences of 'genocide' and 'crimes against humanity', including abetting, facilitating and also for complicity in accomplishing such

crimes directing non-combatant Hindu civilians, violating international humanitarian law as narrated in the formal charge during the War of Liberation in 1971 around the localities under the Police Station- Mirzapur of District-Tangail and also by launching attack at the residence of Danabir Roy Bahadur Ranada Prasad Saha @ R.P Saha situated at Sirajdikhan Road, Khanpur of Naryanganj town.

14. The Tribunal, under Rule 29(1) of the Rules of Procedure, took cognizance of offences as mentioned in section 3(2) (a)(c)(g)(h) of the Act of 1973, by application its judicial mind to the Formal Charge and materials and documents submitted therewith.

15. Mr. Gazi M.H Tamim, Advocate has been appointed the state defence counsel, at the cost of the Government, to defend the accused as he did not engage any counsel to defend him.

16. Then on 11.03.2018 hearing on charge framing matter took place when both sides advanced their respective submission, drawing attention to the formal charge and documents submitted therewith.

V. Submission by the Prosecutor

17. Mr. Rana Das Gupta, the learned prosecutor drawing attention to the formal charge and the documents submitted therewith placed his submission in respect of charge framing matter. He submitted that the accused was actively involved and had complicity in the commission of the offences of ‘genocide’ and ‘crimes against humanity’, narrated in the formal charge. The accused was associated with the politics of Jamat-E-Islami and got engaged in Razakar Bahini, an auxiliary force created to collaborate with the Pakistani occupation force.

18. The offences committed were directed against the Hindu religious group including Ranada Prasad Saha, known as ‘Danabir’ and his family. Prosecution would be successful in proving the arraignments brought in the formal charge, the learned prosecutor added. The learned prosecutor further submitted that the evidence collected during investigation prima-facie

demonstrates that the accused was culpably engaged with the perpetration of the offences as narrated in the formal charge.

VI. Submission by the state defence counsel

19. Mr. Gazi M.H Tamim, the learned state defence counsel by bringing an application seeking discharge submitted that the accused had no involvement with the commission of any of alleged offences in any manner. There has been no reasonable ground to indict the accused for the alleged offences. He did not belong to Razakar Bahini. Delayed prosecution itself creates doubt as to truthfulness of involvement of the accused with the commission of alleged offences. There has been no prima-facie case to indict this accused for the alleging arraignment. Thus, he deserves to be discharged considering his old age, learned defence counsel added.

VII. Deliberations and Decision

20. We have vigilantly gone through the formal charge, statement of witnesses and the documents submitted therewith. It is true, at this stage neither the guilt nor the innocence can be adjudicated decisively as the accused shall be treated innocent, till he is found guilty. His culpability and complicity, if any, can only be well adjudicated at trial, not at this stage.

21. But on *prima facie* scrutiny of the record, we are convinced that the proposed arraignments deserve to be considered and resolved and it may only be done at trial stage, on the basis of evidence to be presented by the prosecution.

22. At this stage, we are to just concentrate our attention to the allegations and facts of attacks disclosed in the Formal Charge as well as the statement of witnesses and documents submitted therewith. It transpires that the formal charge and the statement of witnesses *prima facie* disclose participation, substantial contribution and abetment of the accused person in accomplishing the alleged offences as enumerated in section 3(2) of the Act of 1973.

23. Prosecution avers that the accused was a member of locally formed Razakar Bahini and affiliated with the politics of Jamaat-E-Islami since prior

to 1971 and his father was the President of Mirzapur Thana Peace Committee which imbued the accused to get involved in carrying out atrocious activities. The crucial issue can be well resolved at trial only. Thus, we abstain from rendering a explicit finding on this issue, at this stage.

24. Besides, the Act of 1973 permits to prosecute, try and punish even an individual or group of individuals for the offences enumerated in the Act. Now, at this stage, we are to merely see the *prima facie* complicity and participation of the accused with the commission of alleged offences and of course, treating the accused person innocent till he is found guilty for the alleged offences with which he is being indicted.

25. Defence submitted that the accused was not involved with the offences alleged as the evidence collected during investigation does not indicate it. This submission does not have merit. At this stage, this matter necessary to determine liability of the accused cannot be decided.

26. In view of the discussion as made above and considering the submissions advanced by both sides, we have found *prima facie* the nexus of the accused with the commission of the alleged offences, mostly from the particulars of facts narrated in the Formal Charge.

27. Thus, we are of the view that there are sufficient and substantial materials before this Tribunal to presume *prima facie* that accused was involved with the commission of offences during the War of Liberation in 1971 as specified under section 3(2) of the Act for which he now requires to stand trial.

28. Now, we proceed to read out the charges framed. We are of the view that there are sufficient and substantial materials before this Tribunal to frame charges against accused **Md. Mahbubur Rahman @ Mahbub @ Mahebul** for the offences allegedly committed during the War of Liberation in 1971 as specified under section 3(2) of the Act of 1973 for which he is alleged to be criminally liable under sections 4(1) of the Act of 1973. The charges are thus framed against him in the following manner:

Charges

We,

Justice Md. Shahinur Islam, Chairman

Justice Amir Hossain, Member

Judge Abu Ahmed Jamadar, Member

Of the International Crimes Tribunal -1

Do hereby charge you the accused **Md. Mahbubur Rahman @ Mahbub @ Mahebul** the son of late Abdul Wadud @ Wadud Moulana and Hosne Ara Begum of village-Bairatipara, Baimhati under Mirzapur Municipality, Police Station- Mirzapur of District Tangail as follows:

Charge No.01

[Event no.01 as narrated in page nos. 20-27 in the formal charge]

[Offences of ‘genocide’ or in the alternative the offences of ‘confinement’, ‘abduction’, ‘torture’ and ‘murder’ as crimes against humanity]

That on 07 May, 1971 at about 02:00/02:30 P.M a group formed of 15/20 Razakars , about 60 Pakistani occupation army being accompanied by you the accused Md. Mahbubur Rahman @ Mahbub @ Mahebul, your father Abdul Wadud @ Wadud Moulana[now dead], the then Thana President of Peace Committee, your brother Razakar Md. Abdul Mannan [now dead] led by Captain Ayub by launching attack at ‘Kumudini Complex’ at Baimhati village under Police Station-Mirzapur of District Tangail started searching for ‘Danabir’ R P Saha the founder of the Complex and his son Bhabani Prasad Saha @ Rabi intending to liquidate them. But finding them not available there you the accused Razakar Md. Mahbubur Rahman @ Mahbub @ Mahebul and your accomplices started humiliating the doctors, nurses, teachers, students and employees of the Complex.

Then in conjunction with the attack your accomplice Razakars including Md. Abdul Mannan[now dead] and a group of Pakistani occupation army attacked Hindu dominated localities of villages Baimhati, Andhara and Sarishadair and keeping the Kumudini Complex under their surveillance you the accused Md. Mahbubur Rahman @ Mahbub @ Mahebul, your father Wadud Moulana[now dead], accomplice Razakars and army men moved towards the house of R P Saha at village Baimhati, crossing the river

Lohajang with intent to destroy, in whole or in part, the Hindu religious group including Danabir Ranada Prasad Saha[RP Saha] and his family inmates, by launching attack.

In conjunction with the above phase of attack you the accused , your accomplice Razakars and army men looted households , destroyed 200/250 houses by setting those on fire and unlawfully detained 33 civilians belonging to Hindu religious group and made them stand in a line on the bank of a big ditch, west to the house of R P Saha. Then you and your accomplice Razakars including your father [now dead], brother [now dead] identifying them as 'enemies of Pakistan' instigated the Pakistani occupation army to kill them.

Then With the instigation of you the accused and your accomplice Razakars the Pakistani occupation army gunned down **33 Hindu civilians** --(1) Kamal Saha, (2) Madhusudan Saha, (3) Subhash Saha, (4) Uma Charan Saha, (5) Dharendra Nath Saha, (6) Gadadhar Saha, (7) Keru Shil, (8) Ranglal Saha, (9) Dwijendra Saha, (10) Sudam Chandra Saha, (11) Ranjit Saha @ Dulal, (12) Jugal Chandra Banik, (13) Gopal Chandra Banik, (14) Ganesh Chandra Banik (15) Mangal Chandra Saha, (16) Subhash Chandra Saha , (17) Bhaduri Sutradhar , (18) Ram Chandra Saha, (19) Supati Banik, (20) Swapan Saha, (21) Ananda Saha, (22) Narayan Mandal, (23) Bakul Saha, **of village Mirjapur** under Police Station- Mirzapur of District Tangail , (24) Ganga Charan Karmakar **of village Andhara** under Police Station- Mirzapur of District Tangail, (25) Ranjit Saha, (26) Ganesh Chandra Mandal, (27) Nitai Mandal, (28) Bholanath Mandal, (29) Kandu Gope, (30) Chan Mohon Saha **of village Sarishadair** under Police Station- Mirzapur of District Tangail, (31) Sadhu Mali, (32) Ranjit Saha, (33) Nagina Basfair **of village Baimhati** under Police Station- Mirzapur of District Tangail to death. Popy Saha [05] and Biswarup Saha [01], the daughter and son of Sudhan Chandra Saha, one of victims got injured with gun fire.

Therefore, you the accused Md. Mahbubur Rahman @ Mahbub @ Mahebul participated, substantially abetted and facilitated the actual commission of the offence of 'genocide' as specified in section 3(2) (c)(g)(h) read with section 4(1) of the International crimes(Tribunals) Act, 1973 or in the

alternative for participating, substantially abetting and facilitating the actual commission of the offences of 'confinement', 'abduction', 'torture', 'looting', 'arson', 'other inhumane acts' and 'murder' as crimes against humanity as specified in section 3(2)(a)(g)(h) read with section 4(1) of the International crimes(Tribunals) Act, 1973 which are punishable under section 20(2) of the said Act of 1973.

Charge NO.02

[Event no.02 as narrated in page nos. 27-30 in the formal charge]

[Offence of 'genocide' or in the alternative offences of 'confinement', 'abduction', 'torture' and 'murder' as crimes against humanity]

That in continuation of the attack that resulted in killing 33 civilians belonging to Hindu religious group [as narrated in charge no.01], on the same day i.e on 07 May, 1971 at about 11:00/11:30 P.M you the accused Md. Mahbubur Rahman @ Mahbub @ Mahebul, your father, brother being accompanied by 10/15 accomplice Razakars and 20/25 Pakistani occupation army launched attack, with intent to destroy Hindu religious group, in whole or in part, at the residence of Danabir Roy Bahadur Ranada Prasad Saha @ R.P Saha situated at Sirajdikhan Road, Khanpur of Naryanganj town, arriving there by 4/5 jeeps and then entering into the residence forcibly detained Danabir Roy Bahadur Ranada Prasad Saha, his son Bhabani Prasad Saha @ Rabi, Gour Gopal Saha, the friend of R.P Saha, Rakhal Matlab and a Darwan [a guard whose name could not be known] and they were then subjected to torture. The detainees were then taken away towards the Oil Depot of Adamjee Burma Eastern of Naryanganj located on the bank of the river Sitalakhya and since then they could not be traced even.

Therefore, you the accused Md. Mahbubur Rahman @ Mahbub @ Mahebul participated, substantially abetted and facilitated the actual commission of the offence of 'genocide' as specified in section 3(2) (c)(g)(h) read with section 4(1) of the International crimes(Tribunals) Act, 1973 or in the alternative for participating, substantially abetting and facilitating the actual commission of the offences of 'confinement', 'abduction', 'torture' and 'murder as crimes against humanity as specified in section 3(2)(a)(g)(h) read with section 4(1) of the International crimes(Tribunals) Act, 1973 which are punishable under section 20(2) of the said Act of 1973.

Charge NO.03

[Event no.03 as narrated in page nos. 30-35 in the formal charge]

[Offence of ‘genocide’ or in the alternative offences of ‘confinement’, ‘abduction’, ‘torture’ and ‘murder’ as crimes against humanity]

That on 14 May, 1971 in between about 02:30/03:00 P.M to 12:00 A.M, in continuation of the attack that resulted in killing 33 civilians belonging to Hindu religious group [as narrated in charge no.01] and 05 civilians including Ranada Prasad Saha [R.P Saha] (as narrated in charge no.02) carried out on 07 May, 1971 a group formed of 50/60 armed Razakars being accompanied by you the accused Md. Mahbubur Rahman @ Mahbub @ Mahebul by launching systematic attack at villages Mirzapur, Andhara, Sarishadair, Durgapur, Kanthalia, Postakumari under Police Station Mirzapur of District Tangail with intent to destroy the Hindu religious group, in whole or in part unlawfully detained 22 civilians belonging to Hindu religious group--(1) Dharendra Saha, (2) Nityananda Saha, (3) Dinesh Chandra Poddar, (4) Birendra Nath Chowdhury, (5) Rabindra Nath Saha, (6) Panna Lal Saha, (7) Syamsundar Poddar, (8) Surjendra Poddar, (9) Haridas Saha , (10) Suresh Chandra Saha, (11) Balai Chandra Saha **of village-Mirzapur** under Police Station-Mirzapur, (12) Pada Saha of village Andhara, (13) Bhabendra Kumar Saha, (14) Nitai Karmakar **of village-Sarishadair** under Police Station-Mirzapur, (15) Kanai Lal Saha, (16) Rakhal Chandra Saha, (17) Bhebal Mandal **of village-Durgapur** under Police Station-Mirzapur, (18) Jagadish Bakshi, (19) Amal Kumar Bakshi @ Amu Bakshi **of village-Kantahlia** under Police Station-Mirzapur, (2) Dr Rebati Mohon Saha, (21) Fanindra Nath Saha **of village-Postakumari** under Police Station-Mirzapur and (22) an unknown Hindu civilian and first took them away to Mirzapur Police Station.

Thereafter, at about 06:00 P.M, on the same day a group of Pakistani occupation army arrived at the police station by a big truck being accompanied by you accused Md. Mahbubur Rahman @ Mahbub @ Mahebul and your accomplices and then the 22 detained Hindu civilians including two other detainees were taken to the torture cell set up at Tangail

circuit house, by a truck at about 10:30/11:00 P.M and the detainees were subjected to inhuman torture there in captivity.

Finally, the 24 detainees were taken to Madhupur Bridge under the Bangshai river of Madhupur by an army truck at about 12:00 A.M where they were made stood in a line forcibly and then the Pakistani occupation army bayoneted 22 detainees to death and threw their dead bodies into the river. Detainees Sadhan Bhattacharya and Gandhi Saha somehow got survived with severe injuries sustained.

Therefore, you the accused Md. Mahbubur Rahman @ Mahbub @ Mahebul participated, substantially abetted and facilitated the actual commission of the offence of 'genocide' as specified in section 3(2) (c)(g)(h) read with section 4(1) of the International crimes(Tribunals) Act, 1973 or in the alternative for participating, substantially abetting and facilitating the actual commission of the offences of 'confinement', 'abduction', 'torture' and 'murder as crimes against humanity as specified in section 3(2)(a)(g)(h) read with section 4(1) of the International crimes(Tribunals) Act, 1973 which are punishable under section 20(2) of the said Act of 1973.

29. Thus, you have been indicted as above for committing the offences under section 3(2)(a)(c)(g)(h) of the International Crimes(Tribunals) Act, 1973, punishable under section 20(2) read with section 4(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.

30. You accused **Md. Mahbubur Rahman @ Mahbub @ Mahebul** have heard and understood the aforesaid charges which have been read out and explained [**in Bangla**] in the open court in your presence.

Question: Do you plead guilty or not.

Answer:

31. The charges so framed have been read over and explained to the accused **Md. Mahbubur Rahman @ Mahbub @ Mahebul** to which he pleaded not guilty and claimed to be tried according to law.

32. Let 22.04.2018 be fixed for opening statement and examination of prosecution witnesses. 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 learned state 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 Md. Shahinur Islam, Chairman

Justice Amir Hossain, Member

Judge Md. Abu Ahmed Jamadar, Member