

# **International Crimes Tribunal-1**

Old High Court Building, Dhaka, Bangladesh.

## **ICT-BD [ICT-1] Case No.08 of 2018**

[Arising out of Investigation Agency's compliant register serial no. 65 dated 22.03.2016]

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Present:

**Justice Md. Shahinur Islam, Chairman**

**Justice Amir Hossain, Member**

**Justice Md. Abu Ahmed Jamadar, Member**

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**Order No.05**

**07 February, 2019**

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The Chief Prosecutor

Vs.

(1) Md. Tajul Islam @ Forkan (2) Md. Jahed Miah @ Jahid Miah (3) Md. Shafi Uddin Moulana[absconding] (4) Md. Saleque Miah @ Sayek Miah and (5) Sabbir Ahmmed[absconding]

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**Mr. Sultan Mahmud**, Prosecutor: For the prosecution

**Mr. Mohammad Abul Hassan**, Advocate: State Defence Counsel for three [03] accused in prison (1) Md. Tajul Islam @ Forkan (2) Md. Jahed Miah @ Jahid Miah and (3) Md. Saleque Miah @ Sayek Miah.

**Mr. Gaji M.H Tamim**, Advocate: State Defence Counsel for two [02] absconding accused (4) Md. Shafi Uddin Moulana and (5) Sabbir Ahmmed

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## **[Decision on framing charges]**

Today is fixed for rendering decision on charge framing matter.

Three[03] accused (1) Md. Tajul Islam @ Forkan (2) Md. Jahed Miah @ Jahid Miah and (3) Md. Saleque Miah @ Sayek Miah have been brought to Tribunal from prison. Another two [02] accused (4) Md. Shafi Uddin Moulana and (5) Sabbir Ahmmed have been absconding. Hearing on charge framing matter took place on 07.01.2019 and Tribunal fixed today for rendering order. Now, the record is taken up for passing order on indictment matter.

Before we move to render the order, we deem it necessary to outline a brief portrayal of the settled historical context of the case as in involves the offences allegedly committed in 1971 during the liberation war. At the same time succinct submission advanced by both the prosecution and the defence, in course of hearing also be addressed.

### **I. Introduction and Formation of the Tribunal**

1. This International Crimes Tribunal-1 (hereinafter referred to as the “Tribunal”) has been established under the International Crimes (Tribunals) Act enacted in 1973 (hereinafter referred to as the “Act”) by Bangladesh Parliament to provide for the detention, prosecution and punishment of persons responsible for genocide, crimes against humanity, war crimes as enumerated in sub section (2) of section 3 of

the Act committed in the territory of Bangladesh, before or after commencement of the Act.

## **II. Brief Historical Context**

**2. The** settled historical context that pushed the Bengali nation for achieving Bangladesh an independent state through the war of liberation in 1971 has been portrayed in all the earlier cases disposed of by this Tribunal. Now, in brief, we reiterate that movement started in this part [now Bangladesh] of Pakistan as Bangabandhu Sheikh Mujibur Rahman the Father of the Nation in his historic glowing speech of 7th March, 1971, called on the people of Bangladesh to strive for independence. 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.

**3.** It is now 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 unarmed 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 deported to India as refugees and million others were internally displaced. It also experienced unprecedented destruction of properties all over Bangladesh.

4. The Pakistan government and the occupation military in collaboration with Jamaat E Islami [JEI], a potential pro-Pakistan political party setup number of auxiliary forces such as the Razakars, the Al-Badar, the Al-Shams, the Peace Committee etc. essentially to collaborate with the military in liquidating all those who were perceived to be sympathized with the liberation of Bangladesh, individuals belonging to minority religious groups especially the Hindus, political groups belonging to Awami League and other pro-independence political parties, Bangalee intellectuals and civilian population of Bangladesh.

5. In the case in hand, the arraignments as have been pressed by the prosecution, by submitting 'formal charge' involve the deliberate barbaric atrocious attacks allegedly carried out directing unarmed civilian population of the localities under Police Station-Lakhai, District[now]-Habiganj in 1971 to which the accused persons, in exercise of their active and culpable association with the locally formed Razakar Bahini, allegedly participated and deliberately

contributed, in violation of international humanitarian law and the laws of war.

### **III. Procedural History**

6. The investigation Agency of the Tribunal started investigation pursuant to compliant register serial no. 65 dated 22.03.2016, in respect of commission of offences enumerated in section 3(2) of the Act of 1973 allegedly perpetrated by (1) Md. Tajul Islam @ Forkan (2) Md. Jahed Miah @ Jahid Miah (3) Md. Shafi Uddin Moulana [absconding] (4) Md. Saleque Miah @ Sayek Miah and (5) Sabbir Ahmmed [absconding].

7. During investigation, the IO prayed for causing arrest of 03 suspected accused (1) Md. Tajul Islam @ Forkan (2) Md. Jahed Miah @ Jahid Miah (3) Md. Shafi Uddin Moulana through the Chief Prosecutor, for the purpose of proper and effective investigation. In execution of warrant of arrest issued by the Tribunal 02 accused (1) Md. Tajul Islam @ Forkan (2) Md. Jahed Miah @ Jahid Miah were produced before the Tribunal on 23.11.2017 when they were sent to prison. Accused Md. Shafi Uddin Moulana could not be arrested.

8. Considering the prayer made on 28.11.2017 on part of investigation agency through the Chief Prosecutor Tribunal permitted to interrogate those two[02] suspected accused and accordingly they have been

interrogated at the Central Jail, Keraniganj on 07.01.2018 and 08.01.2018.

9. On conclusion of investigation, the IO submitted its report together with documents and materials collected and statement of witnesses, before the Chief Prosecutor on 21.03.2018 recommending prosecution of three[03] accused persons.

10. The Chief Prosecutor on examination of the report and documents submitted therewith considered that two[02] more suspected accused needed to be prosecuted and thus the prosecution on 10.05.2018 sent back all documents including the report to the Investigation Agency to go on with further investigation.

11. Investigation Officer, afterwards on holding further investigation submitted its report on 04.07.2018 recommending prosecution against in all five [05] accused (1) Md. Tajul Islam @ Forkan (2) Md. Jahed Miah @ Jahid Miah (3) Md. Shafi Uddin Moulana (4) Md. Saleque Miah @ Sayek Miah and (5) Sabbir Ahmmed.

12. In execution of warrant of arrest issued by the Tribunal another accused Md. Saleque Miah @ Sayek Miah was produced before the Tribunal on 14.08.2018 when he was sent to prison.

13. On the basis of the report and documents submitted therewith by the Investigation Agency, placed the 'Formal Charge' on 06.08.2018

under section 9(1) of the Act of 1973 before this Tribunal alleging that the five[05] accused persons had committed the offence of crimes against humanity including abetting and also for complicity to commit such crimes narrated in the formal charge during the period of War of Liberation in 1971 around the localities under Police Station-Lakhai, District[now]-Habiganj .

14. The Tribunal, under Rule 29(1) of the Rules of Procedure, took cognizance of offences as mentioned in section 3(2) read with section 4(1) of the Act of 1973 on 24.09.2018, by application its judicial mind to the Formal Charge and materials and documents submitted therewith.

15. Out of five [05] accused two [02] accused i.e Md. Shafi Uddin Moulana and Sabbir Ahmmed could not be arrested. After having the report in execution of warrant of arrest issued against them the Tribunal, for the purpose of holding proceeding in absentia against them ordered publication of notice in two national daily news papers. But these two accused did not turn up and as such treating them absconded Tribunal by its order dated 14.11.2018 appointed Mr. Mohammad Abul Hassan, Advocate as state defence counsel for three [03] present accused and Mr. Gaji M.H Tamim, Advocate as state defence counsel to defend two [02] absconding accused, at the cost of government and fixed 07.01.2019 for hearing on charge framing matter.

#### **IV. Brief Account of Accused Persons**

16. Before we move to aspects related to the matter of framing charges alleged we deem it essential to make brief portrayal of the accused persons that they had in 1971.

##### **(1) . Md. Shafi Uddin Moulana**

Accused Md. Shafi Uddin Moulana is the son of late Md. Mutiur Rahman alias Motiur Rahman and late Eingraj Bibi of village-Manpur, Police Station-Lakhai, District [now]-Habiganj. He was born on 01.07.1937(as per his NID). Accused Md. Shafi Uddin Moulana was the secretary of central committee of East Pakistan Nezam-e-Islam and he participated in the Election of Provincial Assembly as its candidate. In 1971, he took stance against Independence of Bangladesh and worked as a close associate and collaborator of Pakistani Occupation Army. He was also known as a leader of peace committee and Razakar Bahini of Lakhai Police Station. Accused Md. Shafi Uddin Moulana after recruiting Razakars sent them to Lakhai Army Camp set up at Lakhai Police Station Thana Township and Development Centre (TT & DC) for training. He used to provide lists of Pro-Liberation unarmed civilians, leaders and activists of Awami League, freedom fighters and members of Hindu community to Pakistani Army. During the War of Liberation he participated in committing atrocious activities in the localities under Lakhai Police Station, prosecution alleges.



**(2) . Md. Tajul Islam alias Fokan**

Accused Md. Tajul Islam alias Fokan is the son of late Atab Ullah alias Mahtab Uddin (Shudin) and late Most. Madhu Mala of village-Muriauk, Police Station-Lakhai, District-Habiganj (previously Sub-Division). He was born on 04.10.1937 (as per his NID). In 1970 he was an active follower of accused Md. Shafi Uddin Moulana. In 1971 he joined in locally formed Razakar Bahini and got armed training at Pakistani Occupation Army Camp situated at Thana Township and Development Centre (TT & DC) of Lakhai Police Station. During War of Liberation he participated in the commission of atrocious activities along with other Razakars in the localities under Lakhai police station, prosecution alleges.

**(3) Md. Jahed Miah alias Jahid Miah**

Md. Jahed Miah alias Jahid Miah son of late Ashuk Ullah alias Ashak and late Lal Banu of village-Zirinda, Police Station-Lakhai, District-Habiganj (Previously Sub-Division) was born on 23.08.1955(as per his NID). In the general election of 1970 he was an active supporter and worker of Md. Shafi Uddin Moulana who was a candidate from Nezam-e-Islam party. During War of Liberation accused Jahed Miah joined in the locally formed Razakar Bahini and received armed training from the Pakistani occupation army camp situated at Thana Township and Development Centre (TT & DC) at Lakhai Police Station. In 1971 he participated in commission of different offences

and atrocious activities along with other Razakars in different places of Lakhai Thana area, prosecution avers.

**(4) Md. Saleque Miah alias Sayek Miah**

Accused Md. Saleque Miah alias Sayek Miah is the son of late Abdul Sattar @ Abu Sattar and Most. Shajara Bibi of village-Zirunda under police station-Lakhai, District-Habiganj (previously Sub-Division). He was born on 03.07.1943(as per his NID). He was an active supporter of Nezam-e-Islam Party and in Provincial Assembly Election of 1970 he worked for accused Md. Shafi Uddin Moulana. During the war of liberation he got enrolled in locally formed Razakar Bahini and received armed training from Pakistani Occupation Army Camp set up at Thana Township and Development Centre (TT & DC) of Lakhai Thana. In 1971 he participated in commission of atrocious activities being accomplice of other Razakars in different places of Lakhai Thana area, prosecution alleges.

**(5)Sabbir Ahmmed**

Accused Sabbir Ahmmed is the son of late Nur Hossain and late Pyara Begum of village-Manpur, Police Station-Lakhai, District-Habiganj (previously Sub-Division). He was born on 05.05.1955 (as per his NID). As cousin of accused Md. Shafi Uddin Moulana he was an active supporter of Nezam-e-Islam Party. In 1970 in Provincial Assembly Election he worked for Md. Shafi Uddin Moulana. During the War of Liberation he got enrolled in the locally formed Razakar

Bahini and received armed training from Pakistani Occupation Army Camp set up at Thana Township and Development Centre (TT & DC) of Lakhai Thana. In 1971 he participated in committing atrocious activities along with other Razakars in different places of Lakhai Thana area, prosecution alleges.

#### **V. Submission by the Prosecutor**

17. **Mr. Sultan Mahmud**, the learned prosecutor drawing attention to the formal charge and other materials procured during investigation submitted that the accused persons belonged to locally formed Razakar Bahini and in exercise of association with it they deliberately collaborated with the Pakistani occupation army in accomplishing group crimes or system crimes directing unarmed pro-liberation civilians of localities under police station- Lakhai of District [now]- Habiganj. It has been asserted further that the evidence and materials collected during investigation prima facie point towards participation and complicity of all the five accused persons with the events constituting the offences as crimes against humanity, as has been pressed in the formal charge.

#### **VI. Submission on behalf of accused**

18. **Mr. Abul Hassan** the learned state defence counsel defending the three accused detained in prison i.e (1) Md. Tajul Islam @ Forkan (2) Md. Jahed Miah @ Jahid Miah and (3) Md. Saleque Miah @ Sayek Miah submits that these accused did not belong to locally formed

Razakar Bahini; that they have been falsely implicated in this case out of rivalry; that the alleged arraignment suffers from doubt and truthfulness. The learned state defence counsel however concluded his submission seeking discharge of this accused.

19. On contrary, **Mr. Gaji M. H. Tamim** the learned stated defence counsel for two [02] absconding accused (4) Md. Shafi Uddin Moulana and (5) Sabbir Ahmmed submitted that these two accused have been recommended for prosecution on the basis of flawed investigation; that the materials allegedly collected do not connect these accused with any of the event alleged; that these accused persons were not associated with locally formed Razakar Bahini. The learned counsel concluded his submission seeking discharge of these accused.

## **VII. Deliberation and Decision**

20. The averment agitated by the prosecution that in 1971 the accused persons were the armed members of locally formed Razakar Bahini is a crucial issue which relates to the arraignments brought. But at this stage, conclusive finding on it cannot be given, without trial. For this issue is required to be resolved on evaluation of evidence to be presented in course of trial. Further, it is to be noted too that the International Crimes (Tribunals) Act, 1973 permits to prosecute and try even an individual or group of individuals.

21. However, at this phase of proceeding, we are to just consider whether the documents and materials *prima facie* demonstrate the commission of the alleged atrocious activities constituting the offences as crimes against humanity and complicity and involvement of the accused persons therewith. But of course, presuming the accused persons innocent, till they are found guilty as liability of accused persons for the offences alleged cannot be determined at this stage and without trial and weighing evidence to be presented.

22. Defence submitted that the accused persons were not engaged in accomplishing any of the offences alleged as the evidence collected during investigation does not connect them therewith and they have been falsely implicated in this case.

23. But the above submission agitated by the defence relates to factual aspect which may be well proved only in trial, and not at this stage and as such now it does not deserve consideration.

24. However, we reiterate the settled norm that at this stage the accused persons shall be presumed innocent, till they are found guilty as neither the guilt nor the innocence can be adjudicated decisively. Their culpability, if any, can only be well determined only at trial, not at this stage. Finally, delay is not a clog in prosecuting the offences which are known as international crimes. There has been no statutory

limitation in prosecuting the offences of crimes against humanity. It is now well settled.

25. On careful scrutiny, we have found *prima facie* the nexus of the accused persons with the commission of the alleged offences, mostly from the particulars of events of attacks narrated in the Formal Charge. The alleged offences were system crimes committed against the civilian population constituting the offences as crimes against humanity committed in context of the war of liberation in 1971 and the same need to be resolved in trail.

26. In view of above, now, we proceed to read out the charges framed. We are of the view that there are sufficient and substantial materials before this Tribunal forming reasonable grounds to frame charges against accused (1) **Md. Shafi Uddin Moulana** is the son of late Md. Mutiur Rahman alias Motiur Rahman and late Eingraj Bibi of village-Manpur, Police Station-Lakhai, District [now]-Habiganj,(2) **Md. Tajul Islam alias Fokan** is the son of late Atab Ullah alias Mahtab Uddin (Shudin) and late Most. Madhu Mala of village-Muriauk, Police Station-Lakhai, District-Habiganj,(3) **Md. Jahed Miah alias Jahid Miah** son of late Ashuk Ullah alias Ashak and late Lal Banu of village-Zirinda, Police Station-Lakhai, District-Habiganj,(4) **Md. Saleque Miah alias Sayek Miah** is the son of late Abdul Sattar @ Abu Sattar and Most. Shajara Bibi of village-Zirunda under police station-Lakhai, District-Habiganj and (5) **Sabbir Ahmmed** is the son

of late Nur Hossain and late Pyara Begum of village-Manpur, Police Station-Lakhai, District-Habiganj 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 they are alleged to be criminally liable under sections 4(1) of the Act of 1973. The charges are thus framed against them in the following manner:

### **Charges**

**We,**

**Justice Md. Shahinur Islam, Chairman**

**Justice Amir Hossain, Member**

**Justice Md. Abu Ahmed Jamadar, Member**

### **Of the International Crimes Tribunal -1**

Do hereby charge you the accused (1) Md. Tajul Islam @ Forkan (2) Md. Jahed Miah @ Jahid Miah (3) Md. Shafi Uddin Moulana [absconding] (4) Md. Saleque Miah @ Sayek Miah and (5) Sabbir Ahmmed [absconding] , as follows:

#### **Charge 01: [05 accused indicted]**

**[Looting, Arson and other inhumane acts constituting the offences of crimes against humanity committed at the village-Muriauk under Police Station-Lakhai of District-Habiganj (Previously Sub-Division)]**

That on 31.10.1971 at about 2:00 A.M. a group formed of you the accused (1) Md. Shafi Uddin Moulana (Absconding), (2) Md. Tajul Islam alias Fokan, (3) Md. Jahed Miah alias Jahid Miah, (4) Md. Saleque Miah alias Sayek Miah and (5) Sabbir

Ahmmed(Absconding), 20/25 armed Razakars and 10/15 Pakistani occupation army by launched a systematic attack at village-Muriauk under Police Station-Lakhai of District-Habiganj (Previously Sub-Division) carried out looting at the houses of local M.N.A Mostafa Ali, his full brothers and 10/12 other houses and set those on fire by spreading gun powder.

Therefore, you the accused (1) Md. Shafi Uddin Moulana (Absconding), (2) Md.Tajul Islam alias Fokan, (3) Md. Jahed Miah alias Jahid Miah, (4) Md. Saleque Miah alias Sayek Miah and (5) Sabbir Ahmmed (Absconding) by such criminal acts forming part of systematic attack directing non combatant civilian population, to further policy and plan of the Pakistani occupation army participated, facilitated, abetted, aided and substantially contributed to the commission of the offences of looting, arson and other inhumane acts as crimes against humanity as enumerated 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 02: [05 accused indicted]**

**[Abduction, confinement, looting, arson, torture, other inhumane acts and murder of 02 [two] civilians on forcible capture from the village-Muriauk under Police Station-Lakhai of District-Habiganj (Previously Sub-Division)]**

That in continuation of the event of attack narrated in charge no.1 on 31.10.1971 at about 03:00 A.M a group formed of you the accused (1)



Md. Shafi Uddin Moulana (Absconding), (2) Md.Tajul Islam alias Fokan, (3) Md. Jahed Miah alias Jahid Miah, (4) Md. Saleque Miah alias Sayek Miah and (5) Sabbir Ahmmed (Absconding), 20/25 armed Razakars and 10/12 Pakistani occupation army by launching attack at the house of Elias Kamal of village-Muriauk under Police Station-Lakhai of District-Habiganj (Previously Sub-Division) forcibly captured Md. Idris Miah, father of Elias Kamal and kept him confined at the house of Md. Ismail Moulana when Elias Kamal managed to escape, sensing the attack.

In conjunction with the attack you the accused persons and your accomplices attacked the house of the freedom fighter Md. Shahjahan and apprehended his father Abdul Jabbar and brought him also at the house of Md. Ismail Moulana.

Around 10.00/11.00 A.M on the same day you the accused persons took the detained victims away to the house of you the accused Md. Shafi Uddin Moulana where they were subjected to torture. Around 04.00 P.M on the same day you the accused persons and your accomplices started moving towards the army camp taking the detainees with you and on reaching at Uzadar Bil the detainees Md. Idris Miah and Abdul Jabbar were killed and their dead bodies were thrown in the Bil.

Therefore, you the accused (1) Md. Shafi Uddin Moulana (Absconding), (2) Md. Tajul Islam alias Fokan, (3) Md. Jahed Miah alias Jahid Miah, (4) Md. Saleque Miah alias Sayek Miah and (5) Sabbir Ahmmed (Absconding) by such criminal acts forming part of systematic attack directing non combatant civilian population, to further policy and plan of the Pakistani occupation army participated, facilitated, abetted, aided and substantially contributed to the commission of the offences of abduction, confinement, torture, murder and other inhumane acts as crimes against humanity as enumerated 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.

27. 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 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.

28. You accused (1) Md. Tajul Islam @ Forkan (2) Md. Jahed Miah @ Jahid Miah and (3) Md. Saleque Miah @ Sayek Miah 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:**

29. The charges so framed have been read over and explained to the accused (1) Md. Tajul Islam @ Forkan (2) Md. Jahed Miah @ Jahid Miah and (3) Md. Saleque Miah @ Sayek Miah to which they pleaded not guilty and claimed to be tried according to law.

30. Two [02] accused (4) Md. Shafi Uddin Moulana and (5) Sabbir Ahmmed have been absconding and as such the charges framed could not be read over and explained to them.

31. Let 24.03.2019 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.

32. At the same time the learned engaged counsel and also the learned state defence counsel shall be at liberty to submit a list of witnesses along with documents which the defence intends to rely upon, if any, as required under section 9(5) of the Act on or before the date fixed.

**Justice Md. Shahinur Islam, Chairman**

**Justice Amir Hossain, Member**

**Justice Md. Abu Ahmed Jamadar, Member**