

International Crimes Tribunal-1

Old High Court Building, Dhaka, Bangladesh.

ICT-BD [ICT-1] Case No.02 of 2018

Present:

Justice Md. Shahinur Islam, Chairman

Justice Amir Hossain, Member

Justice Md. Abu Ahmed Jamadar, Member

Order No.06

15 January, 2019

The Chief Prosecutor

Vs.

(1) Md. Rezaul Karim alias Montu (2) Md. Shahid Mandol and

(3) Md. Nazrul Islam [absconding]

Mr. Abul Kalam, Prosecutor: For the prosecution

Mr. Abdus Sattar Palwan, Advocate: Engaged for accused (1) Md. Rezaul Karim alias Montu, (2)Md. Shahid Mandol

Mr. Gaji M.H Tamim, Advocate: State defence Counsel for accused (3) Md. Nazrul Islam [absconding]

[Decision on framing charges]

Today is fixed for rendering decision on charge framing matter.

Accused (1) Md. Rezaul Karim alias Montu, (2) Md. Shahid Mandol are present on dock as have been produced from prison. Another accused (3) Md. Nazrul Islam has been absconding. On closure of

hearing on charge framing matter that took place on 26.11.2018 today is fixed for order. Now the record is taken up for passing order on indictment matter.

Before we pass the order, we consider it indispensable 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. In the earlier cases, already disposed of, 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 by this Tribunal. Now, in brief, we reiterate that despite the overwhelming majority in the general election of 1970, Pakistan Government did not hand over power to Bangabandhu Sheikh Mujibur Rahman the leader of the majority party as democratic norms required. As a result, movement started in this part of Pakistan and Bangabandhu Sheikh Mujibur Rahman the father of 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] 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 identifying and 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-Badalgachi, District-Naogaon in 1971 to which the accused persons, in exercise of their active and culpable affiliation 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. 72 dated 18.10.2016, in respect of commission of offences enumerated in section 3(2) of the

Act of 1973 allegedly perpetrated by (1) Md. Rezaul Karim alias Montu, (2) Md. Shahid Mandol, (3)Md. Nazrul Islam [absconding] and (4) Ishak Ali[died at pre-trial stage]

7. During investigation, the IO prayed for causing arrest of the suspected accused persons through the Chief Prosecutor, for the purpose of proper and effective investigation. In execution of warrant of arrest issued by the Tribunal three suspected accused (1) Rezaul Karim Montu (2) Shahid Mandol (3) Ishak Ali were arrested and were produced before the Tribunal on 30.04.2017 when they were sent to prison.

8. Tribunal considering the prayer on part of investigation agency permitted to interrogate those three suspected accused on 08.05.2017 and 09.05.2017 in Dhaka Central Jail Gate Room. Detained accused Ishak Ali died at pre-trial stage when he had been in prison.

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 30.11.2017.

10. The Chief Prosecutor, on the basis of the report and documents submitted therewith by the Investigation Agency, placed the 'Formal Charge' on 05.04.2018 under section 9(1) of the Act of 1973 before this Tribunal alleging that the three 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 locality of Police Station-Badalgachi, District-Naogaon .

11. 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 07.05.2018, by application its judicial mind to the Formal Charge and materials and documents submitted therewith.

12. Out of three [03] accused one Md. Nazrul Islam could not be arrested. After having the report in execution of warrant of arrest issued against him the Tribunal, for the purpose of holding proceeding in absentia against him ordered publication of notice in two national daily news papers. But the accused Md. Nazrul Islam did not turn up and as such treating him absconded Tribunal by its order dated 08.10.2018 appointed Mr. Gaji M.H Tamim , Advocate as state defence counsel, at the cost of government to defend the absconding accused Md. Nazrul Islam and fixed 26.11.2018 for hearing on charge framing matter.

IV. Brief Account of Accused Persons

13. Before we render order on charge framing matter let us have a look to the brief account of the accused persons, as has been narrated in the formal charge.

(1).Md. Rezaul Karim alias Montu (68)

Accused Md. Rezaul Karim alias Montu (68) is the son of late Majir Uddin Mandol and late Rahima Begum of village-Goalvita, Police Station-Badalgachi, District-Naogaon. Present address: Modern School (Razakar Building), Jamalganj Road, Professor Para, Police Station-Joypurhat Sadar, District-Joypurhat and was born on 09.02.1950 (according to his NID). He passed M.SC (B.Ed) from the University of Rajshahi. During Liberation War accused Md. Rezaul Karim alias Montu was a student of Rajshahi University and active member of Jamaat-e-Islami. In 1971 he got enrolled in Razakar Bahini on having training under Pakistani army and formed a Razakar camp at his locality under Badalgachi Police station under Naogaon Sub-Division (now District) and got involved in committing atrocious activities, prosecution alleges.

(2)Md. Shahid Mandol (62)

Md. Shahid Mandol (62) is the son of late Md. Abul Hossain and late Khoteza Bibi of village-Chapadal under Police Station-Badalgachi, District-Naogaon and was born on 15.06.1955 (as per his NID). During Liberation War he was an active supporter of Jamaat-e-Islami. He joined the locally formed Razakar Bahini and participated in atrocious activities as an accomplice of his commander accused Md. Rezaul Karim alias Montu, prosecution alleges.

(3)Md. Nazrul Islam (64)

Md. Nazrul Islam (64) is the son of late Faraz Uddin Mandol and late Nayajan Bibi of village-Darishan under Police Station-Badalgachi, District-Naogaon and was born on 30.09.1953 (as per his NID). He passed H.S.C from Mollikpur High School, Joypurhat. During Liberation War he was an active supporter of Jamaat-e-Islami and joined the locally formed Razakar Bahini and participated in committing atrocious activities as an accomplice of accused Razakar Commander Md. Rezaul Karim, prosecution alleges.

V. Submission by the Prosecutor

14. Mr. Abul Kalam, the learned prosecutor drawing attention to the formal charge and other materials collected during investigation submitted that the accused persons belonged to locally formed Razakar Bahini and in exercise of association with it they consciously and culpably collaborated with the Pakistani occupation army in accomplishing group crimes or system crimes directing unarmed pro-liberation civilians of localities under police station- Badalgachi of District [now]-Naogaon. It has been asserted too that the evidence and materials collected during investigation prima facie point towards participation and complicity of all the three 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

15. On contrary, **Mr. Abdus Sattar Palwan** the learned counsel engaged for accused 1.Md. Rezaul Karim alias Montu, 2.Md. Shahid Mandol submitted that false accusation has been brought against these accused; that the materials allegedly collected do not connect these accused with any of the event alleged; that the accused persons were not associated with locally formed Razakar Bahini. Delayed prosecution itself creates doubt as to truthfulness of accused persons' complicity with the alleged offences, the learned defence counsel, added. The learned counsel concluded his submission seeking discharge of this accused.

16. **Mr. Gaji M.H. Tamim** the learned state defence counsel defending the absconding accused (3) Md. Nazrul Islam submitted that this accused did not belong to locally formed Razakar Bahini; that he has been falsely implicated in this out of rivalry; that delayed prosecution itself creates doubt as to truthfulness of the alleged arraignments brought against this accused. The learned state defence counsel however concluded his submission seeking discharge of this accused.

VII. Deliberation and Decision

17. The averment agitated by the prosecution that in 1971 the accused persons belonged to locally formed Razakar Bahini is a crucial issue which relates to the arraignments brought. 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 only. 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.

18. However, at this stage, we are to just see whether the documents and materials *prima facie* demonstrate the commission of the alleged 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 evaluating evidence to be presented.

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

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

21. 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 facts 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.

22. 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. Rezaul Karim alias Montu**, son of late Majir Uddin Mandol and late Rahima Begum of village-Goalvita, Police Station-Badalgachi, District-Naogaon. Present address: Modern School (Razakar Building), Jamalganj Road, Professor Para, Police Station-Joypurhat Sadar, District-Joypurhat (2) **Md. Shahid Mandol** son of late Md. Abul Hossain and late Khoteza Bibi of village-Chapadal under Police Station-Badalgachi, District-Naogaon and (3) **Md. Nazrul Islam** son of late Faraz Uddin Mandol and late Nayajan Bibi of village-Darishan under Police Station-Badalgachi, District-Naogaon 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. Rezaul Karim alias Montu, (2) Md. Shahid Mandol and (3) Md. Nazrul Islam as follows:

Charge 01: [03 accused indicted]

[Offences of Abduction, Plundering, arson, other inhumane acts and murder of 04 [four] civilians committed at village-Ronahar under Police Station-Badalgachi of District Naogaon].

That on 07.10.1971 at about 4:00 P.M a group formed of you the accused (1) Md. Rezaul Karim alias Montu, (2) Md. Shahid Mandol , (3) Md. Nazrul Islam and Md. Ishak Ali (now dead) , your 15/20 cohort Razakars and 100/150 Pakistani occupation army by launching systematic attack at village-Ronahar under Police Station- Badalgachi of District[now]-Naogaon apprehended Shaheb Ali and Akam Uddin and handed them over to the Pakistani occupation army and started moving towards west of the crime site. You the accused persons and

your cohorts began to beat the detained victims and at one stage shot them to death. In conjunction with the attack you the accused persons and your accomplices looted 10/12 houses and set those on fire.

Therefore, you the accused (1) Md. Rezaul Karim alias Montu, (2) Md. Shahid Mandol and (3) Md. Nazrul Islam 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**', '**plundering**', '**arson**', '**other inhumane acts**' and '**murder**' 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: [03 accused indicted]

[Offences of Abduction, Plundering, arson, other inhumane acts and murder of 01[one] civilian committed at village-Khojagari under Police Station-Badalgachi of District [now] Naogaon].

That on 08.10.1971 at about 1:30 P.M a group formed of you the accused (1) Md. Rezaul Karim alias Montu, (2) Md. Shahid Mandol , (3) Md. Nazrul Islam and Md. Ishak Ali (now dead) , 20/25 armed Razakars and 100 Pakistani occupation army by launching systematic attack at village-Khojagari under Police Station- Badalgachi of District[now]-Naogaon forcibly captured one Nurul Islam and handed over him to the Pakistani occupation army and then he was shot to

death. In conjunction with the attack you the accused persons and your accomplices after looting 15/20 houses set those on fire.

Therefore, you the accused (1) Md. Rezaul Karim alias Montu, (2) Md. Shahid Mandol and (3) Md. Nazrul Islam 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**', '**plundering**', '**arson**', '**other inhumane acts**' and '**murder**' 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 03: [03 accused indicted]

[Offences of Abduction, Confinement, Plundering, arson, other inhumane acts and murder of 02 [two] civilians committed at village-Maloncha under Police Station Badalgachi of District [now] Naogaon].

That on 08.10.1971 at about 5:00 P.M a group formed of you the accused (1) Md. Rezaul Karim alias Montu, (2) Md. Shahid Mandol , (3) Md. Nazrul Islam and Md. Ishak Ali (now dead) , 20/25 armed Razakars and 100 Pakistani occupation army launched an attack at village-Maloncha under Police Station- Badalgachi of District[now]-Naogaon. Sensing the attack villagers Md. Kenar Uddin Mandol, Md. Akkas Ali, Md. Abbas Ali, Md. Matiar Rahman, Abdul Hakim and

Aklima Khatun went into hiding in different places wherefrom they saw you the accused persons and your accomplices plundering valuables from 40/50 houses and burning down those houses. In conjunction with the attack you the accused persons and your accomplices unlawfully captured Md. Kenar Uddin Mandol and his son Akkas Ali and took them away to the Pakistani army camp at Khanjanpur of Joypurhat and on 09-10-1971 at 5.00 PM they were gunned down to death taking them to the Khanjanpur Kuthibari bridge and their bodies were thrown into the river.

Therefore, you the accused (1) Md. Rezaul Karim alias Montu, (2) Md. Shahid Mandol and (3) Md. Nazrul Islam 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'**, **'plundering'**, **'arson'**, **'other inhumane acts'** and **'murder'** 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.

23. 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.

24. You accused (1) Md. Rezaul Karim alias Montu and (2) Md. Shahid Mandol 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:

25. The charges so framed have been read over and explained to the accused (1) Md. Rezaul Karim alias Montu and (2) Md. Shahid Mandol to which they pleaded not guilty and claimed to be tried according to law.

26. Accused Md. Nazrul Islam has been absconding and as such the charges framed could not be read over and explained to him.

27. Let 26.02.2019 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.

28. At the same time the learned engaged counsel and also the learned state defence counsel are asked to submit a list of witnesses along with documents which the defence intends to rely upon or 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