

International Crimes Tribunal-1

Old High Court Building, Dhaka, Bangladesh

ICT- BD [ICT-1] Case No. 02 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) Advocate Md. Shamsul Haque (2) S.M. Yusuf Ali (3) Md. Ashraf Hossain [absconded] (4) Professor Sharif Ahamed alias Sharif Hossain [absconded] (5) Md. Abdul Mannan [absconded] (6) Md. Abdul Bari [absconded] (7) Harun [absconded], and (8) Md. Abul Hashem [absconded]

Order No. 17
Dated 26.10.2015

Ms. Turin Afroz, and
Mr. Taposh Kanti Baul, Prosecutors

..... For the prosecution

Mr. A.Y. Mashiuzzaman, Senior counsel

.....For accused Advocate Md. Shamsul Haque and
S.M. Yusuf Ali

Mr. Abdus Sobhan Tarafder, Advocate

..... For absconded accused Md. Ashraf Hossain, Professor
Sharif Ahamed alias Sharif Hossain and Md. Abdul Mannan

Mr. Qutub Uddin Ahmed, Advocate

..... For absconded accused Md. Abdul Bari, Harun
and Md. Abul Hashem

[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 eight accused persons six accused persons have been remaining absconded , and of them accused Md. Ashraf Hossain, Professor Sharif Ahamed alias Sharif Hossain and Md. Abdul

Mannan are being defended by Mr. Abdus Sobhan Tarafder, and accused Md. Abdul Bari, Harun and Md. Abul Hashem are being defended by Mr. Qutub Uddin Ahmed as State defence counsels, appointed by the Tribunal. The hearing on charge framing matter took place in presence of accused Advocate Md. Shamsul Haque and S.M. Yusuf Ali only who have been brought today before this Tribunal from prison and they are being defended by their engaged senior counsel Mr. A. Y. Mashiuzzaman. Five separate discharge petitions have been filed on behalf of accused Advocate Md. Shamsul Haque, S.M. Yusuf Ali, Md. Abdul Bari, Harun and Md. Abul Hashem.

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 eight accused persons on 29.04.2015 and then the case came to the stage of charge hearing matter. Afterwards, on 03.09.2015 the Tribunal-2 transferred this case record to this Tribunal-1 which received the same on 06.09.2015 and fixed 15.09.2015 for hearing the charge framing matter by renumbering and registering the case as ICT-BD [ICT-1] Case No. 02 of 2015. But on 15.09.2015 it was adjourned and 30.09.2015 was fixed for hearing charge framing matter . Ultimately charge framing matter was heard on 30.09.2015 and 07.10.2015.

The case involves the criminal acts forming part of systematic attack constituting the offences as enumerated in the International Crimes (Tribunals) Act, 1973 [Act No. XIX of 1973] perpetrated in 1971 during the war of liberation of Bangladesh. The accused persons are alleged to have committed many such offences around the then Jamalpur Sub-Division. 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-1 (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 around the then Jamalpur 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 plan and design 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 a 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 way 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 around the then Jamalpur 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

(i) Accused Md. Ashraf Hossain[absconded]

Accused Md. Ashraf Hossain [64] son of late Mohammad Hossain and late Syeda Ashrafunnesa of village Miapara, Police Station Jamalpur Sadar, District Jamalpur was born on 01.01.1950. He passed the S.S.C. Examination from Singhajani Bohumukhi High School, Jamalpur in 1967 and then he went to Jamalpur Ashek Mahmud College for H.S.C, but could not complete the course. Prosecution alleges that he was the president of the then Jamalpur Sub-Division Islami Chattra Sangha [ICS], the student wing of Jamat-E-Islami

[JEI], during the period of the liberation war in 1971. He founded the Al-Badar Bahini in Jamalpur. Immediate after the independence, the accused Md. Ashraf Hossain escaped from Jamalpur and fled to Patna where he got married to one Afroza where he had been residing with his wife and four daughters, prosecution alleges.

(ii) Accused Professor Sharif Ahamed alias Sharif Hossain [absconded]

Accused Professor Sharif Ahamed alias Sharif Hossain [71] son of late Alhaj Jafar Uddin Ahmed alias Jafar Uddin and late Maziron Nesa of village Kacharipara, Police Station Jamalpur Sadar, District Jamalpur was born on 07.11.1943. He completed his M.A. degree from Rajshahi University. He was a lecturer of the Dhonbari College and after the independence of Bangladesh he had been working in the Islami Bank Bangladesh Ltd. at Dilkusha Branch, Dhaka. In 1971, he was a leader of the Jamat-E-Islami, Jamalpur. After the independence of Bangladesh he was not active in politics, however, he was professionally involved with Jamat-E-Islami's financial organizations like-Islami Bank Ltd, prosecution alleges.

(iii) Accused Md. Abdul Mannan [absconded]

Accused Md. Abdul Mannan [66] son of late Mohir Uddin and late Zayeda Bewa of village Kacharipara, Police Station Jamalpur Sadar, District Jamalpur was born on 02.11.1948. He studied in Jamalpur Ashek Mahmud College, but could not pass H.S.C. Examination in 1969. In 1971, he was an active member of Islami Chattra Sangha, Jamalpur, prosecution alleges. After the independence of Bangladesh he was not active in politics.

(iv) Accused Md. Abdul Bari [absconded]

Accused Md. Abdul Bari [62] son of late Abdur Rahman and Jobeda Bewa of village Bogabaid, Police Station Jamalpur Sadar, District Jamalpur was born on 17.01.1952. He passed the S.S.C Examination from Singhojani Bohumukhi High School, Jamalpur in 1967 and the H.S.C. Examination from Jamalpur Ashek Mahmud College in 1969. He had been working in the Iranian Embassy for a long period of time. Later, leaving that job he worked in a private company. In 1971, he was an active member of Islami Chattra Sangha, Jamalpur, prosecution alleges. After the independence of Bangladesh, he was not active in politics.

(v) Accused Harun[absconded]

Accused Harun [58] son of late Jasim Uddin alias Joshy and late Naziron Begum of village Bashbora, Police Station Jamalpur Sadar, District Jamalpur was born on 21.02.1956. He is now politically involved with Jamat-E-Islami, prosecution alleges.

(vi) Accused Md. Abul Hashem[absconded]

Accused Md. Abul Hashem [60] son of late A. Latif and Noytun Bibi of village Kacharipara, Police Station Jamalpur Sadar, District Jamalpur was born on 25.01.1953. He passed the S.S.C. Examination from Jamalpur High School and H.S.C. from Jamalpur Ashek Mahmud College. He joined the Pakistan Police in 1971 and in 1973 he quitted that job and started business. He joined the politics of Islami Chattra Sangha [ICS], prosecution alleges.

(vii) Accused Advocate Md. Shamsul Haque

Accused Advocate Md. Shamsul Haque [75] son of late Safar Uddin Mondal and late Hobironnesa of Noapara, village Nandina, Police Station

Jamalpur Sadar, District Jamalpur was born on 14.05.1942. He obtained M.A.degree from the University of Dhaka in 1963. He served as a teacher of Netrokona College since 1964 to 1969. He became a member of Jamalpur Bar Association in 1969 and has been practicing as a lawyer. In 1961, he was the V.P. of Jamalpur Ashek Mahmud College. He joined the Jamat-E-Islami in 1970 and has been an active member till now, prosecution alleges.

(viii) Accused S.M. Yusuf Ali

Accused S.M. Yusuf Ali [83] son of late S.M. Torab Ali and late Omukjan Bewa of Fulbaria, Old Bus Stand, Modhupur Road, Jamalpur was born on 01.01.1933. He obtained B.A degree in 1955. He completed his B.Ed. in 1959 from Dhaka Teachers' Training College. He was the Headmaster of Bottala M.E. School, Jamalpur and he joined Ghothail Junior High School as an Assistant Teacher. In 1961, he joined as the Head Master of Singhojani School and retired in September, 2002. He was a candidate in the M.N.A Election in 1970 as nominated by the Jamat-E-Islami, but he was defeated. Presently he is not active in politics.

4. Brief Procedural History

Chief Prosecutor submitted 'formal charge' on having considered the investigation report and documents submitted therewith by the Investigating Agency. Out of eight accused persons only accused Advocate Md. Shamsul Haque and S.M. Yusuf Ali have been in detention since pre-trial stage. The other six accused persons neither could have been arrested nor did they surrender.

On 29.04.2015 the Tribunal-2 took cognizance of offences, perpetration of which has been unveiled in course of investigation and also ordered publication of notice in two daily newspapers as required under Rule 31 of the ROP, 2012 against the six absconded accused (1) Md. Ashraf Hossain (2) Professor Sharif Ahamed alias Sharif Hossain (3) Md. Abdul Mannan (4) Md. Abdul Bari (5) Harun, and (6) Md. Abul Hashem as the execution of warrant of arrest issued against them earlier was found unserved.

Accordingly, despite publication of the notice in two daily newspapers namely ' Daily Janakantha' dated 26.07.2015 and the ' Daily Sun' dated 25.07.2015 the six absconded accused persons did not make them surrendered, and as such, the Tribunal-2 ordered for holding trial *in absentia* against them and appointed Mr. Abdus Sobhan Tarafder to defend accused Md. Ashraf Hossain, Professor Sharif Ahamed alias Sharif Hossain and Md. Abdul Mannan, and Mr. Qutub Uddin Ahmed to defend accused Md. Abdul Bari, Harun and Md. Abul Hashem as State defence counsels. The Tribunal-2 also ordered the prosecution for furnishing documents it relies upon to the State defence counsels and fixed a date for hearing the charge framing matter. In the meantime on 03.09.2015 the Tribunal-2 transferred this case record to this Tribunal-1 which received the same on 06.09.2015 and fixed 15.09.2015 for hearing the charge framing matter by renumbering and registering the case as ICT-BD [ICT-1] Case No. 02 of 2015. Ultimately, on 30.09.2015 and 07.10.2015 this Tribunal-1 heard the charge framing matter and fixed today i.e. 26.10.2015 for decision on it.

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 around the then Jamalpur Sub-Division by the armed gang of local Razakars, Al-Badar and members of Peace Committee in collaboration with the Pakistan occupation army, the Investigating Agency submitted its investigation report finding all the above mentioned eight accused persons *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 eight accused persons therewith 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 participated or contributed or facilitated 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 plan and design to the accomplishment of such offences, and therefore, all the eight accused persons may be jointly prosecuted as permissible under Rule 36 of the Rules of Procedure, 2010 of this Tribunal-1.

5. Submission of both sides

Ms. Turin Afroz and Mr. Taposh Kanti Baul, the learned prosecutors made their submission, drawing our attention to the formal charge, statement of witnesses and the documents collected during investigation. They submitted that accused Md. Ashraf Hossain was the president of the then Jamalpur Sub-Division Islami Chattra Sangha during the war of liberation in 1971, and he founded Al-Badar Bahini in Jamalpur in 1971. In 1971, during the war of liberation, accused Md. Abdul Mannan, Md. Abdul Bari and Md. Abul Hashem

were the active members of Islami Chattra Sangha and accused Professor Sharif Ahamed alias Sharif Hossain, Advocate Md. Shamsul Haque and S.M. Yusuf Ali were the active members of Jamat-E-Islami in the then Jamalpur Sub-Division. Most of them joined the infamous Razakar and Al-Badar Bahinis and Peace Committee. The accused persons along with their accomplices belonging to Razakar Bahini, Al-Badar Bahini, Peace Committee, etc. and Pakistani occupation army had systematically and deliberately carried out atrocious activities directing pro-liberation civilians around the then Jamalpur Sub-Division. Role of all the accused persons in accomplishing the alleged crimes in 1971 during the war of liberation was culpable and in furtherance of common plan and design of the Pakistani occupation army. All the five events of attacks demonstrated in the formal charge involve the killing of unarmed pro-liberation civilians along with other crimes against humanity.

The learned prosecutors further submitted that during the war of liberation in 1971, accused Advocate Md. Shamsul Haque and S.M. Yusuf Ali along with their accomplices committed abduction, torture, murder and other inhumane acts as crimes against humanity to unarmed civilians around the then Jamalpur Sub-Division by establishing and maintaining Peace Committee there as narrated in the event no. 1. In the month of July, 1971 accused Md. Ashraf Hossain, Professor Sharif Ahamed alias Sharif Hossain, Md. Abdul Mannan, Md. Abdul Bari and Harun along with their accomplices and Pakistani occupation army having abducted about twenty unarmed civilians killed all of them, and they also committed other inhumane acts as crimes against humanity as narrated in the event no. 2.

The learned prosecutors further submitted that the accused persons along with their accomplices on 10.07.1971 having abducted Nurul Amin Mollick, an Awami League leader and organizer of the war of liberation killed him as narrated in the event no. 3. Since 22 April to 11 December, 1971 accused Md. Ashraf Hossain, Professor Sharif Ahamed alias Sharif Hossain, Md. Abdul Mannan and Md. Abdul Bari along with their accomplice 50/ 60 Al-Badar members regularly used to confine, torture and kill a lot of unarmed innocent civilians in the torture cell situated at Ashek Mahmud College Degree Hostel, Jamalpur as narrated in the event no. 4. During the war of liberation 1971, in between 22 April and 11 December , 1971 the accused persons along with some other members of local Al-Badar Bahini and Pakistani army also confined and tortured thousands of innocent unarmed civilians in the P.T.I. Hostel of Jamalpur and then killed them at Soshanghat nearer to the Brahmaputra river, Jamalpur as narrated in the event no. 5.

The learned prosecutors lastly submitted that the accused persons were the members of local infamous Razakar and Al-Badar Bahinis, Peace Committee and Islami Chattra Sangha and those Bahinis were formed intending to collaborate with the Pakistani occupation army in carrying out horrific atrocious activities in furtherance of common plan and design of annihilating the pro-liberation Bengali unarmed civilians and freedom-fighters. The accused persons need to be indicted for the offences they had committed in the context of war of liberation in 1971 in the territory of Bangladesh.

Mr. A. Y. Mashiuzzaman, the learned senior defence counsel along with Mr. Gazi M. H. Tamim for accused Advocate Md. Shamsul Haque and S.M. Yusuf Ali placed two separate discharge petitions filed on behalf of these two

accused persons which are almost similar to each other. Mr. A.Y. Mashiuzzaman having placed the discharge petitions submitted that the long, inordinate and inexplicable delay of 40 years in bringing the charges against accused Advocate Md. Shamsul Haque and S.M. Yusuf Ali proves conclusively that because of the said accused's political rivalry with the party in power, these accused persons have been falsely implicated in this case. If there is any delay in lodging the complaint that must be explained and the explanation must be reasonable. Though the prosecution attempted to explain this in the formal charge, but the same is not at all satisfactory in the eye of law.

The learned senior defence counsel further submitted that there are number of requirements that must be met in order for an accused to be sufficiently charged. These requirements are provided for in both domestic and international law. But the proposed charges against said two accused persons cannot be framed as they rely on an insufficient legal basis and contain insufficient factual information, and as such, would result in an unfair trial by both domestic and international standards.

Mr. A.Y. Mashiuzzaman further submitted that an important constituent element of a crime is the requisite knowledge that must be proved by the prosecution in order to find an accused guilty of an offence, but the prosecution has failed to indicate any intention on behalf of these two accused persons within the proposed indictment or its submissions to warrant the framing of charges under section 3(2) of the Act of 1973. Even where the offence under section 3(2) of the Act provides for the requisite knowledge of a crime, the

prosecution has failed to include this in either its formal charge or its oral submission.

The learned senior defence counsel also submitted that the foundation of criminal responsibility is the principle of personal culpability. Nobody may be held criminally responsible for acts or transaction in which he has not personally engaged or in some way participated. Modes of liability describe and classify different modalities of participations . They do not change or replace the elements of crimes. In particular, the requisite *mens rea* for an offence cannot be altered . In order to establish the mode of liability, proof is required that the underlying crime was actually committed by the principal perpetrator.

Mr. A.Y. Mashiuzzaman further submitted that there are no documents in the Volume of Seizure List and Documentary Evidence relating to accused Advocate Md. Shamsul Haque and S.M. Yusuf Ali. None of the documents make any reference to the names of these two accused persons, and as such, there is no documentary basis for framing charges against them. Moreover, with regard to proposed charge nos. 1, 3 and 5 none of the witnesses have alleged any involvement of these two accused persons with the alleged offences. The witnesses merely allege that these two accused persons were members of the Peace Committee. Such allegation of mere membership without any allegation as to any complicity in any offence is not sufficient to frame charges against the accused persons. In fact, these two accused persons were never members of the Peace Committee . Therefore, accused Advocate Md. Shamsul Haque and S.M. Yusuf Ali deserve to be discharged.

Mr. Abdus Sobhan Tarafder, the learned State defence counsel for absconded accused Md. Ashraf Hossain, Professor Sharif Ahamed alias Sharif Hossain and Md. Abdul Mannan submitted that the said three accused persons did not belong to Razakar Bahini, Al-Badar Bahini or Peace Committee, that no document whatsoever has been provided on part of the prosecution to substantiate these accused persons' membership in any of the said Bahinis or organization. He further submitted that these three accused persons were not involved with the alleged events constituting the offences of murder, abduction, torture or any other inhumane act, in any manner. They have been falsely implicated in this case out of local rivalry, therefore, they deserve to be discharged.

Mr. Qutub Uddin Ahmed, the learned State defence counsel for absconded accused Md. Abdul Bari, Harun and Md. Abul Hashem placed three separate discharge petitions filed on behalf of these three absconded accused persons which are almost similar to each other. The learned State defence counsel having placed the discharge petitions submitted that the allegations set up in the formal charge do not disclose or state specificity of general particulars and the required elements to constitute the offences of crimes against humanity. He further submitted that the formal charge is based on vague and unspecified allegations and it does not disclose the mode of participation of these three accused persons with the alleged atrocious acts, and as such, they are liable to be discharged.

In reply to the grounds agitated by the learned defence counsels for 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, Al-Badar Bahini or Peace Committee, 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.

In reply to the submission made by learned senior defence counsel Mr. A.Y. Mashiuzzaman that the foundation of criminal responsibility is the principle of personal culpability, the learned prosecutor argued that criminal responsibility for any crime enumerated in the Act of 1973 is incurred not only by the individuals who physically commit that crime, but also by individuals who participate in and contribute to the commission of a crime in other ways, ranging from its initial planning to its execution. He further argued that accused's physical presence when the crime is committed is not necessary, and accused can be considered to have participated in the commission of a crime if he is found to be concerned with the crime, and as such, the submission made by the learned senior defence counsel has no leg to stand.

6. Deliberation and decision with reasoning

We have meticulously gone through the formal charge, statement of witnesses and the documents submitted. It appears that prosecution by submitting formal charge alleges that the accused persons participated, facilitated, abetted and substantially contributed to the commission of crimes as enumerated in the Act of 1973, by their acts and conducts forming a part of systematic attack directing civilian population in 1971 during the war of liberation around the then Jamalpur Sub-Division.

In all eight accused persons have been proposed to be indicted for the alleged events of attacks constituting the offences of crimes against humanity as narrated in the formal charge. Out of eight accused persons six have been absconding and proceeding is going on in their *absentia* in compliance with legal requirements as contemplated in the Act and the ROP, 2010.

The allegations brought do not constitute isolated crimes. Those are alleged to have been committed in war time situation directing civilians in systematic manner. The undeniable context prevailing in 1971 in the territory of Bangladesh is itself sufficient to the unerring inference of a 'widespread and systematic attack' on Bangladeshi self-determined population. Therefore, the offences committed under this context and in violation of customary international law during 1971 independence war, patently demonstrate that those were of course consequence of part of a 'widespread' or 'systematic' attack directed against the unarmed civilian population. Under section 19(1) of the Act of 1973, the Tribunal can take judicial notice of the above context that must prompt a person of common prudence that the offences of crimes against humanity as mentioned in section 3(2)(a) were inevitably the effect of part of widespread or systematic attack.

Prosecution, at this stage, alleges that the accused persons being members of local Razakar Bahini, Al-Badar Bahini and Peace Committee committed the offences of murder, abduction, torture, plundering, arson and other inhumane acts as crimes against humanity. *Prima facie* the formal charge, statement of witnesses and documents submitted demonstrate accused persons' culpable complicity, act and conduct with the perpetration of offences alleged. But however, culpability and role of them or any of them can be well

adjudicated only on holding trial. And till then they shall be presumed innocent.

It is now settled that the offence of crime against humanity is considered as 'group crime' and it is not perpetrated by a single individual. But however, an individual may participate to the actual commission of the principal crime by his act or conduct, before or midst or after the crime committed. In this regard, the Tribunal notes that in adjudicating culpability of the person accused of offences, context and situations prevailing at the relevant time i.e the period of war of liberation in 1971[March 25 to December 16, 1971] together with his acts, conducts, attitude and association of any organization, if any, are to be considered. It may be well resolved on evaluation of evidence to be presented during trial.

We are not with the submission extended by Mr. A.Y. Mashiuzzaman, the learned senior defence counsel on point of delay in prosecuting the accused persons. As regards delay in prosecuting the suspect offenders we reiterate that the victims of systematic and organised diabolical atrocities committed in 1971 within the territory of Bangladesh in violation of customary international law need justice to heal. State has an obligation to remedy serious human rights violations. Bangladesh recognizes Article 8 of the Universal Declaration of Human Rights [UDHR] and Article 2(3) of the International Covenant of Civil and Political Rights [ICCPR] which ensure the right to an effective remedy for the violation of human rights. And in providing effective remedy to the victims and their families, delay itself cannot stand as a bar in prosecuting an individual offender under the Act of 1973.

At this stage, it cannot be determined conclusively whether the accused persons belonged to local Razakar Bahini, Al-Badar Bahini or local Peace Committee. It is a question of fact that can be effectively resolved only on trial and considering the totality of evidence to be provided by the prosecution. Besides, 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. It is quite 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 resolved.

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.

At this stage, the formal charge and the statement of witnesses *prima facie* demonstrate that the accused persons enthusiastically sided with the plan and design of the Pakistani occupation army and had allegedly carried out horrific activities of killing of innocent unarmed civilians, wanton destruction and other inhuman acts, and as such, the prayers seeking discharge of all the accused persons do not deserve consideration, and therefore, the same are hereby rejected.

Accordingly, now we proceed to read out the charges framed. On perusal of 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 and grounds before the Tribunal to frame charges against accused (1) Md. Ashraf Hossain (2) Professor Sharif Ahamed alias Sharif Hossain (3) Md. Abdul Mannan (4)Md. Abdul Bari (5) Harun (6) Md. Abul Hashem (7) Advocate Md. Shamsul Haque, and (8) S.M. Yusuf Ali 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) Md. Ashraf Hossain [absconded] son of late Mohammad Hossain and late Syeda Ashrafunnesa of village Miapara, Police Station Jamalpur Sadar, District Jamalpur (2) Professor Sharif Ahamed alias Sharif Hossain [absconded] son of late Alhaj Jafar Uddin Ahmed alias Jafar Uddin and late Maziron Nesa of village Kacharipara, Police Station Jamalpur Sadar, District Jamalpur (3) Md. Abdul Mannan [absconded] son of late Mohir Uddin and late Zayed Bewa of village Kacharipara, Police Station Jamalpur Sadar, District Jamalpur (4) Md. Abdul Bari [absconded] son of late Abdur Rahman and Jobeda Bewa of village Bogabaid, Police Station Jamalpur Sadar, District Jamalpur (5) Harun [absconded] son of late Jasim Uddin alias

Joshy and late Naziron Begum of village Bashbora, Police Station Jamalpur Sadar, District Jamalpur (6) Md. Abul Hashem [absconded] son of late A. Latif and Noytun Bibi of village Kacharipara, Police Station Jamalpur Sadar, District Jamalpur (7) Advocate Md. Shamsul Haque son of late Safar Uddin Mondal and late Hobironnesa of Noapara, village Nandina, Police Station Jamalpur Sadar, District Jamalpur, and (8) S.M. Yusuf Ali son of late S.M. Torab Ali and late Omukjan Bewa of Fulbaria, Old Bus Stand, Modhupur Road, Jamalpur as follows:-

Charge No. 01

**[Abduction, torture, murder, plundering, arson and other inhumane acts:
Event No. 01 narrated in the formal charge]**

That during the war of liberation in 1971, you accused Advocate Md. Shamsul Haque and S.M. Yusuf Ali, both as the leaders of Jamat-E-Islami and members of Peace Committee of the then Jamalpur Sub-Division along with your other accomplices substantially facilitated and contributed to the commission of offences of abduction, torture, murder, plundering, arson and other inhumane acts as crimes against humanity caused to unarmed civilians around the then Jamalpur Sub-Division by way of participating, aiding, abetting , facilitating , conspiracy and complicity in the commission of such crimes by establishing and maintaining Peace Committee in the then Jamalpur Sub-Division. As per the advice and guidance of the said Peace Committee the Pakistani occupation army and the local Al-Badar Bahini committed mass atrocities around the then Jamalpur Sub-Division since 22 April to 11 December, 1971. During that period, due to your participation and substantial facilitation and contribution thousands of unarmed proliberation civilians were

killed and wanton destruction of civilians' properties was caused around the then Jamalpur Sub-Division.

Thereby you accused Advocate Md. Shamsul Haque and S.M. Yusuf Ali are hereby charged for participating, aiding, abetting, facilitating, conspiracy and complicity in the commission of offences of abduction, torture, murder, plundering, arson and other inhumane 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. 02

[Abduction, confinement, torture, murder and other inhumane acts: Event No. 02 narrated in the formal charge]

That on 7 July, 1971 at about 10.00 P.M. Abdul Hamid Mokhter, a former MPA and a supporter and organizer of the liberation war, along with about 100/150 local people was listening to radio in the backyard of his house. At that time armed members of Al-Badar Bahini including you accused (1) Md. Ashraf Hossain (2) Professor Sharif Ahamed alias Sharif Hossain (3) Md. Abdul Mannan (4) Md. Abdul Bari, and (5) Harun along with a few Pakistani army men having surrounded the house of Abdul Hamid Mokhter captured and beat them recklessly and tied Abdul Hamid Mokhter and Shamsul Alam together with a rope, and your accomplice Al-Badar members being instigated by you shot Yad Ali Mondol to death on the spot whose dead body was buried in his house. Then you and your accomplices having gone to Rois Uddin Bhuiyan's house, next to said Abdul Hamid Mokhter's house, captured

Professor Shahidur Rahman, an organizer and freedom-fighter, who escaped from you by diving in the pond, and then you and your said accomplices captured and tied their domestic servant Mohir Sheikh alias Madhu and took him to Ismail Hossain's [former IGP] house in Fulbaria. Thereafter, you and your accomplices took said three captured persons to Amir Ali Khan's house situated at Bodra Bausi Ponchopeer and captured their son-in-law Saidur Rahman alias Sadu Chairman and his brother-in-law Abdul Hamid Khan alias Hiru. Then you and your accomplices took those five captured persons together to Hatiya Vatra Jaforshahi Railway Station and put them all in a train and from Jamalpur Railway Station you freed Shamsul Alam and Mohir Sheikh alias Madhu among them. Thereafter, you and your accomplices took rest three captured persons namely, Abdul Hamid Mokhter, Saidur Rahman alias Sadu Chairman and his brother-in-law Abdul Hamid Khan alias Hiru to Jamalpur P.T.I Camp and having confined tortured them there.

That in continuation of the event dated 7 July 1971 as mentioned above, on 14 July 1971 in the afternoon one Pakistani army man freed Abdul Hamid Mokhter from the aforesaid P.T.I Camp and then he took shelter in the house of late Hozrat Ali Muhuri's house situated at Amlapara, Jamalpur. Before Asre prayer, you the accused persons along with others again captured Abdul Hamid Mokhter from that house and thereafter he was never found.

That in continuation of the above mentioned two events dated 7 July and 14 July 1971, on 22 July 1971 after midnight you the accused persons and your accomplice Al-Badar men having tied Saidur Rahman alias Sudu Chairman and his brother-in-law Abdul Hamid Khan alias Hiru with other 16/17 people took them from the P.T.I. Camp to Jamalpur Sashanghat and put them in a

queue in the river side of the Sashanghat. Among them Saidur Rahman alias Sadu Chairman saved his life having dived in the river and fled to India. Thereafter, you the accused persons and your accomplice Al-Badar men killed said Abdul Hamid Khan alias Hiru along with other 16/17 people and left their dead bodies in the river.

Thereby you accused (1) Md. Ashraf Hossain (2) Professor Sharif Ahamed alias Sharif Hossain (3) Md. Abdul Mannan (4) Md. Abdul Bari, and (5) Harun are hereby charged for participating, aiding, abetting, facilitating, conspiracy and complicity in the commission of offences of abduction, confinement, torture, murder and other inhumane 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

[Abduction and murder of Nurul Amin Mollick: Event No. 03 narrated in the formal charge]

That on 10 July 1971 at about 3.00 A.M. in the early morning, you Al-Badar accused (1) Md. Ashraf Hossain (2) Professor Sharif Ahamed alias Sharif Hossain (3) Md. Abdul Mannan (4) Md. Abdul Bari (5) Md. Abul Hashem (6) Advocate Md. Shamsul Haque, and (7) S.M. Yusuf Ali along with other members of Al-Badar Bahini and Peace Committee abducted Nurul Amin Mollick, an Awami League leader and organizer of the liberation war, from his house situated at C & B Road [old], Mollick Villa, Doyamoyee Lane, Jamalpur, who had been sleeping in his room with his younger son

Rokonuzzaman and younger daughter Nasrin . Thereafter, on the same day [10.07.1971] at about 10.00 A.M. the dead body of said Nurul Amin Mollick was found floating on the west side of the Brahmaputra river at Chaptala Ghat.

Thereby you accused (1) Md. Ashraf Hossain (2) Professor Sharif Ahamed alias Sharif Hossain (3) Md. Abdul Mannan (4) Md. Abdul Bari (5) Md. Abul Hashem (6) Advocate Md. Shamsul Haque, and (7) S.M. Yusuf Ali are hereby charged for participating, aiding, abetting, facilitating, conspiracy and complicity in the commission of offences of abduction and murder 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. 04

[Confinement, torture, murder and other inhumane acts committed in the Torture Cell at Ashek Mahmud College Degree Hostel: Event No. 04 narrated in the formal charge]

That as soon as the Pakistan occupation army occupied Jamalpur, on 22 April 1971 Al-Badar Bahini was formed in Jamalpur under the leadership of you accused Md. Ashraf Hossain, who was the president of the then Jamalpur Sub-Division Islami Chattra Sangha. Soon after, Al-Badar Bahini occupied the Degree Hostel of Ashek Mahmud College and used it as their 'torture cell' of which you accused Md. Ashraf Hossain was the chief. Besides him, Al-Badar members you accused Professor Sharif Ahamed alias Sharif Hossain , an influential leader of the then Jamalpur Sub-Division Jamat-E-Islami, Md.

Abdul Mannan and Md. Abdul Bari, and others used to stay in that 'torture cell' regularly to run the same. Since 22 April to 11 December, 1971 you the said four accused persons and about 50/60 other Al-Badar members regularly used to confine, torture and kill a lot of unarmed innocent civilians in the said 'torture cell'.

Thereby you accused (1) Md. Ashraf Hossain (2) Professor Sharif Ahamed alisa Sharif Hossain (3) Md. Abdul Mannan, and (4) Md. Abdul Bari are hereby charged for participating, aiding, abetting, facilitating and complicity to the commission of offences of confinement, torture, murder and other inhumane 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. 05

[Confinement, torture, murder and other inhumane acts committed in P.T.I. Hostel Torture Camp, Jamalpur: Event No. 05 narrated in the formal charge]

That on 22 April 1971 Pakistan occupation army occupied Jamalpur and camped in the P.T.I. Hostel of Jamalpur and WAPDA Rest House . In the P. T. I. Hostel, the Pakistani army and Al-Badar Bahini jointly established a torture centre. Since 22 April to 11 December 1971, you the Al-Badar accused (1) Md. Ashraf Hossain (2) Professor Sharif Ahamed alisa Sharif Hossain (3) Md. Abdul Mannan (4) Md. Abdul Bari (5) Md. Abul Hashem (6) Advocate Md. Shamsul Haque, and (7) S.M. Yusuf Ali, and some other members of local Al-

Badar Bahini and Pakistani army used to confine and torture thousands of innocent unarmed civilians in the said P.T.I. Hostel and at night took them to the Soshanghat situated on the bank of the river Brahmaputra and killed them and left their dead bodies in the said river.

Thereby you accused (1) Md. Ashraf Hossain (2) Professor Sharif Ahamed alias Sharif Hossain (3) Md. Abdul Mannan (4) Md. Abdul Bari (5) Md. Abul Hashem (6) Advocate Md. Shamsul Haque, and (7) S.M. Yusuf Ali are hereby charged for participating, aiding, abetting, facilitating, conspiracy and complicity in the commission of offences of confinement, torture, murder and other inhumane 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.

Thus, you the eight 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 of 1973 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 **Advocate Md. Shamsul Haque** and **S.M. Yusuf Ali** have heard and understood the aforesaid charges which have been read in open court in your presence.

Question: Do you plead guilty or not?

Answer:

The charges so framed [charge nos. 01, 03 and 05] have been read over in English and explained in Bengali to accused Advocate Md. Shamsul Haque and S.M. Yusuf Ali, present on dock, to which they pleaded not guilty and claimed to be tried.

The six other accused **Md. Ashraf Hossain, Professor Sharif Ahamed alias Sharif Hossain, Md. Abdul Mannan, Md. Abdul Bari, Harun and Md. Abul Hashem** have been in absconsion, and as such, they could not be asked whether they plead guilty or not, after reading over the charges framed against them [charge nos. 02, 03, 04 and 05] in open court.

Let **18.11.2015** 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 of 1973 on or before the date fixed.

(Justice Anwarul Haque, Chairman)

(Justice Md. Shahinur Islam, Member)

(Justice Md. Shohrowardi, Member)