

International Crimes (Tribunal)-1

Old High Court Building, Dhaka, Bangladesh

ICT-BD Case No. 03 of 2013

Chief Prosecutor versus Mir Kashem Ali (Accused)

Present:

Justice A.T.M Fazle Kabir, Chairman

Justice Jahangir Hossain, Member

Justice Anwarul Haque, Member

Order No. 12

Order Dated 05.09.2013

Mr. Sultan Mahmud with

Mr. Tapash Kanti Baul

.... For the prosecution

Mr. Tanvir Ahmed Al-Amin

..... For the defence

Decision on Charge Framing Matter

Accused Mir Kashem Ali has been produced before the Tribunal by the prison authority.

Today is fixed for passing decision on charge framing matter and as such the record is taken up for order. Before giving decision on charge framing matter, we would prefer to provide a brief milieu and context of the case, its history, and the arguments put forward by both prosecution and defence before this Tribunal.

1. Introduction and Formation of the Tribunal

This International Crimes Tribunal (hereinafter referred to as the “Tribunal”) was 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, and crimes committed in the territory of Bangladesh, in violation of customary international law, particularly between the period of 25th March to 16th December 1971. However, no Tribunal

was set up and as such no one could be brought to justice under the Act until the government established the Tribunal (Tribunal-1) on 25th of March 2010.

2. Historical Context

In August, 1947, the partition of British India based on two-nation theory, gave birth to two new states, one a secular state named India and the other the Islamic Republic of Pakistan. The western zone was eventually named West Pakistan and the eastern zone was named East Pakistan, which is now Bangladesh.

In 1952 the Pakistani authorities attempted to impose Urdu as the only State language of Pakistan ignoring Bangla, the language of the majority population of Pakistan. The people of the then East Pakistan started movement to get Bangla recognized as a state language thus marking the beginning of language movement that eventually turned to the movement for greater autonomy and self-determination and eventually independence.

In the general election of 1970, the Awami League under the leadership of Bangabandhu Sheikh Mujibur Rahman became the majority party of Pakistan. Despite this overwhelming majority, Pakistan Government did not hand over power to 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 in his historic speech of 7th March, 1971, called on the people of Bangladesh to strive for independence if people's verdict is not respected and power is not handed over to the leader of the majority party. On 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.

In the War of Liberation that ensued, all people of East Pakistan wholeheartedly supported and participated in the call to free Bangladesh but a small number of Bangalees, Biharis, other pro-Pakistanis, as well as members of a number of different religion-based political parties joined and/or collaborated with the Pakistan military to actively oppose the creation of independent Bangladesh and most of them committed and facilitated the commission of atrocities in the territory of Bangladesh. As a result, 3 million (thirty lac) people were killed, more than 2,00,000 (two lac) women 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.

The Pakistan government and the military 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 eliminating 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. Undeniably the road to freedom for the people of Bangladesh was arduous and torturous, smeared with blood, toil and sacrifices. In the contemporary world history, perhaps no nation paid as dearly as the Bangalees did for their emancipation.

3. Brief account of the Accused

Accused Mir Kashem Ali son of Late Mir Tayeb Ali and Late Rabeya Begum of village- Munshi Dangi Satalori, Police Station- Harirampur, Dist. Manikgonj, at present- House NO. 287, Mollapara, South Monipur, Ward No.13, Mirpur, Dhaka, was born on 31 December in 1952. He was a student of Chittagong Government College and passed H.S.C in 1969 and got admitted in B.S.C (Hons) in the same college and he was elected president of Islami Chhatra Songha for the period of 1970 to 25 March 1971. He was the President of Islami Chhatra Sangha, Chittagong Town unit up to 6 November, 1971. He also held the post of General Secretary of East Pakistan Islami Chhatra Sangha till surrender to the joint command of Liberation War. During the War of Liberation, the accused was one of the central commanders of Razakars, Al-badr and Al-shams Bahini. He was directly involved in the commission of Crimes against humanity, at Chittagong and he subsequently discontinued his education and went into hiding and passed B.A. from Ideal College, Dhaka in 1974. He joined the Jamaat-e-Islami in 1980 and has been performing as Sura Member of Jamaat-e-Islami since 1985.

Procedural History

At pre-trial stage, accused Mir Kashem Ali was produced before the Tribunal by the prison authority and then he was shown arrested as an accused before this Tribunal. Accordingly, since 17.06.2012 the accused has been in custody.

Finally, the Chief Prosecutor submitted formal charge under section 9(1) of the Act on 16.05.2013 on the basis of Investigation report of the Investigation Agency. It has been alleged in the Formal Charge that during the War of Liberation in 1971, the accused as the leader and President of Islami Chhatra Sangha, Chittagong Town Unit, had committed Crimes against humanity, including abetting, aiding, participating and providing moral support to commit such crimes in different places of Chittagong district. The Tribunal on perusal of Formal Charge, statement of witnesses and the documents submitted by the Prosecution, took cognizance of offences as specified in section 3(2) of the Act on 26.05.2013 against the accused. The prosecution was then directed to furnish copies of Formal Charge and documents submitted therewith which it intends to rely upon for supplying the same to the accused for preparation of the defence.

During detention of the accused, this Tribunal has entertained a number of applications seeking bail, adjournments and other relief's which were disposed of in accordance with law after hearing both the parties. The Tribunal also allowed the learned defence counsels to have privileged communication with the accused in the custody.

Before this Tribunal, in course of hearing the charge matter, the learned prosecutors Mr. Zead –Al-Malum with Mr. Sultan Mahmud and Mr. Taposh Kanti Baul made submissions in support of framing charge against the accused in the light of the Formal Charge together with statements of witnesses and documents submitted therewith. While Mr. Tanvir Ahmed Al-Amin the learned defence counsel by filing an application for discharge of the accused, made elaborate submissions in support of discharging the accused from the charges brought against him. It is revealed that hearing on charge framing matter was started on 25.07.2013 and it was finally concluded on 21.08.2013 by both the parties. The submissions advanced by both the parties on charge framing matter may be summarized together with the views of the Tribunal on the legal points raised as bellow:-

Submission advanced by the Prosecutor

The learned Prosecutor, before drawing our attention to the facts set out in the Formal Charge constituting the offences allegedly committed by the accused during 1971 War of Liberation, portrayed the context in brief to substantiate the organizational plan and policy in execution of which the local pro-Pakistani persons belonging to fundamentalist Islamic political groups, Al-Badar Bahini and auxiliary force took part in committing the offences and also substantially aided and abetted the Pakistani occupation force in committing horrific atrocities. It is thus submitted that commission of offence of crimes against humanity and genocide in 1971 during Liberation War is an undeniable fact of common knowledge that deserves judicial notice. It was also submitted that the statement of witnesses, documents and materials collected during investigation abundantly establish that the accused abetted the commission of atrocities and also had complicity to commit such offences in Chittagong District in 1971. The accused had physical participation to the commission of offences narrated in the Formal Charge, apart from abetment and complicity to commit offences.

It is submitted by the learned prosecutor that prosecution has sufficiently explained the delay of 41 years in bringing prosecution against the accused in the Formal Charge, moreover, criminal proceedings are always open and not barred by limitation which is universally accepted by all. It is further submitted that accused as leader of Islamic Chhatra Sangha of Chittagong directed auxiliary forces to commit crimes against humanity and he also directly participated in the atrocities and as such he is also liable under section 4(1) and 4(2) of the Act.

Submission advanced by the defence side

The learned counsel for the defence by filing an application seeking discharge of the accused 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. The Formal Charge is based on vague and unspecified allegations and it does not disclose the mode of participation of the accused with the alleged unlawful acts.

It was further argued that apart from the Act of 1973 there had been the Collaborators Order 1972 meant to prosecute and try the local persons who allegedly collaborated the Pakistani Army in committing atrocities. But the

accused was not prosecuted under the Collaborators Order 1972. Thus, it may be validly said that the 1973 Act was enacted only to prosecute those 195 Pakistani armed force members. This prosecution is politically motivated.

It is submitted that the prosecution against the accused has been brought after 41 years without reliable explanation of such long delay and as such case is hopelessly barred by limitation. It is submitted that the alleged offences namely torture, abduction, confinement and deportation had no existence in the International customary laws before 1971 and as such no charge about the said offence can be legally framed against the accused.

It is submitted that the accused never took part in the alleged atrocities mentioned in the formal charge and he was never a leader or commander of any auxiliary forces having control over them and as such he is no way liable under section 4(1) and 4(2) of the Act.

Discussion and Decision

Before deciding the matter, we consider it expedient to address some of the legal issues upon which the learned counsel for the defence drew our notice. Succinctly, the defence raised the issue of inadequacy of the definition of crimes, the absence of elements of crimes like in ICC's Rome Statute, the thresholds of the crimes against humanity, intent of enacting the Act of 1973, prosecution of the accused under the Act, legality of prosecuting the accused questioning the amendment of section 3(1) of the Act brought in 2009.

At the outset it is to be noted that we have already resolved, by providing our considered view in different cases disposed of. Therefore, we consider it expedient to confine ourselves in brief reiteration on those issues.

(i) The Collaborators Order 1972

The Collaborators Order 1972 was a distinct legislation aiming to prosecute and try only the local persons responsible for the offences scheduled therein. The offences punishable under the Penal Code were scheduled in the Collaborators Order 1972. While the 1973 Act was enacted to prosecute and try the crimes against humanity, genocide and other system crimes committed in violation of customary international law. Therefore, we are disinclined to accept the proposition that the accused now immune from being prosecuted under the Act of 1973 as he was not brought to book under the Collaborators Order 1972.

(ii) Tripartite Agreement and immunity to 195 Pakistani war criminals

The ‘tripartite agreement’ of 1974 was an ‘executive act’ and it cannot create any clog to prosecute member of ‘auxiliary force’ or an ‘individual’ or member of ‘group of individuals’ as the agreement showing forgiveness or immunity to the persons committing offences in breach of customary international law was derogatory to the existing law i.e the Act of 1973 enacted to prosecute those offences and the *jus cogens* principle too.

We are thus inclined to pen our conclusive view that the obligation imposed on the state by the UDHR and the Act of 1973 is indispensable and as such the tripartite agreement which is an ‘executive act’ cannot liberate the state from the responsibility to bring the perpetrators of atrocities and system crimes into the process of justice. Thus, any agreement or treaty if seems to be conflicting and derogatory to *jus cogens* (compelling laws) norms does not create any hurdle to internationally recognized state obligation.

Therefore, the argument that since the main responsible persons (Pakistan Army) have escaped the trial, on the strength of the tripartite agreement providing immunity to them, the next line collaborators cannot be tried is far-off to any canons of criminal jurisprudence. Therefore, we are of the view that the ‘tripartite agreement’ is not at all a barrier to prosecute civilian perpetrator under the Act of 1973.

(iii) Amendment of section 3(1) of the Act in 2009

It is submitted by the learned counsel appearing on behalf of the accused that since the subsequent amendment brought in 2009 of the Act of 1973 by inserting the words ‘individual;’ or ‘group of individuals’ in section 3(1) carries ‘prospective effect’, in reality, the present accused cannot be prosecuted in the capacity of an ‘individual’ for the offences underlying in the Act which is admittedly ‘retrospective’. Since such amendment has not been expressly given retrospective effect interpretation stands that the amendment is prospective. Prosecution could not show that the accused was a leader of Islami Chhatra Sangha or commander of ‘auxiliary force’ and as such on this score too he cannot be prosecuted under the Act of 1973.

Admittedly, the Act of 1973 is a retrospective legislation for initiation to prosecute crimes against humanity, genocide and system crimes committed in violation of customary international law which is quite permitted. Already we

have viewed that the legislative modification that has been adopted by bringing amendment in 2009 has merely extended jurisdiction of the Tribunal for bringing the perpetrator to book if he is found involved with the commission of the criminal acts even in the capacity of an ‘individual’ or member of ‘group of individuals’. It is thus validly understood that the rationale behind this amendment is to avoid letting those who committed the most heinous atrocities go unpunished.

The right to move the Supreme Court for calling any law relating to internationally recognised crimes as mentioned in section 3(2) of the Act in question by the persons charged with crimes against humanity and genocide has been taken away by the provision of Article 47A(2) of the Constitution. Therefore, now the accused does not have right to call in question any provision of the International Crimes (Tribunals) Act 1973 or any of amended provisions thereto. Thus, we hold that the application of prospectiveness or retrospectivity as to amendment to section 3 of the Act of 1973 raised by the accused is quite immaterial to him in consideration of his legal status and accordingly the defence objection is not sustainable in law, particularly in the light of Article 47(3) and Article 47A of the Constitution.

(iv) Delay in bringing prosecution

We reiterate our fundamental view that it is now settled that from the point of morality and sound legal dogma, time bar should not apply to the prosecution of human rights crimes. Neither the Genocide Convention of 1948, nor the Geneva Conventions of 1949 contain any provisions on statutory limitations to war crimes and crimes against humanity. Thus, criminal prosecutions are always open and not barred by time limitation.

Still the Nazi war criminals of the Second World War are being prosecuted. Trials of genocides committed during the 1973 Chilean revolution and the Pol Pot regime of Cambodia in the 1970s are now ongoing. The sovereign immunity of Slobodan Milosevic of Serbia, Charles Taylor of Liberia, and Augusta Pinochet of Chile (with the Chilean Senate's life-long immunity) as the head of state could not protect them from being detained and prosecuted for committing genocides, crimes against humanity, and war crimes.

It is needless to say that a prompt and indisputable justice process cannot be motorized solely by the painful memories and aspirations of the victims.

Significantly it requires strong public and political will together with favourable and stable political situation. Mere state inaction, for whatever reasons, does not render the delayed prosecution readily frustrated and barred by any law.

There can be no recognised theory to insist that a ‘system crime’ can only be pursued within a given number of years. However, delay may create a doubt which can be well adjudicated at trial stage only. At this stage, we are to merely examine *prima facie* whether there have been sufficient reasons to presume that the accused had committed the offence(s) under the Act.

In view of the discussion as made above and considering the submissions advanced by both sides, we are of the view that the application seeking discharge of the accused, having no substantial merit, is hereby rejected. Rather, we have found it *prima facie*, particularly from the particulars of facts narrated in the Formal Charge.

We have perused the Formal Charge, statement of witnesses along with other documents submitted by the prosecution. We are of the view that there are sufficient and substantial materials before this Tribunal to presume that accused Mir Kashem Ali committed offences during the War of Liberation in 1971 as specified under section 3(2) of the Act for which he is criminally liable under section 4(1) and 4(2) of the Act. Since we find that there are *prima facie* allegations against the accused, the charges are thus framed against him in the following manner.

Charges

We,

Justice A.T.M Fazle Kabir, Chairman

Justice Jahangir Hossain and

Justice Anwarul Haque, members

of the International Crimes Tribunal -1

do hereby charge you Mir Kashem Ali son of late Mir Tayeb Ali and late Rabeya Begum (step mother late Dali Begum) of Village-Munshi Dangi Sutarari, Police Station-Harirampur, District-Manikgonj and at present House No.287, Mollapara, South Monipur, Ward No.13, Mirpur, Dhaka as follows:

Charge No.1:

That on 8th November around 10.00 a.m in 1971 you Mir Kashem Ali being the president of Islami Chhatra Sangha, Chittagong Town Unit along with some members of Al-Badr Bahini under your leadership abducted Md. Omar-ul-Islam Chowdhury from Chaktai shampan ghat and tortured him after taking into Downtsta Mohammad Panjabee Building (leather godown) Torture Cell under kotwali police station. Thereafter, said victim Md. Omar-ul-Islam was taken to Salma Monjil Torture Cell at Achhadgonj under pachhlaish police station where he was tortured again by Al-Badr Bahini under your control. Finally on 12.11.1971 around 10.00 a.m he was taken by a car to Dalim Hotel at Andarkilla under kotwali police station, and forcibly took signatures from him on some written and unwritten papers thereof and then handed him over to his maternal uncle.

Therefore, you are hereby charged for abetting and facilitating commission of offences of abduction, confinement and torture as crimes against humanity as specified in section 3(2)(a)(g)(h) of the International Crimes Tribunal Act of 1973, which are punishable under section 20(2) of the Act. You are also liable for the commission of above offences under section 4(1) and 4(2) of the Act.

Charge No.2

That on 19 November, 1971 at about 2.00 p.m. during the War of Liberation you Mir Kashem Ali being the President of Islami Chhatra Sangha, Chittagong Town Unit and or a member of group of individuals and under your leadership Victim Lutfar Rahman Faruk and Seraj were abducted while they were staying in the house of Mr. Syed at 35 Bokshirhut ward under Chaktai area of Baklia police station by Pakistani invading force and members of Al-Badr Bahini. They were taken to Mohamaya Hotel popularly known as Dalim Hotel Torture Cell at AndarKilla under Kotwali Police Station organized by you. In your presence and instigation they were tortured there. Victim Lutfar Rahman Faruk was taken outside thereafter to identify houses of pro-liberation activists and were set fire on those houses. Keeping Lutfar Rahman Faruk under torture for 2/3 days at Dalim Hotel, was handed over to Circuit House under control of Pakistani occupation force where he was again tortured and then sent to Chittagong jail. Thereafter, Faruk was freed after 16th December, 1971.

Therefore, you are hereby charged for abetting and facilitating commission of offences of abduction, confinement and torture as crimes against humanity and thereby you have substantially contributed to the actual commission of offence of crimes against humanity as specified in section 3(2)(a)(g)(h) of the International Crimes Tribunal Act of 1973, which are punishable under section 20(2) of the Act. You are also liable for commission of above offences under Section 4(1) and 4(2) of the Act.

Charge No.03

That you Mir Kashem Ali being the president of Islami Chhatra Sangha, Chittagong Town Unit and or a member of group of individuals and under your leadership Victim Jahangir Alam Chowdhury was abducted on 22 or 23 November, 1971 in the morning with the help of Al-Badr Bahini and Pakistan army from his rented house at Kodam Tali under Double Mooring police station. Thereafter, he was taken to Mohamaya Dalim Hotel Torture Cell at AndarKilla under Kotwali Police Station where he was mercilessly beaten and tortured at your instance. When the country was liberated then he was rescued from Dalim Hotel Torture Cell in the early morning on 16th December, 1971 by his relatives and pro-liberation forces.

Therefore, you are hereby charged for abetting and facilitating commission of offences of abduction, confinement and torture as crimes against humanity and thereby you have substantially contributed to the actual commission of offence of crimes against humanity as specified in section 3(2)(a)(g)(h) of the International Crimes Tribunal Act of 1973, which are punishable under section 20(2) of the Act. You are also liable for commission of above offences under Section 4(1) and 4(2) of the Act.

Charge No. 4

In the late night of 24th November, in 1971, you Mir Kashem Ali being the president of Islami Chhatra Sangha, Chittagong Town Unit and or a member of group of individuals at your instance Victim Saifuddin Khan (now dead) was abducted from Aziz colony under Double Mooring Police Station and kept him confined in Dalim Hotel Torture Cell under AndarKilla by the members of Al-Badr Bahini where he along with others were severely beaten and tortured by Al-Badr Bahini under your leadership. Thereafter, on 2nd or 3rd December, at any time they were sent to Chittagong jail where victim's wife Nurjahan met him

through Jailor and she found her husband with blood strained injuries. On 16th December, 1971 in the morning he was released from jail.

Therefore, you are hereby charged for abetting and facilitating the offences of abduction, confinement and torture as crimes against humanity and thereby you have substantially contributed to the actual commission of offence of crimes against humanity as specified in section 3(2)(a)(g)(h) of the International Crimes Tribunal Act of 1973, which are punishable under section 20(2) of the Act. You are also liable for commission of above offences under Section 4(1) and 4(2) of the Act.

Charge No.5

On 25th November, 1971 around 2-30 p.m you Mir Kashem Ali being the president of Islami Chhatra Sangha, Chittagong Town Unit and or a member of group of individuals at your instance Razakar Commander Jalal Chowdhury alias Jollal along with his accomplices abducted Abdul Jabber Member from the gate of Primary Education Office situated at Nandan Kanan and kept him confined in Dalim Hotel Torture Cell at Andarkilla. Under your control victim's hands were tied and his eyes were folded for 17/18 days during commission of torture by Al-Badr members. They fed him urine by force during torture. For which he gave up taking meal from then. He was released on bond at your directive on 13th December, 1971 after noon.

Therefore, you are hereby charged for abetting and facilitating the offences of abduction, confinement and torture as crimes against humanity and thereby you have substantially contributed to the actual commission of offences of crimes against humanity as specified in section 3(2)(a)(g)(h) of the International Crimes Tribunal Act of 1973, which are punishable under section 20(2) of the Act. You are also liable for commission of above offences under Section 4(1) and 4(2) of the Act.

Charge No.6

On 28th November, 1971 at about 10-30/11.00 a.m, you Mir Kashem Ali being the president of Islami Chhatra Sangha, Chittagong Town Unit and or a member of group of individuals at your instance victim Harun-or-Rashid Khan (now late) was abducted by the members of Al-Badr Bahini with the help of Pakistani force and kept him confined holding his hands tied and folding his eyes in Dalim Hotel Torture Cell at Andarkilla under Kotwali Police Station

where he was tortured. Thereafter, at your directives on being tied and folded eyes, he was taken to another Torture Cell known as Salma Manjil under Paschliesh in Chittagong. He was rescued from Salma Manjil on 16th December, 1971 in the morning by pro-liberation forces and local people when the country became freed from foes.

Therefore, you are hereby charged for abetting and facilitating the offences of abduction, confinement and torture as crimes against humanity and thereby you have substantially contributed to the actual commission of offence of crimes against humanity as specified in section 3(2)(a)(g)(h) of the International Crimes Tribunal Act of 1973, which are punishable under section 20(2) of the Act. You are also liable for commission of above offences under Section 4(1) and 4(2) of the Act.

Charge No.7

On 27th November, 1971 after Magrib prayer you Mir Kashem Ali being the president of Islami Chhatra Sangha, Chittagong Town Unit and or a member of group of individuals, at your instance victim Md. Sanaullah Chowdhury, Habibur Rahman(now late) and Elias were abducted from 111 Uttar Nala Para under Double Mooring Police Station by the members of Al-Badr Bahini and kept them confined in the Torture Cell at Mohamaya popularly known as Dalim Hotel at AndarKilla of Kotwali under your control. At your directives, members of Al-Badr Bahini tortured them severely who saw many people there in the same condition during their forceful stay in the Torture Cell. They saw some of them were taken away and they heard that they were killed by Al-Badr Bahini at your instigation. The said Dalim Hotel was absolutely controlled by you as a high command of Al-Badr Bahini and central leader of Islami Chatra Sangha. By your order victims Habibur Rahman and Md. Sanaullah Chowdhury were released on 6th December and 9th December,1971 respectively on condition that they would have to provide information about the freedom fighters regularly.

Therefore, you are hereby charged for abetting and facilitating the offences of abduction, confinement and torture as crimes against humanity and thereby you have substantially contributed to the actual commission of offence of crimes against humanity as specified in section 3(2)(a)(g)(h) of the International Crimes Tribunal Act of 1973, which are punishable under section 20(2) of the Act.

You are also liable for commission of above offences under Section 4(1) and 4(2) of the Act.

Charge No. 08: That on the following of 29th November, 1971 at about 2.30/3.00 a.m., you Mir Kashem Ali being the president of Islami Chhatra Sangha, Chittagong Town Unit and or a member of group of individuals made a plan and directed the armed members of Al-Badr Bahini in collaboration with Pakistani Army who having surrounded Sabhanghata Moholla under Chandgaon police station, abducted Nurul Quddus, Md. Nasir, Nurul Hashem and others therefrom and took them to infront of N.M.C High School first and then at dawn those three persons along with others were taken to the Torture Centre of Al-Badr Bahini situated in Dalim Hotel at Anderkilla under Kotowali police station. Thereafter, under your direction the members of Al-Badr Bahini having confined those three civilians therein for ten days, tortured them and then sent them to Chittagong District Jail, and they were subsequently released on 16th December, 1971 the Victory day of Bangladesh.

Therefore, you are hereby charged for abetting and facilitating the offences of abduction, confinement and torture as crimes against humanity and thereby you have substantially contributed the commission of offences of crimes against humanity as specified under section 3(2)(a), 3(2)(a)(g) and 3(2)(a)(h) of the Act.

You are also liable for commission of above offences under Section 4(1) and 4(2) of the Act.

Charge No. 9: That on the following of 29th November, 1971 at about 4.00/4.30 a.m. you Mir Kashem Ali being the president of Islami Chhatra Sangha, Chittagong Town Unit and or a member of group of individuals made a plan and directed your cohorts the armed members of Al-Badr Bahini who having surrounded the Nazirbari of Nuruzzaman situated under Chandgaon police station, abducted said Nuruzzaman along with his cousins Sayed Md. Osman Hossain, Sayed Md. Jamaluddin, Sayed Md. Kamaddin, Sayed Md. Sarwaruddin, Sayed Md. Golam Kibria and Sayed Md. Golam Rahman therefrom and then took them to the Torture Centre of Al-Badr Bahini situated in Dalim Hotel at Anderkilla under Kotowali police station. Thereafter, under your direction the members of Al-Badr Bahini having confined those unarmed civilians therein tortured them till 15th December, 1971, and they were

subsequently released on 16th December therefrom on the Victory Day of Bangladesh.

Therefore, you are hereby charged for abetting and facilitating the offences of abduction, confinement, and torture as crimes against humanity and thereby you have substantially contributed the commission of offences of crimes against humanity as specified under section 3(2)(a), 3(2)(a)(g) and 3(2)(a)(h) of the Act.

You are also liable for commission of above offences under Section 4(1) and 4(2) of the Act.

Charge No. 10: That on the following of 29th November, 1971 at about 4.30/5.00 a.m., you Mir Kashem Ali being the president of Islami Chhatra Sangha, Chittagong Town Unit and or a member of group of individuals made a plan and directed your cohorts, the armed members of Al-Badr Bahini who having surrounded the area of Nazirbari, abducted Md. Zakaria, Md. Salahuddin alias Chuttu Miah, Iskander Alam Chowdhury, Md. Nazim Uddin along with many others therefrom and then took said four civilians to infront of N.M.C High School first and then they were taken to the Torture Centre of Al-Badr Bahini situated in Dalim Hotel at Anderkilla under Kotowali police station. Thereafter, under your direction members of Al-Badr Bahini having confined those four persons therein tortured them. The victim Md. Nazimuddin was released from the Torture Centre on 30th November, 1971 as he was under age, and after 7/8 days victim Md. Zakaria was released on the request of his father and uncle, and another victim Md. Salahuddin alias Chuttu Miah was released on 11/12th December, 1971 on the request of his relative, and finally the victim Iskander Alam Chowdhury was released from the said Torture Centre on 16th December, 1971, the Victory Day of Bangladesh.

Therefore, you are hereby charged for abetting and facilitating the offences of abduction, confinement, and Torture as crimes against humanity and thereby you have substantially contributed the commission of offences of crimes against humanity as specified under section 3(2)(a), 3(2)(a)(g) and 3(2)(a)(h) of the Act.

You are also liable for commission of above offences under Section 4(1) and 4(2) of the Act.

Charge No. 11: That at any time after the Eid-ul-Fitre day held in 1971, you Mir Kashem Ali being the president of Islami Chhatra Sangha, Chittagong Town Unit and or a member of group of individuals made a plan and at your instance the members of Al-Badr Bahini having abducted Jasim, a freedom-fighter, from an unknown place of Chittagong town, took him to the Torture Centre of Al-Badr Bahini situated in Dalim Hotel at Anderkilla under Kotowali police station. Thereafter on 28th November, 1971 under your direction and hint, the members of Al-Badr Bahini having confined him therein tortured to death and then his dead body along with 5(five) other dead bodies of unknown persons, who were also tortured to death by the members of Al-Badr Bahini, were thrown into the Karnafuli river.

Therefore, you are hereby charged for abetting and facilitating the offences of abduction, confinement, torture and murder as crimes against humanity and thereby you have substantially contributed the commission of offences of crimes against humanity as specified under section 3(2)(a), 3(2)(a)(g) and 3(2)(a)(h) of the Act.

You are also liable for commission of above offences under Section 4(1) and 4(2) of the Act.

Charge No.12: That on any day and at any time in the month of November, 1971, you Mir Kashem Ali being the president of Islami Chhatra Sangha, Chittagong Town Unit and or a member of group of individuals made a plan and directed the members of Al-Badr bahini who having abducted Jahangir Alam Chowdhury (now dead) from the House No. 139 and Ranjit Das alias Lathu and Tuntu Sen alias Raju from the House No. 114 both of Hindu populated Hajari Lane of Chittagong town and took them to the Torture Centre of Al-Badr Bahini situated in Dalim Hotel at Anderkilla under Kotowali police station and tortured them there. Though on the following day said Jahangir Alam Chowdhury was released from the said Torture Centre, but later at your instance the members of Al-Badr Bahini killed Lathu and Razu and kept their dead bodies concealed. At the time of abduction of the said victims, you along with Al-Badr, Rajakar and Al-Shams Bahinis and Pakistani Army plundered many shops and about 250/300 houses were burnt and compelled more than one hundred families to go to India as refugees.

Therefore, you are hereby charged for abetting and facilitating the offences of abduction, confinement, torture, murder and other inhuman acts as crimes against humanity and thereby you have substantially contributed the commission of offences of crimes against humanity as specified under section 3(2)(a), 3(2)(a)(g) and 3(2)(a)(h) of the Act.

You are also liable for commission of above offences under Section 4(1) and 4(2) of the Act.

Charge No. 13: That on any day at the end of November, 1971, Sunil Kanti Bordhon alias Dulal along with his wife, baby-child and a boy-servant were coming back to his own house from the house of his friend Golam Mostofa Kanchan, former Ward Commissioner of Anderkilla, and when they reached Chaktai Shampanghat, you Mir Kashem Ali as a leader of Islami Chhatra Sangha instigated some armed members of Al-Badr Bahini who abducted Bordhan and took him to the Torture Centre situated at Chaktai Dost Mohammad Panjabir Building (Chamrar Gudam) and tortured him therein. On 14th December, 1971 said Sunil Kanti Bordhon alias Dulal along with some other civilians were shifted from that Torture Centre to another Torture Centre situated in Dalim Hotel. On 16th December, 1971, victim Sunil Kanti Bordhon alias Dulal along with others were released by Yusuf, a tenant of him from the said Torture Centre.

Therefore, you are hereby charged for abetting and facilitating the offences of abduction, confinement and torture as crimes against humanity and thereby you have substantially contributed the commission of offences of crimes against humanity as specified under section 3(2)(a), 3(2)(a)(g) and 3(2)(a)(h) of the Act.

You are also liable for commission of above offences under Section 4(1) and 4(2) of the Act.

Charge No. 14: That at the end of November, 1971 Nasiruddin Chowdhury took shelter in the house of A.J.M. Nasiruddin, situated at Nazir Ahmed Chowdhury Road under Kotowali police station, Chittagong Metropolitan area. While he was staying in that house, one day at dead of night you Mir Kashem Ali as a leader of Islami Chhatra Sangha accompanied by some armed young members of Al-Badr Bahini raided that house and abducted Nasiruddin Chowdhury and took him to the Torture Centre situated in Dalim Hotel and at

your direction and presence they tortured him therein for many days. On 16th December, 1971 victim Nasiruddin Chowdhury along with 100/150 persons were released from that Torture Centre by the local people.

Therefore, you are hereby charged for abetting and facilitating the offences of abduction, confinement and torture as crimes against humanity and thereby you have substantially contributed to the commission of offences of crimes against humanity as specified under section 3(2)(a), 3(2)(a)(g) and 3(2)(a)(h) of the Act.

You are also liable for commission of above offences under Section 4(1) and 4(2) of the Act.

The aforesaid charges of crimes against humanity and other offences described under section 3(2)(a)(g)(h) of the Act are punishable under the provisions of section 20(2) read with section 4(1) and 4(2) of the Act which are within the cognizance and jurisdiction of this Tribunal. And we hereby direct you to be tried by this Tribunal on the said charges. You have heard and understood the aforesaid charges.

Question: Do you plead guilty or not.

Answer:

The charges read over and explained to the accused who pleaded not guilty and claimed to be tried.

Let the case be fixed on 30.09.2013 for opening statement and examination of prosecution witnesses. The trial shall be continuing on every working day until further order. The defence counsel is directed to submit a list of witnesses along with documents which the defence intends to rely upon, as required under section 9(5) of the Act.

(A.T.M. Fazle Kabir, Chairman)

(Jahangir Hossain, Member)

(Anwarul Haque, Member)