

International Crimes Tribunal-2

Old High Court Building, Dhaka, Bangladesh

ICT- BD [ICT-2] Case No.03 of 2014

Present:

Justice Obaidul Hassan, Chairman
Justice Md. Mozibur Rahman Miah, Member
Justice Md. Shahinur Islam, Member

Order No.03
18 December 2014

Chief Prosecutor

vs.

Md. Forkan Mollik @ Forkan [Accused]

Mr. Mokhlesur Rahman: For the prosecution

Mr. Md. Abdus Salam Khan: For the defence

[Decision on framing Charges]

Today is fixed for passing decision on charge framing matter and as such the record is taken up for order. Accused Md. Forkan Mollik @ Forkan has been produced before the Tribunal from prison. 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.

I. Introduction and Formation of the Tribunal

1. 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 one could be brought to justice under the Act until the government established 'Tribunal' (Tribunal-1) on 25th of March 2010. It is to be noted that for ensuring expeditious trial, the government has set up this Tribunal (Tribunal-2) under section 6(1) of the Act on 22nd March 2012.

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 sketched by this Tribunal. In brief, we reiterate that despite this 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 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 independence of Bangladesh independent immediately before he was arrested by the Pakistani authorities.

3. It is now settled history that 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 Bangalee, 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.

4. The Pakistan government and the occupation 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.

5. Allegations brought against the accused Forkan Mollik @ Forkan center around the atrocious events of killing civilians, rape, wanton destruction of civilians property, deportation constituting the offences of crimes against humanity. All the events allegedly took place during the war of liberation in 1971 around the locality under police station Mirjaganj of district Patuakhali.

III. Brief account of the Accused Persons

6. Md. Frokan Mollik @ Forkan [63] son of late Sader Mollik and late Sonvan Bibi of village Sailabunia under police station Mirjaganj district Patuakhali studied up to class V. Accused is an employee in a non government organisation in Dhaka and also a farmer, by profession. In 1971 he joined the local Razakar force and used to carry out criminal acts under the local Razakar commanders. He was an active supporter of Muslim League and subsequently since 1977 he has been with the political party BNP.

IV. Procedural History

7. The investigation Agency of the Tribunal started investigation pursuant to compliant register no. 35 dated 25.6.2014, in respect of commission of offences enumerated in section 3(2) of the Act of 1973 allegedly perpetrated by Md. Forkan Mollik @ Forkan. During investigation, the IO prayed for showing the accused person arrested through the Chief Prosecutor. The Tribunal on hearing the matter passed order detaining the accused in prison in connection with the case under investigation.

8. The IO submitted its report together with documents collocated and statement of witnesses, on conclusion of investigation before the Chief prosecutor on 2.11.2014. Finally, the Chief Prosecutor, on the basis of the report and documents submitted therewith by the Investigation Agency, after completion of investigation, submitted the 'Formal Charge' under section 9(1) of the Act of 1973 read with the Rule 18(1) of the ROP before this Tribunal alleging that the accused by Md. Forkan Mollik @ Forkan a member of local Razakar force in 1971 had committed the offence of crimes against humanity and genocide, including abetting, contributing 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 Subidkhali under Mirjaganj police of district Patuakhali.

9. Thereafter, the Tribunal, under Rule 29(1) of the Rules of Procedure, took cognizance of offences as mentioned in section 3(2) (a)(b)(g)(h) of the Act of 1973 and fixed a date for hearing on charge framing matter.

V. Submission by the Prosecutor

10. During the hearing on charge framing matter, the learned prosecutor submitted that the formal charge relates to eight events of 'attack' that resulted in wanton destruction of civilians' property, deportation, torture, conversion to Muslim religion, murder and rape. All these acts were committed upon non combatant civilians belonging to pro-liberation community of the locality. Accused Md. Forkan Mollik, a member of local Razakar actively participated and also abetted, substantially contributed and facilitated the commission of all the crimes constituting the offence of crimes against humanity as enumerated in section 3(2)(a)(g)(h) of the International crimes(Tribunals) Act 1973

11. The documents and statement of witnesses will show that the accused had 'complicity' in committing crimes against humanity, by aiding, the learned prosecutor submits. Finally it has been submitted that on collective consideration of the Formal Charge, statement of witnesses and documents which manifestly indicate that there are sufficient grounds of presuming that the accused Md. Forkan Mollik @ Forkan was criminally culpable for the commission of offences as mentioned in section 3(2) of the Act.

12. The learned defence counsel declined to make any submission on charge framing matter. It is to be noted that there has been no application even on part of the accused seeking discharge.

VI. Deliberations and Decision

13. We have carefully gone through the formal charge, statement of witnesses and the documents submitted therewith. It appears that the formal charge and the statement of witnesses *prima facie* disclose participation, substantial contribution and abetment of the accused persons to the commission of the offences as specified in section 3(2) of the Act. At this stage neither the guilt not the innocence can be determined conclusively. However, the accused persons shall be treated innocent, till they are found guilty. His culpability, if any, can only be well determined at trial only, not at this stage.

14. However, on prima facie examination of the record, at this stage, we are to concentrate our attention to the allegations and facts disclosed in the Formal Charge as well as the statement of witnesses and documents submitted therewith.

15. Now we proceed to read out the charges framed. 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 frame charges against accused **Md. Forkan Mollik @ Forkan** for the offences allegedly committed during the War of Liberation in 1971 as specified under section 3(2)(a)(b)(i)(h) of the Act for which he is 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 Obaidul Hassan, Chairman

Justice Md. Mozibur Rahman Miah, Member

Justice Md. Shahinur Islam, Member

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hereby charge you, **Md. Frokan Mollik @ Forkan** [63] son of late Sader Mollik and late Sonvan Bibi of village Sailabunia under police station Mirjaganj district Patuakhali as follows:-

Charge No.01

[Killing 04 civilians]

That on **12 August 1971** corresponding to 26 Sraavan at about 1:30 pm you Forkan Mollik a member of local Razakar force accompanied the group formed of Razakar commander Shahjahan Sikder, Razakar Dabir Shikder, Ali Akbar Gaji, armed members of Razakars and Pakistani occupation army arrived at Subidkhali bazaar under Mirjaganj police station of district Patuakhali by a gunboat and then by launching attack, apprehended **(1) Hafij Uddin Khalifa**[source of freedom fighters] of village Kakarbunia, local thana Awami League leader **(2) Abdul Kader Jomadder** and they were taken to gunboat where they were kept detained. Then the group accompanied by you apprehended **(3) Dr. Debndra Nath Sarker** from their houses. Biva Rani the wife of Debndra Nath attempted to save her husband but the army shot him to death as shown by you accused Forkan Mollik and you the accused bayoneted her [Biva Rani] to death. After carrying destructive activities of looting you Forkan Mollik, your accomplices Razakars and Pakistani army, the attackers gunned down detained Hafij Khalifa and Abdul Kader Jomadder to death and dumped their bodies to the river.

Therefore, you accused Forkan Mollik are hereby charged for participating, abetting, and substantially contributing the actual commission of killing **04 unarmed civilians** constituting the offence of 'murder' as crimes against humanity as enumerated 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.

You are thus liable for the above offences under section 4(1) of the Act.

Charge No.02

[Forcible conversion to Muslim Religion and deportation]

That on **15 August 1971** corresponding to 29 Sravan at about 12:00 pm you Forkan Mollik a member of local Razakar force accompanied the group formed of, Razakar Dabir Shikder, Ali Akbar Gaji, armed members of Razakars by launching attack apprehended three brothers **(1)** Ramani Kundu, **(2)** Dr. Shyam Sundar Kundu and **(3)** Sunil Kundu from their houses at Subidkhali bazaar under Mirjaganj police station district Patuakhali and forcibly took them to the Razakar camp set up at old hospital building where under coercion made the detainees converted to Muslim through reciting the holy 'kalema and they were then named as Rafiqul Islam, Sharif Ali and Md. Shahjahan respectively. Afterwards, the act of such forcible conversion to Muslim religion compelled the victims to deport, in fear of life.

Therefore you accused Forkan Mollik are hereby charged for participating, abetting, and substantially contributing the actual commission of the act of forcible conversion to Muslim religion constituting the offence of '**other inhuman act**' and '**deportation**' as crimes against humanity as enumerated 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.

You are thus liable for the above offences under section 4(1) of the Act.

Charge No.03

[Rape upon Golapi Rani Saha]

That on **17 August 1971** corresponding to 31 Sravan at about 08:00 pm you Forkan Mollik a member of local Razakar force along with your accomplice Razakars by launching attack at the house of Ramkrishna Saha at Subidkhali bazaar under Mirjaganj police station district Patuakhali apprehended **Golapi Rani Saha**[16] the unmarried daughter of Ram Krishna Saha and forcibly brought her to a place known as Jugibari where you and your accomplices committed recurrent rape upon her[Golapi Rani] and with this she became unconscious and then the Razakars left her abandoned at a place near her house. Golapi Rani eventually died in the midnight of 18 August 1971 and she was buried at the crematorium.

Therefore you accused Forkan Mollik are hereby charged for participating, abetting, and substantially contributing the actual commission of the act of mass rape that resulted in her death constituting the offence of '**rape**' and '**murder**' as crimes against humanity as enumerated 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.

You are thus liable for the above offences under section 4(1) of the Act.

Charge No.04

[Rape upon Sova Rani and Sushama Rani]

That on **20 August 1971** at about 10:00 am you accused Md. Forkan Mollik @ Forkan a member of local Razakar force being accompanied by your accomplices

by launching attack at the house of Lalit Karmakar at village Subidkhali bazaar under Mirjaganj police station district Patuakhali apprehended his unmarried daughter **Shova Rani** and his daughter-in-law **Sushama** to the Razakar camp set up at old hospital building where keeping them in captivity you accused and your accomplices committed recurrent rape upon them and in the mid night of 21 August the victims were left abandoned in front of their house. Afterwards they along with their family deported to India, being feared.

Therefore, you accused Forkan Mollik are hereby charged for participating, abetting, and substantially contributing the actual commission of the act of '**rape**' and '**deportation** 'as crimes against humanity as enumerated 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.

Charge No.05

[Killing 03 civilians and Rape upon Aleya Begum]

That in between **22 August 1971 at about 01:00 pm and 25 August early morning** you Forkan Mollik a member of local Razakar force being accompanied by Razakar Shahjahan Sikder, Razakar Ali Akbar Gaji, other Razakars and a group of Pakistani occupation army by launching attack at Kakakrbunia bazaar with indiscriminate gun firing and with this one **Sanad Kumar Haldar** who was on fleeing died by gun shot. In conjunction with the attack, you accused and the group of attackers had carried out wanton destruction at the bazaar and apprehended Moslem Haldar and Sundar Gazi.

In conjunction with the same attack you and the group of attackers you accompanied attacking the house of Selim Haldar and Hatem Ali, dragged out Aleya Begum the newly married daughter of Hatem Ali. You accused Forkan Mollik gunned down **Hatem Ali** to death with the rifle in your hand, kept Aleya Begum detained, on capture at the gunboat of the army anchored near the bazaar.

Next, the group of attackers accompanied by you attacked the house of Majibur Rahman Mridha and carried out destructive activities, caused torture to apprehended Mosharaf Mridha and then killed **Elemuddin** of village Kakarbumia by gun shot.

On the same day at about 04:30 pm you and the group of attackers carried out destructive activities at the Hindu para and had left the village Kakarbumia along with the looted households and captured Aleya Begum.

Captured Aleya begum was taken to Patuakhali circuit house where she was kept detained in a room along with 20-25 youth girls detained there since earlier. The Pakistani army caused mass sexual violence upon Aleya Begum taking her to another room. On the following day, you accused Forkan Mollik and your accomplices also committed sexual invasion upon Aleya Begum and afterwards, on 25 August in early morning the victim was left abandoned in front of her house. Therefore, you accused Forkan Mollik are hereby charged for participating, abetting, and substantially contributing the actual commission of the act of

'murder' of 03 civilians and 'abduction', 'confinement' and 'rape' upon Aleya Begum constituting the offences of as crimes against humanity as enumerated 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.

You are thus liable for the above offences under section 4(1) of the Act.

Thus you have been indicted as above for committing the offences under section 3(2)(a)(c)(i)(g)(h) of the International Crimes(Tribunals) Act, 1973, punishable under section 20(2) read with section 3(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. You accused Md. Forkan Mollik @ Forkan have heard and understood the aforesaid charges which have been read out in the open Court in your presence.

Question: Do you plead guilty or not.

Answer: *Ami not guilty* (I am not guilty).

The charges so framed have been read over and explained to the accused Md. Forkan Mollik @ Forkan in Bengali to which he pleaded not guilty and claimed to be tried.

Let 19.01.2015 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 which the defence intends to rely upon, as required under section 9(5) of the Act on or before the date fixed.

Sd/-Justice Obaidul Hassan, Chairman
Justice Md. Mozibur Rahman Miah, Member
Justice Md. Shahinur Islam, Member