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**International Crimes Tribunal-2**  
**Old High Court Building, Dhaka, Bangladesh**  
**ICT- BD [ICT-2] Case No. 04 of 2013**

**Present:**

Justice Obaidul Hassan, Chairman

Justice Md. Mozibur Rahman Miah, Member

Justice Md. Shahinur Islam, Member

**Order No.13**

**02 February 2014**

***Chief Prosecutor***

**vs.**

***Syed Md. Kaiser (Accused)***

Mr. Rana Das Gupta: For the prosecution

Mr. Abdus Sobhan Tarafdar: For the defence

**[Decision on framing Charges]**

Accused Syed Md. Kaiser [on bail] is present before this Tribunal.

On conclusion of hearing on charge framing matter and discharge application on 13 January 2014, Tribunal[ICT-2] fixed today for passing decision and as such the record is taken up for order on indictment matter. Before passing the order, we consider it appropriate to provide a brief context of the case, brief account of the accused, procedural history in brief, and the argument put forward by both prosecution and defence before this Tribunal.

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

1. This International Crimes Tribunal-2 (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 as enumerated in sub section (2) of section 3 of the Act committed in the territory of Bangladesh, before or after commencement of the Act. However, no Tribunal was set up and as such 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-2[ICT-2] under section 6(1) of the Act on 22.3.2012.

**II. Historical Context:**

2. 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.

3. 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.

4. In the general election of 1970, the Awami League under the leadership of Bangabandhu Sheikh Mujibur Rahman became the majority party of Pakistan. 5. 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 7<sup>th</sup> 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 26<sup>th</sup> March, following the onslaught of " Operation Search Light" by the Pakistani Military on 25<sup>th</sup> March, Bangabandhu declared Bangladesh independent immediately before he was arrested by the Pakistani authorities.

5. 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.

6. The Pakistan government and the military set up number of auxiliary forces such as the Razakars, the Al-Badar, the Al-Shams, the Peace Committee etc, essentially to collaborate with the Pakistani occupation army 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. Mighty pro-Pakistan people dared to form group with his own followers aiming to provide assistance and support to carry out atrocious activities by the Pakistani occupation army. Undeniably the nation had to cross the arduous and torturous road to freedom and self-determination. The journey was indeed smeared with blood, toil and sacrifices laid down by

millions of people. In the contemporary world history, perhaps no nation paid as dearly as the Bangalees did for their emancipation.

### III. Brief account of the Accused

7. Accused **Syed Md. Kaiser(73)** @ Md. Kaiser @ Syed Kaiser @ SM Kaiser @ Kaiser Syed Kaiser son of late Syed Saiduddin Ahmed and late Begum Hamida Banu of village-Itakhola[Noapara] Police Station- Madhabpur District- Habiganj was born on 19 June 1940. He obtained matriculation from Armanitola New Government High School, Dhaka and studied in Jagannath College Dhaka. No proof could be found showing his study in the said school. He however studied up to BA class as found from the registration form filled up and submitted to the Habiganj Election Office. Accused Kaiser as an industrialist and owns a number of industrial concerns.

8. It is alleged that Syed Md. Kaiser became associated with the politics of Convention Muslim League in 1962 and was elected Member of Sylhet District Board in 1966 and occupied the chair till 1971. Kaiser contested Provincial Assembly Election in 1970 as an independent contestant and was defeated. During the war of liberation in 1971 he was allegedly associated with the local occupation army and carried out atrocious criminal activities through out the period of war in the localities of Habiganj and Brahmanbaria district, as alleged by the prosecution. Instantly either before or after the victory achieved on 16 December 1971, accused Kaiser allegedly went into hiding and fled to London quitting Bangladesh.

9. Prosecution also alleges that the accused Syed Md. Kaiser returned back home in 1978. In 1979 he contested second parliamentary election as an independent candidate and was elected in Sylhet-17 constituency and afterwards joined the Bangladesh nationalist Party[BNP] and became the president of Habiganj district BNP. In 1982 he became the joint secretary general of BNP[Shah Azizur Rahman group]. Afterwards, he joined the Jatio Party of General Ershad and was elected as president of Habiganj jatio Party. In 1986 and 1988 he was elected member of parliament contesting the Jatio Parishad election as a candidate of Jatio Party, in Habiganj-4 constituency[ Madhabpur-Chunarughat], Later on he became the state minister for the Agricultural Ministry. On 1991, 1996 and 2001 he contested the parliamentary elections as a candidate of jatio Party, but was defeated. At a stage he quitting jatio Party, joined PDP.

### IV. Procedural History

10. At pre-trial stage, an application under Rule 9(1) of the Rules of Procedure was initiated by the Chief Prosecutor on 15.5.2013 seeking arrest of the accused Syed Md. Kaiser contending that his detention or arrest was indispensable for the purpose of effective and proper investigation. The Tribunal [ICT-2] on hearing the application by its order issued warrant of arrest in execution of which the law enforcement agency caused his arrest on 21.5.2013 and produced him before this Tribunal on 22.5.2013 and was sent to prison by rejecting an application seeking his bail. Subsequently, on 05.8.2013 The Tribunal [ICT-2] by

its order dated 05.8.2013 allowing application seeking bail released him on conditional bail, taking his physical condition, ailment and old age complications into account. Since then the accused Syed Md. Kaiser has been staying at house no. 21, road no. 06, block-C, Flat no. 3B, Banani, Dhaka.

**11.** Meanwhile, on 22.9.2013 the investigation agency, on completion of investigation submitted 'report as required under Rule 11 of the ROP to the Chief Prosecutor and then on perusal of the 'report' together with the evidence and documents collected during investigation Chief Prosecutor in his turn submitted the 'formal charge' under section 9(1) of the Act of 1973 on 10.11.2013 alleging that the accused as the organiser of 'Kaiser Bahini' and a potential associate of Razakar force and the Pakistani occupation armed force and also as a member of a group of individuals had committed the offence of crimes against humanity, abetted commission of atrocious criminal acts in different places of Habiganj district and Brahamanbaria district and also had conscious 'complicity' to commit such crimes as specified in section 3(2) of the Act, during the period of War of Liberation in 1971.

**12.** The Tribunal [ICT-2], considering the Formal Charge and documents and statement of witnesses submitted therewith, having found *prima facie* case, took cognizance of offences against the accused Syed Md. Kaiser. Prosecution was, as next stage of proceedings, then directed to furnish with the copies of the Formal Charge, documents and statement of witnesses submitted there with which it intends to rely upon to the accused for preparation of defence.

**13.** In course of hearing the charge matter, the learned prosecutor Mr. Rana Das Gupta advanced his submissions showing his argument favourable to framing charges for the criminal acts constituting the offences as narrated in the formal charge against the accused. Mr. Gupta also submitted that the statement of witnesses and documents submitted therewith *prima facie* and reasonably justify the framing of charges alleged. While Mr. Abdus Sobhan Tarafdar, the learned counsel appearing for the accused, upon filing a discharge petition, refuted prosecution's submission and extended his detailed submission both on factual and legal aspects and finally emphasized to allow the prayer to discharge the accused, on the grounds stated therein.

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

**14.** The learned Prosecutor, before drawing our attention to the facts narrated in the Formal Charge constituting the offences allegedly committed by the accused during 1971 War of Liberation, portrayed the context that involved organizational plan and policy in execution of which the local pro-Pakistani persons belonging to fundamentalist Islamic political groups, auxiliary force took part in committing the offences through out the country 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 War of Liberation of Bangladesh is an undeniable fact of common knowledge that deserves judicial notice.

**15.** It was further submitted that the accused, as the organiser of local ‘Kaiser bahini’ which was formed with his followers and they were engaged in participating the attack and providing active assistance to the Pakistani occupation army in carrying out horrific atrocities directing pro-liberation unarmed civilians, Hindu religious groups. The accused was also individually responsible for the attacks directed against unarmed civilian population constituting the offence of crimes against humanity and had direct and substantial complicity in committing killing of members of group of unarmed civilians ; that the accused had material ability and authority to control the members of ‘Kaiser Bahini’. The atrocious and unlawful acts depicted from statement of witnesses and documents fall within the purview of crimes against humanity, genocide and other inhuman acts specified in section 3(2) of the International Crimes (Tribunals) Act, 1973.

**16.** It was also submitted that the statement of witnesses, documents and materials collected during investigation amply establish the orchestration and commission of offences and complicity of the accused in the crimes depicted from the documents and the narration made in the Formal Charge. Combined consideration of the Formal Charge, statement of witnesses and documents patently indicate that there are sufficient grounds of presuming that the accused was criminally liable for the commission of offences as mentioned in section 3(2) of the Act for which he is liable under section 4(1) and 4(2) of the Act of 1973.

#### **VI. Submission advanced by the defence side**

**17.** The learned counsel for the defence by filing an application seeking discharge of the accused submitted that the present accused cannot be prosecuted, merely on allegation of aiding and abetting the principal offenders. The Collaborators Order 1972 was meant to prosecute and try the local persons who allegedly collaborated with the Pakistani Army. Thus, the accused could have been prosecuted under the Collaborators Order 1972 if he actually collaborated and aided the Pakistani army, the principal offenders, in committing alleged atrocities.

**18.** Mr. Abdus Sobhan Tarafdar the learned defence counsel, in support of discharge prayer concentrated his submission mainly on issue of ‘*double jeopardy*’. In addition to it, he further submitted that most of the alleged events narrated in the ‘formal charge’ show that Syed Md. Kaiser was not the principal offender and rather he allegedly ‘abetted’ the commission of the criminal acts by the principals.

**19.** On placing his key submission the learned defence counsel submitted that Bangladesh Collaborator (Special Tribunal) Order 1972 was enacted to prosecute and try the local collaborators. Syed Md. Kaiser was prosecuted, tried and eventually acquitted of the charge under the said Order of 1972. In support of this contention photocopy of certified copy of

judgment dated 19.12.1972 in Special Tribunal Case No. 37 of 1972 passed by the Special Tribunal, Sylhet has been submitted. The learned defence counsel, depending on it, now stressed that the prosecution has brought allegations against Syed Md. Kaiser of committing and abetting offences which also allegedly occurred in 1971. But he could have been prosecuted for these criminal acts too under the Collaborators Order 1972, if actually he was involved with any of events constituting the offence of murder, torture, looting, arson, in any manner.

**20.** It has been further argued by the learned defence counsel that for the events narrated in the formal charge arising out of the 'same transaction' of criminal acts Syed Md. Kaiser cannot be prosecuted and tried twice. All the events constituting the offences under the Act of 1973 as narrated in the formal charge and the offence for which he was tried under the Collaborators Order 1972 may be considered as the 'outcome' of the 'same transaction' as all those happened in between 26 March and 16 December 1971. Therefore, prosecuting the 'same offence' even under different legislation is barred by the doctrine of '*double jeopardy*' as contemplated in Article 35(2) of the Constitution. Thus, Syed Md. Kaiser deserves to be discharged.

#### **VII. Reply of the Prosecutor**

**21.** In reply, Mr. Rana Das Gupta the learned Prosecutor submitted that Syed Md. Kaiser was prosecuted and tried for the offence punishable under section 302/109 and 436/109 Penal Code, the scheduled offences of the Collaborators Order 1972. First, the offence for which he was so prosecuted and tried was an offence as defined in the Penal Code. Second, the events constituting the offence as enumerated in the Act of 1973 took place on different dates in 1971 and those do not arise out of the 'same transaction' of criminal acts. Third, the formal charge has been filed to prosecute Syed Md. Kaiser not for the event constituting the offence for which he was once prosecuted, tried and acquitted under the Collaborators Order 1972. Thus, there can be no way to conclude that prosecuting Syed Md. Kaiser for commission of offence of crimes against humanity on specific events and not for the events constituting the offences enumerated under the Act of 1973 is barred by the doctrine of '*double jeopardy*'. The learned prosecutor, in support of his submission drew attention to the observation of this Tribunal [ICT-2] made in the case of *Md. Abdul Alim*, on the issue of '*double jeopardy*'.

#### **VIII. Discussion and Decision**

**22.** Before we arrive at a decision on the matter of charge framing we consider it expedient to address the legal issues upon which the learned counsel for the defence stressed significantly to justify discharge of the accused.

##### **(i) Prosecuting an individual under the Act of 1973**

**23.** It is 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. In prosecuting an individual for the crimes enumerated in the Act of 1973 there has been no statutory bar.

24. It would appear from the formal charge that the accused Syed Md. Kaiser has been arraigned of the act of abetting the substantive offences as narrated. The formal charge also depicts that the group of Pakistani occupation army accompanied by the accused and his companions belonging to alleged 'Kaiser Bahini' perpetrated the crimes alleged. First, mode of participation can be well adjudicated only on trial. At this stage, no room is left to conclude as to which capacity the accused was involved with the accomplishment of alleged criminal acts. Next, there can be no argument that without bringing the principals to book an abettor cannot be prosecuted and tried. In this regard we reiterate the settled proposition of law that abetment by itself is a substantive offence and the abettor can be prosecuted even without bringing the principal to justice. The Appellate Division in its judgment [Criminal Appeal no. 24 of 2013 : *Abdul Quader Molla*: 17 September 2013: **A.H.M Shamsuddin Chowdhury J.**] has observed that

**“ it must also be borne in mind that Pakistani soldiers were exonerated by executive order following a tripartite agreement between India, Pakistan and Bangladesh, not by the courts and the courts are not bound by the terms of this tripartite agreement.”**

**(ii) Collaborators Order 1972 and prosecuting the present accused under the said Order**

25. On going through the judgment dated 19.12.1972 in Special Tribunal Case No. 37 of 1972 under the Collaborators Order 1972[photocopy of certified copy submitted] it appears that 04 persons including Syed Md. Kaiser were prosecuted and tried for the event of killing of husband, son and 'bhagina' of the complainant and the incident allegedly took place on 10<sup>th</sup> of Jaistha 1378 BS [corresponding to last part of May, 1971]. The accused persons allegedly accompanied the Pakistani occupation army the principal perpetrators. After trial all the accused persons were acquitted. It is to be noted that Syed Md. Kaiser remained absconding and the trial was held in absentia.

26. Now the 'formal charge' before us, as submitted by the Chief Prosecutor on the basis of investigation carried out by the Investigation Agency depict that Syed Md. Kaiser was allegedly involved with as many as 17 events occurred on different dates in 1971 constituting the offences as enumerated in the Act of 1973, either physically or by his act of abetment or complicity. The formal charge does not include the event of murder for which Syed Md. Kaiser was prosecuted and tried under the Collaborators Order 1972.

27. Next, the offence of 'murder' under the Collaborators Order 1972 was an offence defined in the Penal Code. On contrary, the offence of 'murder' as crime against humanity is a quite distinct offence and is known as 'international crime' for which an individual may lawfully be

prosecuted under the Act of 1973. Elements to constitute the offence of ‘murder’ defined in the Penal Code do not conform to those of ‘murder’ as crime against humanity.

**(iii) Doctrine of Double jeopardy**

**28.** It is now settled that the term ‘offence’ (*dicta*) refers to the legal characteristics of an offence and not the facts on which it is based. It is true that the Article 35(2) of the Constitution prohibits prosecution and punishment for twice for the ‘same offence’. But on mere reading of the preamble of the Collaborators Order 1972 it cannot be said that the offences under it are the ‘same offences’ as enumerated in the Act of 1973.

**29.** The doctrine of ‘double jeopardy’ is aimed to prevent harassment to the accused who has previously been either acquitted or convicted by exposing him afresh to another trial for the ‘same offence’ or on same fact[s] for some other offence. But it appears that the instant proceeding has not been initiated on the basis of the fact or incident of the earlier proceeding and thus the instant proceeding under the Act of 1973 initiated on the basis of different events of criminal acts constituting distinct offences cannot be said to be barred by the double jeopardy prohibition.

**30.** Further we have observed, in resolving the issue of double jeopardy, in the case of *Md. Abdul Alim* [Judgment 09 October 2013, para 103] that

**“Additionally, the offences enumerated in the Act of 1973 are quite distinct from those scheduled in the Order of 1972. The Tribunal, in determining the issue of ‘double jeopardy’, is concerned with offences or crimes as clearly refer to the Act of 1973 and not the Collaborators Order 1972”.**

**31.** It is to be noted that accused *Md. Abdul Alim* was arrested under the Collaborators Order 1972 in connection with two cases and subsequently he was released thereof. The defence argument was that on the basis of this admitted fact, the accused Alim cannot be prosecuted and tried again for the same offence even under the Act of 1973. In this regard we penned our reiterated observation as below:

**“..... the Collaborators Order 1972 was a piece legislation aiming to prosecute and try the persons responsible for the offences enumerated in the schedule thereof. The offences punishable under the Penal Code were scheduled in the Collaborators Order 1972. While the Act of 1973 was enacted to prosecute and try the ‘crimes against humanity’, ‘genocide’ and other ‘system crimes’ which are recognised as international crimes committed in violation of customary international law. There is no scope to characterize the offences underlying in the Collaborators Order 1972 to be the ‘same offences’ as specified in the Act of 1973”.**

**[*Md. Abdul Alim* : Judgment 09 October 2013: para 101]**

**32.** In these circumstances, we are of the view that there is a separate and distinct new criminal offence (*i.e.* separate defining elements) under the Act of 1973 that may be prosecuted without violating the common law double jeopardy prohibition.

**(iv) Are the allegations outcome of ‘Same Transaction?’**

**33.** We are not in agreement with the utterly misconceived contention advanced by the learned defence counsel that the events of criminal acts narrated in the ‘formal charge’ before us and the offence for which the accused was prosecuted and tried under the Collaborators Order 1972 are the outcome of ‘same transaction’ and as such Syed Md. Kaiser could have been prosecuted and tried under the Collaborators Order 1972, if really he had any involvement with the alleged criminal acts narrated in the formal charge. The Tribunal notes that the formal charge submitted describes independent events occurred on different dates and sites in 1971. Those cannot be said to have occurred during the ‘same transaction’ or arose from the same facts, as argued.

**34.** It is to be noted that an offence or offences may be deemed to have been committed in the course of the ‘same transaction’ if the same be committed in one series of acts so connected together as to form the same transaction. Whether the series of acts are so connected as to form the ‘same transaction’ would depend on the facts and circumstances of each case and it interlinks a series of acts so intimately as to form the ‘same transaction’ depending on proximity of time and place or continuity of action.

**35.** But the criminal events narrated in the formal charge for which the accused has been arraigned do not depict proximity of time and place or continuity of action. The events narrated in the formal charge, particularly when the same constitute the offence of crimes against humanity, do not have link with the incident of earlier proceeding. The events allegedly occurred at different places on different dates and are not linked to a series of acts and as such the events constituting the offences cannot be said to have formed the ‘same transaction’.

**36.** Therefore, we are of unambiguous view that the offences now sought to be tried under the Act of 1973 did not occur during the ‘same transaction’ which can be said linked to the offence for which Syed Md. Kaiser was prosecuted, indicted and tried during the previous trial under the Collaborators Order 1972. On this consideration too, prohibition against double jeopardy as expressly contemplated in Article 35(2) of the Constitution does not come into play, in the case in hand.

**37.** Additionally, mere non prosecution for the alleged criminal acts under the Order of 1972 in no way now creates any clog in prosecuting Syed Md. Kaiser under the International Crimes (Tribunals) Act, 1973 enacted for the atrocities constituting offences of crimes against humanity, genocide.

## IX. Concluding view

38. *Prima facie* it is depicted on cautious appraisal of formal charge together with the statement of witnesses and the documents submitted therewith the accused was an influential person of the locality who allegedly formed a ‘bahini’ of his own known as ‘Kaiser Bahini’ with his companions and allegedly provided substantial and active aid, support and assistance to the Pakistani occupation army and local Razakars with intent to accomplishment of alleged crimes directing civilian population within the territory of Habiganj and Brahmanbaria in 1971, during the war of liberation.

39. The truthfulness of these pertinent factual issues for determining culpability of the accused may be well adjudicated at trial only. At this stage, we merely prefer 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. It is to be noted that framing charges will provide a due notice to the accused to answer all those issues, presuming him to be innocent until and unless he is found guilty.

40. In view of 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 merit, is hereby rejected. Rather, we have found it *prima facie* to presume the accused responsible for conducts that he knowingly participated, abetted and aided the commission of offences and that his act and conduct directly and substantially affected the commission of such offences through supporting, ordering, instigating and abetting the actual commission before or during the incidents, as alleged by the prosecution.

41. Now we proceed to read out the charges. 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 the accused Syed Md. Kaiser who had allegedly committed offences in 1971 War of Liberation 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 Obaidul Hassan, Chairman

Justice Md. Mozibur Rahman Miah, Member and

Justice Md. Shahinur Islam, Member

of the International Crimes Tribunal -2

hereby charge you, accused **Syed Md. Kaiser** (73) @ Md. Kaiser @ Syed Kaiser @ SM Kaiser @ Kaiser son of late Syed Saiduddin Ahmed and late Begum Hamida Banu of village- Itakhola[Noapara] Police Station- Madhabpur District- Habiganj, at present house no. 21, road

no. 06, block-C, Flat no. 3B, Banani, Dhaka, Dhaka Metropolitan Police[DMP], Dhaka as follows:-

**Charge No.1: [Fact narrated in paragraph 10:01 of formal charge]**

**[Murder and other inhuman acts caused to civilians at a place nearby Islampur Police post and Kazibari village]**

That on 27 April 1971 in between 1:30 and 03:00 pm you Syed Md. Kaiser being accompanied by your 'Kaiser bahini' and a group of Pakistani occupation armed force arrived at a place nearby Islampur police post under Islampur police station, the then Brahmiabaria sub-division where following your instruction the army gunned down one Shahjahan Chairman and then the group moved towards Kazibari locality under the same police station and on the way following your order the army caused torture to one Naeb Ali a pro-liberation people and in conjunction with the event the group launched attack directing civilians of Kazibari locality and looted households of 15 civilians and destructed properties by setting fire to civilians' houses.

Therefore, you Syed Md. Kaiser are hereby charged for abetting, facilitating and contributing the actual commission of offence of '**murder as crime against humanity**' or in the alternative, for abetting, facilitating and contributing the actual commission of offence of '**other inhuman acts as crime against humanity**' which was part of attack against civilian population as specified in section 3(2) (a) (g)(h) of the Act 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 : [Fact narrated in paragraph 10:02 of formal charge]**

**[Other Inhuman acts caused to civilians of Katiara village]**

That on 27 April 1971 in between 05:00 and 06:00 pm, you Syed Md. Kaiser being accompanied by 'Kaiser Bahini' and a group of Pakistani occupation armed force by launching 'attack' directing civilian population of western part of Madhabpur Bazar and adjacent Katiara village looted 150 shops and households and then destructed the same by setting those belonging to pro-liberation civilians Kamini Roy, Binod Bihari Modok, Sachindra Roy, Hirendra Roy, Rati Babu, Ahid Hossain Pathan on fire.

Therefore, you Syed Md. Kaiser are hereby charged for abetting, facilitating and contributing the actual commission of offence '**other inhuman acts as crime against humanity**' which was part of attack against civilian population as specified in section 3(2) (a) (g)(h) of the Act 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:[ Fact narrated in paragraph 10:03 of formal charge]**

**[Killing of 04 civilians and causing mental & physical harm to pro-liberation civilians at village Krsihnanagar]**

That on 27 April 1971 at about 07:00 pm you Syed Md. Kaiser being accompanied by ‘Kaiser bahini’ and a group of Pakistani occupation armed force launched ‘attack’ directing pro-liberation civilian population of village *Krishnanagar*, police station Madhabpur, district Habiganj, half kilometer far from Madhabpur Bazar looted households and destructed 40-45 houses by arson and at a stage following your instruction the army, on chasing, killed 04 civilians Ahid Pathan, Cherag Ali, Jonab Ali and Madhu sweeper by gun shot.

Therefore, you Syed Md. Kaiser are hereby charged for abetting, facilitating and contributing the actual commission of offence of ‘**murder as crime against humanity**’ or in the alternative, for abetting, facilitating and contributing the actual commission of offence of ‘**other inhuman acts as crime against humanity**’ which was part of attack against civilian population as specified in section 3(2) (a) (g)(h) of the Act 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 4: [Fact narrated in paragraph 10:04 of formal charge]**

**[Killing 15 civilians at Madhabpur Bazaar]**

That on 28 April 1971 in between 10:00 am and 02:30 pm you Syed Md. Kaiser being accompanied by a group of 10/15 members of ‘Kaiser Bahini’ and 30/35 of Pakistani occupation armed force by launching attack at the north-east part of Madhabpur Bazaar under Madhabpur police station district Habiganj with indiscriminate gun firing killed 15 civilians including Sattar, Barkat Ali and also destroyed about 150-200 shops and houses of civilians by looting and setting fire.

Therefore, you Syed Md. Kaiser are hereby charged for abetting, facilitating and contributing the actual commission of killing of 15 unarmed civilians constituting the offence of ‘**murder as crime against humanity**’, which was part of attack against civilian population as specified in section 3(2) (a) (g)(h) of the Act 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 5: [Fact narrated in paragraph 10:05 of formal charge]**

**[Killing of 07 civilians detained at Shaestaganj food godown]**

That on 29 April 1971 at about 01:00-01:30 pm you Syed Md. Kaiser being accompanied by a group of members of ‘Kaiser Bahini’ arriving at the food godown at Shaestaganj under police station Shaestaganj district Habiganj caused physical torture to the employees and officers of the godown and kept them detained there under armed guard for about one month, and that on

29 May 1971 at about 03:30 pm you Syed Md. Kaiser being accompanied by a group of members of 'Kaiser Bahini', peace committee members and members of Pakistani occupation armed force came to the godown wherefrom 07 of confined persons were brought beneath the rail-bridge over the river *Khoai* and then following your instruction the army gunned them down to death. The people standing nearby the bridge witnessed the event.

Therefore, you Syed Md. Kaiser are hereby charged for substantially aiding abetting, facilitating and contributing the actual commission of killing of 07 unarmed civilians constituting the offence of '**murder as crime against humanity**' which was part of attack against civilian population as specified in section 3(2) (a) (g)(h) of the Act 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 6:[ Fact narrated in paragraph 10:06 of formal charge]**

#### **[Killing of Dr. Salehuddin and Hirendra Chnadra Roy at Laskarpur]**

That on 29 April 1971 at any time after 03:30-04:00 pm at a place of 'Puran Bazaar' point at Shaestaganj, you Syed Md. Kaiser asked the members of Pakistani armed force to stop the Jeep by which Dr. Salehuddin and Hirendra Chnadra Roy were on the way towards Indian border to take refuge in India. With this, stopping the jeep the army men dragged them to the premises in front of the native house of former Chief Justice Syed AB Mahmud Hossain at Laskarpur through the bank of river '*Khoai*' where they were hanged with a tree and were subjected to torture and after the dusk they were gunned down to death and their dead bodies were left abandoned near the house of one Ramjan Ali alongside Laskarpur rail line.

Therefore, you Syed Md. Kaiser are hereby charged for substantially abetting, facilitating and contributing the actual commission of killing of 02 unarmed civilians constituting the offence of '**murder as crime against humanity**' which was part of attack against civilian population as specified in section 3(2) (a) (g)(h) of the Act 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.7: [Fact narrated in paragraph 10:07 of formal charge]**

#### **[ Other Inhuman acts caused to civilians at Habiganj Town]**

That on 30 April 1971 in between 10:00-10:30 and 04:00-04:30 pm the 10-15 members of 'Kaiser bahini led by you Syed Md. Kaiser being accompanied by the Pakistan occupation army arriving at Habiganj town created horror by launching attack and indiscriminate gun firing and started looting of households of 40-45 civilians including Advocate Mostafa Ali MNA, Latifur Rahman @ Manik Chiwdhury MNA, Dr. Abul Hashem MPA, Anil Kumar Roy, Iswar Paul, Roby Roy, Thakur Jhee, Sajib Ali, Surjakanta Babu, Rajaram, Upendra Paul and then with intent to destroy their property, set their houses and shops on fire.

Therefore, you Syed Md. Kaiser are hereby charged for abetting, facilitating and contributing the actual commission of the offence of ‘ **other inhuman acts as crime against humanity**’, which was part of attack against civilian population as specified in section 3(2) (a) (g)(h) of the Act 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 08: [[Fact narrated in paragraph 10:08 of formal charge]**

**[Committing Rape upon Hiramoni at Chanpur Tea garden]**

That on 11 May 1971 at about 10:00 am you, Syed Md. Kaiser accompanied a group of Pakistani occupation army towards Chanpur tea garden under Chunarughat police station of district Habiganj and on arriving there the group started causing torture to the garden labourers and dwellers belonging to Hindu community and at a stage entered into the dwelling hut of one Santal woman Hiramoni when you, showing the woman, asked the army to enjoy [ravish] and with this 2-3 army men committed rape upon Hiramoni.

Therefore, you Syed Md. Kaiser are hereby charged for substantially abetting, facilitating and contributing the actual commission of sexual ravishment upon one *santal* woman constituting the offence of ‘ **rape as crime against humanity**’ which was part of attack against civilian population as specified in section 3(2) (a) (g)(h) of the Act 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 09: [Fact narrated in paragraph 10:09 of formal charge]**

**[Killing of 08 civilians of village Lohaid]**

That on 15 May 1971 in between 10:00-10:30 am and 01:00-01:30 pm you Syed Md. Kaiser being leader of ‘Kaiser Bahini’, accompanied your 10-15 companions, Razakar force and a group of 30 members of Pakistani armed force headed towards the village ‘Lohaid’ under Madhabpur police station district Habiganj where the group by launching attack apprehended pro-liberation civilians namely (1) Abdul Aziz (2) Abdul Gafur (3) Jamiruddin (4) Azimuddin (5) Etimunnesa (6) Nur Ali (7) Alamchan Bibi (8) Abdul Ali from their houses and then following your instruction the accompanying army caused their death by charging bayonet and gun shot. In conjunction with the event the group of perpetrators committed looting of Rahimuddin’s house and then set it on fire.

Therefore, you Syed Md. Kaiser are hereby charged for abetting, consciously facilitating and substantially contributing the actual commission of killing of 08 unarmed civilians constituting the offence of ‘ **murder as crime against humanity**’ which was part of attack against civilian population as specified in section 3(2) (a) (g)(h) of the Act 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 10: [Fact narrated in paragraph 10:10 of formal charge]**

**[Killing of Shah Firoz Ali and Torture to Shah Hossain Ali at army camp at R&H Duck bungalow, Shaestaganj]**

That on 13 June 1971 at about 2:00-03:00 pm you Syed Md. Kaiser being the leader of 'Kaiser Bahini' instructed them and Razakar force to forcibly pick up local organiser of liberation war Shah Firoz Mia from his house at *Mokambari* locality under Habiganj police station district Habiganj and on capture he was first brought to Habiganj police station where he was kept confined for one night and on the following day he was brought to Shaestaganj R&H Duck bungalow where you Syed Md. Kaiser handed him over to the Pakistani army.

On getting information, Shah Hossain Ali son of the abducted and confined victim Shah Firoz returned home on 16 July 1971. On the very night of his return, he too was apprehended by 'Kaiser Bahini' and Razakars and brought to Habiganj police station. And on the following day he was handed over to the Pakistani army at R&H duck bungalow at Shaestaganj wherein he was kept detained for 20-25 days and during this period the army men inflicted severe torture causing grave bodily injury to him leading to amputation of his left leg and he was however released at the end of August 1971. But his father Shah Firoz Ali handed over earlier to the army, on capture, to cause his death could not be traced even.

Therefore, you Syed Md. Kaiser are hereby charged for abetting, facilitating and contributing the actual commission of killing of 01 unarmed civilians constituting the offence of '**murder as crime against humanity**', or in the alternative, for abetting, facilitating and contributing the actual commission of offence of '**torture as crime against humanity**' which was part of attack against civilian population as specified in section 3(2) (a) (g)(h) of the Act 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.11: [Fact narrated in paragraph 10:11, 10:12 & 10:13 of formal charge]**

**[Murder, abduction, torture & other inhuman acts at village Haripur, Gutma and Purbabhag under police station Nasirnagar]**

That on 23 June 1971 at about 10:30-11:00 am a group of 40-50 armed members of 'Kaiser Bahini' and Razakar force led by you Syed Md. Kaiser by launching attack to the house of Golam Nur, an organiser of liberation war of village *Haripur* under police station Nasirnagar district Brahmanbaria, looted the household and set the house on fire and abducted Golam Rouf Master there from and brought him at your house at *Noapara* where he was kept detained for one week and was subjected to torture and finally, he was released in exchange

of Taka 8,000/00. Eventually Golam Rasul Master eventually died after two weeks due to severe injuries he sustained from torture caused to him.

On the same day, in conjunction with the same transaction of criminal activities, at about 02:00-02:30 pm the group led by you Syed Md. Kaiser also attacking the village *Gutma* about two miles far from village Haripur and looted house holds of one Gobinda Karmakar and set the house on fire and abducted Givendra Roy and kept him detained at your [Syed Md. Kaiser] house wherefrom he , confinement managed to flee from his confinement after 20-22 days.

On the same day and in conjunction with the same transaction the group of perpetrators led by you Syed Md. Kaiser moved towards the village *Purbabhag* , two miles far from *Gutma* village and at about 04:00-04:30 pm by launching attack looted and destructed the house of Saedul Haque, an organiser of liberation war and then set the house on fire.

Therefore, you Syed Md. Kaiser are hereby charged for participating, abetting, facilitating and contributing the actual commission of killing of 01 unarmed civilians constituting the offence of ‘ **murder as crime against humanity**’, or in the alternative, for participating , abetting, facilitating and contributing the actual commission of offence of ‘**other inhuman act as crime against humanity**’ which was part of attack against civilian population as specified in section 3(2) (a) (g)(h) of the Act 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.12: [Fact narrated in paragraph 10:14 of formal charge]**

#### **[Committing rape upon Majeda at army camp at Jagadishpur High School]**

That on any day of mid August of 1971 at noon you Syed Md. Kaiser, by your companions of ‘Kaiser Bahini’ and Razakar force, brought Majeda Begum, her father Atab Mia and uncle Ayub Mia to the army camp set up at Jagadishpur High School under Madhabpur police station , on capture from their house and then you Syed Md. Kaiser handed Majeda Begum over to the army for their entertainment, despite protest on her father’s part. The army men thus committed successive rape upon Majeda, during night for 8/10 days and later on, physically and mentally devastated Majeda was left abandoned at a place near *Temunia* Primary School wherefrom she managed to return home somehow and received necessary medical treatment and few days later she felt her pregnancy that resulted from the forcible sexual invasion caused to her at the army camp.

Therefore, you Syed Md. Kaiser are hereby charged for substantially abetting, facilitating and contributing the actual commission of committing forcible sexual ravishment constituting the offence of ‘ **rape as crime against humanity**’ which was part of attack against civilian population as specified in section 3(2) (a) (g)(h) of the Act 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.13: [Fact narrated in paragraph 10:15 of formal charge]**

**[Killing of 03 civilians at Nalua Tea garden killing Field]**

That on 18 August 1971 in between 09:00-09:30 am and 03:00-03:30 pm a group of 15-20 Razakars and peace committee members led by you Syed Md. Kaiser by launching attack apprehended Abdus Shahid and three other civilians of village *Narapati* under police station Chunarughat district Habiganj and brought them to peace committee office set up at the house of Rajendra Poddar @ Lechu Poddar where on your instruction they were subjected to torture and forced to disclose information about the arms they had. At a stage of causing torture, on disclosure by the detained persons they were brought to army camp, one mile far from the peace committee office and then you and the group brought the detained persons to killing field adjacent to *Nalua* tea garden by army vehicle where they were killed.

Therefore, you Syed Md. Kaiser are hereby charged for participating, abetting, facilitating and contributing the actual commission of killing of 03 unarmed civilians constituting the offence of ‘**murder as crime against humanity**’ which was part of attack against civilian population as specified in section 3(2) (a) (g)(h) of the Act 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 14:[ Fact narrated in paragraph 10:16 of formal charge]**

**[Killing of 04 civilians at Sonai river bridge on capture from village Moujpur]**

That on 29 September 1971 in between 05:00-05:30 am and 02:00-02:30 pm a group of 40-45 Razakar members, peace committee members and member of Pakistani occupation armed force attacked the house of freedom fighter Seraj Ali at village Moujpur under Madhabpur police station district Habiganj and on your [Syed Md Kaiser] instruction (1) Akkas Ali, (2) Abdus Sattar, (3)Wahed Ali and (4) Seraj Ali were captured and your companions and the army started causing torture to them. Afterwards, the captured persons were brought to the bridge over *Sonai* river, about 03 kilometers far from Moujpur village where they were gunned down to death by you Syed Md. Kaiser, your companions and the army and their dead bodies were thrown to the river.

Therefore, you Syed Md. Kaiser are hereby charged for participating, facilitating and contributing the actual commission of killing of 03 unarmed civilians constituting the offence of ‘**murder as crime against humanity**’, which was part of attack against civilian population as specified in section 3(2) (a) (g)(h) of the Act 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 15:[ Fact narrated in paragraph 10:17 of formal charge]****[Killing of Md. Nizamuddin at army camp at Shahajibazar Biddut Kendra ]**

That on any day during mid of the month of October 1971 in the evening a group of Razakars and ‘Kaiser Bahini’ following instruction of you Syed Md. Kaiser apprehended Md. Nazim Uddin from his house at about 05:00 pm and brought him to you Syed Md. Kaiser at Shahpur road wherefrom you picking him up to your jeep brought him to your house where he was kept detained and tortured by you for one day and then was brought to army camp at Shahajibazar Biddut Kendra where he was kept detained for 20 days and was subjected to torture and eventually he was brutally killed by ‘Kaiser Bahini’ led by you, Razakars and Pakistani army and his dead body was buried behind the Biddut Kendra.

Therefore, you Syed Md. Kaiser are hereby charged for participating, abetting, facilitating and substantially contributing the actual commission of killing of 01 unarmed civilians constituting the offence of ‘**murder as crime against humanity**’ which was part of attack against civilian population as specified in section 3(2) (a) (g)(h) of the Act 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.16: [Fact narrated in paragraph 10:18 of formal charge]****[Genocide : mass killing of 108 Hindus of 22 villages under Nasirnagar police station]**

That on 15 November 1971, during the period of war of liberation, in between 07:00-07:30 am and 03:00-03:30 pm you Syed Md. Kaiser led a group of members of Razakars, peace committee members, ‘Kaiser Bahini’ and the members of Pakistani armed force launched attack directing civilians of villages *Daura, Nishcintapur* and twenty other villages under Nasirnagar police station district Brahmanbaria and created horror by indiscriminate gun firing around the crime sites, setting houses on fire, looting households of civilians, with intent to destroy the Hindu religious community, either whole or in part. In conjunction with the horrendous event, you and other perpetrators killed **108** unarmed civilians, as listed in the narration made in **paragraph 10:18** of the formal charge, belonging to Hindu community of crime villages.

Therefore, you Syed Md. Kaiser are hereby charged for participating, abetting, facilitating and substantially contributing the actual commission of killing of 108 unarmed civilians belonging to Hindu community constituting the offence of ‘**genocide**’, or in the alternative, for participating, abetting, facilitating and substantially contributing the actual commission of offence of ‘**extermination as crime against humanity**’ which was part of attack against civilian population as specified in section 3(2) (a) (c) (g)(h) of the Act 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 allegedly committed the offences under section 3(2)(a)(c)(i)(g)(h) which are 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 have heard and understood the aforesaid charges.

**Question:** Do you plead guilty or not.

**Answer:**

The charges so framed have been read over and explained to the accused Syed Md. Kaiser in open court to which he pleaded not guilty and claimed to be tried.

Let **04.3.2014** be fixed 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 on or before the date fixed.

**Justice Obaidul Hassan, Chairman**

**Justice Md. Mozibur Rahman Miah, Member**

**Justice Md. Shahinur Islam, Member**