

International Crimes Tribunal-2

Old High Court Building, Dhaka, Bangladesh.

ICT-BD [ICT-2] Case No.02 of 2014

Present:

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

Order No.03
11 December 2014

Chief Prosecutor

Vs.

Md. Mahidur Rahman [Accused]
Md. Afsar Hossain @ Chutu [Accused]

Mr. Shahidur Rahman: For the prosecution
Mr. Mizanul Islam: 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. Before rendering decision on charge framing matter, we would prefer to provide a brief context of the case, succinct arguments put forward by both prosecution and defence before this Tribunal.

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.

III. Brief account of the Accused Persons

Accused Md. Mahidur Rahman

5. Md. Mahidur Rahman [84] son of late Subedar Ali Biswas of village Dadanchak [Kaitanitola] no.9 UP Durlavpur police station Shibganj district Chapai Nababganj studied up to class IX. In 1971 he used to maintain his livelihood by agricultural activities. He is the father of one son and 04 daughters. Since prior to 1971 he was involved with politics of Muslim League. He joined the peace committee and Razakar force in 1971 intending to collaborate with the Pakistani occupation army. During the war of liberation in 1971 he used to stay at the local Razakar camp and commit atrocities around the localities jointly with other members of Razakars.

Accused Md. Afsar Hossain @ Chutu[65]

6. Md. Afsar Hossain @ Chutu[65] son of late Kutub Uddin Morol and late Ferjan Begum of village Satrashia(Rasunchak), no.8 UP Binodpur police station Shibganj district Chapai Nababganj[the then sub-division] studied up to class V. He is the father of 2 sons and 2 daughters. He maintains his livelihood by agriculture activities. Since prior to 1971 he had been an active worker of Muslim League. During the war of liberation in 1971 he joined the peace committee and Razakar force. Being associated with the Razakar members of the local Razakar camp he used to participate in carrying out criminal acts constituting the offence of crimes against humanity and genocide, around the locality.

IV. Procedural History

7. The investigation Agency of the Tribunal started investigation pursuant to compliant register no. 31 dated 11.2.2014, in respect of commission of offences enumerated in section 3(2) of the Act of 1973 allegedly perpetrated by (1) Md. Mahidur Rahman and (2) Md. Afsar Hossain Chutu. During investigation, the IO prayed for showing the two persons arrested on 18.9.2014 through the Chief Prosecutor. The Tribunal directed the prison authority to produce these persons [detained in connection with another case under the Penal, Code] before this Tribunal. Accordingly they were produced before this Tribunal on 23.9.2014 and the Tribunal disallowing the application seeking them showing arrested sent them back to prison and ordered to submit progress report on investigation on 2.11.2014.

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 and thus the Chief prosecutor informing the Tribunal about submission of report prayed time for placing formal charge .

9. 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' on 16.11.2014 under section 9(1) of the Act of 1973 before this Tribunal alleging that the accused by (1) Md. Mahidur Rahman and (2) Md. Afsar Hossain Chutu, members of Razakar force in 1971 had committed the offence of crimes against humanity and genocide, including abetting and also for complicity to commit such crimes narrated in the formal charge during the period of War of Liberation in 1971 around the locality of Shibganj under police station Shibganj the then sub-division Chapai Nababganj.

10. Thereafter, on 24.11.2014 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 also passed an order considering prosecution's application showing the accused persons arrested and keeping the application praying bail

for them with the record. of arrest for causing appearance of the accused persons as required under Rule 30.

V. Submission by the Prosecutor

11. The learned prosecutor submitted that the formal charge relates to three events of 'attack'. The first one involves killing of numerous targeted civilians belonging to pro-liberation political group and the accused persons being the members of Razakar force accompanied the group of attackers to the crime sites and were concerned with the commission of the principal offences. The second event, as narrated in the formal charge relate to the events of plundering, pillaging and burning down civilians property in a systematic manner which constituted the offence of 'other inhuman acts as crimes against humanity. The third event of attack involves the criminal act of abduction, confinement, torture and killing of unarmed pro-liberation civilians constituted the offence of crimes against humanity.

12. The accused persons belonged to Muslim League political and they joined the Razakar force which was set up to collaborate with the Pakistani occupation army in 1971, during the war of liberation. The formal charge along with the documents and statement witnesses shall go to show that the accused persons physically participated, abetted and substantially contributed to the commission of the criminal acts constituting the offence of crimes against humanity and genocide as they were part of the group of perpetrators. The documents and statement of witnesses will show that the accused had 'complicity' in committing crimes against humanity, by aiding

13. The learned prosecutor finally insisted on framing of charges 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 were criminally culpable for the commission of offences as mentioned in section 3(2) of the Act.

VI. Submission on behalf of accused

14. The learned fence counsel submitted that the issues on some legal aspects have already been settled in earlier cases and as such he did not intend to focus on the same. He simply submitted that the accused persons were not involved with the commission of alleged criminal acts constituting the offences as enumerated in the Act of 1973, in any manner. However, the accused persons are now ready to face the charges, if framed. It is to be noted that no application seeking discharge of the accused persons has been filed on part of the defence.

VII. Deliberations and Decision

15. Having regard to submission advanced by the learned defence counsel we do not consider it necessary to focus on issues involving legal aspects as the same have already been resolved in the earlier cases, by this Tribunal.

16. 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 nor the innocence can be determined conclusively. However, the accused persons shall be treated innocent, till they are found guilty. Their culpability, if any, can only be well determined at trial only, not at this stage.

17. However, on prima facie examination of the record, we are convinced that the proposed charges deserve to be considered and resolved only at trial, on presentation of evidence. 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.

18. Rule 36 of the ROP provides provision of trying persons accused of offences at one trial as they allegedly committed the same offences being the associates of the group of attackers. Thus trying them jointly is approved.

19. 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 **(1) Mahidur Rahman** and **(2) Ashraf Hossain @ Chutu** 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 they are alleged to be criminally liable under sections 4(1) of the Act of 1973. The charges are thus framed against them in the following manner.

Charges

We,

Justice Obaidul Hassan, Chairman

Justice Md. Mozibur Rahman Mia

Judge Md. Shahinur Islam, Member

Of the International Crimes Tribunal -2

hereby charge you, **(1) Mahidur Rahman son of** late Subedar Ali Biswas of village Dadanchak [Kaitanitola] no.9 UP Durlavpur police station Shibganj now district Chapai Nababganj[the then sub-division and **(2) Ashraf Hossain @ Chutu]** son of late Kutub Uddin Morol and late Ferjan Begum of village-Satrashia (Rasunchak), no.8 UP Binodpur police station Shibganj now district Chapai Nababganj[the then sub-division] as follows:-

Charge No.1

[Abduction, confinement and torture of 39 civilians of them targeted 24 civilians were killed]

On 06.10.1971 at about 05:00 am you accused **(1) Mahidur Rahman** and **(2) Ashraf Hossain @ Chutu**, members of Razakar force accompanied the group formed of hundreds of armed members of Razakar force and Pakistani occupation army towards the villages ChandShikari, Chamatol, Kabirajtola and Eradot Biswasertola known as the locality siding with the war of liberation and besieging the sites carried out extensive hunt and apprehended (1) Fazlur Rahman (2) Ariful Islam (3) Ayesuddin(4) Ajmal Hossain (5) Rejaul Karim Razzak (6) Parul Hossain (7) Golap Ali (8) Dukhu Mondol (9) Afardi Mondol (10) Saifuddin (11) Fitu **(12) Afsar Ali** **(13) Md. Zillur Rahman** **(14) Md. Mokhlesur Rahman(Mokhlu)** **(15) Md. Raisuddin** (16) Kaesuddin(now dead) and (17) Jalal, the civilians belonging to pro-liberation political group, with intent to destroy it, either whole or in part, and then took them forcibly at the field of Binodpur High School where at about 09:30 am accused **(1) Mahidur Rahman** and **(2) Ashraf Hossain @ Chutu** gunned down **12 detained civilians** to death with the rifle in their hands. Of the detained civilians- Afsar Ali, Md. Zillur Rahman, Md. Mokhlesur Rahman (Mokhlu) and Md. Raisuddin however survived despite receiving bullet injury.

In conjunction with the same attack, after committing the killing of 12 civilians, the group of perpetrators, with same intent, by launching attack apprehended unarmed pro-liberation civilians and forcibly brought them at an open field 200 yards west to village ChandShikari where they grilled them, by causing torture, for extracting whereabouts of freedom fighters and their accomplices. On the same day at about 12:30-01:00 pm the detained civilians were then brought to Binodpur High School and were kept confined in a room of the school. The detainees were subjected to torture whole night.

On the following day i.e. on 07.10.1971 at about)4:00 pm the detainees were taken out to the school ground where on approval of accused **(1) Mahidur Rahman** and **(2) Ashraf Hossain @ Chutu**, amongst the detainees Paigam Biswas[now dead], Abul Hossain[now dead], Abdur Rahman[now dead] Jalaluddin, Mahabul, Rostam Ali[now dead], Bilat Ali[now dead] were set free and the rest 15 detainees were then brought to the southern side of the field where you the accused (1) Md. Mahidur Rahman and (2) Md. Afsar Hossain @ Chutu made them seated in a line and you the accused persons and some members of Razakar force gunned down them to death by the rifles in your hands. Md. Fasih Alam @ Sattu. Md. Zakaria and Afzal Hossain [now dead] somehow survived despite receiving bullet injury.

In this way, by launching systematic attack directing civilian population belonging to the pro-liberation group, you the accused persons along with the group of armed Razakars and Pakistani occupation abducted 39 civilians in two phases, in conjunction with the same attack, kept them confined for the purpose of extracting whereabouts of freedom fighters, caused torture to them and of them 24 were shot to death eventually.

Therefore, you the accused **(1) Mahidur Rahman** and **(2) Ashraf Hossain @ Chutu]** are hereby charged for participation, abetment and substantial contribution to the act of forcible capture of 39 civilians and causing torture upon them constituting the offence of 'abduction' and torture' as crimes against humanity and also for participation, abetment and substantial contribution to the accomplishment of killing 24 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 is punishable under section 20(2) read with section 3(1) of the Act and thus you the accused persons incurred liability under section 4(1) of the Act for the above offences.

Charge No.2

[Wanton destructive activities constituting the offence of 'other inhuman acts']

That on **13.10.1971** at about **12:00/12:30 pm** you accused **(1) Md. Mahidur Rahman** and **(2) Md. Afsar Hossain @ Chutu** being accompanied by an armed group of Razakar force directed a systematic attack at villages Kabirajtola and Eradot Biswasertola known as the locality of supporters of freedom fighters and then being divided into groups you the accused persons led the armed Razakars first in accomplishing the destructive acts of pillaging and burning down the houses of numerous civilians of village Kabirajtola. The destructive activities continued for 1 ½ -2 hrs and then you the accused persons led the gang of perpetrators, being divided into groups in moving towards the village Eradot Biswasertola where you carried out wanton destructive activities by looting and burning down the houses of civilians that resulted in deportation of the civilians.

Therefore, you the accused persons are hereby charged for participating, abetting and substantially contributing to the commission of the offence of '**other inhuman acts**' 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 and thus you the accused persons incurred liability under section 4(1) of the Act for the above offences.

Charge No.3

['Abduction', confinement', 'torture' and 'murder' of Kalumuddin Mondol, Md. Abdur Rashid , Gajal and Ilias Mondol of village Sherpur Vandar and also the offence of 'other inhuman acts' as crimes against humanity]

That on **02.11.1971** in between 02:00 pm[noon] and any time at night of **03.11.1971** you accused **(1) Md. Mahidur Rahman and (2) Md. Afsar Hossain @ Chutu** being accompanied by an armed group formed of 30-35 members of Razakar force attacked the houses of Kalumuddin Mondol, Md. Abdur Rashid , Gajal and Ilias Mondol of village Sherpur Vandar under police station Shibganj, the then sub-division Chapai Nababganj and on apprehending them started to cause torture, destructed their houses by looting valuables and burning the same down . Then you the accused persons and your accomplices brought the apprehended civilians forcibly to Razakar camp set up at Adina Fazlul Haque College where they were subjected to inhuman torture and then they were taken the army camp at Shibganj CO office. On the following day i.e. on 03.11.1971 the detained civilians were subjected to barbaric torture whole day and at night they were brought to a place adjacent to the mango garden of Jagircot para where they were shot to death. After the independence, their decomposed bodies could be identified seeing their wearing apparels and were in a mass grave behind the CO office.

Therefore, you the accused persons are hereby charged for participating abetting, contributing and substantially facilitating the commission of the offence of 'abduction', confinement', 'torture' and 'murder' and also the offence of 'other inhuman acts' as crimes against humanity as enumerated in section 3(2)(a)(g)(h) of the Act of 1972 which are punishable under section 20(2) read with section 3(1) of the Act and thus you the accused persons incurred liability under section 4(1) of the Act for the above offences

Thus you have been indicted as above for committing the offences under section 3(2)(a)(g)(h) of the International Crimes(Tribunals) Act, 1973, punishable under section 20(2) read with section 3(1) of the Act 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 **(1) Md. Mahidur Rahman and (2) Md. Afsar Hossain @ Chutu** have heard and understood the aforesaid charges which have been read out and explained [**in Bangla**] in the open court in your presence.

Question: Do you plead guilty or not.

Answer:

The charges so framed have been read over and explained to the accused **(1) Md. Mahidur Rahman and (2) Md. Afsar Hossain @ Chutu** to which he pleaded not guilty and claimed to be tried.

Let **12.01.2015** 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. Let the application for bail be kept with the record.

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