

International Crimes Tribunal-2 (ICT-2)

[Tribunal constituted under section 6 (1) of the Act No. XIX of 1973]

Old High Court Building, Dhaka, Bangladesh

ICT-BD Case No. 02 of 2013

[Charges: crimes against Humanity and aiding & complicity to commit such crimes as specified in section 3(2)(a)(g)(h) of the Act No. XIX of 1973]

The Chief Prosecutor

Vs

AKM Yusuf

[[Died before summing up of cases]

Present:

Justice Obaidul Hassan, Chairman

Justice Md. Mozibur Rahman Miah, Member

Justice Md. Shahinur Islam, Member

For the Prosecution:

Mr. Golam Arief Tipoo, Chief Prosecutor

Mr. Syed Haider Ali

Mr. Rishikesh Saha, Prosecutor

Mr. Zahid Imam, Prosecutor

For the Accused:

Mr. Syed Mizanur Rahman, Advocate, Bangladesh Supreme Court

Mr. Md. Mizanul Islam, Advocate, Bangladesh Supreme Court

Mr. Gazi M.H Tamim, Advocate, Bangladesh Supreme Court

Mr. Saifur Rahman, Advocate, Bangladesh Supreme Court

Date of delivery of Order: 12 February 2014

ORDER NO.76

[On death of accused on 09 February 2014]

Today is fixed for summing up of case by the prosecution. The previous order dated 09 February reflects that the sole accused AKM Yusuf who was in custody of prison died on 09 February 2014 at 11:30 am and the matter was brought to notice of the Tribunal seeking permission [by the defence counsel] of receiving dead body of deceased accused without holding autopsy.

1. Today, the prison authority by sending back the custody warrant has informed the Tribunal[ICT-2] that accused AKM Yusuf who was kept detained at Kashimpur Jail died on 09 February 2014 at BSMMU at 11:30 am. According to papers submitted together with the custody warrant the accused had fallen sick in the morning on 09 February and then he was taken to BSMMU where at a stage of providing necessary treatment he was declared dead. Post mortem report is yet to be received.
2. It appears from the record that on 09 February 2014 the defence counsel came up with an application seeking necessary order for receiving the dead body of the accused without holding autopsy contending that the relatives of the deceased did not have objection in this regard as the accused's death was 'normal'. The Tribunal on hearing both sides observed in its order that since the accused died in custody of prison the Tribunal needed to know the cause of his death and thus it ordered the prison authority to do the needful according to recognized procedure.
3. Now, on perusal of the papers before us we have found that the accused AKM Yusuf [88] died in the CCU of BSMMU at 11:30 am on 09 February 2014. We regret his death.
4. Mr. Syed Haider Ali the learned Prosecutor regretting the death of the accused submitted that since already both sides adduced evidence in support of their respective cases, humanity demands verdict as to culpability of the accused who stood trial for charges relating to internationally recognised crimes. With the death of the accused AKM Yusuf under trial further proceeding is not terminated.
5. Mr. Syed Haider Ali further submitted that as against order announcing termination of proceeding by the ICTY in the event of death of Slobodan Milosevic in 2006, the ICJ [International Court of Justice] subsequently declared that order passed by the ICTY announcing end of Milosevic trial ineffective.
6. On query by the Tribunal on legal position, Mr. Abdus Sobhan Tarafder present in court [not engaged for the accused] submitted that under the existing domestic legal system a criminal case abates with the death of the accused person under trial. There has been no instance of rendering full verdict in case under such circumstances.
7. The Tribunal notes that ICTY and ICJ are quite two different judicial forums. Only the Appeal Chamber of the ICTY can intervene with any order rendered by the ICTY Trial Chamber and not the ICJ, a distinct judicial body. Besides, Mr. Syed Haider Ali could not place any paper in support of his submission. Rather, we have found that the U.N backed war crimes tribunal [ICTY] announced the formal end of the case against Slobodan Milosevic following his death in March 2006, and expressed regrets that a verdict in the landmark trial was now impossible. Milosevic was within weeks of winding up his defense, which he was conducting himself, against 66 counts of war crimes, including genocide,

during the Balkan upheavals of the 1990s. Milosevic, who suffered chronic heart problems, was found dead in his cell [Source: http://www.nytimes.com/2006/03/14/world/europe/14iht-web.0314milo.html?_r=0]. Therefore, in absence of instance either domestic or international, we are not convinced with what has been submitted by the learned Prosecutor. However, we are now going to render our decision as below.

8. In the case in hand the under trial accused A.K.M Yusuf @ Abul Kalam Mohammad Yusuf (87) was the son of late Azim Uddin Howlader of village Rajoir under police station Sharonkhola district Bagerhat at present House no. 22, Dilkhola Road, Tutpara, Khulna and House no. 37-A, First floor, Road no. 10-A, Dhanmondi, police station Dhanmondi, Dhaka Metropolitan Police[DMP], Dhaka. From the account made in the formal charge demonstrates that the accused AKM Yusuf, in his student life, was an active member of Jamiate-Talabee-e-Arabia and he joined Jamat E Islami in 1952 and became the chief of JEI, Khulna division in 1957. In 1962, A.K.M Yusuf was elected member of National Assembly. He was nominated Provincial Joint Secretary of Jamat E Islami in 1969 and in 1971, he was the Deputy Amir of the then East Pakistan Jamat E Islami.
9. Admittedly, accused AKM Yusuf was prosecuted, convicted and sentenced for imprisonment for life under the Collaborators Order 1972 on allegation of (i) waging war or attempted to do so or abetted the waging of war against Bangladesh (ii) attempting to bring into hatred or attempting to excite disaffection towards the government of Bangladesh and (iii) attempting to aid or aided the occupation army in furthering its design of perpetrating the forcible occupation of Bangladesh. The further admitted position is that during pendency of appeal against the judgment of conviction and sentence [imprisonment for life] passed by the trial court the accused was released on General Amnesty granted by the government.
10. Prosecuting the accused AKM Yusuf under the Collaborators Order 1972 did not create any clog in prosecuting him under the International Crimes (Tribunals) Act 1973 on allegation of abetting, facilitating and contributing to the commission of system crimes as enumerated in the Act. In this regard this Tribunal[ICT-2] in its decision dated 01 August 2013 framing charges clearly observed that

“The Tribunal notes that the accused got the benefit of general amnesty as he was then not charged or convicted for the offence of ‘murder’ under the Collaborators Order 1972. But the mere fact of not prosecuting and trying the accused for the charge of ‘murder’ under the Collaborators Order 1972 does not make him absolved now of being prosecuted for the charge of ‘murder’ as defined in the Act of 1973. Admittedly, there has been no statutory bar in prosecuting an individual for criminal acts constituting the offence punishable under law”[Para 25 of the decision]

11. AKM Yusuf [now dead] was indicted for the offence of crimes against humanity and genocide committed in the territory of the then sub-division Bagerhat in 1971 during the war of liberation. Admittedly, he was the convener of peace committee of greater Khulna in 1971. This fact finds support too from a report published in The Daily Sangram 11 May 1971. The report says

”সাবেক জাতীয় পরিষদ সদস্য জনাব আজিজুর রহমান, সাবেক জাতীয় পরিষদ সদস্য মওলানা এ কে এম ইউসুফ, সাবেক প্রাদেশিক পরিষদ সদস্য সৈয়দ শামসুর রহমান এবং সাবেক জাতীয় পরিষদ সদস্য জনাব সিরাজুল ইসলামকে আহ্বায়ক নিযুক্ত করে যথাক্রমে কুমিল্লা, খুলনা, যশোর এবং রংপুর জেলা শান্তি কমিটি গঠিত হয়েছে।.....”

[সূত্রঃ দৈনিক সংগ্রাম ১১ মে ১৯৭১ এবং 'সংবাদপত্রে মুক্তিযুদ্ধের বিরোধিতা : একাত্তরের ঘটকদের জবান জুলুম ষড়যন্ত্র চিত্র: সম্পাদনা: দুলাল চন্দ্র বিশ্বাস: বাংলাদেশ প্রেস ইন্সটিটিউট, মার্চ ২০১৩]

12. It is now history that peace committee was formed to collaborate with the Pakistani occupation army in carrying out atrocities directing civilian population in 1971. He is also alleged to have formed the Razakar force first in Khulna with the selected pro-Pakistan youths. No one can justify that the Razakar force was created simply to preserve tranquility and to preserve Pakistan. The objective of creating this para militia auxiliary force was to wipe out the pro-liberation Bengali civilians, people belonging to Hindu community and in doing so it collaborated with the Pakistani occupation army in 1971.

13. After taking cognizance of offences on 12 May 2013, Tribunal [ICT-1] issued warrant of arrest against the accused and thus he was so arrested and produced before the Tribunal [ICT-1] on 14 May 2013 and it sent him to prison rejecting application praying bail. At the stage of hearing on charge framing matter Tribunal-1, on application filed by the Chief Prosecutor, transmitted the case record to this Tribunal [Tribunal-2] under section 11A(1) of the Act. Thus, on receipt of the case record, this Tribunal [ICT-2] had to hear the charge framing matter as required under section 11A (2) of the Act and eventually it framed as many as 13 charges and then adequate time was afforded to the accused for preparation of defence and also to submit papers/ documents and list of witnesses, if any, upon which it intended to rely and thus trial commenced.

14. AKM Yusuf was charged for abetting, facilitating and substantially contributing the commission of offence of mass killing or genocide targeting the local Hindu religious group by the local Razakars [of police stations Morelganj, Kachua, Sharonkhola under the then Bagerhat sub-division]. He allegedly abetted the commission of criminal activities constituted the offences with which he was charged, in exercise of his position of authority that he allegedly achieved through organising the armed Razakar force and also by making inciting and provoking public hate speech.

15. The proceedings took place in presence of accused AKM Yusuf. At the initial stage of trial, release of accused was prayed mainly on his health ground and old age complications before this Tribunal [ICT-2]. The Tribunal asked the prison authority to let it [ICT-2] know about his physical condition and accordingly by submitting a report the prison authority informed the Tribunal that on medical examination by a board constituted in this regard the accused was found physically stable. Considering the report and the barbaric nature and extent of allegations brought against him, the Tribunal refused to set him at liberty on bail and directed the prison authority to ensure and provide necessary medical treatment with the accused as and when needed.
16. Prosecution, to prove the charges[13 charges], adduced in all 27 witnesses including the Investigation Officer [IO] of whom 24 have been examined and three have been tendered. Defence duly cross-examined them and it adduced and examined the son of the accused as only defence witness, although the Tribunal permitted the defence to examine three witnesses. Many of prosecution witnesses, in addition to the events narrated in the charges described that the accused AKM Yusuf organised the Razakar force and placed them at the crime localities and provoked them on several occasions to target Hindus and pro-liberation civilians by making inciting speech in public. The witnesses and victims claimed by making testimony before the Tribunal that such provocation to wipe out unarmed pro-liberation civilians and Hindu community eventually encouraged and facilitated the principal perpetrators in committing the offence of genocide and crimes against humanity around the crime localities.
17. Defence by examining the sole witness [son of the accused] claimed that accused never visited the crime sites in 1971 and was not involved with the criminal activities alleged. On closure of the phase of taking evidence adduced by both sides, the Tribunal fixed 12 February 2014 for summing up of case by the prosecution. But meanwhile, on 09 February 2014 the accused passed away, as mentioned at the out set.
18. It is to be reiterated that Bangladesh considers that the right to remedy should also belong to victims of crimes against humanity (CAH). State has an obligation to remedy serious human rights violations. Bangladesh recognizes the UDHR Article 8 and ICCPR Article 2(3) which ensure the right to an effective remedy for the violation of human rights.
19. Accused AKM Yusuf was 87 years old when he had been prosecuted under the International Crimes (Tribunals) Act 1973. But it is crucial to note that responsibility doesn't diminish with age and old age should not afford protection to people who committed very serious crimes---that's not a defence. **John Demjanjuk** a 91 year old retired US autoworker convicted in Munich in the month of May 2011. His lawyers failed to convince the court that the former Nazi death camp guard was too sick to be tried because of bone marrow disorder, kidney disease, anemia and other ailments.
20. It is to be kept in mind that the victims deserve that their tormenters are held accountable; the passage of time doesn't diminish the guilt. The central issue that this Tribunal[ICT-2] considered whether

prima facie complicity of the accused, in any manner, was found with the perpetration of alleged serious and system crimes, while framing charges against the accused. This Tribunal taking *prima facie* complicity of the accused and pattern and extent of the offences alleged into account ordered for detention of accused AKM Yusuf in prison in May 2013.

21. It appears that in course of trial many of relatives of victims, sufferers and eye witnesses came before the Tribunal and described what trauma they experienced due to horrific and barbaric atrocities committed by the perpetrator Razakars on approval, encouragement and abetment of the accused AKM Yusuf. Many of prosecution witnesses [victims] became emotion choked by shading tears in open court and sought for justice, while narrating the events. The trial against AKM Yusuf significantly offered the victims of 1971 atrocities a delayed, but fundamental occasion to see and participate in valid justice.
22. We regret that accused's sudden death has surely deprived not only him but the victims and sufferers who with the aspiration of getting justice narrated the enormous pains and horror they sustained resulting from serious system crimes, coming on dock. The case was at the stage of summing up of cases by both sides. But with the death of accused the rest of proceedings has become redundant . However, the testimony of victims and sufferers who came before the Tribunal shall ever be considered as a response to the legitimate needs of justice. At the same time, this order does not amount to posthumous acquittal of AKM Yusuf for crimes against humanity and genocide for which he was indicted.
23. AKM Yusuf was the sole accused in this case. Had there been other accused, the trial would have continued even after AKM Yusuf's death and in that case a final verdict on merit could have been rendered. But now with the death of accused AKM Yusuf the rest of proceeding is terminated. The verdict could not be rendered, on hearing closing argument as the accused AKM Yusuf died on 09 February 2014 with which further proceeding of the case has been halted, despite the fact that the accused stood trial for the charge of abetting, substantially facilitating the commission of serious system crimes i.e. crimes against humanity and genocide in 1971, during the war of liberation as narrated in 13 charges. Thus, we announce formal end and closure of the case against accused AKM Yusuf [88] who admittedly died on 09 February 2014 when he was in custody of prison.
24. With this order the case is disposed of. Let the record and documents forming part of the record be preserved according to procedure.
25. The Tribunal reiterates that it needs to know the exact cause of death of accused AKM Yusuf who was in custody of prison so that necessary observation can be made in the judicial record of the case. Thus the prison authority is asked to submit the post mortem report before this Tribunal [ICT-2] immediately. Let copy of this portion of the order be transmitted to the IG [Prison] for information and necessary action.

Justice Obaidul Hassan, Chairman

Justice Md. Mozibur Rahman Miah, Member

Justice Md. Shahinur Islam, Member

