

International Crimes Tribunal-1

Old High Court Building, Dhaka, Bangladesh

ICT- BD [ICT-1] Case No. 01 of 2016

Present:

Justice Anwarul Haque, Chairman
Justice Md. Shahinur Islam, Member
Justice Md. Shohrowardi, Member

Chief Prosecutor

vs.

(1) Md. Moslem Prodhan, and
(2) Syed Md. Hussain alias Hossain [Absconded]

Order No. 06

Date: 09.05.2016

Mr. Tapas Kanti Baul, Prosecutor

..... For the prosecution

Mr. Abdus Sattar Palwan, Advocate

..... For accused Md. Moslem Pradhan as engaged
counsel and for absconding accused Syed Md.
Hussain alias Hossain as State defence counsel.

[Decision on charge framing matter]

Today is fixed for passing decision on charge framing matter, and as such, the record is taken up for order. Out of 2[two) accused persons one accused Md. Moslem Pradhan, now in custody, is being defended by Mr. Abdus Sattar Palwan, Advocate as his engaged counsel, and another accused Syed Md. Hussain alias Hossain, who has been absconding, is also being defended by Mr. Abdus Sattar Palwan as State defence counsel, appointed by this Tribunal at the cost of the State. The hearing on charge framing matter took place in presence of accused Md. Moslem Pradhan who has been brought today before this Tribunal from prison.

At the out set, it is to be noted that the 'formal charge' was submitted by the prosecution before this Tribunal against 02(two) accused persons and this Tribunal on 07.01.2016 took cognizance of offences against both the accused persons and then the case came to the stage of charge hearing matter and on 26.04.2016 charge framing matter was heard.

The case involves the criminal acts forming part of systematic attack constituting the offences as enumerated in the International Crimes (Tribunals) Act, 1973 [Act No. XIX of 1973] perpetrated in 1971 during the war of liberation of Bangladesh. The accused persons are alleged to have committed many such offences in the localities under the then Kishoreganj Sub-Division. 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.

1. Introductory words

This International Crimes Tribunal-1 (hereinafter referred to as the “Tribunal”) has been set up under the International Crimes (Tribunals) Act enacted in 1973 (hereinafter referred to as the “Act”) by Bangladesh Parliament. The Act which is meant for the detention, prosecution and punishment of persons for genocide, crimes against humanity, war crimes and other crimes under international law is *ex-post facto* legislation. It is to be noted that the ICTY, ICTR and SCSL the Adhoc Tribunals backed by the United Nations (UN) have been constituted under their respective retrospective Statutes. Only the International Criminal Court [ICC] is founded on prospective Statute [Rome Statute]. The 1973 Act of Bangladesh has the merit and means of ensuring the standard of safeguards recognized universally to be

provided to the person accused of crimes against humanity, genocide, war crimes and other crimes under international law.

2. Brief Historical Background

The dreadful systematic events constituting the offences of genocide and crimes against humanity as narrated in the formal charge allegedly occurred in different places of the then Kishoreganj Sub-Division were part of horrific atrocious activities carried out in 1971 during the war of liberation directing the unarmed pro-liberation civilians in furtherance of common plan and design of Pakistani occupation army.

The undisputed history says that atrocious and dreadful crimes were committed during the nine-month-long war of liberation in 1971, which resulted in the birth of Bangladesh, an independent State and the motherland of the Bengali nation. Some three million people were killed, nearly a quarter million women were raped and over 10 million people were forced to deport to India to escape from brutal persecution at home, during the nine-month battle and struggle of Bangalee nation.

The history goes on to portray that in the general election of 1970, the Awami League under the leadership of Bangabandhu Sheikh Mujibur Rahman became the majority party of Pakistan. But defying the democratic norms Pakistan government did not care to respect this overwhelming majority. As a result, movement started in the territory of this part of Pakistan and Bangabandhu Sheikh Mujibur Rahman in his historic speech of 7th March, 1971, called on the Bangalee nation to struggle for independence if people's verdict was not respected. In the early hour of 26th March, following the

onslaught of “Operation Search Light” by the Pakistani Military on 25th March, Bangabandhu declared Bangladesh independent immediately before he was arrested by the Pakistani authorities.

The ‘operation’ was designed to disarm and liquidate Bengali policemen, soldiers and military officers, to arrest and kill nationalist Bengali politicians, soldiers and military officers, to arrest and kill and round up professionals, intellectuals, civilians belonging to Hindu community and students. Afterwards, actions in concert with its local collaborators belonging to Razakar, Al-Badar and the key pro-Pakistani political organisations Jamat-E-Islami (JEI) and Nejam-E-Islami were intended to stamp out the Bengali national liberation movement and to mash the national feelings and aspirations of the Bangalee nation.

The Pakistan government and the military formed Peace Committee as an ‘associate organization’ and number of auxiliary forces such as the Razakar, the Al-Badar, the Al-Shams, etc, essentially to act as a collaborating team with the Pakistani occupation army in identifying and eliminating all those who were perceived to be pro-liberation, individuals belonging to minority religious groups especially the Hindus, political groups belonging to Awami League and Bangalee intellectuals and unarmed civilian population of Bangladesh.

Incontrovertibly the way to self-determination for the Bangalee nation was strenuous, swabbed with enormous blood, strive and sacrifices. In the present-day world history, conceivably no nation paid as extremely as the Bangalee nation did for its self-determination. The events alleged in the formal charge constituting the offences of genocide and crimes against humanity

occurred in different places under the then Kishoreganj Sub-Division of District-Faridpur mirror a partial scenario of totality of horrendous activities accomplished in violation of customary international law with the culpable facilitation and assistance provided by the local collaborators.

3. Brief account of the accused persons

(i) Accused Md.Moslem Pradhan [in custody]

Accused Md. Moslem Pradhan (67) son of late Labhu Sheikh and late Rezia Akhter of village Kamarhati, Police Station Nikli, District Kishoreganj was born on 31.12.1948 . He did not receive any formal education. He is only an alphabet-literate. During the Liberation War of 1971 he [accused Md. Moslem Pradhan] individually and jointly committed a number of crimes of genocide and crimes against humanity in different localities of the then Kishoreganj Sub-Division, and then he was known as 'Razakar Commander' of 'Nikli Union', prosecution alleges. He has been involved in the politics of Bangladesh Nationalist Party [BNP].

(ii) Accused Syed Md. Hussain alias Hossain [absconded]

Accused Syed Md. Hussain alias Hossain [64] son of late Syed Musleh Uddin and late Syeda Fatema Banu was born on 15.09.1951. His permanent address is village Machihata, Police Station and District Brahmanbaria. His last known current address is House No. 2, Road No. 6, Pink City, Police Station Khilkhet, Dhaka . However, during 1971, he lived at Hoybat Nagar, Police Station Kishoreganj Sadar under the then Kishoreganj Sub-Division of District Mymensingh, prosecution alleges. He passed S.S.C Examination in 1967 from Kishoreganj High School and H.S.C Examination in 1969 from the Gurudoyal

College, Kishoreganj. Later, he also passed B.A Examiantion in 1975 from the same college. During pre-liberation period he was involved with Chhatra League [student wing of Awami League] politices of his college, however, during the Liberation War of 1971, he adopted the ideological position of Pakistan Democratic Party [PDP] and he individually and jointly committed a number of crimes of genocide and crimes against humanity in different localities of the then Kishoreganj Sub-Division, and then he was commonly known as 'Razakar Daroga' of Nikli Thana, prosecution alleges. His eldest brother Syed Md. Hachhan alias Syed Md. Hasan alias Hachhen Ali was tried *in absentia* in ICT-BD Case No. 02 of 2014 and was found guilty of the offences of genocide and crimes against humanity for which he was sentenced to death on 09.06.2015 by the ICT-BD Tribunal-1.

4. Brief Procedural History

The Chief Prosecutor submitted 'formal charge' against 02 [two] accused persons on having considered the investigation report and documents submitted therewith by the Investigating Agency. This Tribunal on 07.01.2016 took cognizance of offences against both the accused persons as mentioned above. Out of the two accused persons accused Md. Moslem Pradhan has been in detention. The another accused Syed Md. Hussain alias Hossain neither could have been arrested nor did he surrender.

On 07.01.2016 this Tribunal took cognizance of offences, perpetration of which has been unveiled in course of investigation and on 15.02.2016 ordered publication of notice in two daily newspapers as required under Rule 31 of the International Crimes (Tribunal-1) Rules of Procedure, 2010 against the

absconding accused Syed Md. Hussain alias Hossain as the execution of warrant of arrest issued against him earlier was found unserved.

Accordingly, despite publication of the notice in two daily newspapers namely 'The Daily Ittefaq' and 'The Daily Independent' dated 18.02.2016 and 17.02.2016 respectively the absconding accused Syed Md. Hussain alias Hossain did not make him surrendered, and as such, this Tribunal ordered for holding trial *in absentia* against him and appointed Mr. Abdus Sattar Palwan, Advocate to defend the absconding accused person as State defence counsel. This Tribunal fixed 26.04.2016 for hearing the charge framing matter and on the date fixed this Tribunal-1 heard the charge framing matter and fixed today i.e. 09.05.2016 for decision on it.

The record goes to show that on holding investigation on some atrocious events allegedly committed in 1971 during the war of liberation in systematic manner directing unarmed civilians in different places under the then Kishoreganj Sub-Division by the local Razakars accompanied by the Pakistani occupation army, the Investigating Agency submitted its investigation report finding both the accused persons *prima facie* responsible for the atrocities before the Chief Prosecutor.

The Chief Prosecutor considering the nature, pattern of the alleged atrocious events and culpable participation and involvement of both the accused persons preferred to submit a single 'formal charge' with a view to prosecute them jointly.

It appears that the 'formal charge' submitted discloses that the accused persons allegedly participated or facilitated or abetted or aided or had complicity in the commission of the alleged offences in the course of the same transaction and they appear to have allegedly acted in furtherance of common plan and design to the accomplishment of such offences, and therefore, both the accused persons may be jointly prosecuted as permissible under Rule 36 of the Rules of Procedure, 2010 of this Tribunal-1.

5. Submission advanced by the Prosecutor

Ms. Tureen Afroz, the learned prosecutor made her submission, drawing our attention to the documents and statement of witnesses collected during investigation. She submitted that both the accused persons belonged to local Razakar Bahini. They along with their accomplices belonging to infamous Razakar Bahini and Pakistani occupation army had systematically and deliberately carried out atrocious activities directing pro-liberation civilians around the localities under the then Kishoreganj Sub-Division. Role of both the accused persons in accomplishing the alleged crimes in 1971 during the war of liberation was culpable and in furtherance of common plan and design of the Pakistani occupation army. The events of attacks as demonstrated in the formal charge involve genocide and killing of unarmed pro-liberation civilians and other crimes against humanity and both the accused persons actively participated, abetted, aided, facilitated and had complicity in the commission thereof.

The learned prosecutor went on to submit that the accused persons were the members of local infamous Razakar Bahini, an auxiliary force of Pakistani occupation army and in 1971 the Razakar Bahini was formed intending to collaborate with the Pakistani army in carrying out horrific atrocious activities in furtherance of common plan and design of annihilating the pro-liberation Bengali civilians and freedom fighters. The accused persons need to be

indicted for the offences they had committed in the context of war of liberation in 1971 in the territory of Bangladesh.

6. Submission advanced by the defence side

Mr. Abdus Sattar Palwan, the learned counsel has filed an application seeking discharge of accused Md. Moslem Pradhan. But no application for discharge has been filed on behalf of absconding accused Syed Md. Hussain alias Hossain.

Mr. Abdus Sattar Palwan, the learned Advocate defending accused Md. Moslem Pradhan as his engaged lawyer and accused Syed Md. Hussain alias Hossain as State defence counsel appointed by this Tribunal placing the discharge application filed on behalf of accused Md. Moslem Pradhan conversely made submission seeking discharge of both the accused persons that the accused persons did not belong to Razakar Bahini and the document relied upon by the prosecution in this regard is a recently and locally prepared which is not sourced and authoritative. None of the accused persons had involvement with the commission of alleged offences in any manner. They could have been prosecuted under the Collaborators Order 1972 if really they had complicity in committing any such alleged offences. But there has been nothing to show that they were so prosecuted on the allegation of their involvement with the commission of any of alleged offences. Delayed prosecution also makes accused persons' alleged involvement with the commission of offences doubtful. Therefore, the accused persons are liable to be discharged.

7. Deliberation and decision with reasoning

We have meticulously gone through the formal charge, statement of witnesses and the documents submitted. It appears that the prosecution by submitting formal charge alleges that the accused persons participated, facilitated, abetted, aided and had complicity in the commission of crimes as enumerated in the Act of 1973, by their acts and conducts forming a part of systematic attack directing civilian population in 1971 during the war of liberation in the localities under the then Kishoreganj Sub-Division.

Both the accused persons have been proposed by the prosecution to be indicted for the alleged events of attacks constituting the offences of genocide and crimes against humanity as narrated in the formal charge. Out of two accused persons one accused has been absconding and proceeding is going on in his *absentia* in compliance with legal requirements as contemplated in the Act and the ROP, 2010.

The allegations brought do not constitute isolated crimes. Those are alleged to have been committed in war time situation directing civilians in systematic manner. The undeniable context prevailing in 1971 in the territory of Bangladesh is itself sufficient to the unerring inference of a 'widespread and systematic attack' on Bangladeshi self-determined population. Therefore, the offences committed under this context and in violation of customary international law during 1971 independence war, patently demonstrate that those were of course consequence of part of a 'widespread' or 'systematic' attack directed against the unarmed civilian population. Under section 19(1) of the Act of 1973, the Tribunal can take judicial notice of the above context that must prompt a person of common prudence that the offences of genocide

and crimes against humanity as mentioned in section 3(2)(a) (c) of the Act of 1973 were inevitably the effect of part of widespread or systematic attack.

Prosecution, at this stage, alleges that the accused persons belonging to local Razakar Bahini accompanied the group of Razakars and Pakistani occupation army which had committed the offences of genocide and crimes against humanity, in conjunction with the attack. *Prima facie* the formal charge, statement of witnesses and documents submitted demonstrate accused persons' culpable complicity, act and conduct with the perpetration of offences alleged. But however, culpability and role of them or any of them can be well adjudicated only on holding trial. And till then they shall be presumed innocent.

It is now settled that the offences of genocide and crimes against humanity are considered as 'group crime' and these are not perpetrated by a single individual. But however, an individual may participate to the actual commission of the principal crime by his act or conduct, before or midst or after the crime committed. In this regard, the Tribunal notes that in adjudicating culpability of the person accused of offences, context and situations prevailing at the relevant time i.e the period of war of liberation in 1971[March 25 to December 16, 1971] together with his acts, conducts, attitude and association of any organization, if any, are to be considered. It may be well resolved on evaluation of evidence to be presented during trial.

The learned defence counsel submitted that the accused persons are liable to be discharged as they could have been prosecuted under the Collaborators Order, 1972 if really had they any complicity or involvement

with the commission of alleged offences in any manner. But we are not inclined to agree with the argument that merely for the reason that since the accused persons were not brought to justice under the Collaborators Order, 1972 now they are immune from being prosecuted under the Act of 1973.

We are not with the submission extended by the learned defence counsel on point of delay in prosecuting the accused persons. As regards delay in prosecuting the suspect offenders we reiterate that the victims of systematic and organised diabolical atrocities committed in 1971 within the territory of Bangladesh in violation of customary international law need justice to heal. State has an obligation to remedy serious human rights violations. Bangladesh recognizes Article 8 of the Universal Declaration of Human Rights [UDHR] and Article 2(3) of the International Covenant of Civil and Political Rights [ICCPR] which ensure the right to an effective remedy for the violation of human rights. And in providing effective remedy to the victims and their families, delay itself cannot stand as a bar in prosecuting an individual offender under the Act of 1973.

At this stage, it cannot be determined conclusively whether the accused persons belonged to local Razakar Bahini. It is a question of fact that can be effectively resolved only on trial and considering the totality of evidence to be provided by the prosecution. Besides, it would be relevant to reiterate that the Act of 1973 is meant to prosecute and punish not only the armed forces and the perpetrators who belonged to 'auxiliary forces', but also to prosecute and punish an 'individual' or member of 'group of individuals' who committed the offences enumerated in the Act of 1973. It is quite 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. Already it has been well resolved.

It is settled that mere framing charge does not prove one's guilt. The accused persons shall be presumed innocent until they are found guilty of the offences alleged. However, now, we are convinced, on going through the statement of witnesses and materials on record, to *prima facie* conclude that there have been sufficient grounds of proceeding.

At this stage, the formal charge and the statement of witnesses *prima facie* demonstrate that the accused persons enthusiastically sided with the policy and plan of the Pakistani occupation army and had allegedly carried out horrific activities of genocide and crimes against humanity and other inhumane acts, and as such, the submission made by the learned defence counsel seeking discharge of the accused persons does not deserve consideration, and therefore, the application seeking discharge of accused Md. Moslem Prodhan is hereby rejected.

Accordingly, now we proceed to read out the charges framed. On perusal of 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 and grounds before the Tribunal to frame charges against accused (1) Md. Moslem Pradhan and (2) Syed Md. Hussain alias Hossain [absconded] for the offences allegedly committed during the war of liberation in 1971 as specified under section 3(2)(a)(c)(g)(h) of the Act of 1973 for which they are alleged to be criminally liable under section 4(1) of the said Act. The charges are thus framed against them in the following manner:

Charges

We,

Justice Anwarul Haque, Chairman
Justice Md. Shahinur Islam, Member
Justice Md. Shohrowardi, Member

Of the International Crimes Tribunal -1

Hereby charge you, accused (1) Md. Moslem Pradhan son of late Labhu Sheikh and late Rezia Akhter of village Kamarhati, Police Station Nikli, District Kishoreganj, and (2) Syed Md. Hussain alias Hossain son of late Syed Musleh Uddin and late Syeda Fatema Banu of village Machihata, Police Station and District Brahmanbaria, and last known present address- House No. 2, Road No. 6, Pink City, Police Station Khilkhet, Dhaka as follows:

Charge No. 01

[Forceful conversion of Hindu religious people to Muslims of village Dampara under Nikli Police Station]

That during the mid of August, 1971 under the instruction of you Razakar Commander accused Syed Md. Hussain alias Hossain, Shaheb Ali alias Teku Chairman [now dead], leader of local Peace Committee of Dampara, forcefully converted Hindu religious people to Muslims of village Dampara under Nikli Police Station of the then Kishoreganj Sub-Division.

Thereby, you accused Syed Md.Hussain alias Hossain is hereby charged for participating, abetting, facilitating and complicity in committing the criminal acts of forceful conversion of Hindu religious people to Muslims constituting the offence of 'other inhumane act' as crime against humanity as part of systematic attack directed against unarmed civilians as specified in section 3(2)(a)(g)(h) of the Act of 1973 which are punishable under section

20(2) of the Act for which you the accused person has incurred liability under section 4(1) and 4(2) of the Act.

Charge No. 02

[Abduction and confinement of victims Budhu, Shundar Ali, Mohar Ali and Md. Kashem Ali of Nikli Thana Sadar]

That on 2 September, 1971 at about 11.00 /11.30 A.M. you Razakar Commander accused Syed Md. Hussain alias Hossain along with your cohorts 4/5 Razakars having abducted (1) Budhu [now dead], (2) Shundar Ali [now dead], (3) Mohar Ali [now dead] and (4) Md. Khashem Ali from their respective houses under Nikli Thana Sadar of the then Kishoreganj Sub-Division took them away to Nikli Thana premises and confined them there. Subsequently, on after the intervention of one local businessman Abdul Ali and having taken three goats and two and a half maund of rice as consideration from the families of the detained persons released the detainees on condition of giving daily attendance by them to you.

Thereby, you accused Syed Md. Hussain alias Hossain is hereby charged for participating, abetting, facilitating and complicity in the commission of offences of abduction and confinement as crimes against humanity as part of systematic attack directed against unarmed civilians as specified in section 3(2)(a)(g)(h) of the Act of 1973 which are punishable under section 20(2) of the Act for which you the accused person has incurred liability under section 4(1) and 4(2) of the Act.

Charge No. 03

[Persecution, torture, plundering and arson committed at village Gurui under Nikli Police Station]

That on 6 September, 1971 at about 07.00 A.M. a group of Pakistani army men accompanied by 70/80 Razakars including you Razakar Commander accused Syed Md. Hussain alias Hossain [absconded], you Razakar accused Md. Moslem Prodhan and other local collaborators attacked the village Gurui under Nikli Police Station of the then Kishoreganj Sub-Division, and at that time an exchange of gunfire took place between you and your accomplices and the freedom-fighters and ultimately you and your accomplices had to move back and took shelter in the nearest *haor* [wet land].

On the same day at about 11.00 A.M. you and your accomplices again attacked the village Gurui and at that time the freedom-fighters had to move back without any further resistance . Then you the accused persons and your said accomplices and Pakistani army men inhumanely tortured the civilians of that village and set fire to the houses after plundering the properties of those civilian people. At that time you accused Razakar Commander Syed Md. Hussain alias Hossain and accused Razakar Md. Moslem Prodhan and your cohorts Razakars with the help of Pakistani army men shot 26[twenty six] civilians of Gurui village to death and then left the crime site at about 01.00 P.M.

Thereby, you accused (1) Syed Md. Hussain alias Hossain, and (2) Md. Moslem Prodhan are hereby charged for participating, abetting, facilitating and complicity in committing large scale killing of civilians constituting the offence of extermination, torture, and plundering and arson [other inhumane

acts] as crimes against humanity as part of systematic attack directed against unarmed civilians as specified in section 3(2)(a)(g)(h) of the Act of 1973 which are punishable under section 20(2) of the Act for which you the accused persons have incurred liability under section 4(1) and 4(2) of the Act.

Charge : 04

[Genocide, extermination, rape, abduction, confinement and torture committed at village Dampara under Nikli Police Station]

That on 23 September, 1971 at about 12.00/01.00 P.M. Pakistani army along with you accused Razakar Commander Syed Md. Hussain alias Hossain and a group of 50/60 Razakars including local collaborator Shaheb Ali alias Teku Chairman [now dead] having come to mostly Hindu populated village Dampara under Nikli Police Station of the then Kishoreganj Sub-Division gathered 39 [thirty nine] Hindu male people in front of the yard of the house of Banabashi Sutradhar and confined them there. Meanwhile, you along with some Pakistani army men and Razakars committed rape on some Hindu women of that village. Thereafter, at about 04.00 P.M. you and your accomplice Razakars and Pakistani army men having taken away the detained 39 Hindu civilians came to Nikli Thana and kept them confined there. In the evening, you and your accomplices mercilessly tortured those Hindu detainees in Nikli Thana.

Thereafter, on the same day at about 08.00/08.30 P.M. you the accused along with some other Razakars, with intent to destroy, in whole or in part, the Hindu religious group, having taken 35 detainees of the 39 detained Hindu civilians away from Nikli Thana to Nikli Moha Shoshan, situated just at the

other side of the river, shot them there and out of said 35 detainees 34 detainees were instantly killed there and the rest one became severely injured who could manage to flee away from there but succumbed to his injuries later.

On the following day [24.09.1971] at about 11.00 / 12.00 P.M. you the accused person forcibly took Rois Uddin and Babar Ali [both are dead] away to said Moha Shashan and forced them to carry and dump the dead bodies of the victims to Ghorautra river. Because of being under aged, 4[four] other detained people were released later.

Thereby, you accused Syed Md. Hussain alias Hossain is hereby charged for participating, abetting, facilitating and complicity in the commission of offences of genocide, extermination [large scale killing of civilians], rape, abduction, confinement and torture as crimes against humanity as part of systematic attack directed against unarmed civilians as specified in section 3(2)(a)(c)(g)(h) of the Act of the 1973 which are punishable under section 20(2) of the Act for which you the accused person has incurred liability under section 4(1) and 4(2) of the Act.

Charge No. 05

[Abduction and murder of freedom-fighter Abdul Malek of village Purbogram under Nikli Police Station]

That on 19 October, 1971 in the afternoon freedom-fighter Abdul Malek being unarmed went to his house situated at village Purbogram under Nikli Police Station of the then Kishoreganj Sub-Division to meet his wife and children. Being informed about Abdul Malek's presence at his own house and upon instruction of you accused Razakar Commander Syed Md. Hussain alias

Hossain, you accused Razakar Md. Moslem Prodhan along with 4/5 Razakars having captured the freedom-fighter Abdul Malek from his house on that day at about 05.30 P.M. took away him in front of the house of Debendra Chandra Nath [now dead] and upon instruction of you accused Syed Md. Hussain alias Hossain you accused Md. Moslem Prodhan shot him [Abdul Malek] to death there. On the following day [20.10.1971] the dead body of Abdul Malek was buried in his uncle -in-law, Abdur Rahim Peon's [now dead] house at Gurui village.

Thereby, you accused (1) Syed Md. Hussain alias Hossain, and (2) Md. Moslem Prodhan are hereby charged for participating, abetting, facilitating and complicity in the commission of offences of murder and abduction as crimes against humanity as part of systematic attack directed against unarmed civilians as specified in section 3(2)(a)(g)(h) of the Act of 1973 which are punishable under section 20(2) of the Act for which you the accused persons have incurred liability under section 4(1) and 4(2) of the Act.

Charge No. 06

[Other in humane acts caused to the dead bodies of two freedom-fighters]

That on 20 November, 1971 freedom-fighter Khairul Jahan with a group of 22 freedom-fighters took position at Nandania village and another freedom-fighter Md. Selim with a group of 15 freedom-fighters took position at village Pyarabhangra village both under Hossainpur Police Station of the then Kishoreganj Sub-Division. Meanwhile, the local Razakars informed the Pakistani occupation army and the Razakars about the presence of the said two

freedom-fighters at Nandania and Pyarabhangra villages. Being informed about it on 26 November, 1971 in the morning Razakars accompanied by Pakistani occupation army surrounded the villages Nandania and Pyarabhangra with the help of you accused Razakar Commander Syed Md. Hussain alias Hossain. Being informed about the matter, freedom-fighters Khairul Jahan and Md. Selim along with their group of freedom-fighters crossed the Pyarabhangra bridge and took position in the jungle and paddy-field situated beside Nath Bari. Then gunfire exchanged between Pakistani occupation army along with Razakars and the freedom-fighters. In this armed battle, freedom-fighters Khairul Jahan and Md. Selim were killed along with other freedom-fighters, namely Khairul son of Abdur Rashid and Jalal Uddin son of Aftab Uddin both of village Pyarabhangra.

Later, on order of you the Razakar Commander accused Syed Md. Hussain alias Hossain the Razakars accompanying you dragging out the dead bodies of two freedom-fighters, killed in armed battle, out of the paddy field threw the same to the road towards Hossainpur and at about 2:30-03:00 PM on the same day, on your [accused Syed Md. Hussain alias Hossain] order your accomplice Razakars tying the legs of the dead bodies up to the backside of the jeep of Pakistani occupation army started moving ruthlessly through the brick surfaced road to the house of Shafi Chairman wherefrom two dead bodies were shifted to Kishoreganj town by rickshaw and were dumped in front of Islamia Boarding under old Thana area. On the same day, after Asar prayer infamous collaborator Moulana Athar Ali came there and spitting on the dead bodies of two freedom-fighters killed in armed battle started uttering that -"It is

the blessings of Allah, they are 'kafir', 'kafir', they are enemies of Pakistan and our sons had killed them" and saying this he also kicked the dead body of freedom-fighter Khairul Jahan by expressing abhorrence. At night the dead bodies were made disappeared. Even on searching their dead bodies could not be found. After independence those two freedom fighters were declared as 'Bir Protik' by the government of the People's Republic of Bangladesh.

Thereby, you accused Syed Md. Hussain alias Hossain is hereby charged for participating, abetting, facilitating and complicity in the commission of offences of other inhumane acts [causing blatant indignity and inhuman hatred to dead bodies] as crimes against humanity as part of systematic attack directed against unarmed civilians as specified in section 3(2)(a)(g)(h) of the Act of 1973 which are punishable under section 20(2) of the Act for which you the accused person has incurred liability under section 4(1) and 4(2) of the Act.

You accused Md. Moslem Pradhan has heard and understood the aforesaid charges which have been read in open court in your presence.

Question: Do you plead guilty or not?

Answer:

The charges so framed have been read over in English and explained in Bengali to accused Md. Moslem Pradhan, present on dock, to which he pleaded not guilty and claimed to be tried.

Another accused Syed Md. Hussain alias Hossain has been in absconsion, and as such, he could not be asked whether he plead guilty or not, after reading over the charges framed against him in open court.

Let 05.06.2016 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 list of witnesses along with documents, if any, which the defence intends to rely upon, as required under section 9(5) of the Act of 1973 on or before the date fixed.

(Justice Anwarul Haque, Chairman)

(Justice Md. Shahinur Islam, Member)

(Justice Md. Shohrowardi, Member)