

International Crimes Tribunal-1

Old High Court Building, Dhaka, Bangladesh

ICT- BD [ICT-1] Case No. 06 of 2016

Present:

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

Chief Prosecutor

vs.

- (1) Shamsul Hossain Tarafder alias Ashraf
[absconded]**
- (2) Md. Nesar Ali [absconded]**
- (3) Yunus Ahmed**
- (4) Md. Ujer Ahmed Chowdhury, and**
- (5) Mobarak Mia [absconded]**

Order No. 06

Date: 08.12.2016

Mr. Md. Sultan Mahmud, Prosecutor
..... For the prosecution

Mr. Muzahedul Islam Shahin, Advocate
..... For accused Yunus Ahmed and Md. Ujer Ahmed Chowdhury
as engaged counsel, and for absconding accused Shamsul
Hossain Tarafder alias Ashraf, Md. Nesar Ali and Mobarak
Mia 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 05[five] accused persons 03[three] accused, namely Shamsul Hossain Tarafder alias Ashraf, Md. Nesar Ali and Mobarak Mia have been absconding and they are being defended by Mr. Muzahedul Islam Shahin as State defence counsel, appointed by this Tribunal at the cost of the State.

At the out set, it is to be noted that the 'formal charge' was submitted by the prosecution before this Tribunal against 05(five) accused persons and this Tribunal on 09.06.2016 took cognizance of offences against all the accused persons and then the case came to the stage of charge hearing matter and on 02.11.2016 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 different areas of Rajnagar Police Station and Maulavibazar town under the then Maulavibazar 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 areas of Rajnagar Police Station and Maulavibazar town under the then Maulavibazar 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, 1971 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 Jamaat-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 areas of Rajnagar Police Station and Maulavibazar town under the then Maulavibazar Sub-Division 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 Shamsul Hossain Tarafder alias Ashraf [absconded]

Accused Shamsul Hossain Tarafdar alias Ashraf [65], son of late Attor Mia Tarafder [Manto Mia] and late Abiza Bibi of Village Bagajura, Police Station Rajnagar, District Maulavibazar, at present Village Kornigram, Police Station Rajnagar, District Maulavibazar was born on 09.01.1949 [according to his NID]. He passed B.Com Examination from Sheikh Borhanuddin College, Dhaka in 1976. Prosecution alleges that during his study in college he was an active worker of Islami Chhatra Sangha [ICS] which was a front student wing of Jamaat-e-Islami [JEI]. During the war of liberation in 1971, accused Shamsul Hossain Tarafder alias Ashraf joined the local Al-Badar Bahini as a

commander and carried out anti-liberation activities in different areas of Rajnagar Police Station under Maulavibazar District. At present he is an active worker of Jamaat-e-Islami in Maulavibazar.

(ii) Md. Nesar Ali [absconded]

Accused Md. Nesar Ali [75], son of late Forjan Mia and late Joygun Bibi of Village Jamura, Police Station Rajnagar, District Maulavibazar was born on 12.04.1939 [according to his NID]. During the war of liberation in 1971, he was an active worker of Muslim League. He joined the local Razakar Bahini as commander which was an auxiliary force of Pakistan occupation army and during the war of liberation in 1971 he carried out atrocious activities in different areas under Rajnagar Police Station of the then Maulavibazar Sub-Division, prosecution alleges.

(iii) Yunus Ahmed

Accused Yunus Ahmed [71], son of late Shuruj Mia and late Nabura Bibi of Village Sonatiki, Police Station Rajnagar, District Maulavibazar was born on 12.02.1943 [according to his NID]. In 1971, during the war of liberation he was an active member of local Razakar Bahini, prosecution alleges. At present he is a supporter of Jamaat-e-Islami.

(iv) Md. Ujer Ahmed Chowdhury

Accused Md. Ujer Ahmed Chowdhury [63] , son of late Abdur Nur Chowdhury and late Ruhena Begum Chowdhury of Village Goyashpur, Police Station Rajnagar, District Maulavibazar, at present Village Kalenga,

Deorachhora, Police Station Rajnagar, District Maulavibazar was born on 10.09.1951 [according to his birth certificate]. He was a worker of Muslim League. During the war of liberation in 1971, he was an active member of local Razakar Bahini and he carried out atrocious activities in his area, prosecution alleges.

(v) Mobarak Mia [absconded]

Accused Mobarak Mia [66], son of late Alkas Mia and late Mohibunnesa Chowdhury of Village Mushuria [Uttar Nandiura], Police Station Rajnagar, District Maulavibazar was born on 12.05.1949 [according to his birth certificate]. Prosecution alleges that during the war of liberation in 1971, he was an active member of local Razakar Bahini and was involved in heinous crimes like confinement, abduction, torture, arson and murder.

4. Brief Procedural History

The Chief Prosecutor submitted 'formal charge' against 05 [five] accused persons on having considered the investigation report and documents submitted therewith by the Investigating Agency. This Tribunal on 09.06.2016 took cognizance of offences against all the accused persons as mentioned above. Out of 05[five] accused, 03[three] accused persons have been absconding and they neither could have been arrested nor did they surrender.

On 09.06.2016 this Tribunal took cognizance of offences, perpetration of which has been unveiled in course of investigation and on 24.07.2016 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 persons as the execution of warrant of arrest issued against them earlier was found unserved.

Accordingly, despite publication of the notice in two daily newspapers namely 'The Daily Vorer Kagaj' and 'The Daily Star' both dated 26.07.2016, the three absconding accused persons did not make them surrendered, and as such, this Tribunal ordered for holding trial *in absentia* against them and appointed Mr. Muzahedul Islam Shahin, Advocate to defend the absconding accused persons as State defence counsel. On 02.11.2016 this Tribunal-1 heard the charge framing matter and fixed today i.e. 08.12.2016 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 areas of Rajnagar Police Station and Maulavibazar town under the then Maulavibazar Sub-Division by the local Al-Badar and Razakars accompanied by the Pakistani occupation army, the Investigating Agency submitted its investigation report finding all 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 all 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, all the 05[five] 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

Mr. Md. Sultan Mahmud, the learned prosecutor made his submission, drawing our attention to the documents and statement of witnesses collected during investigation. He submitted that out of 05[five] accused persons accused Shamsul Hossain Tarafder alias Ashraf was local Al-Badar commander and four other accused persons belonged to local Razakar Bahini. They along with their accomplices belonging to infamous Al-Badar and Razakar Bahinis and Pakistani occupation army had systematically and deliberately carried out atrocious activities directing pro-liberation civilians in different areas of Rajnagar Police Station and Maulavibazar town under the then Maulavibazar Sub-Division. Role of all 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 attacks as demonstrated in the formal charge involve the offences of genocide and crimes against humanity and all the accused persons actively participated, abetted, aided, facilitated and had complicity in the commission thereof.

The learned prosecutor went on to submit that out of 05[five] accused persons accused Shamsul Hossain Tarafder alias Ashraf was local Al-Badar commander and other four accused persons were the members of local infamous Razakar Bahini, an auxiliary force of Pakistani occupation army, and in 1971 the Al-Badar and Razakar Bahinis were formed intending to collaborate with the Pakistan occupation 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. Muzahedul Islam Shahin, the learned defence counsel for all the accused persons has filed 02[two] separate applications seeking discharge of all the 05[five] accused persons. Mr. Muzahedul Islam Shahin placing the discharge applications conversely submitted that the accused persons did not belong to Al-Badar or Razakar Bahini and the documents relied upon by the prosecution in this regard are recently and locally prepared which are 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. Prosecution has not given any

explanation for bringing delayed prosecution against the accused persons. 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 different areas of Rajnagar Police Station and Maulavibazar town under the then Maulavibazar Sub-Division.

All the 05[five] 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 05[five] accused, three accused persons have been absconding and proceeding is going on in their *absentia* in compliance with legal requirements as contemplated in the Act of 1973 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 Al-Badar and Razakar Bahinis accompanied the group of Al-Badar and 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 Al-Badar and Razakar Bahinis. 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 as such, the

applications seeking discharge of the accused persons as mentioned earlier do not deserve consideration, and therefore, the same are 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) Shamsul Hossain Tarafder alias Ashraf [absconded] (2) Md. Nesar Ali [absconded] (3) Yunus Ahmed (4) Md. Ujer Ahmed Chowdhury, and (5) Mobarak Mia [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) Shamsul Hossain Tarafder alias Ashraf, son of late Attor Mia Tarafder [Manto Mia] and late Abiza Bibi of Village Bagajura, Police Station Rajnagar, District Maulavibazar, at present Village Kornigram, Police Station Rajnagar, District Maulavibazar (2) Md. Nesar Ali, son of late Forjan Mia and late Joygun Bibi of Village Jamura, Police Station Rajnagar, District Maulavibazar (3) Yunus Ahmed, son of late

Shuruj Mia and late Nabura Bibi of Village Sonatiki, Police Station Rajnagar, District Maulavibazar (4) Md. Ujer Ahmed Chowdhury, son of late Abdur Nur Chowdhury and late Ruhena Begum Chowdhury of Village Goyashpur, Police Station Rajnagar, District Maulavibazar, at present Village Kalenga, Deorachhora, Police Station Rajnagar, District Maulavibazar, and (5) Mobarak Mia, son of late Alkas Mia and late Mohibunnesa Chowdhury of Village Mushuria [Uttar Nandiura], Police Station Rajnagar, District Maulavibazar as follows:

Charge No. 01

[Killing of Danu Mia and committing other offences of abduction, confinement, torture and other inhumane acts]

That on 22.11.1971 at about 10.00 A.M. you accused Al-Badar commander Shamsul Hossain Tarafder alias Ashraf and accused Razakar commander Md. Nesar Ali, accused Razakars Yunus Ahmed, Md. Ujer Ahmed Chowdhury and Mobarak Mia along with other 25/30 armed Razakars and 20/25 Pakistani occupation army men having gone to Baligaon village under Rajnagar Police Station of the then Maulavibazar Sub-Division attacked the house of Danu Mia, who was an active organizer of the war of liberation in 1971, and confined and tortured him [Danu Mia] there.

After keeping the victim Danu Mia detained at the outskirts of his house, you the accused persons and your accomplice Razakars and Pakistani occupation army men on the same day [22.11.1971] at about 11.00/11.30 A.M. attacked the house of Samed Ullah, a neighbour of victim Danu Mia and an active organizer of the liberation war, and on being failed to get any freedom-

fighter on search looted the belongings of his house and having confined Mobarak Mia and Jalal Mia [both are now dead] of that house severly tortured them and then set the house of Samed Ullah on fire.

Thereafter, you the accused persons and your accomplice Razakars and Pakistani occupation army men on the same day [22.11.1971] at about 01.00/ 01.30 P.M. attacked the house of Taju Mia of the same Baligaon village, who was an active supporter of the liberation war, and on failing to find any freedom-fighter there looted almost all households of his house and then came back to the place where victim Danu Mia was kept detained and looted the belongings of the house of victim Danu Mia.

Thereafter, you the accused persons and your accomplice Razakars and Pakistani occupation army men on the same day [22.11.1971] at about 03.00 P.M. having taken detained Danu Mia away from his house went to the house of Harendra Bhattacharia of village Nandiura under Rajnagar Police Station in search of freedom-fighters, but having found nobody there left the place and then moved back to the army camp set up at Maulavibazar along with the detained Danu Mia and confined him there.

On the following day i.e. on 23.11.1971 at about 10.00 A.M. you the accused persons along with other 15/20 armed Razakars again attacked the house of Harendra Bhattacharia and failing to capture him set his house on fire. At that time you the accused persons and your cohort Razakars having captured Kandarpbabu, Borananandi and Shamru took them away to Rajnagar Police Station and thereafter they were forwarded to the Pakistani occupation army

stationed at the PTI in Maulavibazar wherefrom they were released subject to the condition that they would have to give information about freedom-fighters.

While victim Danu Mia was in custody of Pakistani occupation army at Maulavibazar army camp, on 30.11.1971 you the accused persons along with other 4/5 Razakars came to the house of victim Danu Mia and demanded ransom of Tk. 5000/- from Md. Motiur Rahman, son of victim Danu Mia for releasing the said victim, and on 04.12.1971 you the accused persons having gone to the house of victim Danu Mia received ransom money amounting to Tk. 5000/- from the sons of victim Danu Mia, namely Md. Motiur Rahman and Md. Ataur Rahman and then took away those two sons and Haris Mia, brother of victim Danu Mia to Maulavibazar and handed over them to Pakistani occupation army at Chandnighat of Maulavibazar town where they were tortured. Thereafter, on 05.12.1971 at about 12.00 P.M. Pakistani occupation army killed victim Danu Mia at Maulavibazar. After liberation of Bangladesh on 18.12.1971 the dead body of victim Danu Mia was recovered from the bank of the river Monu and buried in their family graveyard.

Thereby, you accused (1) Shamsul Hossain Tarafder alias Ashraf (2) Md. Nesar Ali (3) Yunus Ahmed (4) Md. Ujer Ahmed Chowdhury, and (5) Mobarak Mia are hereby charged for participating, abetting, facilitating, contributing and complicity in the commission of offences of murder, abduction, confinement, torture and other inhumane acts [plundering and arson] as crimes against humanity as part of systematic attack directed against unarmed civilians as enumerated in section 3(2)(a)(g)(h) of the Act of 1973

which are punishable under section 20(2) of the said Act for which you the accused persons have incurred liability under section 4(1) of the said Act.

Charge No. 02

[Killing of Dr. Jamini Mohan Dev and committing other offences of abduction, confinement, torture and other inhumane act]

That on 25.11.1971 just after evening you accused Razakar commander Md. Nesar Ali, accused Razakar Yunus Ahmed and accused Razakar Md. Ujer Ahmed Chowdhury along with other 10/12 armed Razakars by launching attack, abducted Moinul Bakta [now U.K. resident] of Fakirtola village and Md. Abdul Hannan of Rajapur village from the house of Abdul Mannan of Rajapur village, all under Rajnagar Police Station of the then Maulavibazar Sub-Division and then took them away to adjacent government quarter of doctor of Indeshwar Charitable Dispensary and started searching for Dr. Jamini Mohan Dev and having found him there confined him along with said two abducted persons in the quarter of Dr. Jamini Mohan Dev. Then you the accused persons and your cohort Razakars looted gold ornaments from Kalpana Rani and Kiron Shashi, daughter and wife respectively of Dr. Jamini Mohan Dev and also cash money from their quarter. Thereafter, you the accused persons and your cohort Razakars having taken away the three confined persons namely, Moinul Bakta, Md. Abdul Hannan and Dr. Jamini Mohan Dev to the Pakistani occupation army camp set up at Maulavibazar Govt. College and handed over them there where they were kept confined and subjected to torture by the Pakistani occupation army.

About 7/8 days after the above mentioned criminal acts all the three confined persons along with some other confined persons were made stood in a queue in the Maulavibazar College field and then detained Moinul Bakta and Md. Abdul Hannan were released therefrom on condition that they would not make any contact with freedom-fighters and the other confined person Dr. Jamini Mohan Dev was killed by gun-shot there.

Thereby, you accused (1) Md. Nesar Ali (2) Yunus Ahmed, and (3) Md. Ujer Ahmed Chowdhury are hereby charged for participating, abetting, facilitating, contributing and complicity in the commission of offences of murder, abduction, confinement, torture and other inhumane act [looting] as crimes against humanity as part of systematic attack directed against unarmed civilians as enumerated 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) of the Act.

Charge No. 03

[Committing the offences of abduction, confinement, torture and other inhumane act in the Uttarbhag village]

That on 27.11.1971 at about 07.00 A.M. you accused Razakar commander Md. Nesar Ali, accused Razakar Yunus Ahmed, and accused Razakar Md. Ujer Ahmed Chowdhury along with your cohort some other armed Razakars having abducted Monoranjan Bhattacharia and his son Monindra Bhattacharia from their house of village Uttarbhag under Police Station Rajnagar of the then Maulavibazar Sub-Division by launching attack tortured them severely and looted gold ornaments and cash money therefrom.

In conjunction with the same attack, after abducting the said two persons you the accused persons and your cohort Rajakars by attacking the house of Dr. Rasharaj Bhattacharia of the same Uttarbhag village abducted him and his younger brother Ranjit Bhattacharia and looted their households. Thereafter, you the accused persons and your cohort Razakars having taken the four detained persons started moving towards north and on the way you accused Md. Ujer Ahmed Chowdhury mercilessly slapped on the face of abducted victim Ranjit Bhattacharia and then released him. Thereafter, you the accused persons and your cohort Razakars having taken other three persons detained on forcible capture away to the house of Uttarbhag Union Peace Committee Convener Nasib Ali and kept them confined and tortured them there. At the time of their confinement, during interrogation by the Pakistani occupation army in the house of said Nasib Ali all the three confined persons, namely Monoranjan Bhattacharia and his son Monindra Bhattacharia and Dr. Rasharaj Bhattacharia were released by the Pakistani occupation army on condition that they would provide information about the freedom-fighters.

Thereby, you accused (1) Md. Nesar Ali (2) Yunus Ahmed, and (3) Md. Ujer Ahmed Chowdhury are hereby charged for participating, abetting, facilitating, contributing and complicity in the commission of offences of abduction, confinement, torture and other inhumane act [looting] as crimes against humanity as part of systematic attack directed against unarmed civilians as enumerated in section 3(2)(a)(g)(h) of the Act of 1973 which are punishable

under section 20(2) of the said Act for which you the accused persons have incurred liability under section 4(1) of the said Act.

Charge No. 04

[Killing of Md. Nojabat Ali and Md. Abdul Basit alias Badsha of village Dakhkhin Kholagram and committing other crimes against humanity]

That on 29.11.1971 at dawn you accused Al-Badar commander Shamsul Hossain Tarafder alias Ashraf and accused Razakar commander Md. Nesar Ali, accused Razakars Yunus Ahmed, Md. Ujer Ahmed Chowdhury and Mobarak Mia along with 100/150 Pakistani occupation army men, armed Razakars and local collaborators having launched attack in the village Dakhkhin Kholagram [Noyatila] under Rajnagar Police Station of the then Maulavibazar Sub-Division abducted NAP leader Md. Nojabat Ali, Student Union leader Md. Abdul Basit alias Badsha and his brother Md. Abdul Kadir from their houses and looted belongings of both the houses and then set them on fire. Thereafter, you the accused persons and your accomplices having taken the three detained persons away to the Rajnagar Police Station where they were kept confined and subjected to torture.

Thereafter, on the same day [29.11.1971] in the evening you the accused persons and your cohort Razakars taking the said three detained persons on forcible capture away with them started moving for Maulavibazar by a vehicle and on the way you dropped Md. Abdul Kadir from the vehicle at 'lungur pool', guessing him dead due to torture. After reaching the Pakistani army camp in Maulavibazar you the accused persons and your cohort Razakars handed over

the rest two victims, i.e. Md. Nojabat Ali and Md. Abdul Basit alias Badsha to Pakistani occupation army stationed at the said army camp.

That on 08.12.1971 Maulavibazar became free from enemy and thereafter the relatives of the victims and others searched for the dead bodies of the victims and ultimately they could trace the decomposed dead bodies of the victims, namely Md. Nojabat Ali and Md. Abdul Basit alias Badsha at the south side of Maulavibazar College and then Indian allied forces buried those dead bodies along with other decomposed dead bodies.

Thereby, you accused (1) Shamsul Hossain Tarafder alias Ashraf (2) Md. Nesar Ali (3) Yunus Ahmed (4) Md. Ujer Ahmed Chowdhury, and (5) Mobarak Mia are hereby charged for participating, abetting, facilitating, contributing and complicity in the commission of offences of murder, abduction, confinement, torture and other inhumane acts [looting and arson] as crimes against humanity as part of systematic attack directed against unarmed civilians as enumerated in section 3(2)(a)(g)(h) of the Act of 1973 which are punishable under section 20(2) of the said Act for which you the accused persons have incurred liability under section 4(1) of the said Act.

Charge No. 05

[Genocide and crimes against humanity committed in Kholagram village under Rajnagar Police Station]

That after the commission of crimes against humanity at village Dakhkhin Kholagram on 29.11.1971 as narrated in charge no. 04, on the same day [29.11.1971] at about 06.00 A.M. you accused Al-Badar commander

Shamsul Hossain Tarafder alias Ashraf and accused Razakar commander Md. Nesar Ali, accused Razakars Yunus Ahmed, Md. Ujer Ahmed Chowdhury and Mobarak Mia along with 100/150 Pakistani occupation army men, armed Razakars and local collaborators having attacked the Kholagram village under Rajnagar Police Station of the then Maulavibazar Sub-Division first besieged the house of Shashanka Shekhor Ghose and the new house of Shuriti Dhar. Being panicked Shashanka Shekhor Ghosh managed to escape. Failing to capture him you the accused persons and your accomplices looted the belongings of his house, vandalized the household materials and then set the house on fire.

In conjunction with the same attack, you the accused persons and your accomplices along with the Pakistani occupation army next attacked the old house of Shurjo Kumar Dhar [old house of Shuriti Mohon Dhar] and forcibly captured Aurabinda Dhar, Shukesh Ranjan Dhar, Akhil Ranjan Dhar and Nishi Ranjan Dhar therefrom and looted the belongings of that house and then set the house on fire. Thereafter, on the way to the new house of Shuriti Dhar you the accused persons and your accomplices forcibly detained Zatindra Mohon Ghosh, Bijoy Das and Babul Dev and rushed to the house of Shuriti Dhar. After bringing the said detained persons in the house of Shuriti Dhar, you the accused persons and your accomplices also detained Shushital Dhar, Shatadal Dhar, Shemol Dhar, Shajal Dhar, all sons of Shuriti Dhar from their house, and from the adjacent house detained Protap Purakaiosta, Khirod Dev and Parimol Das and brought them to the house of Shuriti Dhar and kept all of them there

and then looted the belongings of his house. During the act of looting in the house of Shuriti Dhar you the accused persons and your accomplices having entered into the worships pavilion destructed the picture of Goddess and dishonoured those by smashing under feet.

Thereafter, you the accused persons and your accomplice Razakars and Pakistani occupation army with intent to destroy, in whole or in part, the Hindu religious group first killed (i) Shatodal Dhar (ii) Shajal Dhar, and (iii) Shushital Dhar among all the abducted and confined persons by shooting and charging bayonet in a small house situated inside the north side gate, and then killed (iv) Bijoy Das (v) Shukesh Ranjan Dhar, and (vi) Zatindra Mohan Ghosh near the south side gate of the house by firing bullet shot, and then brought (vii) Nishi Ranjan Dhar (viii) Protap Purakaiosta, and (ix) Akhil Ranjan Dhar in south foundation house of Shuriti Dhar and killed them by fireing bullet shot, and killed (x) Shemol Dhar, and (xi) Babul Dev by shooting in the east foundation residence. Thereafter, (xii) Khirod Dev (xiii) Parimol Das, and (xiv) Arabinda Dhar were taken to the east side open place of the house of Shuriti Dhar and killed them by firing bullet shot. Thereafter, you the accused persons and your accomplice Razakars and Pakistani occupation army set the house of Shuriti Dhar on fire at about 11.00 A.M. and thereafter left the place and moved towards Rajnagar.

On the following day i.e. 30.11.1971 without performing ritual custom alive members of the house of Shuriti Dhar and neighbours being afraid of Razakars and Pakistani occupation army buried the dead bodies in the place to

the east-north side of that house. At present there is a name plate of martyrs engraved there.

Thereby, you accused (1) Shamsul Hossain Tarafder alias Ashraf (2) Md. Nesar Ali (3) Yunus Ahmed (4) Md. Ujer Ahmed Chowdhury, and (5) Mobarak Mia are hereby charged for participating, abetting, facilitating, contributing and complicity in the commission of offences of genocide and abduction, confinement and other inhumane acts [looting, arson, vandalism, etc] as crimes against humanity as part of systematic attack directed against unarmed civilians as enumerated in section 3(2)(a)(c)(g)(h) of the Act of 1973 which are punishable under section 20(2) of the said Act for which you the accused persons have incurred liability under section 4(1) of the said Act.

The charges so framed have been read over in English and explained in Bengali in open court.

You accused Yunus Ahmed and Md. Ujer Ahmed Chowdhury have heard and understood the aforesaid charges which have been read over 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 Yunus Ahmed and Md. Ujer Ahmed Chowdhury present on dock, to which they pleaded not guilty and claimed to be tried.

Other 03[three] accused persons, namely (1) Shamsul Hossain Tarafder alias Ashraf (2) Md. Nesar Ali, and (3) Mobarak Mia have been in absconsion, and as such, they could not be asked whether they plead guilty or not, after reading over the charges framed against them in open court.

Let 15.01.2017 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. Shohrwardi, Member)