

International Crimes Tribunal-1
Old High Court Building, Dhaka, Bangladesh.

ICT-BD [ICT-1] Case No.02 of 2016

Present:

Justice Md. Shahinur Islam, Chairman
Justice Amir Hossain, Member
Judge Md. Abu Ahmed Jamadar, Member

Order No.21

03 April, 2018

Chief Prosecutor

Vs.

04 accused [in prison]

- (1) Salamatullah Khan [detained in prison],
- (2) Moulavi Mohammad Nurul Islam alias Nurul Islam [detained in prison],
- (3) Osman Gani alias Moulavi Osman Gani [detained in prison],
- (4) Badsha Mia [detained in prison],

12 accused [remained absconding]

- (5) Moulavi Mohammad Zokoria Sikder [absconded],
- (6) Oli Ahmad alias Moulavi Oli Ahmad [absconded],
- (7) Momtaz Ahmad alias Montaz [absconded],
- (8) Moulavi Ramiz Hasan [absconded],
- (9) Mohammad Jalaluddin alias Jalal Ahmad [absconded],
- (10) Mohammad Saiful alias Sabul [absconded],
- (11) Abdul Aziz [absconded],
- (12) Habibur Rahman alias Habib Munshi [absconded],
- (13) Mohammad Zakaria alias Mohammad Zokoria [absconded],
- (14) Moulavi Amjad Ali [absconded],
- (15) Abdus Sukkur @ Abdu Sukkur [absconded],
- (16) Moulavi Jalal alias Jalal Ahmad [absconded]

Mr. Rana Das Gupta, Prosecutor: For the prosecution

Mr. Abdus Sobhan Tarafdar, State defence Counsel: For **06** absconding accused Moulavi Mohammad Zokoria Sikder, Oli Ahmad alias Moulavi Oli Ahmad, Mohammad Jalaluddin alias Jalal Ahmad, Mohammad Saiful alias Sabul, Momtaz Ahmad alias Montaz, Habibur Rahman alias Habib Munshi; **AND**

Engaged counsel: For **02** accused Salamatullah Khan, and Moulavi Mohammad Nurul Islam alias Nurul Islam.

Mr. Abdus Sattar Palwan, State defence Counsel : For **03** absconding accused Moulavi Amjad Ali, Abdus Sukkur, Mohammad Zakaria alias Mohammad Zokoria as state defence counsel; **AND**

Engaged counsel: For **02** accused Badsha Mia, Osman Gani alias Moulavi Osman Gani,

Mr. Muhammad Abul Hassan, State defence Counsel: For **03** absconding accused Moulavi Jalal @ Jalal Ahmed, Abdul Aziz and Moulavi Ramiz Hassan

[Decision on framing charges]

Accused (1) Salamatullah Khan [detained in prison], (2) Moulavi Mohammad Nurul Islam alias Nurul Islam [detained in prison], (3) Osman Gani alias Moulavi Osman Gani [detained in prison], (4) Badsha Mia [detained in prison], are present before this Tribunal as has been brought from prison.

On closure of hearing on charge framing matter and discharge applications submitted by Mr. Abdus Sattar Palwan the learned counsel engaged for accused Moulavi Mohammad Nurul Islam alias Nurul Islam and as state defence counsel for absconding accused Moulavi Amjad Ali[absconded], Abdus Sukkur[absconded], Mohammad Zakaria alias Mohammad Zokoria[absconded] and another discharge application for accused Mohammad Jalaluddin alias Jalal Ahmad[absconded], Abdul Aziz and Moulavi Ramiz Hasan [absconded] submitted by Mr. Mohammad Abdul Hasan, the learned state defence counsel on 17 December , 2017, the Tribunal[ICT-1] fixed today for rendering its decision and as such the record is taken up for order on indictment matter. Before we pass the order, we consider it indispensable to sketch a brief portrayal of the context of the case and succinct arguments advanced by both prosecution and defence in course of hearing.

I. Formation of the Tribunal

1. This International Crimes Tribunal-1 (hereinafter referred to as the “Tribunal”) has been constituted under the International Crimes (Tribunals) Act enacted in 1973 (hereinafter referred to as the “Act”) by the sovereign Parliament of Bangladesh intending to provide provisions for the detention, prosecution and punishment of individual or group of individuals or member or members of auxiliary force as defined in the Act responsible for the offences of genocide, crimes against humanity, war crimes as enumerated in sub section (2) of section 3 of the Act perpetrated in the territory of Bangladesh in 1971 during the war of liberation. The preamble of the Act

reflects this core objective. However, the government established ‘Tribunal’ (Tribunal-1) on 25th of March 2010.

II. Brief Historical Context

2. In all the earlier cases, already disposed of, the Tribunal described the settled historical context that imbued the Bengali nation to start fighting for self determination and independence of the motherland—Bangladesh. Bangabandhu Sheikh Mujibur Rahman the father of the nation in his historic speech of 7th March, 1971, called on the people of Bangladesh to strive for independence.

3. Long 46 years after the nation achieved its independence the historic March 7 speech of Bangabandhu Sheikh Mujibur Rahman, the father of nation has been recognized as a world documentary heritage by the UNESCO which is indeed the stamp of immense pride for the nation. This recognition shall prevent distortion of the history and the 7 March radiating speech of Bangabandhu calling on the freedom-loving Bangalees indispensably activated and inspired the whole nation, excepting a few pro-Pakistan people to get prepared for the war of liberation.

4. On 26th March, following the onslaught of “Operation Search Light” by the Pakistani Military on 25th March, Bangabandhu declared independence of Bangladesh immediately before he was arrested by the Pakistani authorities.

5. It is now the settled history that in the War of Liberation that ensued in 1971 under the leadership of Bangabandhu the father of nation, all people of the then East Pakistan wholeheartedly supported and participated in the call to free Bangladesh but a small number of Bangalee, Biharis, other pro-Pakistanis, as well as members of a number of different religion-based political parties joined and/or collaborated with the Pakistan occupation army to actively oppose the birth of independent Bangladesh and most of them committed and facilitated the commission of appalling atrocities in the territory of Bangladesh, directing non-combatant pro-liberation civilians. As a result, 3 million (thirty lacs) people were killed, more than 2, 00,000 (two lacs) women were raped, about 10 million (one crore) people were forced to deport to India as refugees and million others were internally displaced. The nation also experienced unprecedented destruction of properties all over

Bangladesh, in violation of laws of war and fundamental rights of protected civilians.

6. The Pakistan government and the occupation military created number of auxiliary forces such as the Razakars, the Al-Badar, the Al-Shams, the Peace Committee etc. essentially to collaborate with the military in identifying and eliminating all those who were perceived to be sympathized with the liberation of Bangladesh, individuals belonging to Hindu religious groups, individuals belonging to Awami League and other pro-independence political parties, Bangalee intellectuals and unarmed civilian population of Bangladesh.

7. In the case in hand, the arraignments as have been pressed by the prosecution, by submitting formal charge involve the deliberate barbaric atrocious attacks allegedly carried out directing civilian population and Hindu religious group of the localities under Police Station-Moheskhali of District [now]- Cox's Bazar by the accused persons in collaboration with their accomplices and Pakistani occupation army in the context as briefly narrated herein above.

III. Brief account of the Accused Persons

8. Before we render our decision on charge framing matter let us have a look what has been stated in the formal charge about the identity of the accused persons .The following are the brief account of the 17(seventeen) accused persons which will essentially provide the ideology, status and mindset they had in 1971 during the war of liberation:

(i) Accused Salamatullah Khan

Accused Salamatullah Khan (79), son of late Hamid Bakshu and late Shuazan Bibi of village Fakiraghona, Bara Moheskhali, Police Station-Moheskhali, District-Cox's Bazar (Previously Sub-Division) was born on 01.03.1938(according to the report of Election Commission's Secretariat, Dhaka). He obtained his graduation degree from Chittagong Government College prior to 1971. Accused Salamatullah Khan being the Vice-President of Moheskhali Thana Committee of Convention Muslim League played an active role for formation of local peace committee to collaborate with the

Pakistani occupation army in carrying out heinous crimes around the localities, prosecution alleges. He was the Convener of the Moheskhali Thana Peace Committee.

(ii) Accused Moulavi Mohammad Zokoria Sikder

Accused Moulavi Mohammad Zokoria Sikder (79), son of late Abdul Aziz Sikder and Foyeza Begum of village-Sikderpara, Gorakghata, Police Station-Moheskhali, District-Cox's Bazar (Previously Sub-Division) was born on 18.11.1937 (according to the report of Election Commission's Secretariat, Dhaka). He passed both Fazil and Kamil prior to 1971. He was the President of Moheskhali Thana Committee of Nezam-i-Islam Party and in 1970 he contested as its candidate in Provincial Assembly election from Cox's Bazar-Moheskhali constituency. He played an active role for formation of local peace committee and he was the Vice-President of the Moheskhali Thana Peace Committee.

(iii) Accused Oli Ahmad alias Moulavi Oli Ahmad

Accused Oli Ahmad alias Moulavi Oli Ahmad (71), son of late Sahar Mulluk and late Sakina of village- Sikderpara, Gorakghata, Police Station-Moheskhali, District-Cox's Bazar (Previously Sub-Division) was born on 24.06.1946 (according to the report of Election Commission's Secretariat, Dhaka). He passed Kamil in 1964 from Jamia Arabia Islamia Ziri Madrasha, Patiya, Chittagong. He was affiliated with the politics of Nezam-i-Islam Party. In 1971, he in exercise of his mighty political position in the locality played an active role in forming Moheskhali Thana Peace Committee and collaborated with the Pakistani occupation army in carrying out atrocious activities, prosecution alleges.

(iv) Accused Mohammad Jalaluddin alias Moulavi Jalal Ahmad

Accused Mohammad Jalaluddin alias Moulavi Jalal Ahmad (65), son of late Bacha Miah and late Bahar Bibi of village-Sikderpara, Gorakghata, Police Station-Moheskhali, District-Cox's Bazar (Previously Sub-Division) was born on 02.07.1952 (according to the report of Election Commission's Secretariat, Dhaka). In 1971, i.e. during the liberation war, he being an active worker of Convention Muslim League played role in forming

Moheskhali Thana Peace Committee intending to collaboration with the Pakistani occupation army in carrying out heinous activities, prosecution alleges.

(v) Accused Moulavi Nurul Islam alias Nurul Islam

Accused Moulavi Nurul Islam alias Nurul Islam (58),(according to the statements of witnesses, presently he is 62/63 years old), son of late Ali Miah and Golcheman of village- Sonajanpara, Dakkhin Nalbila, Chhoto Moheskhali, Police Station- Moheskhali, District-Cox's Bazar (Previously Sub-Division) was born on 09.05.1959 (according to the report of Election Commission's Secretariat, Dhaka). In 1971, i.e. during the liberation war, he being an active worker of Convention Muslim League played role with the local leaders of Convention Muslim League and Nezam-i-Islam party in forming Moheskhali Thana Peace Committee aiming to collaborate with the Pakistani occupation army in accomplishing heinous activities, prosecution alleges.

(vi) Accused Mohammad Saiful alias Sabul

Accused Mohammad Saiful alias Sabul(55),(according to the statements of witnesses, presently he is 64/65 years old), son of late Ezahar Miah alias Gura Mia and late Alkumar Khatun of village- Dailpara, Thakurtala, Chhoto Moheskhali, Police Station- Moheskhali, District-Cox's Bazar (Previously Sub-Division) was born on 01.07.1962 (according to the report of Election Commission's Secretariat, Dhaka). In 1971, i.e. during the liberation war, he was affiliated with the politics of convention Muslim League and got enrolled in locally formed Razakar Bahini to actively collaborate with the Pakistani occupation army in committing heinous crimes, prosecution alleges. This accused Mohammad Saiful alias Sabul is the elder brother of co-accused Mohammad Momtaz Ahmad alias Montaz.

(vii) Accused Mohammad Momtaz Ahmad alias Montaz

Accused Mohammad Momtaz Ahmad alias Montaz (52), (according to the statements of witnesses made to IO, presently he is 62/63 years old), son of late Ezahar Miah alias Gura Mia and late Alkumar Khatun of village- Dailpara, Thakurtala, Chhoto Moheskhali, Police Station- Moheskhali, District-Cox's Bazar (Previously Sub-Division) was born on 12.07.1955

(according to the report of Election Commission's Secretariat, Dhaka). In 1971, i.e. during the liberation war, he being an active member of Convention Muslim League got enrolled in locally formed Razakar Bahini. He actively collaborated with the Pakistani occupation army in committing atrocious activities, prosecution alleges.

(viii) Accused Habibur Rahman alias Habib Munshi

Accused Habibur Rahman alias Habib Munshi (71), son of late Amir Hossain and late Chanda Bibi of village- Dakkhin Sipahirpara, Dakkhin Nalbila, Chhoto Moheskhali, Police Station- Moheskhali, District-Cox's Bazar (Previously Sub-Division) was born on 15.11.1946 (according to the report of Election Commission's Secretariat, Dhaka). In 1971, i.e. during the liberation war, he being an active worker of Convention Muslim League got enrolled in locally formed Razakar Bahini. He actively collaborated with the Pakistani occupation army in committing heinous crimes, prosecution alleges.

(ix) Accused Moulavi Amzad Ali alias Amzad Ali

Accused Moulavi Amzad Ali alias Amzad Ali (74), son of late Nazir Ahmad Munshi alias Hazi Nazar Ali and late Amera Khatun of village- Fakirakata, Bara Moheskhali, Police Station- Moheskhali, District-Cox's Bazar (Previously Sub-Division) was born on 05.02.1944 (according to the report of Election Commission's Secretariat, Dhaka). In 1971, i.e. during the liberation war, he being the Vice-President of Moheskhali Thana Nezam-i-Islam Party played active role in forming Moheshkhali Thana Peace Committee aiming to collaborate with the Pakistani occupation army in carrying out heinous crimes. He was also an active member of the locally formed Peace Committee.

(x) Accused Badsha Miah

Accused Badsha Miah (75), son of late Nazir Ahmad and late Amena Khatun of village- Dakkhin Putibila, Moheskhali Pourashava, Police Station- Moheskhali, District-Cox's Bazar (Previously Sub-Division) was born on 29.04.1942 (according to the report of Election Commission's Secretariat, Dhaka). Accused Badsha Miah passed class VIII from Gorakghata Model High School. In 1971, i.e. during the liberation war, he

being a supporter of Convention Muslim League and an influential businessman of the locality played an active role in forming Moheshkhali Thana Peace Committee. He himself was also an active member of locally formed Peace Committee. He collaborated with the Pakistani occupation army in committing heinous crimes in 1971, prosecution alleges.

(xi) Accused Osman Gani alias Moulavi Mohammad Osman Gani

Accused Osman Gani alias Moulavi Mohammad Osman Gani (63), son of late Haji Lal Miah Majhi and late Zahura Begum of village- Madhya Gorakghata, Moheshkhali Pourashava, Police Station- Moheshkhali, District-Cox's Bazar (Previously Sub-Division) was born on 06.10.1954 (according to the report of Election Commission's Secretariat, Dhaka). In 1971, he being a student of Edgaon Al-Mashia Fazil Madrasha of Cox's Bazar joined as an active member of locally formed Al- Badar Bahini to collaborate with the Pakistani occupation army in committing crimes.

(xii) Accused Abdus Sukkur alias Abdu Sukkur

Accused Abdus Sukkur alias Abdu Sukkur (67), son of late Ali Reza and late Zulekha Bibi alias Zulekha Begum of village-Gulguliapara, Bara Moheshkhali, Police Station- Moheshkhali, District-Cox's Bazar (Previously Sub-Division) was born on 01.01.1951[according to the report of Election Commission's Secretariat, Dhaka]. In 1971, he being an active worker of Convention Muslim League played role in forming Moheshkhali Thana Peace Committee. He himself was also an active member of locally formed Thana Peace Committee and collaborated with the Pakistani occupation army in committing crimes, prosecution alleges.

(xiii) Accused Mohammad Zakaria alias Mohammad Zokoria

Accused Mohammad Zakaria alias Mohammad Zokoria (60),(according to the statements of witnesses, presently he is 63/64 years old), son of late Hasmat Ali and late Alkumari of village- Dailpara, Thakurtala, Chhoto Moheshkhali, Police Station- Moheshkhali, District-Cox's Bazar (Previously Sub-Division) was born on 18.12.1957 (according to the report of Election Commission's Secretariat, Dhaka). Prior to 1971, accused Mohammad Zakaria alias Mohammad Zokoria was a supporter of Convention Muslim League. In 1971, as a follower of the local peace committee leaders, he

joined in locally formed Razakar Bahini intending to actively collaborate with the Pakistani occupation army in commission of crimes, prosecution alleges.

(xiv) Accused Moulavi Jalal alias Jalal Ahmad

Accused Moulavi Jalal alias Jalal Ahmad (77), son of late Ali Reza and late Zulekha Bibi alias Zulekha Begum of village- Debengapara, Bara Moheskhali, Police Station- Moheskhali, District-Cox's Bazar (Previously Sub-Division) was born on 06.12.1940 (according to the report of Election Commission's Secretariat, Dhaka). Accused Moulavi Jalal alias Jalal Ahmad passed Dakhil examination from Patiya Madrasha, Chittagong. In 1971, he played an active role in forming Moheskhali Thana Peace Committee of which he himself was member. He actively collaborated with the Pakistani occupation army in carrying out atrocious activities around the localities, prosecution alleges.

(xv) Accused Abdul Aziz

Accused Abdul Aziz (70), son of late Ali Reza and late Zulekha Bibi alias Zulekha Begum of village- Gulgulipara, Bara Moheskhali, Police Station- Moheskhali, District-Cox's Bazar (Previously Sub-Division) was born on 30.10.1947 (according to the report of Election Commission's Secretariat, Dhaka). Accused Abdul Aziz passed S.S.C examination from Gorakghata Model High School, Moheskhali, Cox's Bazar prior to 1971. He as a supporter of Convention Muslim League and as a follower of his two brothers co-accused Moulavi Jalal alias Jalal Ahmad and Abdus Sukkur alias Abdu Sukkur played an active role to collaborate with the Pakistani occupation army in committing crimes, prosecution alleges.

(xvi) Accused Moulavi Ramiz Hasan

Accused Moulavi Ramiz Hasan (72) is the son of late Mafzolur Rahaman and late Islam Khatun of village- Miahzirpara, Bara Moheskhali, Police Station- Moheskhali, District-Cox's Bazar (Previously Sub-Division). Accused Moulavi Ramiz Hasan passed Dawra Hadith from Al-Jamia-Al-Islamia Madhrasa, Patiya, Chittagong about 55 years ago. He was a supporter of Nezami-i-Islam Party and Imam of Gorakghata Central Jam-e-Masjid, Moheskhali. In 1971, during the liberation war, he being an

influential citizen of the locality played an active role in forming Moheskhali Thana Peace Committee of which he himself was an active member and collaborated with the Pakistani occupation army in carrying out criminal activities, prosecution alleges.

IV. Procedural History

9. The Investigation Agency of the Tribunal constituted under the Act of 1973 started investigation pursuant to complaint register's serial no. 33 dated 12.05.2014, in respect of commission of offences enumerated in section 3(2) of the Act of 1973 allegedly perpetrated in 1971 during the war of liberation in the localities under Police Station-Moheskhali of District [now] Cox's Bazar.

10. During investigation, on prayer of the IO through the prosecution the Tribunal ordered issuance of warrant of arrest [WA] against all the 18 accused persons. Of them accused (1) Salamatullah Khan, (2) Mohammad Rashid Miah B.A @ Mohammad Rashid [died after hearing on charge framing matter] (3) Moulavi Md. Nurul Islam @ Nurul Islam, (4) Osman Gani, (5) Mohammad Zinnah @ Zinnat Ali (6) Badsha Mia and (7) Moulavi Shamsuddoha were arrested on different dates, in execution of WA issued. Later on, of the seven detained suspected accused Mohammad Rashid Miah B.A @ Mohammad Rashid [recommended for prosecution but died on 28.03.2018 pending decision on charge framing matter] was enlarged on bail on 23.08.2015 considering his old age complications and accused Moulavi Shamsuddoha and Mohammad Zinnah @ Zinnat Ali died on 27.5.2015 and 05.01.2016 respectively, during investigation. The rest of 19 accused persons could not be arrested.

11. Md. Nurul Islam the Investigation Officer [IO] submitted report together with documents and materials collected and statement of witnesses, on wrapping up of investigation before the Chief Prosecutor on 08.10.2015. Subsequently the IO submitted supplementary report on 10.03.2016 as two accused Moulavi Shamsuddoha and Mohammad Zinnah @ Zinnat Ali already died.

12. The Chief Prosecutor, on the basis of the report and documents submitted therewith by the Investigation Agency, after completion of investigation, submitted the 'Formal Charge' on 15.03.2016 under section 9(1) of the Act of 1973 before this Tribunal alleging that all the accused persons were engaged in committing the offences of crimes against humanity and genocide, including facilitating, aiding and abetting and also for complicity to commit such crimes narrated in the formal charge during the period of War of Liberation in 1971 around the localities under Police Station Moheshkhali of District[now] Cox's Bazar.

13. The Tribunal, under Rule 29(1) of the Rules of Procedure, took cognizance of offences as mentioned in section 3(2) (a)(b)(g)(h) of the Act of 1973 by its order dated 23.03.2016, by application its judicial mind to the Formal Charge and materials and documents submitted therewith.

14. Out of 19 suspected accused 14 accused could not be arrested. After having the report in execution of warrant of arrest issued against them the Tribunal, for the purpose of holding proceeding in absentia against them, ordered publication of notification in two national daily news papers. But despite publication of such notice as required in law those accused did not turn up and as such treating them absconded the Tribunal ordered for hearing the charge framing matter by appointing state defence counsels, at the cost of Government, to defend the absconding accused persons.

15. At a stage, after taking cognizance of offences one accused Moulavi Abdul Majid @ Abdul Majid died on 22.12.2016 and as such proceedings so far as it relates to him stood abated, by Tribunal's order no.13 dated 13.7.2017. The accused S.I Shamsul Haque as has been named in the formal charge remained untraced and as such prosecution prayed to drop him from the proceeding

16. Then the hearing on charge framing matter took place on 26.11.2017 and 17.12.2017 when both sides placed their respective submission. The Tribunal also heard the applications seeking discharge of accused Moulavi Mohammad Nurul Islam alias Nurul Islam and also the applications

seeking discharge for absconding accused Moulavi Amjad Ali[absconded], Abdus Sukkur[absconded], Mohammad Zakaria alias Mohammad Zokoria[absconded], Mohammad Jalaluddin alias Jalal Ahmad [absconded], Abdul Aziz [absconded], and Moulavi Ramiz Hasan [absconded] submitted by Mr. Abdus Sattar Palwan, the learned engaged and state defence counsel and Mr. Mohammad Abdul Hasan, the learned state defence counsel.

17. On closure of hearing on charge framing matter Tribunal fixed 26.02.2018 for decision on it. But on that date Tribunal on apparent observation felt it indispensable to go ahead with the proceedings only on having report on 'mental soundness' of the accused Mohammad Rashid Miah B.A alias Mohammad Rashid (and accordingly the Civil Surgeon, Dhaka was directed for holding necessary examination by forming a board to ascertain 'mental soundness' of this accused and to report and fixed 03.04.2018 for order on decision on charge framing matter after receiving report as ordered.

18. But on 01.04.2018 prosecution came up with an application together with necessary papers prayed for necessary order as the accused Mohammad Rashid Miah B.A alias Mohammad Rashid died on 28.02.2018. We heard Mr. Rana Das Gupta, the learned prosecutor and perused the application and papers submitted including the copy of the death certificate which stated that the accused Mohammad Rashid Miah B.A alias Mohammad Rashid died on 28.02.2018. The learned defence counsel conceded it. Accordingly, on 01.04.2018 Tribunal ordered that the proceedings so far as it related to the accused Mohammad Rashid Miah alias Mohammad Rashid (B.A) stood abated.

V. Submission by the Prosecutor

19. Mr. Rana Das Gupta, the learned prosecutor drawing attention to the events narrated in the formal charge and the relevant materials submitted therewith that the accused persons were actively affiliated with the peace committee of Police Station-Moheshkhali of District [now] Cox's Bazar and pro-Pakistan political parties and in exercise of their potential position therewith they were engaged in carrying out recurrent atrocious activities around the localities. The evidence collected during investigation shall

demonstrate prima facie that the accused persons were culpably and actively engaged in launching attacks directing civilian population and Hindu religious group as narrated in the formal charge that resulted in the offences of crimes against humanity; and also the offence of 'genocide' as enumerated in the Act of 1973.

20. In pressing the events of attack and participation and complicity of the accused persons therewith as narrated in the formal charge the learned Prosecutor further submitted that the materials, statement of cited witnesses and the documents collected *prima facie* provide reasonable grounds of proceedings by framing indictments against the accused persons, as have been pressed and with this the learned Prosecutor concluded his submission.

VI. Submission on behalf of accused persons:

21. Mr. Abdus Sattar Palwan the learned Advocate is defending **03** absconding accused [Moulavi Amzad Ali, Abdus Sukkur, Mohammad Zakaria alias Mohammad Zokoria] as state defence counsel and **03** accused [Badsha Mia, Osman Gani alias Moulavi Osman Gani, Mohammad Rashid Miah B.A alias Mohammad Rashid [died on 28.02.2018 after hearing on charge framing matter] as their engaged counsel who made submission in course of hearing on framing charge matter.

22. Mr. Abdus Sattar Palwan submitted that these accused have been falsely implicated in this case out of local rivalry; that they had no affiliation with the locally formed peace committee and the Pakistani occupation army, as alleged; that the alleged evidence collected during investigation does not specifically connect these accused with the commission of any of offences alleged in any manner. There has been no *prima facie* evidence to establish the alleged arraignments brought and as such these accused persons deserve to be discharged. With this the learned defence counsel concluded his submission.

23. Mr. Abdus Sobhan Tarafdar the learned Advocate is defending **06** absconding accused [06 accused Moulavi Mohammad Zokoria Sikder, Oli Ahmad alias Moulavi Oli Ahmad, Mohammad Jalaluddin alias Jalal Ahmad, Mohammad Saiful alias Sabul, Momtaz Ahmad alias Montaz, Habibur Rahman alias Habib Munshi] as state defence counsel and **03** accused

Salamatullah Khan, Moulavi Nurul Islam @ Nurul Islam and [Mohammad Rashid Miah B.A alias Mohammad Rashid who died after hearing on charge framing matter] as their engaged counsel. Accused Mohammad Rashid Miah B.A alias Mohammad Rashid [died after hearing on charge framing matter] who was on bail was being defended by **Mr. Abdus Sattar Palwan** as well.

24. Mr. Abdus Sobhan Tarafdar the learned counsel defending the above 09 accused submitted that the alleged arraignments pressed by the prosecution against these accused persons are not true and there has been no prima facie ground of proceeding against them. Besides, accused Mohammad Saiful @ Sabul was a minor boy of about 09 years old, the formal charge itself speaks it. Thus a person who was a minor boy at the relevant time i.e in 1971 cannot be prosecuted and tried jointly with other accused persons. **Mr. Abdus Sobhan Tarafdar** also submitted that there has been no specific allegation against any of these accused persons and they have been implicated and the allegations are not based on any lawful evidence.

25. Mr. Mohammad Abul Hassan the learned state defence counsel appointed to defend the 03 absconding accused Moulavi Jalal @ Jalal Ahmed, Abdul Aziz and Moulavi Ramiz Hassan submitted that these accused were not involved with the local peace committee and were not engaged in committing any of criminal acts alleged. There has been no prima facie ground to go with the proceeding against them.

VII. Deliberations and Decision

26. We have cautiously gone through the formal charge, statement of witnesses and the documents submitted therewith. It appears that the formal charge and the statement of witnesses *prima facie* disclose participation, substantial contribution and abetment and complicity of the accused persons to the perpetration of the alleged offences as enumerated in section 3(2) of the Act of 1973.

27. It is true, at this stage neither the guilt nor the innocence can be adjudicated decisively. However, the accused persons shall be treated

innocent, till they are found guilty. Their culpability, if any, can only be well determined at trial, not at this stage.

28. However, on *prima facie* examination of the record, we are convinced that the proposed arraignments deserve to be considered and resolved which may only be effectively done at trial, on presentation of evidence. At this stage, we are to just concentrate our attention to the allegations and facts of attacks disclosed in the Formal Charge as well as the statement of witnesses and documents submitted therewith.

29. Prosecution avers that the accused persons were the potential members of locally formed Peace Committee. We refrain from rendering explicit finding on this issue, at this stage. This issue can be well resolved at trial. Besides, the Act of 1973 permits to prosecute try and punish even an 'individual' or 'group of individuals' if found responsible for the offences enumerated in the Act. Now, at this stage, we are to merely see the *prima facie* complicity and participation of the accused persons with the commission of alleged offence and of course, treating the accused persons innocent, till they are found guilty.

30. Rule 36 of the ROP provides provision of trying the persons accused of offences at one trial as they allegedly committed the same offences being the associates of the group of attackers, allegedly in exercise of their membership in locally formed Razakar Bahini. Thus, trying them jointly is lawfully approved.

31. At this stage, it is difficult to deduce whether the accused Mohammad Saiful @ Sabul was a minor boy of about 09 years old in 1971. Besides, the formal charge also states that according to the statement of witnesses in this accused is now 64/65 years old. However the matter needs to be resolved on the basis of evidence to be presented. Thus, we are not with the learned defence counsel that in 1971 this accused was a minor boy and as such cannot be prosecuted and tried jointly with other accused persons.

32. In view of the discussion as made above and considering the submissions advanced by both sides, we are of the view that the applications seeking

discharge of some of accused persons, having no substantial merit, are hereby rejected. Rather, we have found *prima facie* the nexus of the accused persons with the commission of the alleged offences, mostly from the particulars of facts narrated in the Formal Charge.

33. Thus, we are of the view that there are sufficient and substantial materials before this Tribunal to presume *prima facie* that accused persons were involved with the commission of offences during the War of Liberation in 1971 as specified under section 3(2) of the Act for which they now need to stand trial under the Act of 1973.

34. Now, we proceed to read out the charges framed. We are of the view that there are sufficient and substantial materials before this Tribunal to frame charges against 16 accused for the offences allegedly committed during the War of Liberation in 1971 as enumerated in section 3(2) of the Act of 1973 for which they are alleged to be criminally liable under sections 4(1) of the Act of 1973. The charges are thus framed against them in the following manner.

Charges

We,

Justice Md. Shahinur Islam, Chairman

Justice Amir Hossain, Member

Judge Abu Ahmed Jamadar, Member

Of the International Crimes Tribunal -1

Do hereby charge you accused (1) Salamatullah Khan, (2) Moulavi Mohammad Zokoria Sikder, (3) Oli Ahmad alias Moulavi Oli Ahmad, (4) Moulavi Mohammad Nurul Islam alias Nurul Islam, (5) Momtaz Ahmad alias Montaz, (6) Badsha Mia, (7) Moulavi Ramiz Hasan, (8) Osman Gani alias Moulavi Osman Gani, (9) Mohammad Jalaluddin alias Jalal Ahmad, (10) Mohammad Saiful alias Sabul, (11) Habibur Rahman alias Habib Munshi, (12) Moulavi Amzad Ali alias Amjad Ali, (13) Abdus Sukkur alias Abdu Sukkur, (14) Mohammad Zakaria alias Mohammad Zokoria, (15) Abdul Aziz and (16) Moulavi Jalal alias Jalal Ahmad as follows:

Charge No.01: [02 accused indicted]

[Event no.01 as narrated in the formal charge: page-48-53: 03 accused indicted]

[Offences of confinement and killing of Mohammad Sharif Ahmed alias Sharif Chairman, a local organizer of liberation war]

That on 30 April, 1971 at about 7.00 P.M leader of peace committee of Moheskhali police station you the accused (1) Salamatullah Khan, (2) Moulavi Mohammad Zokoria Sikder and Mohammad Rashid Miah B.A alias Mohammad Rashid [recommended for prosecution but died on 28.02.2018 pending decision on charge framing matter] by arranging a peace committee's meeting conspired as part of plan to wipe out Mohammad Sharif Ahmed alias Sharif Chairman, a local organizer of liberation war managed and ensured the presence of Sharif Chairman with trickery at the said meeting and made him president of the meeting.

On the same day, at about 8.00 P.M while accused Moulavi Mohammad Zokoria Sikder was addressing the meeting pursuant to conspiracy and plan, S.I Shamsul Haque(now untraced), the then Officer in-Charge of the Moheskhali police station along with a police contingent numbering about 20/30 rushed to the meeting place when you the accused persons and your accomplices, intending to terrorize the people present in the meeting started making hue and cry by shouting Punjabi soldiers were coming and then the people present in the meeting quitted the meeting place. Then the armed police contingent and you the three accused persons encircled Sharif Chairman when you the accused persons directed and instigated S.I Shamsul Haque to kill Sharif Chairman and accordingly S.I Shamsul Haque fired twice by his own arms to Sharif Chairman and with this victim Sharif Chairman got seriously injured . Thereafter, you the aforementioned three accused persons being accompanied by your accomplices carried seriously injured Sharif Chairman towards the Badarkhalighat at north Nolbila wherefrom you the accused persons started moving towards Cox's Bazar on an engine boat, taking the victim with you and at a stage, ensuring death of the victim you the three accused persons fled away leaving the dead body of the victim Sharif on the boat at Kasturighat Channel. Thereafter, Abdus Salam(now dead),the then Chairman of Zhilanja Union Council recovered

the dead body of the victim Sharif chairman and buried him at Goldighirpar graveyard at Cox' Bazar Sadar.

Therefore, you the accused (1) Salamatullah Khan and (2) Moulavi Mohammad Zokoria Sikder[absconded] are hereby charged for actively participating, facilitating, abetting and substantially contributing to the commission of the offences of '**confinement**' and '**murder**' as crimes against humanity as specified in section 3(2)(a)(g)(h) read with section 4(1) of the International Crimes (Tribunals) Act,1973 which are punishable under section 20(2) of the Act.

Charge No.02: [02 accused indicted]

[Event no.02 as narrated in the formal charge: page-53-55: 03 accused indicted]

[Offences of abduction, confinement and killing of Shafiqur Rahman and Yunus Ali, the followers of victim Sharif Chairman, the victim of the event narrated in charge no.01]

That on 01 May, 1971 at about 11.00 A.M. you the accused (1) Salamatullah Khan, (2) Moulavi Mohammad Zokoria Sikder and Mohammad Rashid Miah B.A alias Mohammad Rashid[recommended for prosecution but died on 28.02.2018 pending decision on charge framing matter] being accompanied by your associates forcibly captured Shafiqur Rahaman and Yunus Ali, the followers of Sharif Chairman from the place in front of Primary School situated at Kalarmar Chara Bazar, by launching attack and confined them at Moheskhal police station where they were subjected to torture. Thereafter, on 05 may,1971 you the accused persons and S.I Shamsul Haque(now untraced) handed over the said detainees to the Pakistani occupation army stationed at the camp set up at the sea beach rest house in Cox's Bazar. Later on, the Pakistani occupation army killed the detained Shafiqur Rahaman and Yunus Ali and their bodies could not be traces as the same were made concealed.

Therefore, you the accused (1) Salamatullah Khan and (2) Moulavi Mohammad Zokoria Sikder[**absconded**] are hereby Charged for actively participating, facilitating, abetting and substantially contributing and also for complicity in the commission of the offences of '**abduction**', '**confinement**', '**torture**' and '**murder**' as crimes against humanity as

specified in section 3(2)(a)(g)(h) read with section 4(1) of the International Crimes (Tribunals) Act,1973 which are punishable under section 20(2) of the Act.

Charge No.03: [13 accused indicted]

[Event no.04 as narrated in the formal charge: page-59-63: 14 accused indicted]

[Destruction of Buddha's statues of Gorakghata Dakkhin Rakhainpara Buddhist Temple constituting the offence of 'other inhumane act']

That pursuant to conspiracy designed on 5 May, 1971 at the Pakistani occupation army camp set up at the sea beach rest house, Cox's Bazar Sadar you the accused (1) Salamatullah Khan, (2) Moulavi Mohammad Zokoria Sikder, (3) Oli Ahmad alias Moulavi Oli Ahmad, (4) Mohammad Jalaluddin alias Jalal Ahmad, (5) Habibur Rahman alias Habib Munshi, (6) Moulavi Mohammad Nurul Islam alias Nurul Islam, (7) Mohammad Saiful alias Sabul, (8) Momtaz Ahmad alias Montaz, (9) Badsha Mia, (10) Abdus Sukkur alias Abdu Sukkur, (11) Mohammad Zakaria alias Mohammad Zokoria, (12) Moulavi Ramiz Hasan, (13) Moulavi Jalal alias Jalal Ahmad being accompanied by the Pakistani occupation army and your close associates including Mohammad Rashid Miah B.A alias Mohammad Rashid [recommended for prosecution but died on 28.02.2018 pending decision on charge framing matter] on 6 May, 1971 at 8.30 A.M launched attack on Dakkhin Rakhainpara Buddhist Temple, adjacent south-eastern side of Gorakghata bazaar and demolished the statues as identified by you the accused persons. Thereafter, all you the accused persons conjointly plundered the temples and set those on fire.

Therefore, you the accused (1) Salamatullah Khan, (2) Moulavi Mohammad Zokoria Sikder, (3) Oli Ahmad alias Moulavi Oli Ahmad, (4) Mohammad Jalaluddin alias Jalal Ahmad, (5) Habibur Rahman alias Habib Munshi, (6) Moulavi Mohammad Nurul Islam alias Nurul Islam, (7) Mohammad Saiful alias Sabul, (8) Momtaz Ahmad alias Montaz, (9) Badsha Mia, (10) Abdus Sukkur alias Abdu Sukkur, (11) Mohammad Zakaria alias Mohammad Zokoria, (12) Moulavi Ramiz Hasan, (13) Moulavi Jalal alias Jalal Ahmad are hereby charged for actively participating, abetting, facilitating, contributing and also for complicity in the commission of offences of

'other inhumane act' as crimes against humanity as specified in section 3(2)(a)(g)(h) of the International Crimes (Tribunals) Act,1973 read with section 4(1) which are punishable under section 20(2) of the Act.

Charge No.04: [13 accused indicted]

[Event no.05 as narrated in the formal charge: page-63-70: 14 accused indicted]

[Offences of 'abduction', 'confinement', 'torture', 'murder' as crimes against humanity or in alternative the offence of 'genocide' at Gorakghata Bazar and its adjacent area]

That on 6 May, 1971 at about 9.00 A.M, after the attack carried out at Gorakghata Dakkhin Rakhainpara Buddhist Temple a group formed of the Pakistani occupation army, you the accused (1) Salamatullah Khan, (2) Moulavi Mohammad Zokoria Sikder, (3) Oli Ahmad alias Moulavi Oli Ahmad, (4) Mohammad Jalaluddin alias Jalal Ahmad, (5) Habibur Rahman alias Habib Munshi, (6) Moulavi Mohammad Nurul Islam alias Nurul Islam, (7) Mohammad Saiful alias Sabul, (8) Momtaz Ahmad alias Montaz, (9) Badsha Mia, (10) Abdus Sukkur alias Abdu Sukkur, (11) Mohammad Zakaria alias Mohammad Zokoria, (12) Moulavi Ramiz Hasan, (13) Moulavi Jalal alias Jalal Ahmad and your cohorts including Mohammad Rashid Miah B.A alias Mohammad Rashid [recommended for prosecution but died on 28.02.2018 pending decision on charge framing matter], by launching systematic attack at Gorakghata Bazar and its adjacent locality forcibly, with specific intent to destroy Hindu religious group, either whole or in part, captured 12 civilians [as named in the formal charge] belonging to Hindu religious group who were then made stood under a culvert on the bank of a canal situated at the three-way crossing of Natun Jetty road and then you the accused persons in connivance with Pakistani occupation army gunned them down to death there and their dead bodies were thrown in the canal which subsequently got floated.

In conjunction with the attack you accused persons in collaboration with the Pakistani occupation army inflicted knife blows to Kamal Krishna Dey alias Kamal Sadhu and Mohammad Ali Sowdagar that resulted in injury and gun shot was fired to Sudhir Karmakar causing injury. One seriously injured Kamal Sadhu was later on taken to Dulhazara hospital but on the following day he succumbed to injuries.

In conjunction with the attack, you the accused persons and the Pakistani occupation army carried out looting at the houses and shops of numerous civilians as named in the formal charge and destroyed those by setting fire.

Therefore, you the accused (1) Salamatullah Khan, (2) Moulavi Mohammad Zokoria Sikder, (3) Oli Ahmad alias Moulavi Oli Ahmad, (4) Mohammad Jalaluddin alias Jalal Ahmad, (5) Habibur Rahman alias Habib Munshi, (6) Moulavi Mohammad Nurul Islam alias Nurul Islam, (7) Mohammad Saiful alias Sabul, (8) Momtaz Ahmad alias Montaz, (9) Badsha Mia, (10) Abdus Sukkur alias Abdu Sukkur, (11) Mohammad Zakaria alias Mohammad Zokoria, (12) Moulavi Ramiz Hasan, (13) Moulavi Jalal alias Jalal Ahmad are hereby charged for actively participating, abetting, facilitating, contributing and also for complicity in the commission of offences of **‘abduction’, ‘confinement’, ‘torture’, and ‘murder’** as crimes against humanity as specified in section 3(2)(a)(g)(h) read with section 4(1) of the International Crimes (Tribunals) Act, 1973 or in the alternative for actively participating, abetting, facilitating, contributing and also for complicity in the commission of offence of **‘genocide’** as specified in section 3(2)(c)(i)(ii) (g)(h) read with section 4(1) of the International Crimes (Tribunals) Act, which are punishable under section 20(2) of the Act.

Charge No.05: [09 accused indicted]

[Event no.07 as narrated in the formal charge: page-72-79: 10 accused indicted]

[Offences of ‘abduction’, ‘confinement’, ‘torture’, ‘arson’, ‘murder’ as crimes against humanity or in the alternative the offence of ‘genocide’ at Gorakghata Dakkhin Hindu para]

That on 6 May, 1971 at about 11.00A.M-12.00 noon, to further plan and conspiracy, a squad formed of 25/30 Pakistani occupation army men and you the accused (1) Salamatullah Khan, (2) Moulavi Mohammad Zokoria Sikder, (3) Oli Ahmad alias Moulavi Oli Ahmad, (4) Moulavi Mohammad Nurul Islam alias Nurul Islam, (5) Momtaz Ahmad alias Montaz, (6) Badsha Mia, (7) Moulavi Ramiz Hasan, (8) Osman Gani alias Moulavi Osman Gani, (9) Mohammad Jalaluddin alias Jalal Ahmad and your associate Rashid Miah B.A alias Mohammad Rashid [recommended for prosecution but died on 28.02.2018 pending decision on charge framing matter], being divided

into groups, launched attack at Gorakghata Dakkhin Hindupara locality under Police Station –Moheshkhali of District Cox’s Bazar.

In conjunction with the attack, with intent to destroy Hindu religious group, either whole or in part, the perpetrators looted households of Hindu community of the locality under attack, tortured about 40/50 women and destructed their houses by setting those on fire, forcibly captured 10 Hindu residents of the crime locality as named in the formal charge. The detained Hindu civilians were then forcibly taken away to the bank of a canal, behind the house of Bashi Ram Dey where they were gunned down to death at about 12.00 noon and then you the accused persons and Pakistani occupation army quitted the crime site.

In conjunction with the attack when Priyatosh Dey attempted to escape, on seeing the criminal activities, the accused persons along with the Pakistani occupation army injured him seriously by gun firing and at the instance of you the accused persons, Pakistani occupation army also assaulted Purna Chandra Dey and subsequently let him off. About 4/5 days after the event of mass killing, the local people mass-graved the dead bodies at the place of occurrence.

Therefore, you the accused (1) Salamatullah Khan, (2) Moulavi Mohammad Zokoria Sikder, (3) Oli Ahmad alias Moulavi Oli Ahmad, (4) Moulavi Mohammad Nurul Islam alias Nurul Islam, (5) Momtaz Ahmad alias Montaz,(6) Badsha Mia, (7) Moulavi Ramiz Hasan,(8) Osman Gani alias Moulavi Osman Gani and (9) Mohammad Jalaluddin alias Jalal Ahmad are hereby charged for actively participating, abetting, facilitating, contributing and also for complicity in the commission of offences of **‘abduction’**, **‘confinement’**, **‘torture** and **‘murder’** as crimes against humanity as specified in section 3(2)(a)(g)(h) read with section 4(1) of the International Crimes (Tribunals) Act,1973 or in the alternative the offence of **‘genocide’** as the attack was directed against the Hindu minority group with intent to destroy it, either in whole or in part, as enumerated in section 3(2)(c)(i)(ii)(g)(h) read with section 4(1) of the International Crimes (Tribunals) Act,1973 which are punishable under section 20(2) of the Act.

Charge No.06: [05 accused indicted]

[Event no.08 as narrated in the formal charge: page-79-85: 06 accused indicted]

[Offences of ‘abduction’, ‘confinement’, ‘rape’, ‘torture’, ‘arson’, ‘murder’ or in the alternative the offence of ‘genocide’ at the localities of Debengapara, Shilpara, Gorasthan Hindupara, Jagiraghona, Munshirdail of Bara Moheshkhali under Moheshkhali Police Station, Cox’s Bazar (previously sub-division)]

That on 6 May, 1971 at about 11.00 A.M, after carrying out the attack as stated in charge no. 5, you the accused (1) Salamatullah Khan, (2) Moulavi Mohammad Zokoria Sikder , (3) Mohammad Moulavi Jalal alias Jalal Ahmad, (4) Abdus Sukkur alias Abdu Sukkur and (5) Abdul Aziz and your accomplices including Rashid Miah B.A alias Mohammad Rashid[recommended for prosecution but died on 28.02.2018 pending decision on charge framing matter], being accompanied by 10/12 Pakistani occupation army men arrived at Debengapara of Bara Moheshkhali, about 4 Kilometers north-west from Gorakghata Bazar attacked the localities of Shilpara, Gorasthan Hindupara, Jagiraghona, Munshirdail under Moheshkhali Police station one after another, with intent to destroy the Hindu religious group, either whole or in part. By launching such joint attack you the accused persons and the Pakistani occupation army committed killing of Jogendra Shil, Manohori Dey, Satish Chandra Shil, Arjun Shil, Mohon Bashi Charan Dey and Akhil Chandra Dey belonging to Hindu community along with one Muslim Abdus Sattar of those locality.

In conjunction with the attack, the squad detained the non-combatant civilians Abul Khair, Abu Jafar alias Jafar Ahmed, Raham Dad, Amir Hossain and Mozaher Miah, the supporters of the war of liberation from their houses as identified by you the accused persons and took them away, tying up their hands and eyes at the place of Debengapara four-way crossing and thereafter, you the accused persons and the Pakistani occupation army men killed 03 detained civilians-- Abul Khair, Abu Jafar alias Jafar Ahmed, Raham Dad and assaulted Amir Hossain and Mozaher Miah. They also set the house of Mozaher on fire and killed Samsunnahar, a child of 8 years old.

The squad formed of you the accused persons and the Pakistani occupation army destroyed at least 35/36 houses including those of Rahim Box,

Mozaher, Abul Khair, Abu Jafar, Raham Dad, Amir Hossain, Sultan Ahmed, Ismail and Abdus Sattar by setting those on fire.

In conjunction with the attack, you the accused persons and your accomplices committed sexual violence upon Razia Akhter, daughter of Raham Dad; Nur Ayesha and Salima Khatun--2 daughters of Abul Khair; Mariam Khatun-- wife of Abdus Salam and Nurjahan-- daughter of Habibur Rahman. On the following day, one rape victim Razia Akhter committed suicide due to social ostracism and another victim Nur Ayesha subsequently also committed suicide as she became pregnant.

After the squad of attackers had left the crime sites, at 1.30 P.M, the local people buried the dead bodies of Hindus at different places of the locality and the dead bodies of Muslims were buried at Debengapara graveyard of Bara Moheshkhali.

Therefore, you the accused (1) Salamatullah Khan, (2) Moulavi Mohammad Zokoria Sikder , (3) Mohammad Moulavi Jalal alias Jalal Ahmad, (4) Abdus Sukkur alias Abdu Sukkur and (5) Abdul Aziz are hereby charged for actively participating, abetting, facilitating, contributing and also for complicity in the commission of offences of **‘abduction’, ‘confinement’, ‘torture’, ‘arson’, ‘rape’, and ‘murder’** as crimes against humanity as specified in section 3(2)(a)(g)(h) read with section 4(1) of the International Crimes (Tribunals) Act,1973 **and/or the offence of ‘genocide’** as the attack was also directed against the Hindu religious group with intent to destroy it, either in whole or in part, as enumerated in section 3(2)(c)(i)(ii) (g)(h) read with section 4(1) of the International Crimes (Tribunals) Act,1973 which are punishable under section 20(2) of the Act.

Charge No.07: [02 accused indicted]

[Event no.09 as narrated in the formal charge: page-85-97: 03 accused indicted]

[Offences of ‘arson’, ‘murder’ at the house of Rakhal Chandra Paul of Natun Palpara, Putibila under Moheshkhali Police Station]

That on 6 May, 1971 at about 12.15 P.M. the group formed of 10/12 Pakistani occupation army and you the accused (1) Moulavi Mohammad

Zokoria Sikder and (2) Oli Ahmad alias Moulavi Oli Ahmad and your accomplices including Rashid Miah B.A alias Mohammad Rashid[recommended for prosecution but died on 28.02.2018 pending decision on charge framing matter] by launching systematic attack at the house of Rakhal Chandra Paul of Natun Palpara situated at Putibila, about half kilometer far from Dakkhin Hindu Para carried out destructive activities by looting cattle and setting the houses on fire and one **Fanindra Paul** was shot to death by the Pakistani army men as identified by you the accused persons when he attempted to escape.

Therefore, the accused (1) Moulavi Mohammad Zokoria Sikder and (2) Oli Ahmad alias Moulavi Oli Ahmad are hereby charged for actively participating, abetting, facilitating, contributing and also for complicity in the commission of offences of **‘plunder’, ‘arson’, and ‘murder’** as crimes against humanity as specified in section 3(2)(a)(g)(h) read with section 4(1) of the International Crimes (Tribunals) Act, which are punishable under section 20(2) of the Act.

Charge No.08: [10 accused indicted]

[Event no.10 as narrated in the formal charge: page-87-95: 11 accused indicted]

[Offences of ‘genocide’ at Thakurtala and its adjacent hilly area under Moheshkhali Police Station, Cox’s Bazar (previously sub-division)]

That after accomplishing the offences by launching attacks as stated in the charge nos. 3 to 7 on 6 May, 1971 at about 1.00 P.M you the accused (1) Salamatullah Khan, (2) Moulavi Mohammad Zokoria Sikder, (3) Oli Ahmad alias Moulavi Oli Ahmad, (4) Mohammad Jalaluddin alias Jalal Ahmad, (5) Moulavi Mohammad Nurul Islam alias Nurul Islam, (6) Mohammad Saiful alias Sabul, (7) Momtaz Ahmad alias Montaz, (8) Habibur Rahman alias Habib Munshi, (9) Mohammad Zakaria alias Mohammad Zokoria and (10) Moulavi Ramiz Hasan and your cohorts including Rashid Miah B.A alias Mohammad Rashid[recommended for prosecution but died on 28.02.2018 pending decision on charge framing matter] being accompanied by Pakistani occupation army arriving at Hindu populated Thakurtala village, about one-fourth Kilometer north-east from Moheshkhali Health Complex (Hospital) hoisted Pakistani flag at the crossing of Thakurtala road and told the inhabitants of that locality not to go anywhere and asked them to remain

stayed at their houses, in the name of holding a peace-meeting. The residents of the locality thus remained stayed at their houses, believing it innocently. 15 minutes afterwards , at about 1.15 P.M, you the accused persons along with the Pakistani occupation army men being divided into different groups encircling the different parts of Thakurtala village, Adinath Temple, Buddhist Temple and its adjacent areas launched attack, with intent to destroy the Hindu religious group, either whole or in part and looted the households, raped women, killed 28 Hindu civilians as named in the formal charge and others numbering about 60/70 unknown Hindus and also injured 4 Hindu civilians by gunshot as mentioned in the formal charge pressed by the prosecution.

The group of perpetrators being accompanied by you the accused persons destroyed about more than hundred houses and after committing all those heinous crimes and then had left the crime sites at about 3.15/3.30 P.M. After the group of attackers departed, the local people buried most of the dead bodies.

Therefore, you the accused (1) Salamatullah Khan, (2) Moulavi Mohammad Zokoria Sikder, (3) Oli Ahmad alias Moulavi Oli Ahmad, (4) Mohammad Jalaluddin alias Jalal Ahmad, (5) Moulavi Mohammad Nurul Islam alias Nurul Islam, (6) Mohammad Saiful alias Sabul, (7) Momtaz Ahmad alias Montaz, (8) Habibur Rahman alias Habib Munshi, (9) Mohammad Zakaria alias Mohammad Zokoria and (10) Moulavi Ramiz Hasan are hereby charged for participating, abetting, facilitating, contributing and also for complicity in the commission of offences of ‘**genocide**’ as enumerated in section 3(2)(c)(i)(ii) (g)(h) read with section 4(1) of the International Crimes (Tribunals) Act,1973 which are punishable under section 20(2) of the Act.

Charge No. 09: [01 accused indicted]

[Event no.11 as narrated in the formal charge: page-95-100: 02 accused indicted]

[Offences of genocide at Palpara, Kaiyasthpara of Putibila under Moheshkhali Police Station of Cox’s Bazar (previously sub-division)]

At a stage of attack carried out at Thakurtala village and its adjacent areas [as narrated in charge no.08] on May 06, 1971, a group formed of you the accused Moulavi Mohammad Zokoria Sikder and your accomplices

including Rashid Miah B.A alias Mohammad Rashid[recommended for prosecution but died on 28.02.2018 pending decision on charge framing matter] and 15/20 Pakistani occupation army men at 03.00 P.M. and headed towards Palpara and Kaiyasthpara the Hindu populated localities of village Putibila, about one and half Kilometer west-south from the village Thakurtala and attacking the Hindu religious group, with intent to destroy, in whole or in part, killed 15 Hindu civilians as named in the formal charge. In conjunction with the attack one Sujit Paul tortured and the squad being accompanied by you the accused persons destroyed 20/25 houses by setting those on fire.

Prior to launching the attack, some of your local agents asked the residents of Palpara and Kaiyasthpara to remain stayed at their own houses as would be a peace-meeting. After the departure of the accused persons and their accomplices, the local people cremated the dead bodies.

Therefore, you the accused Moulavi Mohammad Zokoria Sikder is hereby charged for actively participating, abetting, facilitating, contributing and also for complicity in the commission of offence ‘**genocide**’ as enumerated in section 3(2)(c)(i)(ii)(g)(h) read with section 4(1) of the International Crimes (Tribunals) Act,1973 which are punishable under section 20(2) of the Act.

Charge No.10 [16 accused indicted]

[Event no.12 as narrated in the formal charge: page-100-108: 17 accused indicted]

[Offences of ‘Crimes against humanity’, and ‘Genocide’ committed at different largely Hindu populated areas under Moheshkhali Police Station of Cox’s Bazar (previously sub-division)]

That in between the period of 6 May 1971 to 16 December, 1971 you the accused (1) Salamatullah Khan, (2) Moulavi Mohammad Zokoria Sikder, (3) Oli Ahmad alias Moulavi Oli Ahmad, (4) Moulavi Mohammad Nurul Islam alias Nurul Islam, (5) Momtaz Ahmad alias Montaz, (6) Badsha Mia, (7) Moulavi Ramiz Hasan, (8) Osman Gani alias Moulavi Osman Gani, (9) Mohammad Jalaluddin alias Jalal Ahmad, (10) Mohammad Saiful alias Sabul, (11) Habibur Rahman alias Habib Munshi, (12) Moulavi Amjad Ali alias Amjad Ali, (13) Abdus Sukkur alias Abdu Sukkur, (14) Mohammad Zakaria alias Mohammad Zokoria, (15) Abdul Aziz and (16) Moulavi Jalal

alias Jalal Ahmad and your accomplices including Rashid Miah B.A alias Mohammad Rashid[recommended for prosecution but died on 28.02.2018 pending decision on charge framing matter] being accompanied the Pakistani occupation army kept the Hindu civilians of Gorakghata Dakkhin Hindu Para, Thakurtala and Palpara [as named in the formal charge] under Police Station- Moheshkhali of District[now] Cox's Bazar confined at their houses and forced about 40/50 Hindu civilians them to get converted to Islam religion and to say prayer at local mosques and also at the house of one Hirendra of Dakkhin Hindu Para by transforming it into a Mosque.

Such prohibited acts were carried out with intent to destroy in whole or in part, the Hindu religious group which causing serious mental harm and deliberately inflicting such serious harm on the group conditions of life was calculated to bring about its physical destruction.

You the accused persons conjointly forced the confined victim Sikha Rani, daughter of Pulin Bahari Paul to get married with accused Moulavi Zokoria Sikder and also all the accused persons along with S.I Shamsul Haque (now untraced), the then Officer in-Charge of Moheshkhali-Police Station tortured and raped the confined victim Chinu Chakraborti of Thakurtala. Of the converted victims, one Dhani Ram Dey died due to Tetanus within 15/20 days after cutting of his foreskin.

Therefore, the accused (1) Salamatullah Khan, (2) Moulavi Mohammad Zokoria Sikder, (3) Oli Ahmad alias Moulavi Oli Ahmad, (4) Moulavi Mohammad Nurul Islam alias Nurul Islam, (5) Momtaz Ahmad alias Montaz, (6) Badsha Mia, (7) Moulavi Ramiz Hasan, (8) Osman Gani alias Moulavi Osman Gani, (9) Mohammad Jalaluddin alias Jalal Ahmad, (10) Mohammad Saiful alias Sabul, (11) Habibur Rahman alias Habib Munshi, (12) Moulavi Amjad Ali alias Amjad Ali, (13) Abdus Sukkur alias Abdu Sukkur, (14) Mohammad Zakaria alias Mohammad Zokoria, (15) Abdul Aziz and (16) Moulavi Jalal alias Jalal Ahmad are hereby charged for participating, abetting, facilitating, contributing and also for complicity in the commission of offences of **'confinement', 'torture', 'other inhuman acts'**, as crimes against humanity] as specified in section 3(2)(a)(c)(g)(h)

read with section 4(1) of the International Crimes (Tribunals) Act, 1973 or in the alternative the offence of and ‘**genocide**’, [causing serious bodily or mental harm to members of the Hindu religious group] , as specified in section 3(2)(a)(c)(ii) (g)(h) read with section 4(1) of the International Crimes (Tribunals) Act, 1973 which are punishable under section 20(2) of the Act.

33. Thus, you the accused persons have been indicted as above for committing the offences under section 3(2)(a)(c)(g)(h) of the International Crimes (Tribunals) Act, 1973, punishable under section 20(2) read with section 4(1) of the Act which are within the cognizance and jurisdiction of this Tribunal. And we hereby direct you the accused persons to be tried by this Tribunal on the said charges.

34. You the accused (1) Salamatullah Khan, (2) Moulavi Mohammad Nurul Islam alias Nurul Islam, (3) Osman Gani alias Moulavi Osman Gani, (4) Badsha Mia have heard and understood the aforesaid charges which have been read out and explained [**in Bangla**] in the open court in your [accused (1) Salamatullah Khan, (2) Moulavi Mohammad Nurul Islam alias Nurul Islam, (3) Osman Gani alias Moulavi Osman Gani and (4) Badsha Mia] presence.

Question: Do you plead guilty or not.

Answer:

35. The charges so framed have been read over and explained to the accused (1) Salamatullah Khan, (2) Moulavi Mohammad Nurul Islam alias Nurul Islam, (3) Osman Gani alias Moulavi Osman Gani and (4) Badsha Mia to which they pleaded not guilty and claimed to be tried according to law. The rest 12 accused remained absconded and as such the charges framed against them as above could not be explained to them.

36. Let 13.05.2018 be fixed for opening statement and examination of prosecution witnesses. 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 engaged defence counsels and state defence counsels are directed to submit a list of witnesses along with documents which the defence intends to rely upon, as required under section 9(5) of the Act on or before the date fixed.

Justice Md. Shahinur Islam, Chairman

Justice Amir Hossain, Member

Judge Md. Abu Ahmed Jamadar, Member