

**Order dated 03.10.2011**

**Order No. 23**

Today is fixed for passing an order on charge matter and as such the record is taken up for order. Before passing the order, we want to provide a brief background and context of the case, its history, and the arguments put forward by both prosecution and defence before this Tribunal.

**Introduction:**

This is the first case before this International Crimes Tribunal (hereinafter referred to as the “Tribunal”) established under the International Crimes (Tribunals) Act enacted in 1973 (hereinafter referred to as the “Act”) by Bangladesh Parliament to provide for the detention, prosecution and punishment of persons for genocide, crimes against humanity, war crimes, and crimes under international law committed in the territory of Bangladesh. This is, thus, a case bearing considerable significance for the people of Bangladesh as well as for the victims of international crimes committed in Bangladesh during the Liberation Struggle, particularly between 25th March and 16th December 1971. As such, it is a remarkable occasion which is only one of its kind so far in the legal history of Bangladesh when we have the task to deal with the matter of framing the charge involving internationally recognised crimes, such as crimes against humanity, genocide and other crimes enumerated under section 3(2) of the Act.

**Historical Context:**

In August, 1947, the partition of British India based on two-nation theory, gave birth to two new states, one a secular state named India and the other the Islamic Republic of Pakistan. The two-nation theory was propositioned on the basis that India will be for Hindus while Pakistan will be a state for the Muslims. This theory culminated into the creation of Pakistan which was comprised of two geographically and culturally separate areas to the east and the west of India. The western zone was eventually named West Pakistan and the eastern zone was named East Pakistan, which is now Bangladesh.

Ever since the creation of Pakistan, the Pakistan Government adopted discriminatory policies backed by its bureaucracy and Army to rule over the people of East Pakistan that caused great disparity in every field including, education, welfare, health, armed services, civil bureaucracy, economic and social developments. One of the first patently discriminatory and undemocratic policies of the Government of Pakistan was manifested when in 1952 the Pakistani authorities attempted to impose Urdu as the only State language of Pakistan ignoring Bangla, the language of the majority population of Pakistan. The people of the then East Pakistan started movement to get Bangla recognised as a state language thus marking the beginning of language movement that eventually turned to the movement for greater autonomy and self-determination and eventually independence. Numerous Bangalees sacrificed their lives to realise Bangla as a state language. Since, the people of East Pakistan started thinking for their own emancipation and started a political movement for getting provincial autonomy for East Pakistan.

In the general election of 1970, the Awami League under the leadership of Bangabandhu Sheikh Mujibur Rahman won 167 seats out of 300 seats of the National Assembly of Pakistan and thus became the majority party of Pakistan. Of the 300 seats 169 were allocated to East Pakistan of which Awami League won 167 demonstrating an absolute majority in the Parliament. Despite this overwhelming majority, Pakistan government did not hand over power to the leader of the majority party as democratic norms required. As a result, movement started in this part of Pakistan and Bangabandhu Sheikh Mujibur Rahman in his historic speech of 7th March, 1971 called on the people of Bangladesh to strive for independence if people's verdict is not respected and power is not handed over to the leader of the majority party. On 26th March, following the onslaught of "Operation Search Light" by the Pakistani military on 25th March, Bangabandhu declared Bangladesh independent immediately before he was arrested by the Pakistani authorities.

With his declaration of independence, the war to liberate Bangladesh from the occupation of Pakistan military began that ended on 16th of December 1971 with the surrender of all Pakistani military personnel present in Bangladesh before the Joint Indian and Bangladeshi forces in Dhaka. In the War of Liberation that ensued, all people of East Pakistan wholeheartedly supported and participated in

the call to free Bangladesh but a small number of Bangalees, Biharis, other pro-Pakistanis, as well as members of a number of different religion-based political parties joined and/or collaborated with the Pakistan military to actively oppose the creation of independent Bangladesh. Except those who opposed, Hindu communities like others in Bangladesh, supported the Liberation War which in fact drew particular wrath of the Pakistani military and their local collaborators, who perceived them as pro-Indian and made them targets of attack, persecution, extermination and deportation as members belonging to a religious group.

As a result, 3 million (thirty lacs) people were killed, more than 200,000 (two lacs) women raped, about 10 million (one crore) people deported to India as refugees and million others were internally displaced. It also saw unprecedented destruction of properties all over Bangladesh.

To prosecute their policy of occupation and repression, and in order to crash the aspiration of the freedom-loving people of an independent Bangladesh, the Pakistan government and the military setup number of auxiliary forces such as the Razakars, the Al-Badar, the Al-Shams, the Peace Committee etc, essentially to collaborate with the military in identifying and eliminating - all those who were perceived to be sympathized with the liberation of Bangladesh, individuals belonging to minority religious groups especially the Hindus, political groups belonging to Awami League and other pro-Independence political parties, Bangalee intellectuals and civilian population of Bangladesh. The truth about the nature and extent of the atrocities and crimes perpetrated during the period by the Pakistani military and their allies became known to the wider world through independent reports by the foreign journalists and dispatches sent home by the diplomatic community in Dhaka.

The road to freedom for the people of Bangladesh was arduous and torturous, smeared with blood, toil and sacrifices. In the contemporary world history, perhaps no nation paid as dearly as the Bangalees did for their emancipation.

Pursuant to Bangabandhu's Declaration of Independence, a provisional government-in-exile was formed on April 17, 1971 in Mujibnagar with Bangabandhu as the President of Bangladesh. In his absence, Syed Nazrul Islam

was the Acting President and Tajuddin Ahmed was the Prime Minister who coordinated the operations to expel the occupying Pakistani forces, and to liberate Bangladesh.

In order to bring to justice the perpetrator of the crimes committed in 1971, the International Crimes (Tribunals) Act, 1973 was promulgated. However, no tribunal was set up and no trial took place under the Act until the government established this International Crimes Tribunal on 25th of March 2010.

### **Procedural History:**

Accused Delwar Hossain Sayeedi was arrested and brought before the Tribunal on 2nd of November 2010. Since his arrest, the Tribunal has disposed a number of bail petitions which were disposed of in accordance with law. In addition, on the prayer of the accused's counsel, the Tribunal directed the relevant authorities to ensure better treatment of the accused in the hospital as desired and also directed the concerned authorities to provide him with "health friendly" transportation while transporting the accused from prison to hospital and to this Tribunal.

On the basis of the investigation report of the Investigating Agency, the prosecutors submitted the Formal Charge on 11-07-2010 against the accused alleging that the accused as a member and leader of the local Razakar bahini (i.e., auxiliary force) and as an individual and member of a group of individuals has committed crimes against humanity, genocide and other crimes in different places of Pirozpur sub-division (now a district) during the Liberation War.

On perusal of formal charge and documents available on record, this Tribunal took cognizance of offence on 14th July 2011 against accused Delwar Hossain Sayeedi. The learned prosecutor Mr Syed Haider Ali and the learned defence counsel Mr. Md. Tajul Islam made elaborate submissions on the Formal Charge and framing of charges by the Tribunal on 4th September, 21st September, 25th September and 27th September 2011. In the following paragraphs we summarise the submissions made by the counsels of the Prosecution and the Defence along with the views of the Tribunal.

### **Submissions by the Prosecution and the Defence:**

The learned Prosecutors drew our attention to the acts and atrocities allegedly committed by the accused during 1971 independence war within Pirojpur sub-division now Pirojpur District within the territory of Bangladesh. It was submitted that the accused was personally involved in the killing of individuals and group of individuals, torture, rape, looting, arson and destruction of houses, forcibly conversion of Hindus to Muslims - which comes under the purview of crimes against humanity, genocide and other crimes mentioned in section 3(2) of the International Crimes (Tribunals) Act, 1973. It was also submitted that the statement of witnesses and documents collected during investigation amply establish the allegations regarding commission of such acts and complicity of the accused in the crimes which have been narrated in the Formal Charge. The Prosecutors submitted that in proving the crimes they have ocular, documentary and other evidence of the offences mentioned of which the accused is liable to be charged under section 3(2) of the Act which disclose the material elements that constitute the offence of crimes against humanity and other crimes enumerated therein.

The learned counsel for the defence filed an application on 20 September 2011 for discharging the accused arguing that the required elements to constitute the offences of crimes against humanity are not available. The definitions of the offence alleged are not well defined in the Act. The offences are not specified in the Acts and complicity of the accused there with have also not been stated.

He then submitted that the proposed charge submitted by the prosecution are vague, indefinite, the elements of crimes are not defined and requirements of framing charge are absent, and that the proposed charge has no sufficient legal basis, the nexus between crimes against humanity and international armed conflict are absent, and the requisite knowledge about the alleged crimes by the accused is absent in the proposed charge. He further submitted that after the enactments of 1973 Act, the jurisprudence on these issues have evolved, particularly by the different international tribunals. Moreover, the defence counsel added, the allegations are vague and that the accused do not have sufficient scope to understand the allegations of which he is being tried. In support of his submissions, the learned counsel drew our attention to a number of decisions of the International Criminal Tribunal for the Former Yugoslavia (ICTY), International

Criminal Tribunal for Rwanda (ICTR) and Special Court for Sierra Leone (SCSL) which have also been cited in the application for discharge.

The learned counsel further submitted that on 06 September, 2010 Bangladesh acceded to the International Covenant on Civil and Political Rights (ICCPR) and became bound by the rights and obligations under the instrument. He referred to Article 2(1) of ICCPR that Bangladesh is to undertake to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present covenant, without distinction of any kind, such as race, colour, sex and political and national or social origin property birth or other status.

He also submitted the concluding observation of the Human Rights Committee Portugal (Macao)(1999) regarding the Committee's concern at para 12 over vague and insufficiently defined or abstract offence. He further referred to the Vienna Convention on Law of the Treaties regarding the binding nature of treaties upon the parties.

The learned counsel further submitted that the rule of law as evidenced by the introduction by the ICC elements of crimes, which compliments the ICC Rome Statute which recognized that there was a need to define crimes with clarity, precision and specificity that many jurisdictions require for criminal law.

By referring from judgments of ICTY and ICTR, he submitted that the attack must be widespread or systematic with a clear knowledge about the commission of that offence but our Act does not contemplate this and the crimes are not adequately detailed. He further submitted that the provisions of Article 15(1) and (2) of ICCPR regarding prohibition of prosecution of any criminal offence which did not constitute any criminal offence under national or international law at the time of its commission. He also referred to Article 14(3) of ICCPR regarding the accused's right to be informed of the charges 'promptly and in detail in a language which he understands of the nature and cause of the charge against him'.

The defence counsel referred to the two decisions of the Supreme Court of Bangladesh, one being Hossain Mohammad Ershad Vs. Bangladesh and others reported in 21 BLD (AD) 69 and another being State Vs. Secretary, Ministry of Law Justice and Parliamentary Affairs and others reported in 29 BLD (HCD) 656.

In reply to the legal issues raised by the defence, the learned Prosecutor Mr. Sayed Haider Ali submitted that at this stage of proceeding as to whether charges will be framed or not, the legal submissions of the learned counsel of the defence are not relevant. He also submitted that the learned counsel for the defence assailed the “Propose Charge” which basically has no legal value as the Tribunal is only to consider the Formal Charge, the statement of witnesses and other materials in order to decide whether there are materials to frame charge.

Upon perusing the Formal Charge and statements of the witnesses recorded by the Investigating Agency and the documents submitted therewith, if the Tribunal is of opinion that there are sufficient grounds to presume that the accused has committed an offence, then only the charge will be framed otherwise the accused shall be discharged. The Act does not prescribe to submit any proposed charge. Only to assist the Tribunal, the said proposed charge has been submitted and that can not be the basis of any framing of charge.

He further submitted that the allegations made in the formal charge are not vague rather definite and clear, adding that the offences as mentioned in section 3(2) of the Act are clearly defined. The allegations and the documents submitted therewith establish a *prima facie* case against the accused person. The learned prosecutor further submitted that the Act is very much specific and clear and as per provision of section 22 of the Act, the Tribunal formulated the Rules of Procedure which in itself is adequate to conduct a fair trial to which the Tribunal is duty bound. As such, he argued, the Tribunal do not need to borrow anything from any other tribunals, but if the Tribunal feels that some reference from the other tribunals are relevant, then they can consider them as only having persuasive value to reach at a proper decision. He further submitted that nowhere in the discharge application nor in the submission the learned counsel for the accused has stated that the accused is innocent and that he did not commit any offence in Pirojpur District during the liberation War of Bangladesh. He further submitted that the international Treaties and comments are not obligatory upon the state parties and the Courts and Tribunals of the state parties are to be guided by their domestic laws and this Tribunal being not a hybrid Tribunal nor a Tribunal being set up by United Nations, rather set up under the provision of section 6 of the Act 1973 and

the Act was promulgated by the parliament of the country after the Liberation of Bangladesh to try the offenders who committed the international crimes and therefore not bound by the international instruments cited by the defence. This Tribunal is a domestic Tribunal which is competent to try international crimes.

In respect of incorporating the elements of crimes of ICC, the learned prosecutor submitted that ICC will not look into the offences committed before 17th July, 1998 and the elements of crimes defined by ICC has got no retroactive effect so the arguments of the learned counsel for discharge of the accused is liable to be rejected and charges should be framed against the accused person.

Before deciding the matter we are of the view that we should address some of the legal issues upon which the learned counsel for the defence drew our attention to. At a glance, the defence raised the issue of inadequacy of the definition of crimes, the absence of elements of crimes like in ICC's Rome Statute, the thresholds of the crimes against humanity, the nexus between crimes against humanity and armed conflict, requirement of knowledge, provisions of ICCPR and the Rome Statute and the Vienna Convention on the Law of the Treaties.

In regard to definition of crimes mentioned in the Act and elements thereof, we are of the view that the definitions are quite clear and complete without any ambiguity. The Act was drafted in an era when the crimes enumerated therein were fairly known and understood to the world, and were very much part of customary international law. Therefore, we see no reason why should we be trying to find gaps which are not there or try to borrow definitions from fairly recent international tribunals where the International Crimes Tribunal of Bangladesh do not have any such obligation to do so. However, the Tribunal may take into account jurisprudential developments from other jurisdictions should it feel so required in the interest of justice.

In regard to thresholds of the crimes against humanity and its nexus to armed conflict and the requirement of knowledge, as stated above, we are of the view that the crimes under the Act are adequate in all aspects and therefore it is not necessary to visit other recent notions developed by the statutes of various



international tribunals. However, the Tribunal may take into account normative developments should it feel so required in the interest of justice.

Regarding submissions on Articles 14 and 15 of the ICCPR, we are of the view that by and large every aspect of Article 14 of ICCPR is covered by the Act and its Rules of Procedure. Moreover, the Constitution of Bangladesh also embodies the principles and provisions of the Universal Declaration of Human Rights. Citing the prohibition of Article 15(1) of ICCPR, the defence counsel argued the principle against retroactive law which the subsequent Article 15(2) overrides in that the principle has been made inapplicable in cases of crimes proscribed by general principles of law recognised by the community of nations. It needs to be reiterated that the Act proscribes international crimes that were regarded as crimes under international law long before the Act was enacted.

About observations of the Human Rights Committee as referred by the defence counsel, we are of the view that this is a mere observation and not at all relevant in the matter of framing charges against the accused in the present case. Moreover only paragraph 12 of observation has been referred. Upon perusing the whole document we are of the view that the facts stated therein are totally different from the facts of this case and therefore not relevant.

As regards the Vienna Convention, and other international instruments to which Bangladesh is a party to, we are of the view that those instruments are enforceable in our courts if the provisions thereof have been incorporated in the domestic law of Bangladesh. Even in cases where domestic laws are or perceived to be inconsistent with the provisions of international instruments, the national courts are obliged to follow the domestic laws and not the international instruments. Moreover, in this case, the Act itself being clear and passed by the Parliament after the Liberation War to try the offences of international crimes committed by the perpetrators and that this Tribunal being a creation of the said Act too, we are of view that the international instruments of which no legislation has been passed by our Parliament are not binding upon this Tribunal. The case of 'Humberto Leal Garcia the Mexican' supports our view. The man was convicted of rape and murder and was sentenced to death by the Court and was executed on July 7, 2011 in Huntsville, Texas defying the Vienna Convention which the U.S Senate ratified

back in 1969 on the ground that no national law has been passed following that Convention.

The two cases of the Supreme Court of Bangladesh referred to by the learned counsel for the defence also do not state that the international instruments are directly enforceable in our courts nor do they state that their provisions have precedence over the provisions of domestic law. But if their provisions are incorporated in the domestic law then they become enforceable in national courts.

Since as said this Tribunal was created by the Act and considering all the facts and laws relating thereto, we reiterate our opinion that this Tribunal is very much a domestic Tribunal created under the said Act passed by the parliament of Bangladesh to try given international crimes.

We have perused the Formal Charge and other documents and statement of witnesses upon which the prosecution intends to rely upon, and carefully considered the submissions made by both the sides on those materials. We are of the opinion that there is sufficient ground to presume that the accused Delwar Hossain Sayeedi has committed offences under section 3(2) of the Act. We are also of the opinion that there are no reasons to discharge the accused rather there are numerous grave allegations that the accused has to provide answer and as such the said application for discharge is hereby rejected.

We shall now proceed to pass our Order on the framed charges against the accused Delwar Hossain Saydee. Before we do so, we would like to place on record our acknowledgment of the efforts that have been made so diligently by the learned Prosecutors and the learned Defence counsels in assisting the Tribunal through their able submissions.

We like to state here that we are mindful of the onerous burden the law has imposed on us to dispense justice in this otherwise very significant case to uphold rule of law.

Since we find that there are *prima facie* case against the accused, the Charges are framed against him in the following manner:

**Charges:-**

We,

Justice Md. Nizamul Huq (Chairman)

Justice A.T.M Fazle Kabir(Member)

and

A.K.M. Zaheer Ahmed(Member) of the International Crimes Tribunal hereby charge you accused Delwar Hossain Sayeedi @ Delu @ Dellya @ Abu Nayeem Mohammad Delwar Hossain@ Allama Delwar Hossain Sayeedi, son of late Yusuf Ali Sikder of Village South Khali, police station-Indurkani, District-Pirojpur, at present 914, Shaheed Bag, Police station-Motijheel, District-Dhaka.

**Charge No.1-** That on 4th May, 1971 you as a member of a group of individuals as well as a member of peace (santi) committee gave secret information to the Pakistan Army in the morning about the gathering of some people behind the Madhya Masimpur bus stand and after their arrival you took them to the back Madhya Masimpur bus stand under Pirojpur Sadar Police Station and in a planned way you killed 20 unnamed civilian people by firing which is murder as crimes against humanity.

Thus, you have committed the said crime of murder as crimes against humanity punishable under section 3(2)(a) of the International Crimes (Tribunal) Act, 1973, hereinafter referred to as the Act.

**Charge No.2:-** That on 04.05.1971 in broad daylight, you along with your accomplices accompanied with Pakistani Army went to Masimpur Hindur Para under Pirozpur Sadar Police Station and by riding those houses of Hindu people looted their goods and destroyed their houses by setting fire. On being frightened while the unnamed civilian people started to flee away then you and your team members opened fire on them indiscriminately pursuant to pre-arranged plan and thereby killed 13(thirteen) civilians, namely Sarat Chandra Mondol, Bijoy Mistri, Opendranath, Jogendranath Mistri, Surendra Nath Mistri, Motilal Mistri, Jogeshwar Mondol, Suresh Mondol and 5 others unidentified civilian people with intent to destroy in whole or in part members of Hindu religious group which amounts to

genocide. The act of looting goods and destroying houses by fire are considered as persecutions as crimes against humanity.

Thus, you have committed the said crimes of genocide and persecution punishable under section 3(2)(c)(i) and 3(2)(a) of the Act.

**Charge No. 3:-** That on the same date on 04.05.1971 you led a team of Pakistani Army to Masimpur Hindu Para and looted goods from the houses of Monindra Nath Mistri and Suresh Chandra Mondol and completely destroyed their houses by setting fire. You also directly took part in causing large scale destruction by setting fire on the road side houses of villages namely Kalibari, Masimpur, Palpara, Sikarpur, Razarhat, Kukarpara, Dumur Tola, Kalamtola, Nawabpur, Alamkuthi, Dhukigathi, Parerha and Chinrakhali and these Acts are considered as persecution against civilian population on religious grounds.

Thus, you have committed the said crimes of persecution punishable under section 3(2)(a) of the Act.

**Charge No. 4:-** That on 4th May, 1971 you with your accomplices accompanied with Pakistani Army in a planned way surrounded the Hindu Para located in front of Dhopa Bari and behind the LGED Building under Pirozpur Sadar Police Station with intent to destroy the members of Hindu Community, opened fire indiscriminately on the unnamed Hindu civilians and thereby killed Debendra Nath Mondol, Jogendranath Mondol, Pulin Behari and Mukunda Bala by gun-shot with intent to destroy a religious group and such acts amount to genocide.

Thus, you have committed the said crimes of genocide punishable under section 3(2)(c)(i) of the Act.

**Charge No. 5:-** That Mr. Saif Mizanur Rahman, the then Deputy Magistrate of Pirozpur Sub-Division (now District) organized Sarbo Dalio Sangram Parishad to inspire the people for participating in the War of Liberation. Knowing this fact, you declared publicity to arrest him for his pro-liberation activities. On 5th May, 1971 you along with your associate Monnaf (now deceased), the member of Peace (santi) Committee accompanied with some members of Pakistani Army riding on a Military Jeep went to Pirozpur Hospital at noon where Mr. Saif Mizanur Rahman was into hiding.

In order to execute the pre-arranged plan, one of you, identified him to the Pakistani Army who picked him up from the hospital to the bank of river Baleshwar. As a part of the plan on the same date and time, Mr. Foyezur Rahman Ahmed, Sub-Divisional Police officer, and Mr. Abdur Razzak(S.D.O. in charge of Pirojpur) were also arrested from their work place and taken to the bank of the said river. You as a member of the killer party were present there and all the three civilian government officers were gunned down and their dead bodies were thrown into the river Boleshwar. You directly participated and abetted in the acts of abduction, and killing of those three officers, which is crimes against humanity and abatement of killing.

Thus, you have committed the said crimes punishable under section 3(2)(a) and 3(2)(g) of the Act.

**Charge No. 6:-** That on 7th May, 1971 you led a team of Peace (Santi) Committee to receive Pakistani Army at Parerhat Bazar under Pirozpur Sadar Police Station, then you identified the houses and shops of the people belonging to Awami League, Hindu Community and supporters of the Liberation War. You as one of the perpetrators raided those shops and houses and looted away valuable including 22 seers of gold and silver from the shop of Makhanlal Shaha. These acts are considered as crime of persecution on political and religious grounds as crimes against humanity.

Thus, you have committed the said crimes of persecution punishable under section 3(2)(a) of the Act.

**Charge No. 7:-** That on 8th May, 1971 at about 1.30 p.m. you led a team of armed accomplices accompanied with Pakistani Army raided the house of Shahidul Islam Selim, son of Nurul Islam Khan of village Baduria under Pirozpur Sadar Police Station and you identified Nurul Islam Khan as an Awami League leader and his son Shahidul Islam Selim a freedom-fighter, then you detained Nurul Islam Khan and handed over him to Pakistani Army who tortured him and after looting away goods from his house, you destroyed that house by setting fire. The act destruction of the house by fire is considered as crime of persecution as crimes against humanity on political ground and you also abetted in the torture of Nurul Islam Khan by the Pakistani Army.

Thus, you have committed the said crimes punishable under sections 3(2)(a) and 3(2)(g) of the Act.

**Charge No. 8:-** That on 8th May, 1971 at about 3.00 p.m. under your leadership you and your accomplices accompanied with Pakistani Army raided the house of Manik Posari of village-Chitholia under Pirozpur Sadar Police Station and caught his brother Mofizuddin and one Ibrahim @ Kutti therefrom. At your instance other accomplices after pouring kerosene oil on five houses, those were burnt to ashes causing a great havoc. On the way to Army Camp, you instigated Pakistani Army who killed Ibrahim @ Kutti by gun-shot and the dead body was dumped near a bridge, then Mofiz was taken to army Camp and was tortured. Thereafter, you and others set fire on the houses of Hindu community at Parerhat Bandar causing huge devastations. The acts of looting goods and setting fire on dwelling houses are considered as persecution as crimes against humanity on religious ground. You directly participated in the occurrences of abduction, murder and persecution which are identified as crimes against humanity.

Thus, you have committed the said crimes punishable under sections 3(2)(a) of the Act.

**Charge No. 9:-** That on 02.06.1971 at about 9.00 a.m. under your leadership with your armed associates accompanied with Pakistani Army raided the house of Abdul Halim Babul of village-Nolbunia under Indurkani Police Station and looted away valuables, then set the house on fire to ashes. The acts of burning house to ashes and looting goods therefrom are considered as persecution as crimes against humanity.

Thus, you have committed the said crimes punishable under sections 3(2)(a) of the Act.

**Charge No. 10:-** That on the same day i.e. 02.06.1971 at about 10.00 a.m. under your leadership with your armed associates accompanied with Pakistani Army raided the Hindu Para of village-Umedpur under Indurkani Police Station you burnt 25 houses including houses of Chitta Ranjan Talukder, Jahar Talukder, Horen Tagore Anil Mondol, Bisabali, Sukabali, Satish Bala and others. At one stage Bisabali was tied to a coconut tree and at your insistence Bisabali was shot to dead by your accomplice. The act of burning dwelling houses of unarmed civilians is

considered as persecution. You directly participated in the acts of burning houses and killing of Bisabali which is persecution and murder within the purview of crimes against humanity.

Thus, you have committed the said crimes punishable under section 3(2)(a) of the Act.

**Charge No. 11:-** That on the same day i.e. on 02.06.1971, you led a team of Peace (shanti) Committee members accompanied with Pakistani occupied forces raided the houses of Mahbul Alam Howlader (freedom-fighter) of village-Tengra Khali under Indurkani Police Station and you detained his elder brother Abdul Mazid Howlader and tortured him. Thereafter, you looted cash money, jewellery and other valuables from their houses and damaged the same. You directly participated in the acts of looting valuables and destroying houses which are considered as persecution on political grounds, and also torture.

Thus, you have committed the said crimes of torture and persecution punishable under sections 3(2)(a) of the Act.

**Charge No. 12:-** That during liberation war on one day a group of 15/20 armed accomplices under your leadership entered the Hindu Para of Parerhat Bazar under Pirozpur Sadar Police Station and captured 14 Hiddus namely Horolal Malakar, Aoro Kumer Mirza, Taronikanta Sikder, Nando Kumer Sikder and others, all were civilians and supporters of Bangladesh independence. You tied them with a single rope and dragged them to Pirozpur and handed over them to Pakistani Military where they were killed and bodies were thrown into the river. This act was directed against a civilian population with intent to destroy in whole or part of a religious group, which is genocide.

Thus, you have committed the said offence of genocide punishable under section 3(2)(c)(i) of the Act.

**Charge No. 13:-** That about 2/3 months after the start of the Liberation War, on one night under your leadership some members of Peace Committee accompanied with the Pakistani Army raided the house of Azhar Ali of village-Nalbunia under Pirozpur Sadar Police Station and then caught and tortured Azhar Ali and his son Shaheb Ali. Thereafter, you abducted Shaheb Ali and ultimately he was taken to

Pirozpur and after killing him threw his dead body in the river. The acts of murder, torture, and abduction as crimes against humanity.

Thus, you have committed the said crimes punishable under sections 3(2)(a) of the Act.

**Charge No. 14:-** That during the last part of the Liberation War, you led a team of Razakar Bahini consisting of 50 to 60, in the morning of the day of occurrence in a planned way you attacked Hindu Para of Hoglabunia under Pirozpur Sadar Police Station. On seeing them Hindu people managed to flee away but Shefali Gharami the wife of Modhu Sudhan Gharami could not flee away, then some members of Razakar Bahini entering into her room raped Shefali Gharami. Being the leader of the team you did not prevent them in committing rape upon her. Thereafter you and members of your team set-fire on the dwelling houses of the Hindu Para of village–Hoglabunia resulting complete destruction of houses of the Hindu civilians. The act of destruction of houses in the Hindu Para by burning in a large scale is considered a crime of persecution on religious ground and the act of raping both as crimes against humanity.

Thus, you have committed the said crimes punishable under sections 3(2)(a) and 3(2)(g) and 3(2)(h) of the Act.

**Charge No. 15:-** That during the last part of liberation war, 1971 you led 15/20 armed Razakars under your leadership and entered into the village-Hoglabunia under Pirozpur Sadar Police Station, caught 10(ten) Hindu civilians namely Toroni Sikder, Nirmol Sikder, Shyamkanto Sikder, Banikanto Sikder, Horolal Sikder, Prokash Sikder and others. You then tied all of them with a single rope with intent to kill and dragged them to Pirozpur and handed over them to the Pakistani Army where they all were killed and the bodies were thrown in the river. This conduct was directed against a population with intent to destroy a religious group which is genocide.

Thus, you have committed an offence of genocide punishable under section 3(2)(c)(i) of the Act.

**Charge No. 16:-** That during the time of liberation war in 1971, you led a group of 10-12 armed Razakars and peace Committee members and surrounded the house of Gowranga Saha of Parerhat Bandor under Pirozpur Sadar Police Station



Subsequently you and others abducted (i) Mohamaya (ii) Anno Rani (iii) Komol Rani the sisters of Gowranga Saha and handed over them to Pakistani Army Camp at Pirozpur where they were confined and raped for three days before release. You are directly involved in abetting the offence of abduction, confinement and rape as crimes against humanity.

Thus, you have committed an offence of abduction, confinement and rape which are punishable under section 3(2)(a) and 3 (2)(g) of the Act.

**Charge No. 17:-** That during the time of liberation war in 1971, you along with other armed Razakars kept confined Bipod Shaha's daughter Vanu Shaha at Bipod Shaha's house at Parerhat under Pirozpur Sadar Police Station and regularly used to go there to rape her. This was committed by force or by threat and directed against a civilian population.

Thus, you have committed an offence of rape under section 3(2)(a) of the Act.

**Charge No. 18:-** That during the liberation war, Vagirothi used to work in the camp of Pakistani Army. On one day, after a fight with the freedom fighters, and at the instance of you, said Bhagirothi was arrested on charge of passing information to the freedom fighters and was tortured and then after taking her to the bank of river Boleshwar she was killed and the dead body was thrown into the river.

Thus, you have committed an offence of abetment of torture and murder under section 3(2)(a)(g) of the Act.

**Charge No 19:-** That during the period of Liberation War starting from 26.03.1971 to 16.12.1971 you being a member of Razakar Bahini, by exercising your influence over Hindu community of the then Pirozpur Subdivision (now Pirozpur District) converted the following Hindus to Muslims by force namely (1) Modhusudan Gharami (2) Kristo Saha (3) Dr. Gonesh Saha (4) Azit Kumar Sil, (5) Bipod Saha, (6) Narayan Saha, (7) Gowranga Pal, (8) Sunil Pal, (9) Narayan Pal, (10) Amullya Hawlader, (11) Hari Roy, (12) Santi Roy Guran, (13) Fakir Das and (14) Tona Das (15) Gouranga saha (16) his father Haridas (17) his mother and three sisters (18) Mahamaya, (19) Annorani and (20) Kamalrani and other 100/150 Hindus of village- Parerhat and other villages under Pirozpur Sadar Police Station and you also compelled them to go the mosque to say prayers. The act of compelling somebody

to convert his own religious belief to another religion is considered as an inhuman act which are treated as crimes against humanity.

Thus, you have committed the said crimes punishable under sections 3(2)(a) of the Act.

**Charge No. 20:-** That one day in the last part of November, 1971 you got the information that thousands of civilian people were fleeing to neighbour country India in order to save their lives. Then under your leadership a Razakar Bahini consisting of 10-12 armed forces, in a planned way, attacked the houses of Talukdar Bari in the village-Indurkani under Indurkani Police Station and detained total 85 persons and looted away goods therefrom. Then you dragged them to local Razakar camp. Except 10-12 persons, the rest of the persons were released on taking bribe negotiated by Fazlul Huq a member of Razakar Bahini. Male persons were tortured and female persons including Dipali, daughter of Khagendra Nath Saha Talukder, Niva Rani, wife of Khagendra Nath Saha Talukder and Maya Rani daughter of Rajballav Saha and others were raped by Pakistani Army deployed in the camp. You directly participated in the acts of abduction, torture and abated the offence of rape which fall within the purview of the crimes against humanity.

Thus, you have committed the said crimes punishable under section 3(2)(a) of the Act.

The aforesaid charges of crimes brought against you are punishable under the provision of section 3(2) of the Act and within the cognizance and jurisdiction of this Tribunal. And we hereby direct you to be tried by this Tribunal on the said charges. You have heard and understood the aforesaid charges.

Q Are you guilty or not-guilty ?

Ans.

The charges are read over and explained to the accused on dock who pleaded not guilty and claimed to be tried.

To 30-10-2011 for opening statement of the prosecution and examination of prosecution witnesses. The trial shall be continuing on every working days until further order. The defence counsel is also directed to submit a list of witnesses, if any, along with four sets of documents thereof, which the defence intends to rely upon by the date fixed.

