



International Crimes Tribunal-2
Old High Court Building, Dhaka, Bangladesh

ICT- BD Case No. 01 of 2012

Chief Prosecutor vs. Md. Abdul Alim (Accused)

Present:

Justice A.T.M Fazle Kabir, Chairman

Justice Obaidul Hassan, Member

Judge Md. Shahinur Islam, Member

Order No.18

Dated 11.06. 2012

Mr. Rana Das Gupta

.... For the prosecution

Mr. Tajul Islam

.... For the defence

Decision on Charge Framing Matter

Accused Md. Abdul Alim is on bail and has appeared today before this Tribunal.

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

1. Introduction and Formation of the Tribunal

This International Crimes Tribunal (hereinafter referred to as the "Tribunal") was 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 responsible for genocide, crimes against humanity, war crimes, and crimes committed in the territory of Bangladesh, in violation of customary international law, particularly between the period of 25th March to 16th December 1971. However, no Tribunal was set up and as such no one could be brought to justice under the Act until the government established 'Tribunal' (Tribunal-1) on 25th of March 2010. It is to be noted that for ensuring expeditious trial, the government has set up this Tribunal (Tribunal-2) under section 6(1) of the Act on 22.3.2012.

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2. 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 western zone was eventually named West Pakistan and the eastern zone was named East Pakistan, which is now Bangladesh.

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 recognized 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.

In the general election of 1970, the Awami League under the leadership of Bangabandhu Sheikh Mujibur Rahman became the majority party of Pakistan. 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.

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 and most of them committed and facilitated the commission of atrocities in the territory of Bangladesh. As a result, 3 million (thirty lac) people were killed, more than 2,00,000 (two lac) women raped, about 10 million (one crore) people deported to India as refugees and million others were internally displaced. It also experienced unprecedented destruction of properties all over 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

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religious groups, especially the Hindus, political groups belonging to Awami League and other pro-Independence political parties, Bangalee intellectuals and civilian population of Bangladesh. Undeniably 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.

3. Brief account of the Accused

Accused Md. Abdul Alim son of late Abdul Wahed of Ismailia Rice Mill, thana road police station Joypurhat under district Joypurhat was born on 01 November 1930 in the village *Pandua* under police station Hooghli, West Bengal, India. He and his family migrated to the then East-Pakistan in the year of 1950-51 and settled at Joypurhat. After having MA and LLB degree he joined the legal profession. In 1958 he joined the Muslim League and got the responsibility of divisional organising secretary of the party in 1962. In 1971 he was an influential leader of the Convention Muslim League and vice-chairman, Bogra district council. He established an army camp, peace committee office and training centre for Razakers and lodging arrangement for one Pakistani Major Afzal by occupying the '*gadi ghar*' (trading office) and trading and homestead premises of one Shownlal Bajla, a significant jute trader of Joypurhat when they became compelled to deport to India leaving all those assets. However, in 1979 he joined the Bangladesh Nationalist Party (BNP) and was elected Member of Parliament and then a Cabinet Minister of Ziaur Rahman's Government.

4. Procedural History

At pre-trial stage, Chief Prosecutor submitted an application under Rule 9(1) of the Rules of Procedure seeking arrest of accused M.A Alim for the purpose of effective and proper investigation. On hearing the Chief Prosecutor the Tribunal ordered issuance of warrant of arrest on 27.3.2011 in execution of which the accused was arrested by the enforcement and then produced before the Tribunal (Tribunal-1) on 28.3.2011 and then he was sent to prison rejecting the bail application brought on behalf of him. Thereafter, another application was submitted on behalf of the accused seeking his bail. The Tribunal-1, on hearing both sides allowed the accused to remain at large on conditional bail by its order dated 31.3.2011. Since then he is on bail and has been appearing before the Tribunal as directed.

The Tribunal (Tribunal-1), at pre-trial stage has entertained a number of applications and the same were disposed of in accordance with law after hearing both the sides. The Tribunal however, instead of allowing the investigation agency to bring the accused to safe home as prayed by the Chief Prosecutor, ordered directing the

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investigation agency to interrogate the accused at his home where he has been residing, considering his old age health complications.

Finally, the Chief Prosecutor submitted the Formal Charge under section 9(1) of the Act on 15.3.2012, relying on the investigation report of the Investigating Agency, alleging that the accused as the local commander of Razaker Bahini as well as the Chairman, local Peace Committee or member of a group of individuals had committed crimes against humanity, genocide and also abetted, aided, instigated, encouraged, facilitated and substantially contributed to the commission of such crimes in different places in Joypurhat sub-division (now district) during the period of War of Liberation in 1971. The Tribunal (Tribunal-1) took cognizance of offences against the accused having found *prima facie* case in consideration of the documents together with the Formal Charge submitted by the prosecution. Prosecution was then directed to furnish copies of the Formal Charge and documents submitted therewith which it intends to rely upon for supplying the same to the accused for preparation of defence as required under section 9(3) of the Act. Initially the case record was with the Tribunal-1 where it was at the stage of hearing on charge framing matter. Subsequently, on the basis of an application filed by the Chief Prosecutor the Tribunal-1 transmitted the case record to this Tribunal (Tribunal-2) under section 11A(1) of the Act. This Tribunal received of the case record on 19.04.2012, and heard the charge framing matter afresh as required under 11A(2) of the Act and as such the hearing took place on 24 April, 25 April, 09 May, 14 May, 15 May, 20 May, 21 May and 23 May 2012.

Before this Tribunal, in course of hearing the charge matter, the learned prosecutor Mr. Rana Das Gupta made his submissions showing argument favourable to framing charges against the accused, in the light of the Formal Charge together with statement of witnesses and documents submitted therewith. While Mr. Tajul Islam, the learned counsel, refuting prosecution's submission, has taken pain in extending his detailed submission both on factual and legal aspects and finally emphasized to allow the prayer to discharge the accused. Submissions advanced by both sides, on charge framing matter, have been summarized together with the views of the Tribunal on concerns raised, as below:

5. Submission by the Prosecutor

The learned Prosecutor, at the out set, in brief described the context and background that involved organizational plan and policy in implementation of which the local pro-Pakistani persons belonging to fundamentalist Islamic political groups, peace committee, auxiliary force who substantially aided, abetted and substantially facilitated the Pakistani occupation force in committing horrendous atrocities. Thereafter, the

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Prosecutor drew our attention to the facts narrated in the Formal Charge constituting the offences allegedly committed by the accused during 1971 War of Liberation. It has also been submitted that commission of atrocious offence of crimes against humanity and genocide in 1971 War of Liberation and the sufferings caused thereby sustained by the victims are indisputable fact of common knowledge that deserves judicial notice.

It was further submitted that the accused Md.Abdul Alim was a local elite person belonging to Islamic political group and had active association with Razaker Bahini and the Pak armed forces in launching attacks and committing unlawful acts in the locality. The statement of witnesses and documents will articulate the detail that the accused was an atrocious and potential member of Razaker Bahini having authority and leadership as well as member of 'group of individuals' as mentioned in section 3(1) of the Act of 1973. The accused, apart from participating actively to the commission of offences, substantially contributed to the commission thereof as an aider and abettor as have been transpired from the narration made in the Formal Charge and the documents submitted therewith. The documents and statement of witnesses will show that the accused had 'complicity' in committing crimes against humanity and genocide, by aiding, abetting, ordering, encouraging and providing moral support to the members of Razakers on whom he had *de facto* reasonable and material ability to control, as a top elite of the locality and Joypurhat town.

The context of the atrocities based on policy and plan and the nature and frequency of 'attack' causing murder, rape, other inhuman acts sufficiently indicates that the 'attack' was directed against civilians constituting the offences of crimes against humanity and the killing of members of Bangalee pro-liberation national group, Hindu community with intent to destroy, either whole or in part of the group constituted the offence of genocide. It was further submitted that in arriving at a decision regarding framing charge the Tribunal is to consider not only the Formal Charge but also the documents submitted therewith as required under Rule 37. At this stage there has been no scope to make final appraisal of evidence and documents which the prosecution intends to rely upon. It is to be examined merely whether there is sufficient and reasonable ground to believe *prima facie* that the accused was involved in committing offences. The statement of witnesses and documents and materials collected during investigation abundantly establish the allegations resulted from the commission of series of unlawful acts constituting offences and complicity of the accused in the crimes which have been narrated in the Formal Charge. There are sufficient grounds of presuming that the accused was criminally liable for the commission of offences as mentioned in section 3(2) of the Act.

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6. Defence Submission

Mr. Tajul Islam, the learned counsel appearing on behalf of the accused submitted that the prosecution could not show acceptably that the accused belonged to Razaker Bahini, the auxiliary force or that he in 1971 was associated with the 'peace committee' as its Chairman and as such he cannot be prosecuted. 'Peace committee' does not come within the definition of 'auxiliary force'. Therefore, even if it is said that the accused had association with the local peace committee he cannot be qualified to be a member of an 'auxiliary force'.

It was further submitted that the accused was prosecuted under the Collaborators Order 1972 and eventually he was freed on general amnesty and thus now he cannot be prosecuted again for 'same offences' constituting the allegation of collaborating the Pakistan armed forces, the main perpetrators of atrocities in 1971 and thus the accused is entitled to get the benefit of the principle of 'double jeopardy' as provided in Article 35(2) of the Constitution.

The learned defence counsel continued to contend that assertion that the accused was 'Razaker commander' does not have any basis as the Razaker Bahini was formed under the Razaker Ordinance that came into force on 02 August 1971. Besides, even from the documents submitted by the prosecution it will appear that not the accused but some other person was the Chairman of local peace committee. The documents submitted by the prosecution further go to demonstrate that the accused belonged not to the Jamat-e-Islami but to the Convention Muslim League and as such he cannot be said to have had control on Razaker Bahini and its members as well. Moreover, the documents submitted by the prosecution will seem to be conflicting in establishing the contention that the accused was the chairman of local peace committee. Therefore, the accused cannot be held culpable under the theory of civilian superior responsibility for the atrocities committed by Razaker Bahini. Besides, section 4(2) of the Act does not relate to any civilian superior.

Mr. Tajul Islam went on to submit further that the facts narrated in the Formal Charge for the purpose of framing charge lack of sufficient grounds and particulars, method of commission of alleged offences. Section 16(1)(c) of the Act of 1973 is consistent with the Article 67(7) of the Rome Statute under which the prosecution is obliged to state particulars of the alleged crimes as are reasonably sufficient to provide the accused notice of the matter with which he is charged. But the charges as have been narrated in the Formal Charge are devoid of this statutory requirement. Therefore, there has been no legal and factual basis of framing charge against the accused.

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On legal aspects, the learned defence counsel advanced his argument that without bringing the principal perpetrators into justice the accused who is alleged to have abetted and aided them cannot be prosecuted, although under the Act of 1973 'abetting' or 'aiding' is a distinct offence. By virtue of the tripartite agreement the 195 listed principal perpetrators (Pakistani army officials) were allowed to evade justice and now 40 years after the atrocities took place bringing the accused to the process of justice is *malafide* and politically motivated. Mr. Tajul Islam, the learned defence counsel referring the summary judgment of Charles Taylor Case (SCSL: 26 April 2012) submitted that Charles Taylor was prosecuted as the principal offender although after trial he was found guilty and convicted only for abetting, aiding and planning the offences underlying in the statute of the SCSL.

It was further submitted that subsequent amendment brought in 2009 of the Act of 1973 by inserting the words 'individual;' or 'group of individuals; in section 3(1) does not have retrospective effect and as such the present accused, on this score as well, cannot be prosecuted qualifying him as an 'individual' or member of 'group of individuals' for the offences underlying in the Act. Since such amendment has not been expressly given retrospective effect interpretation stands that the amendment of the Act in 2009 is prospective.

7. Reply of the prosecutor

In reply to the factual aspects agitated by the defence, the learned Prosecutor Mr. Rana Das Gupta submitted that the statement of witnesses and documents submitted speak well of the fact that the accused Md. Abdul Alim was associated with Razakaer Bahini and the Peace Committee. He further submitted, on legal aspects that since 'abetting' or 'aiding' is a distinct offence under the Act the accused even as an abettor or aider only can be brought to book. In reply to argument on amendment through which insertion of the words 'individual' or 'group of individuals' have been made in section 3(1) of the Act the learned prosecutor submitted that the intent of the Act and section 3(1) is to be perceived as a whole in interpreting whether such subsequent amendment is 'retrospective' or 'prospective'. Besides, this issue involves constitutional interpretation and as such this Tribunal will go slow in resolving it. The tripartite agreement providing immunity to 195 Pakistani war criminals was an 'executive act' which does not expel or derogate the state obligation to prosecute the local perpetrators of atrocities committed in 1971 under a valid legislation enacted in 1973.

It is not correct to say that the Tribunal is to peruse the Formal Charge only for settling the matter of framing charges. The Act does not prescribe provision of submitting any proposed charge. The object of submitting the Formal Charge is to assist the Tribunal

and the same cannot be the sole basis of framing of any charge or charges. According to Rule 37 on perusal of the Formal Charge and statements of the witnesses and the documents submitted therewith, if the Tribunal finds 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.

8. Discussion and Decision

Before deciding the matter we consider it expedient to address some of the legal issues upon which the learned counsel for the defence drew our notice. Succinctly, 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, intent of enacting the Act of 1973, prosecution of the accused under the Act, for same offences, suffers from the doctrine of 'double jeopardy', legality of prosecuting the accused questioning the amendment of section 3(1) of the Act brought in 2009

(i) *The Collaborators Order 1972*

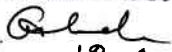
The Collaborators Order 1972 was a distinct legislation aiming to prosecute and try only the local persons responsible for the offences scheduled therein. The offences punishable under the Penal Code were scheduled in the Collaborators Order 1972. While the 1973 Act was enacted to prosecute and try the crimes against humanity, genocide and other system crimes committed in violation of customary international law. In the case in hand we have found that there are sufficient grounds to presume *prima facie* that the accused was associated with the orchestration and perpetration of the offences enumerated in the 1973 Act. Therefore, we are disinclined to accept the proposition that the fact that the accused was freed from the prosecution initiated under the Collaborators Order 1972 by dint of amnesty in no way immune him from being prosecuted under the Act of 1973.

(ii) *Doctrine of Double Jeopardy*

An offence for which the accused could have been convicted on the initial indictment under the Collaborators Order 1972 does not appear to be same for which the accused has been prosecuted under the Act of 1973. The Tribunal, in determining the issue of double jeopardy, is concerned with offences or crimes as clearly refer to the Act of 1973 and not the Collaborators Order 1972.

Where a criminal charge has been adjudicated upon by a Court having jurisdiction to hear and determine it, that adjudication, whether it takes the form of an acquittal or conviction, is final as to the matter so adjudicated upon, and may be pleaded as a bar to

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any subsequent prosecution for the same offence. [*R. v. Miles (1890) 24 Q.B.D. 423 at 431 (Q.B.) per Hawkins J.*] There are three essential criteria to be satisfied, to resolve the issue of prohibition by the principle of double jeopardy:

- The accused had formerly been in jeopardy (or peril) of a lawful conviction before a court of competent criminal jurisdiction;
- The former criminal trial must have concluded with a final determination of the facts at issue, *i.e.* that there has been a final verdict, either of acquittal or conviction, following a trial on the merits;
- The criminal offence for which the accused has been charged on the second occasion is the same or substantially the same offence as that for which he had formerly been acquitted or convicted.

It is to be tested as well whether two criminal offences are the same for the purposes of double jeopardy jurisprudence, **Lord Morris** explained that-

what has to be considered is whether the crime or offence charged in the later indictment is the same or is in effect or is substantially the same as the crime charged (or in respect of which there could have been a conviction) in a former indictment and that it is immaterial that the facts under examination or the witnesses being called in the later proceedings are the same as those on some earlier proceedings. [1964] A.C. 1254 at 1306 [H.L.(E.)].

Thus, the doctrine of double jeopardy prohibits that the accused should not have been put in peril of conviction for the same criminal offence as that with which he is then prosecuted and punished. Admittedly the accused was prosecuted under the Collaborators Order 1972 but could not be tried as subsequently he was freed under the general amnesty. That is to say the earlier prosecution was not ended on the merits. Offence (*dicta*) refers to the legal characteristics of an offence and not the facts on which it is based. It is true that the Article 35(2) of the Constitution prohibits prosecution and punishment for twice for the 'same offence'. But on mere reading of the preamble of the Collaborators Order 1972 it cannot be said that the offences under it are the same offences as mentioned in the Act of 1973. In these circumstances, we are of view that there is a separate and distinct new criminal offence (*i.e.* separate defining elements) under the Act of 1973 that may be prosecuted without violating the common law double jeopardy prohibition. Therefore and since the offences for which the accused was prosecuted, though not tried, earlier under a different legislation are not the 'same offences' the accused cannot have the benefit of the doctrine of double jeopardy.

(iii) Tripartite Agreement and immunity to 195 Pakistani war criminals

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It is not acceptable to say that no individual or member of auxiliary force as stated in section 3 of the Act of 1973 can be brought to justice under the Act for the offence(s) enumerated therein for the reason that 195 Pakistani war criminals belonging to Pak armed force were allowed to evade justice on the strength of 'tripartite agreement' of 1974. Such agreement was an 'executive act' and it cannot create any clog to prosecute member of 'auxiliary force' or an 'individual' or member of 'group of individuals' as the agreement showing forgiveness or immunity to the persons committing offences in breach of customary international law was derogatory to the existing law i.e the Act of 1973 enacted to prosecute those offences.

It is settled that the *jus cogens* principle refers to peremptory principles or norms from which no derogatory is permitted, and which may therefore operate a treaty or an agreement to the extent of inconsistency with any such principles or norms. We are thus inclined to pen our conclusive view that the obligation imposed on the state by the UDHR and the Act of 1973 is indispensable and inescapable and as such the tripartite agreement which is an 'executive act' cannot liberate the state from the responsibility to bring the perpetrators of atrocities and system crimes into the process of justice.

As state party of UDHR and Geneva Convention Bangladesh cannot evade obligation to ensure and provide justice to victims of those offences and their relatives who still suffer the pains sustained by the victims and as such an 'executive act' (tripartite agreement) can no way derogate this internationally recognized obligation. Thus, any agreement or treaty if seems to be conflicting and derogatory to *jus cogens* (compelling laws) norms does not create any hurdle to internationally recognized state obligation.

Next, the Act of 1973 is meant to prosecute and punish not only the armed forces but also the perpetrators who belonged to 'auxiliary forces', or who committed the offence as an 'individual' or member of 'group of individuals' and nowhere the Act says that without prosecuting the armed forces (Pakistani) the person or persons having any other capacity specified in section 3(1) of the Act cannot be prosecuted. Rather, it is manifested from section 3(1) of the Act of 1973 that even any person (individual or member of group of individuals), if he is *prima facie* found individually criminally responsible for the offence(s), can be brought to justice under the Act of 1973. Therefore, the argument that since the main responsible persons (Pakistan Army) have escaped the trial, on the strength of the tripartite agreement providing immunity to them, the next line collaborators cannot be tried is far-off to any canons of criminal jurisprudence. Therefore, we are of the view that the 'tripartite agreement' is not at all a barrier to prosecute civilian perpetrator under the Act of 1973.

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(iv) Amendment of section 3(1) of the Act in 2009

It is submitted by the learned counsel appearing on behalf of the accused that since the subsequent amendment brought in 2009 of the Act of 1973 by inserting the words 'individual;' or 'group of individuals' in section 3(1) carries 'prospective effect', in reality, the present accused cannot be prosecuted in the capacity of an 'individual' for the offences underlying in the Act which is admittedly 'retrospective'. Since such amendment has not been expressly given retrospective effect interpretation stands that the amendment is prospective. Prosecution could not show that the accused belonged to Al-Badar Bahini or an 'auxiliary force' and as such on this score too he cannot be prosecuted under the Act of 1973.

At the out set, it is to be noted that it is rather admitted that even under retrospective legislation (Act enacted in 1973) initiation to prosecute crimes against humanity, genocide and system crimes committed in violation of customary international law is quite permitted. It is to be noted that the ICTY, ICTR SCSL the judicial bodies backed by the UN have been constituted under their respective retrospective Statutes. Only the ICC is founded on prospective Statute.

We are to perceive the intent of enacting the main Statute together with fortitude of section 3(1). At the same time we cannot deviate from extending attention to the protection provided by the Article 47(3) of the Constitution to the Act of 1973 which was enacted to prosecute, try and punish the perpetrators of atrocities committed in 1971 War of Liberation. The legislative modification that has been adopted by bringing amendment in 2009 has merely extended jurisdiction of the Tribunal for bringing the perpetrator to book if he is found involved with the commission of the criminal acts even in the capacity of an 'individual' or member of 'group of individuals'. It is thus validly understood that the rationale behind this amendment is to avoid letting those who committed the most heinous atrocities go unpunished. This is the intent of bringing such amendment.

It may be further mentioned here that the words 'individual' or 'group of individuals' have been incorporated both in section 3 of the Act of 1973 and in Article 47(3) of the Constitution by way of amendments in 2009 and 2011 respectively. The right to move the Supreme Court for calling any law relating to internationally recognised crimes in question by the persons charged with crimes against humanity and genocide has been taken away by the provision of Article 47A(2) of the Constitution. Since the accused has been prosecuted for offences recognised as international crimes as mentioned in the Act of 1973 he does not have right to call in question any provision of the

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International Crimes (Tribunals) Act 1973 or any of amended provisions thereto. Thus, we hold that the application of prospectiveness or retrospectivity as to amendment to section 3 of the Act of 1973 raised by the accused is quite immaterial to him in consideration of his legal status and accordingly the defence objection is not sustainable in law, particularly in the light of Article 47(3) and Article 47A of the Constitution.

(v) Prosecuting 'abettor' and 'aider'

We are not with the emphatic argument advanced by Mr. Tajul Islam, the learned counsel appearing for the accused, on permissibility of prosecuting a person only as 'abettor' or 'aider' without bringing the principal offender to book.

The Act of 1973 has enumerated abetting and aiding as distinct offence and punishable there under. From the jurisprudence evolved in the ICTR and SCSL it is now settled that even only the abettor and aider to perpetration of crimes(s) underlying in the statutes can be prosecuted.

Let us have a look to the case of Charles Taylor (SCSL). On 26 April 2012, a Trial Chamber of the Special Court for Sierra Leone (SCSL), with Justice Richard Lussick presiding, convicted former Liberian President Charles Taylor for '**aiding and abetting**' war crimes and crimes against humanity and has been sentenced to suffer imprisonment for 50 years by the sentencing order dated 30 May 2012. Charles Taylor was indicted by the Prosecutor in 2003 when he was a sitting president and Head of State of Liberia. He was not prosecuted and tried together with any other offender or principal or actual perpetrator. He was however acquitted of ordering the commission of the crimes – a more serious mode of participation than aiding and abetting. Taylor was also acquitted of superior/command responsibility and joint criminal enterprise (JCE). Therefore we find that in law, either 'aiding' or 'abetting' alone is ample to render the perpetrator criminally liable.

The above international references also consistently supplement our own view that 'abetting', 'aiding', 'conspiracy' are distinct offences specified in the Act of 1973 and the persons responsible for any of acts constituting 'abetment' or 'aiding' that substantially contributed to the commission of offences enumerated in section 3(2)(a)(c) can lawfully be brought to justice.

(vi) Delay in bringing prosecution

From the point of morality and sound legal dogma, time bar should not apply to the prosecution of human rights crimes. Neither the Genocide Convention of 1948, nor the Geneva Conventions of 1949 contain any provisions on statutory limitations to war

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crimes and crimes against humanity. Article I of the Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes Against Humanity adopted and opened for signature, ratification and accession by General Assembly resolution 2391 (XXIII) of 26 November 1968 provides protection against even any statutory limitation in prosecuting crimes against humanity, genocide etc. Thus, criminal prosecutions are always open and not barred by time limitation.

Still the Nazi war criminals of the Second World War are being prosecuted. Trials of genocides committed during the 1973 Chilean revolution and the Pol Pot regime of Cambodia in the 1970s are now ongoing. The sovereign immunity of Slobodan Milosevic of Serbia, Charles Taylor of Liberia, and Augusta Pinochet of Chile (with the Chilean Senate's life-long immunity) as the head of state could not protect them from being detained and prosecuted for committing genocides, crimes against humanity, and war crimes.

In view of above settled position and in the absence of any statutory limitation, as a procedural bar, only the delay itself does not preclude prosecutorial action to adjudicate the culpability of the perpetrator of core international crimes. Indubitably, a prompt and indisputable justice process cannot be motorized solely by the painful memories and aspirations of the victims. It requires strong public and political will together with favourable and stable political situation. Mere state inaction, for whatever reasons, does not render the delayed prosecution readily frustrated and barred by any law.

Considerations of material justice for the victims should prevail when prosecuting crimes of the extreme magnitude is on the process. Therefore, justice delayed is no longer justice denied, particularly when the perpetrators of core international crimes are brought to the process of justice. However, there can be no recognised theory to insist that such a 'system crime' can only be pursued within a given number of years. However, delay may create a doubt which can be well adjudicated at trial stage only. At this stage, we are to merely examine *prima facie* whether there have been sufficient reasons to presume that the accused had committed the offence(s) under the Act.

(vii) Offences: Whether well characterized

It is emphatically submitted that the offences enumerated in the Act are not well defined and as such it will cause prejudice the accused in preparing its own defence. The Rome Statute embodies elements required to constitute crimes underlying in the Statute. On the basis of flawed definition of crimes lawful prosecution cannot be initiated. The learned Counsel also drew our attention to the Statute of ICC (Rome Statute).

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It is to be noted that looking at the contemporary standards of definition of 'Crimes against Humanity' in various Statutes, this observation can be made that there is no 'consistency' among definitions. The definition of 'Crimes against humanity' as contemplated in Article 5 of the ICTY Statute 1993 neither requires the presence of 'Widespread and Systematic Attack' nor the presence of 'knowledge' thereto as conditions for establishing the liability for 'Crimes against Humanity'. True, the Rome Statute definition differs from that of both ICTY and ICTR Statutes.

But, the Rome Statute says, the definition etc. contained in the Statute is 'for the purpose of the Statute'. So, use of the phrase "for the purpose of the Statute" in **Article 10 of the Rome Statute** means that the drafters were not only aware of, but recognized that these definitions were not the final and definitive interpretations, and that there are others. In establishing the 'Crimes against Humanity' in the Sierra Leon Court, there is no need to prove that the relevant crimes were committed with the knowledge of attack. We see that there is no actual consistency in the definition of 'Crimes against Humanity' as per the ICTY Statute, the ICTR Statute, the Rome Statute and the Sierra Leone Statute.

The section 3(2)(a) of the Act states the 'attack' constituting the offences of crimes against humanity is required to have been directed against '**any civilian population**' or '**persecution on political, racial, ethnic or religious grounds**'. Similarly, genocide requires, as stated in section 3(2)(c) of the Act, that the unlawful acts to constitute the offence of genocide are to be committed '**with intent to destroy, in whole or in part**', a '**national, ethnic, racial, religious or political group**'. Therefore, the claim as to the non-existence of a consistent international standard for the definition of 'Crimes against Humanity' in the 1973 Act is not acceptable. However, in this regard, the Tribunal shall not be precluded in seeking guidance from international references and evolved jurisprudence, if it is so indispensably required, at the stage of trial.

Concluding view

Prima facie it is depicted from the statement of witnesses and the documents that the accused was an influential person of the locality who was actively associated with the Razaker Bahini and its activities exercising his authority and also was local leader of the peace committee. The truthfulness of this pertinent factual issue may be well adjudicated at trial only. At this stage we prefer to concentrate our attention to the allegations and facts disclosed in the Formal Charge as well as the statement of witnesses and documents submitted therewith. It is to be noted that framing charges will provide a due notice to the accused to answer all those issues, presuming him to be innocent until and unless he is found guilty.

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In view of discussion as made above and considering the submissions advanced by both sides we are of the view that the application seeking discharge of the accused, having no substantial merit, is hereby rejected. Rather, we have found it *prima facie* to presume the accused responsible for conducts that he knowingly participated in the commission of offences and that his participation directly and substantially affected the commission of such offences through supporting, ordering, instigating and abetting the actual commission before or during the incidents.

Now we proceed to read out the charges. We have perused the Formal Charge, statement of witnesses along with other documents submitted by the prosecution. We are of the view that there are sufficient and substantial materials before this Tribunal to presume that accused Md. Abdul Alim had committed offences in 1971 War of Liberation as specified under section 3(2) of the Act for which he is criminally liable under section 4(1) of the Act. Since we find that there are *prima facie* allegations against the accused, the charges are thus framed against him in the following manner.

Charges

We,

Justice A.T.M Fazle Kabir, Chairman
Justice Obaidul Hassan, Member and
Judge Md. Shahinur Islam, Member
of the International Crimes Tribunal -2

hereby charge you, Md. Abdul Alim son of late Abdul Wahed of Islamia Rice Mill, Thana road police station-Joypurhat under district Joypurhat at present House No. 81, Road No. 3 , Block-F , Banani residential Area, Dhaka-1213 as follows:-

Charge 01

that on 20 April at about 05:00 pm during the War of Liberation 1971, you Md. Abdul Alim, being the local influential leader of Razaker Bahini as well as the chairman of local peace committee and or member of 'group of individuals' being accompanied by the Pakistani occupation force and the members of the peace committee, with ill intent, raided and attacked the house of a member of civilian population named Meher Uddin Chowdhury (now dead) belonging to Awami League of village 'Dom Doma' Police Station 'Panch Bibi' under district Joypurhat and caused intentional and severe damage by looting and arson and thereby compelled Meher Uddin Chowdhury and his inmates to deport to India.

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Therefore, you Md. Abdul Alim are hereby charged for participating and substantially abetting and contributing the actual commission of offence of '**deportation as crime against humanity**' by directing attack against the civilian population as specified in section 3(2) (a) (g) of the Act which are punishable under section 20(2) read with section 3(1) of the Act.

You are thus liable for the above offences under section 4(1) of the Act.

Charge 02

that during the period of War of Liberation, on 26 April 1971 in between 09:00 am to 05:00 pm you, being the local influential leader of Razaker Bahini as well as the chairman of local peace committee and or member of group of individuals, following prior plan and consultation with Pakistani Army Major Afzal, being accompanied by other members of the peace committee and Pak army, with common and discriminatory intent, launched a sudden armed attack directing the 'Hindu civilians' dwelling in the Hindu populated villages *Koroi, Kadipur, Chwakpara, Sonarpara, Palpara, Munshipara* within the locality of *Koroi Kadipur* under police station Joypurhat and entering inside their houses started damaging property by looting, arson and thereby created havoc and then you and your accomplices brought the Hindu civilians from their houses and were lined up and 370 Hindu unarmed civilians including (1) Laxman Chandra Devnath (2) Aswini Chandra Devnath (3) Devendra Chandra Devnath (4) Jogendra Chandra Devnath (5) Mohendra Chandra Devnath (6) Jotish Chandra devnath (7) Khitish Chandra Devnath (8) Parixit Chandra devnath (9) Joton Chandra Devnath (10) Dilip Chandra Devnath (11) Amindra Chandra Devnath (12) Suresh Chandra Devnath (13) Anath Chandra Devnath (14) Gopinath Chandra Devnath (15) Sudhangso Chandra Devnath (16) Gopen Chandra Devnath (17) Shibhen Chandra Devnath (19) Khokon Chandra Devnath (20) Sukhchan Chandra Devnath (21) Ratan Chandra Devnath (22) Vundala Chandra Devnath (23) Jogesh Chandra Devnath son of late Laxmi Chandra Devnath (24) Kanchira Mohanta (25) Sedra Chandra Barman (26) Krishna Chandra Barman (27) Tormuja Barman (28) Banikanta Chandra Barman (29) Ghona Chandra Barman (30) Benga Chandra Barman (31) Duka Chandra Barman (32) Santosh Chandra Barman (33) Goura Chandra Barman (35) Priyobondo Barman (36) Deennath Barman (37) Nusha Chandra Devnath (38) Pachkori Devnath of those villages of *Koroi Kadipur* locality were gunned down to death. One 90 years old Kanchira Mohan was slaughtered to death and one Aswini Kumar Debnath was buried alive to death. Then you and your accomplices left the crime site and thereafter the dead bodies were buried in a mass grave.

Therefore, you Md. Abdul Alim are hereby charged for substantially abetting and contributing to the commission of offence of large scale '**killing of Hindu**

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community as genocide' with intent to destroy the community either whole or in part as specified in section 3(2) (c) (g) of the Act which are punishable under section 20(2) read with section 3(1) of the Act.

You are thus liable for the above offences under section 4(1) of the Act.

Charge 03

that during the period of War of Liberation, on 18 June 1971 in between 02:00 pm to 09:00 pm following your instruction and being instigated by you the local influential leader of Razaker Bahini as well as the chairman of local peace committee, one Reaz, Mridha, member of the peace committee aided 11 Pakistani army in apprehending 22 'musalli', members of civilian population, before and after the 'jumma' prayer. They also apprehended more 500 civilians from the road nearer to the mosque and brought them to the courtyard of one Afaz's house where they were lined up in three lines. Then Reaz Mridha, your associate, provided the army with a list given to him by you. According to the list 28 civilians who were identified as pro-liberation and pro-Awami League were segregated and the rest were allowed to go. Thereafter, tying up their hands those 28 identified civilians were brought inside a mud made hut where 22 were killed but the rest somehow escaped.

Therefore, you Md. Abdul Alim are hereby charged for substantially abetting and contributing to the actual commission of offence of '**murder as crime against humanity**' by directing attack against the civilian population as specified in section 3(2) (a) (g) of the Act which are punishable under section 20(2) read with section 3(1) of the Act.

You are thus liable for the above offences under section 4(1) of the Act.

Charge 04

that in the morning of one day of the first part of May of 1971 during the War of Liberation, you, being the local influential leader of Razaker Bahini as well as the chairman of local peace committee and or member of group of individuals, ordered and instigated your accomplices belonging to local peace committee and Razaker Bahini along with Pakistani army came to a place known as 'Bakul Tola' rail line by a train and thereafter dividing into groups they launched attack against the civilian population and started damaging, looting the houses of civilians of villages *Koktara, Ghorapa, Bagjana, Kutahara* and they killed 19 pro-liberation civilians and then your accomplices and Pakistani army went back towards Parbatipur by train.

Therefore, you Md. Abdul Alim are hereby charged for substantially abetting and contributing to the actual commission of offence of '**murder as crime against**

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humanity' by directing attack against the civilian population as specified in section 3(2) (a) (g) of the Act which are punishable under section 20(2) read with section 3(1) of the Act.

You are thus liable for the above offences under section 4(1) of the Act.

Charge 05

that on any day between 09 May-15 May of 1971 during the War of Liberation, you, being the local influential leader of Razaker Bahini as well as the chairman of local peace committee and or member of group of individuals, ordered and instigated your accomplices belonging to local peace committee and Razaker Bahini along with Pakistani army came to Mission School of village south '*Pahu nanda*, of Joypurhat where a group of 50/60 stayed there and the rest moved towards '*pagla dewan*. Thereafter, they called villagers and got some bunkers digged by them and buried dead bodies of 67 unknown civilians belonging to 'Hindu community' out of those seven were killed in their presence.

Therefore, you Md. Abdu Alim are hereby charged for substantially abetting and contributing to the actual commission of offence of '**murder as crime against humanity**' by directing attack against the Hindu civilians as specified in section 3(2) (a) (g) of the Act which are punishable under section 20(2) read with section 3(1) of the Act.

You are thus liable for the above offences under section 4(1) of the Act.

Charge 06

that on any day of the first part of May of 1971 during the War of Liberation, Abdus Salam of Akkelpur and 09 others, the members of civilian population, while, on the way to India, arrived at a village Nurpur at about 11:00 pm the local UP chairman and members of peace committee and Razaker Bahini apprehended and confined them in the house of one Syed Ali and there from they were brought to waiting room of Akkelpur Rail Station and the matter was informed to you, the influential leader of Razaker Bahini as well as the chairman of local peace committee and you ordered to 'finish' them. Accordingly the members of Akkelpur peace committee stopping a train handed the apprehended 10 civilians to Pakistani army who later on gunned them down causing death of 09 civilians at a place known as *Bakul Tala* of Koktara village and one Mofazzal however managed to escape.

Therefore, you Md. Abdul Alim are hereby charged for substantially abetting and contributing to the actual commission of offence of '**murder as crime against humanity**' by directing attack against the civilian population as specified in section

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3(2) (a) (g) of the Act which are punishable under section 20(2) read with section 3(1) of the Act.

You are thus liable for the above offences under section 4(1) of the Act.

Charge 07

that during the period of War of Liberation, on 26 May 1971 in between 11:00 am to 06:00 pm, following your order and instigation your accomplices belonging to local peace committee and Razaker Bahini along with Pakistani army attacked the village Nowda under police station Panchbibi district Joypurhat and apprehending 04 civilians, members of the civilian population, namely Ilias Uddin Sarder, Ysuf Uddin Sarder, Yunusuddin Sarder and Abdul Kader Mondol brought them to Balighata UP office and kept them confined there. The relatives of the detained persons met and approached you to release them. But you, being the local influential leader of Razaker Bahini as well as the chairman of local peace committee and or member of group of individuals, without paying heed to it, told that they could not be so released as they were apprehended on being identified as persons supporting the War of Liberation. Thereafter, on the same day at about 06:30- 07:00 pm they were killed by the side of a pond of one Kali Saha.

Therefore, you Md. Abdul Alim are hereby charged for substantially abetting and contributing to the actual commission of offence of **'murder as crime against humanity'** by directing attack against the civilian population as specified in section 3(2) (a) (g) of the Act which are punishable under section 20(2) read with section 3(1) of the Act.

You are thus liable for the above offences under section 4(1) of the Act.

Charge 08

that on any day of last part of May during the period of War of Liberation in 1971, you, being the local influential leader of Razaker Bahini as well as the chairman of local peace committee and or member of group of individuals, accompanied by Pakistani army Major Afzal and other accomplices belonging to peace committee and Razaker Bahini came to the place known as 'Uttarhat Shabor' under 'police station 'Khetlal and arranged a meeting attended by 500/700 audiences where you, Md. Abdul Alim made inciting speech that **"the Hindus would not be forgiven"** (হিন্দুদের ক্ষমা করা যাবে না। এদের যা পাও লুট করে নাও) and also encouraged to loot whatever they (Hindus) had.

Following such inciting speech made by you the members of peace committee and Razaker Bahini along with Pakistan army at the end of May raided 'Hindu Palli',

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'Uttarhat Shahor, 'Harunjahat' and surrounding area and launched attack targeting 'Hindu community', with intent to destroy it, either whole or in part and started damaging and looting their properties and houses. 10 Hindu civilians including Badal, Shachin @ Vanu, Bishu, Probas Chandra Sheel, Monibhushan, Chakravarti, Kartik Chandra Barman, Nimai Chandra were apprehended and brought to Khetlal Sadar, with intent to kill them. Thereafter, they were brought to office of the peace committee located at the 'gadi ghar' of Shownlal Bajla where you M.A Alim ordered to kill them and accordingly all of them were killed at a place *Khanjanpur Kuthibari Ghat*.

Therefore, you Md. Abdul Alim are hereby charged for substantially abetting, inciting and contributing to the actual commission of offence of killing members of a group i.e Hindu community which is an offence of **genocide** as specified in section 3(2) (c) (g) of the Act which are punishable under section 20(2) read with section 3(1) of the Act.

You are thus liable for the above offences under section 4(1)) of the Act.

Charge 09

that during the period of War of Liberation, on 14 June 1971 your accomplices belonging to the peace committee apprehended 15 youths suspecting them to be the 'freedom fighters' while they were on the way to Bogra through Akkelpur and were brought to the office of the peace committee set up at 'gadi ghar' of Shownlal Bajla and kept them confined there. On being informed, you, Md. Abdul Alim, being the local influential leader of Razaker Bahini as well as the chairman of local peace committee and or member of group of individuals, came there and then consulted Pakistani army Major Afzal at their camp at 'gadi ghar' and decided to kill them. Following this decision the detained members of the civilian population were brought to village 'West Amatra' and were tortured to death and then they were buried in a mass grave.

Therefore, you Md. Abdul Alim are hereby charged for substantially abetting and contributing to the actual commission of offence of '**murder as crime against humanity**' by directing attack against the civilian population as specified in section 3(2) (a) (g) of the Act which are punishable under section 20(2) read with section 3(1) of the Act.

You are thus liable for the above offences under section 4(1) of the Act.

Charge 10

that in one morning of last part of June, during the period of War of Liberation in 1971, following a decision taken by you, Md. Abdul Alim, being the local influential

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leader of Razaker Bahini as well as the chairman of local peace committee and or member of group of individuals, in the office of the peace committee set up at 'gadi ghar' of Shownlal Bajla, with intent to destroy the group of 'pro-liberation youths', either whole or in part, detained 26 civilians suspecting them to be 'freedom fighters' and brought them to western open site of Joypurhat Railway Station by a truck. Thereafter, keeping some arms of their own in front of the detained persons, the Pakistani army, members of peace committee and Razaker Bahini including you and Major Afzal stood behind them. One Motasim Billah, owner of 'Alokhela Studio', as brought by you, took photograph of you and the detained civilians. Thereafter, you consulted Major Afzal following which 26 detainees were taken to Joypurhat College and were killed. You, Md.Abdul Alim later on collected photograph including the negative from the studio owner, although Motasim Billah kept some copies of photograph with him.

Therefore, you Md. Abdul Alim are hereby charged for participating, substantially abetting and contributing to the actual commission of offence of 'killing a group' which is an offence of 'genocide' as specified in section 3(2) (c)(i)(g) of the Act which are punishable under section 20(2) read with section 3(1) of the Act.

You are thus liable for the above offences under section 4(1) of the Act.

Charge 11

That on any day in between 25 June to 30 June, during the period of War of Liberation in 1971, your accomplices along with Pakistani army apprehended Md. Mokhlesur Rahman, Ahad Ali, Najer Akond, Amjad Hossain, Abdul Gafur and unknown more 14 'garoals' (bullock-cart pullers), members of civilian population, while they were on the way back from the Indian border leaving the civilians belonging to 'Hindu community' and brought them to you Md.Abdul Alim the local influential leader of Razaker Bahini as well as the chairman of local peace committee and or member of group of individuals, in the office of the peace committee set up at 'gadi ghar' of Shownlal Bajla at thana road, Joypurhat. On getting information, relatives of the detainees came and approached for their release but you detained them too. Later on, they were gunned down to death near the 'khanjanpur kuthibari bridge' and their dead bodies were thrown to river.

Therefore, you Md. Abdul Alim are hereby charged for substantially abetting and contributing to the actual commission of offence of 'murder as crime against humanity' by directing attack against the civilian population as specified in section 3(2) (a) (g) of the Act which are punishable under section 20(2) read with section 3(1) of the Act.

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You are thus liable for the above offences under section 4(1) of the Act.

Charge 12

that on 24 July , during the period of War of Liberation in 1971, you, Md. Abdul Alim, being the local influential leader of Razaker Bahini as well as the chairman of local peace committee and or member of 'group of individuals', with intent to attack the non-combatant civilian population, ordered to apprehend and detain Dr. Abul Kashem of 'Devipur Kajipara' under police station and district Joypurhat , a local significant Awami League leader and following your such order your accomplices belonging to Razaker Bahini being accompanied by Pakistani army raiding the house of Dr. Abul Kashem, detained him and dragged him to 'Teghor Bridge Rajaker Camp' wherefrom, by blind folding, he was dragged to Joypurhat Railway station and was confined him through out whole night .On the following morning Dr. Abul Kashem was brought to you in the office of the peace committee set up at 'gadi ghar' of Shownlal Bajla. You did not respond to release him despite approach made by his relatives. Subsequently on 26 July, in the evening Dr. Abul Kashem was brought near the 'Khanjanpur Kuthibari bridge' from the camp of peace committee office and was killed .

Therefore, you Md. Abdul Alim are hereby charged for substantially abetting and contributing the actual commission of offence of '**murder as crime against humanity**' by directing attack against the civilian population as specified in section 3(2) (a) (g) of the Act which are punishable under section 20(2) read with section 3(1) of the Act.

You are thus liable for the above offences under section 4(1) of the Act.

Charge 13

that in the first week of the month of September , during the period of the War of Liberation in 1971, 11 youths, members of the civilian population, were brought by the Pakistani troops by trucks to the government degree college and then they were lined up at the place adjacent to 'Baraghati'. Within a short while, you, Md. Abdul Alim, being the local influential leader of Razaker Bahini as well as the chairman of local peace committee and member of 'group of individuals' arrived there (crime site) by a jeep and standing on it you uttered "**11 persons are the spies of India and enemies of Pakistan and they are freedom fighters. Let them be sent** (এগারো আদমী ভারত কা চর হায়। পাকিস্তানী দুৰমন। মুক্তিফৌজ হায়। ইসকো ভেস দো)। Following this inciting instruction at about 11/12 am those 11 detained youths were pulled down from the truck and were brought to south part of 'bara ghati pukur' and the Pakistani army gunned them down to death.

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Therefore, you Md. Abdul Alim are hereby charged for substantially abetting, inciting and contributing the actual commission of offence of '**murder as crime against humanity**' by directing attack against the civilian population as specified in section 3(2) (a) (g) of the Act which are punishable under section 20(2) read with section 3(1) of the Act.

You are thus liable for the above offences under section 4(1) of the Act.

Charge 14

that on 07 October, during the period of War of Liberation in 1971 the members of the local peace committee, Rajakers and Pakistani army, apprehended Fazlul Karim son of late *Alhaj* Abdur Rahim and unknown two others, the members of civilian population and brought them in front of CO(Dev) Office, Joypurhat. On getting information, you Md. Abdul Alim, being the local influential leader of Razaker Bahini as well as the chairman of local peace committee and or member of 'group of individuals' came out from the CO (Dev) Office and then following your order and in your presence, with intent to terrorize the unarmed Bangalees, you and Major Afzal with those detained civilians started moving around the town by truck. During the transaction of such unlawful acts, you made statement that "the freedom fighters are fighting against Pakistan. Fazlul Karim's father is friend of mine but he did not prevent his son from remaining in wrong track despite repeated asking. Therefore, his son is to pay in exchange of his life". Later on, following your substantially instigating statement, they were brought to '*khanjan pur kuthibari ghat*' where they were gunned down to death. However, their dead bodies could not be traced even.

Therefore, you Md. Abdul Alim are hereby charged for substantially abetting and contributing the actual commission of offence of '**murder as crime against humanity**' by directing attack against the civilian population as specified in section 3(2) (a) (g) of the Act which are punishable under section 20(2) read with section 3(1) of the Act.

You are thus liable for the above offences under section 4(1) of the Act.

Charge 15

that during the period of War of Liberation in 1971 you, Md. Abdul Alim, the local influential leader of Razaker Bahini as well as the chairman of local peace committee and or member of 'group of individuals' were closely associated with the army camp set up inside the Joypurhat sugar mill where in a room 25 civilians and Solaiman Ali Fakir, Abdul Khalek, Abdus Samad and Aftab Hossain under Pachbibi police station were kept detained from 25 October 1971 and following verdict of you

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and the Pakistani Colonel, during eight nights those 25 civilians detained inside the Mill premises, were killed.

Therefore, you Md. Abdul Alim are hereby charged for substantially abetting and contributing the actual commission of offences of '**murder as crimes against humanity**' by directing attack against the civilian population as specified in section 3(2) (a) (g) of the Act which are punishable under section 20(2) read with section 3(1) of the Act.

You are thus liable for the above offences under section 4(1) of the Act.

Charge 16

That during the period of War of Liberation in 1971, Solaiman Ali Fakir, Abdul Khalek, Abdus Samad and Aftab Hossain, members of civilian population, under Pachbibi police station were apprehended and brought to the army camp set up inside the sugar mill by your accomplices and they were kept there detained from 25 October along with other 25 civilians in a room. On Friday, the 09th day of their confinement at the army camp a 'court' took its seat inside the sugar mill club room. One Pakistani Colonel was its 'judge' and you Md. Abdul Alim was sitting by him to assist. Solaiman Ali Fakir, Abdul Khalek, Abdus Samad and Aftab Hossain were produced before you. Then you by interrogating them mentioned it to the Colonel that they would flee to India if they were set at large and it would be damaging if they reported it there and as such they could be released". With this, the detainees told the Colonel that they would not go to India. Listening it, the Colonel, instead of paying heed to you, pronounced his decision by saying "**freed**" (**Azad**) and then they being released there from came to home but Soleman Ali Fakir and Abdus Samad Mondol felt it compelling to go to India in the same night as they thought it unsafe to stay in village.

Therefore, you Md. Abdul Alim are hereby charged for substantially abetting and contributing the actual commission of offences of '**confinement as crime against humanity**' by directing attack against the civilian population as specified in section 3(2) (a) (g) of the Act which are punishable under section 20(2) read with section 3(1) of the Act.

You are thus liable for the above offences under section 4(1) of the Act.

Charge 17

that at the end of November the day of *Eid-ul-Fitre* in 1971 Subeder Major Jabbal Hossain of 17 wing, EPR having severe injuries took shelter at the house of one Nazim

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Uddin of village 'Dhuroil', Police Station 'Panchbibi' under district Joypurhat. This was informed to you Md. Abdul Alim, being the local influential leader of Razaker Bahini as well as the chairman of local peace committee and or member of 'group of individuals', by the members of local peace committee and Rajaker Bahini. On having this information, you being accompanied by Pakistani army of the camp set up at 'gadi ghar' of Shawn Lal Bajla and the members of peace committee and Rajaker Bahini, on the day of Eid-ul-Fitre launched planned attack to the house of late Nazim Uddin and apprehended Jabbal Hossain, a member of civilian population, and brought him to Joypurhat. Relatives came to you at 'gadi ghar' and approached repeatedly to release him. But instead of releasing him you rather told that he would not be released as he fought against Pakistani army in Chittagong. Eventually the relatives of Jabbal Hossain came to know that you killed him.

Therefore, you Md. Abdul Alim are hereby charged for substantially participating, abetting and contributing the actual commission of offence of 'murder as crime against humanity' by directing attack against the civilian population as specified in section 3(2) (a) (g) of the Act which are punishable under section 20(2) read with section 3(1) of the Act.

You are thus liable for the above offences under section 4(1) of the Act.

Thus you have committed the offences under section 3(2)(a)(g) which are punishable under section 20(2) read with section 3(1) of the Act.

The aforesaid charges of crimes against humanity and also complicity to the commission of such crimes described under section 3(2)(a)(g) of the Act are punishable under the provisions of section 20(2) read with section 3(1) of the Act which are 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.

Question: Do you plead guilty or not.

Answer: *আমি সাক্ষী নই।*

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

Let 09. 07.2012 be fixed for opening statement and examination of prosecution witnesses. The trial shall be continuing on every working day until further order. The

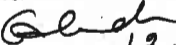
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defence counsel is directed to submit a list of witnesses along with documents which the defence intends to rely upon, as required under section 9(5) of the Act.

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Justice A.T.M Fazle Kabir, Chairman

Justice Obaidul Hassan, Member

Judge Md. Shahinur Islam, Member