

International Crimes Tribunal-2
Old High Court Building, Dhaka, Bangladesh
ICT- BD Case No. 04 of 2012

Chief Prosecutor Vs. Ali Ahsan Muhammad Mujahid (Accused)

Present:

Justice A.T.M Fazle Kabir, Chairman

Justice Obaidul Hassan, Member

Judge Md. Shahinur Islam, Member

Order No.11

Dated 21.06. 2012

Mr. Rana Das Gupta and Mr. Mokhlesur Rahman Badal

.... For the prosecution

Mr. Abdur Razzak

..... For the defence

Decision on Charge Framing Matter

Accused Ali Ahsan Muhammad Mujahid has been produced before the Tribunal by the prison authority.

Today is fixed for passing decision on charge framing matter and as such the record is taken up for order. Before giving decision on charge framing matter, we would prefer 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 22nd March .2012.

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.

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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.

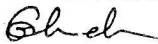
In the War of Liberation that ensued, all people of East Pakistan wholeheartedly supported and participated in the call to free Bangladesh but a small number of Bangalees, Biharis, other pro-Pakistanis, as well as members of a number of different religion-based political parties joined and/or collaborated 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 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 **Ali Ahsan Muhammad Mujahid** son of late Moulana Abdul Ali and late Begum Nurjahan of '*Paschim khabashpur*' under Kotwali police station district Faridpur, at present Road No. 10, House No. -05, Flat No. 2/A, Sector-11, Police Station Uttara, Dhaka Metropolitan Police, Dhaka was born on 02 January 1948. He obtained SSC in 1964 and thereafter studied in Faridpur Rajendra College when he joined the Islami Chatra Sangha. During

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1968-1970 he was the president of Faridpur district Islami Chatra Sangha. In 1970 he got himself admitted in the department of Law, University of Dhaka. He was nominated as the President of Dhaka district Islami Chatra Sangha and in the same year, in the month of August/September he was assigned with the responsibility of Secretary, East Pakistan Islami Chatra Sangha. Thereafter, in the month of October, 1971 he was elected Provincial President of the organization and also became the Chief of Al-Badar Bahini. Ali Ahsan Muhammad Mujahid belongs to a political family. His father late Moulana Abdul Ali was a member of 'Pradeshik Parishod' of the then East Pakistan since 1962-1964. Ali Ahsan Muhammad Mujahid contested the parliamentary election in 1986, 1991, 1996 and 2008 but could not succeed even for once. He was the social welfare Minister of the BNP-Jamat alliance government during 2001-2006.

4. Procedural History

At pre-trial stage, the Chief Prosecutor submitted an application under Rule 9(1) of the Rules of Procedure seeking arrest of accused Ali Ahsan Muhammad Mujahid for the purpose of effective and proper investigation. At the time of hearing it was learnt that the accused was already in custody in connection with some other case. Thereafter, pursuant to the production warrant (PW) issued by the Tribunal (Tribunal-1) the accused was produced before the Tribunal (Tribunal-1) by the prison authority and then he was shown arrested as an accused before the Tribunal. Accordingly, since 02.10.2010 accused Ali Ahsan Muhammad Mujahid has been in custody.

The Tribunal (Tribunal-1), since his detention, has entertained a number of applications seeking bail and the same were disposed of in accordance with law and on hearing both sides. The Tribunal also allowed the learned defence counsels to have privileged communication with the accused in custody for several times.

Finally, the Chief Prosecutor submitted the Formal Charge under section 9(1) of the Act on 05.12.2011, on the basis of the investigation report of the Investigating Agency. But the Tribunal on perusal of the same, in exercise of its inherent powers, returned it to the prosecution to submit afresh in an arranged form. Thereafter, the prosecution, as directed, submitted the Formal Charge afresh on 16.01.2012 alleging that the accused as the leader and chief of Al-Badar Bahini and also as the leader of Islami Chatra Sangha had committed crimes against humanity, genocide including abetting, aiding, providing moral support to commit such crimes in different places of Dhaka and Faridpur 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 there with which it intends to rely upon for supplying the same to the accused for preparation of defence.

The Tribunal-1, on application filed by the Chief Prosecutor, ordered for transmission of the case record to this Tribunal-2 under section 11A (1) of the Act. This Tribunal, thereafter, received the case record on 10.05.2012. Earlier, the case was at the stage of hearing the charge

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framing matter. Thus, this Tribunal heard the matter afresh as required under section 11A (2) of the Act. Accordingly, the hearing took place on 16 May, 21 May, 24 May, 29 May and 30 May 2012.

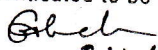
Before this Tribunal, in course of hearing the charge matter, the learned prosecutors Mr. Rana Das Gupta with Mr. Mokhlesur Rahman Badal made submissions in support of framing charges against the accused, in the light of the Formal Charge together with the statement of witnesses and documents submitted therewith. While Mr. Abdur Razzak, the learned senior counsel appearing for the accused, emphatically dislodging prosecution's submission, has placed his submissions both on factual and legal aspects and finally emphasized to discharge the accused by allowing the application seeking discharge. Submissions advanced by both sides, on charge framing matter, may be summarized together with the views of the Tribunal on concerns raised, as below:

5. Submission advanced by the Prosecutor

The learned Prosecutor, before drawing our attention to the facts set out in the Formal Charge constituting the offences allegedly committed by the accused during 1971 War of Liberation, portrayed the context in brief to substantiate the organizational plan and policy in execution of which the local pro-Pakistani persons belonging to fundamentalist Islamic political groups, Al-Badar Bahini and auxiliary force took part in committing the offences and also substantially aided and abetted the Pakistani occupation force in committing horrific atrocities. It is thus submitted that commission of offence of crimes against humanity and genocide in 1971 War of Liberation of Bangladesh is an undeniable fact of common knowledge that deserves judicial notice. It was further submitted that the accused Ali Ahsan Muhammad Mujahid was the Chief of Al-Badar Bahini and thus he is responsible under the doctrine of civilian superior responsibility for the commission of offences through out the country in 1971 by the members of Al-Badar Bahini. The accused was an atrocious leader of Islami Chatra Sangha, subsequently merged to Al-Badar Bahini which was involved in the mass killing and attack directed against the civilian population constituting the offence of crimes against humanity, genocide as mentioned in section 3(2) of the International Crimes (Tribunals) Act, 1973. It was also submitted that the statement of witnesses, documents and materials collected during investigation abundantly establish that the accused abetted the commission of atrocities and also had complicity to commit such offences through out the country in 1971. The accused had physical participation to the commission of offences narrated in the Formal Charge, apart from abetment and complicity to commit offences. The allegation depicted from the commission of such unlawful acts and complicity of the accused in the commission of crimes has been well narrated in the 'Formal Charge'. The Formal Charge, the documents and statement of witnesses indicate that there are sufficient grounds of presuming that the accused was criminally liable under section 4(1) and 4(2) of the Act of 1973 for the commission of offences as mentioned in section 3(2) of the Act.


6. Submission advanced by the defence side

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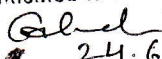
The learned counsel for the defence by filing an application seeking discharge of the accused submitted that the allegations set up in the Formal Charge do not disclose or state specificity of general particulars and the required elements to constitute the offences of crimes against humanity, genocide. The Formal Charge is based on vague and unspecified allegations and it does not disclose the mode of participation of the accused with the alleged unlawful acts. It has been submitted further that the statement allegedly made by the accused as narrated in count nos.-10.1.1 and 10.1.2 series cannot be designated as 'abetting and inciting' and those, even if taken to be true, were speeches favouring Pakistan and such statement was not linked, in any way, with commission of any particular crime as mentioned in section 3(2) of the Act. From the Formal Charge it will reveal that the accused became the chief of Al-Badar Bahini in October and he allegedly made statement and speeches as narrated in paragraph nos. 10.1.1(Ka)-10.1.1(Thha) and 10.1.2(Ka)- 10.1.2(Thha) in between 11 August to 10 December 1971 and as such how he could be connected as an abettor with the atrocities committed prior to such statement and speeches. In such case how he could be held responsible under the doctrine of civilian superior responsibility. Further, the narration made in paragraph nos. 10.1.1(Ka)-10.1.1(Thha) and 10.1.2(Ka)- 10.1.2(Thha) do not disclose causal relationship, in any manner, between the alleged statement and speeches and any particular incident constituting offences

The learned counsel by referring international jurisprudence further submitted that the 'attack' must be 'widespread' or 'systematic' in relation to the required elements to constitute the offence of crimes against humanity. The claim that the accused was the chief of Al-Badar has not been established by any cogent document. In relation to charges, incidents narrated in paragraph 1.1.3(Ka)-1.1.3(Ja) of the Formal Charge, the learned counsel argued that the Formal Charges neither contain particulars of facts nor the particulars of crime which are required under section 16(1) of the Act and this requirement is consistent with the ICC Statute (Rome Statute) and the ICCPR for ensuring due notice of the charge enabling the accused to understand and defend him properly.

On legal aspects, the learned Senior Counsel appearing for the accused further submitted that after enacting the International Crimes (Tribunals) Act 1973 there had been a tripartite agreement executed in 1974 on the strength of which 195 Pakistani war criminals (member of armed forces) were shown clemency despite the fact that they were the principal perpetrators of atrocities committed in 1971 in the territory of Bangladesh and as such without bringing them to the process of justice the present accused cannot be prosecuted.

It was further argued that apart from the Act of 1973 there had been the Collaborators Order 1972 meant to prosecute and try the local persons who allegedly collaborated the Pakistani Army in committing atrocities. But the accused was not prosecuted under the Collaborators Order 1972. Thus, it may be validly said that the 1973 Act was enacted only to prosecute those 195 Pakistani armed force members. This prosecution is politically motivated. Delay of long 40 years in bringing prosecution against the accused remains unexplained and there is nothing to show that

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the accused was listed in any manner as a perpetrator of atrocities committed in 1971, before constituting the Tribunal in 2010.

7. 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

At the outset it is to be noted that we have already resolved, by providing our considered view, the issues to be discussed below, in the case of *Chief Prosecutor Vs. Abdul Quader Molla* (ICT-BD Case No. 02 of 2012), *Chief Prosecutor Vs. Muhammad Kamaruzzaman* (ICT-BD Case No.03 of 2012) and *Chief Prosecutor Vs. Md. Abdul Alim* (ICT-BD Case No. 01 of 2012). Therefore, we consider it expedient to confine ourselves in brief reiteration on those issues.

(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. Therefore, we are disinclined to accept the proposition that the accused now immune from being prosecuted under the Act of 1973 as he was not brought to book under the Collaborators Order 1972.

(ii) *Tripartite Agreement and immunity to 195 Pakistani war criminals*

The 'tripartite agreement' of 1974 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 and the *jus cogens* principle too.

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 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. 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.

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

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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.

(iii) 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.

Admittedly, the Act of 1973 is a retrospective legislation for initiation to prosecute crimes against humanity, genocide and system crimes committed in violation of customary international law which is quite permitted. Already we have viewed that 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.

The right to move the Supreme Court for calling any law relating to internationally recognised crimes as mentioned in section 3(2) of the Act 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. Therefore, now the accused does not have right to call in question any provision of the 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.

(iv) Prosecuting 'abettor' and 'aider'

We are not with the argument advanced by 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.

On 26 April 2012, a Trial Chamber of the Special Court for Sierra Leone (SCSL) convicted the former Liberian President Charles Taylor for 'aiding and abetting' war crimes and

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crimes against humanity and has been sentenced to suffer imprisonment for 50 years by the sentencing order dated 30 May 2012. Charles Taylor was not prosecuted and tried together with any other offender or principal or actual perpetrator. 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.

(v) Delay in bringing prosecution

We reiterate our fundamental view that it is now settled that 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 crimes and crimes against humanity. 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.

It is needless to say that a prompt and indisputable justice process cannot be motorized solely by the painful memories and aspirations of the victims. Significantly 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.

There can be no recognised theory to insist that 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.

(vi) Contextual requirements of Offences

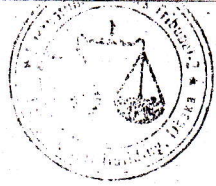
It was submitted that the offences enumerated in the Act are not well defined and as such it will cause prejudice the accused in preparing its own defence. The Rome Statute embodies elements required to constitute crimes underlying in the Statute. On the basis of flawed definition of crimes lawful prosecution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

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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. The ICC statute does not have any binding force on this Tribunal (ICT-BD). '

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**'.

'Widespread' or 'systematic' requirement is rather the outcome of the jurisprudential development through judicial pronouncements which has now been recognised necessary in characterizing the offence of crimes against humanity. However, the Tribunal (ICT-BD) 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

The statement of witnesses and the documents *Prima facie* demonstrate that the accused was an influential leader of Islami Chatra Sangha and subsequently Chief of Al-Badar Bahini who was actively associated with the Pakistani occupation Army and Razaker Bahini exercising his authority. The truthfulness of this pertinent factual issue including the fact that the accused was the chief of Al-Badar Bahini may be well adjudicated at trial only. At this stage, we are 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.

It is to be noted that we are not with the learned prosecutor that the facts as narrated in paragraph nos. 10.1.1(Ka)-10.1.1(Thha) and 10.1.2(Ka)- 10.1.2 (Thha) relate the accused with the offence of 'aiding' and 'complicity' respectively as the same are not found to have been linked with any particular incident constituting offences. However, the prosecution, in order to prove substantial allegations, may bring the facts narrated therein if those are found to be relevant at trial.

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*, particularly from the particulars of facts narrated in paragraph 1.1.3 of the Formal Charge, the added facts bringing allegation, statement of witnesses and documents submitted therewith, to presume the accused responsible for conducts that he knowingly participated, abetted and facilitated the commission

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of offences as mentioned in section 3(2) of the Act of 1973, also provided moral support to 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 Ali Ahsan Muhammad Mujahid had committed offences during the War of Liberation in 1971 as specified under section 3(2) of the Act for which he is criminally liable under section 4(1) and 4(2) 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, Ali Ahsan Muhammad Mujahid son of late Moulana Abdul Ali and late Begum Nurjahan of '*Pascchim khabashpur*' under Kotwali police station district Faridpur, at present Road No. 10, House No. -05, Flat No. 2/A, Sector-11, Police Station Uttara, Dhaka Metropolitan Police, Dhaka as follows:-

Charge 01

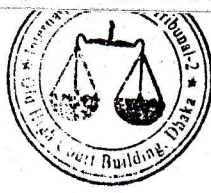
that you Ali Ahsan Mohammad Mujahid being the leader of Islami Chatra Sangha and subsequently the head of Al-Badar Bahin and or as a member of group of individuals wrote a counter article which was published on 16th September 1971 in the 'Daily Sangram' opposing the article written by Seraj Uddin Hossain, the then Executive Editor of the daily 'Ittefaq', portraying the untold sufferings caused to unarmed civilians by the local agents of Pakistani Army and also criticizing Seraj Uddin Hossain as an 'agent of India' (ভারতের দালাল). During that period the Pakistan Government had instructed to publish articles branding the freedom fighters as 'miscreants'. Seraj Uddin Hossain, a notable journalist of the country being a member of 'group of intellectuals', became target of the Jamat-E-Islami and Al-Badar Bahini and as such at 03:00 am, in the night following 10 December 1971, 7/8 youths having their face covered by 'monkey cap' equipped with rifles abducted Seraj Uddin Hossain from his rented house at 5, Chamelibag, Dhaka and he never returned nor his body was found.

Therefore, you Ali Ahsan Mohammad Mujahid are hereby charged for abetting, facilitating and contributing the actual commission of offence of '**abduction as crime against humanity**' or in the alternative, for abetting, facilitating and contributing the actual commission of offence of '**murder as crime against humanity**, by your conduct which was part of attack against civilian population and also targeting a notable member of 'intellectuals' as specified in

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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) and 4(2) of the Act.

Charge 02

That one day in the middle of May 1971 during the War of Liberation you Ali Ahsan Mohammad Mujahid being the leader of Islami Chatra Sangha and subsequently the head of Al-Badar Bahini and or as a member of group of individuals being accompanied by one Hammad Moulana of Faridpur town, 8-10 non Bengaleese including one Isahaque and Pakistani Army, with discriminatory and persecutory intent, raided and launched attack directed against the Hindu Populated villages e.g. *Baidyadangi, Majhidangi, Baladangi* with intent to destroy the 'Hindu Community' either whole or in part and caused killing of 50/60 Hindus by indiscriminate gun firing and also burnt their houses by setting fire.

Therefore, you Ali Ahsan Mohammad Mujahid are hereby charged for abetting and substantially contributing the actual commission of offence of '**persecution as crime against humanity**' by directing attack against the Hindu civilian population as specified in section 3(2) (a) (g) of the Act or in the alternative, for abetting and substantially contributing the commission of offence of '**genocide**' with intent to destroy the 'Hindu 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 one morning in the first week of June 1971 during the War of Liberation the Razakers, as a part of attack against the civilian population and also with discriminatory intent, apprehending one Ranjit Nath @ Babu Nath son of late Ramesh Chandra Nath of *Rathkhola* under Kotwali Police station, district Faridpur from near the *Khabashpur* mosque of Faridpur town brought him to Pakistani Major Akram at Faridpur Old Circuit House where you Ali Ahsan Muhammad Mujahid being the leader of Islami Chatra Sangha and subsequently the head of Al-Badar Bahini and or as member of group of individuals were also present and then on getting signal from you, after having your talk with that Major, some Razakers and non-bengaleese, with intent to kill brought him to the house of one Abdur Rashid situated to the eastern side of the 'Bihari camp' wherein he was kept confined and tortured. Later on, during night Ranjit Nath @ Babu Nath managed to escape.

Therefore, you Ali Ahsan Mohammad Mujahid are hereby charged for abetting and facilitating the commission of offence of '**confinement as crime against humanity**' by your conduct which was part of attack against the Hindu 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.

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B. H. H.
24.6.12

Judge Officer, ICT-BD-2
Dhaka District Court Building, Dhaka.

Charge 04

that on 26 July in the morning during the War of Liberation in 1971 the local Razakers abducted one Md. Abu Yusuf @ Pakhi of east *Goalchamat Khoda Bakshpur* PS Kotwali district Faridpur from the locality of Alfadanga under district Faridpur and brought him to the army camp set up in Faridpur Stadium suspecting him to be a freedom fighter. On the same day, at about 11:00 am you Ali Ahsan Muhammad Mujahid being the leader of Islamic Chatra Sangha and subsequently the head of Al-Badar Bahini and or as a member of group of individuals came to the camp and saw Abu Yusuf @ Pakhi confined there with other detainees then you told something to the army Major following which he was subjected to torture severely. The victim Abu Yusuf @ Pakhi was kept confined there for 01 month and 03 days and during the period of such confinement he was subjected to inhuman torture that resulted severe physical injury causing fracture of bones and at one stage he was shifted to the Jessore cantonment.

Therefore, you Ali Ahsan Mohammad Mujahid are hereby charged for abetting and facilitating the commission of offence of '**confinement as crime against humanity**' by your conduct which was a part of attack against the civilian population or in the alternative, for abetting and facilitating the commission of offence of '**other inhuman act as crime against humanity**' 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) and 4(2) of the Act.

Charge 05

that on 30 August at about 08:00 pm during the War of Liberation in 1971 you Ali Ahsan Muhammad Mujahid being the Secretary of East Pakistan Islamic Chatra Sangha and subsequently the head of Al-Badar Bahini and or as a member of group of individuals being accompanied by Matiur Rahman Nizami the Al-Badar Chief came to the army camp at old MP Hostel, Nakhapara, Dhaka where you started scolding Altaf Mahmud, Jahir Uddin Jalal, Badi, Rumi, Jewel and Azad who were kept confined there and then you told one army captain that before proclamation of clemency by the President they would have to be killed. Following this decision you with the assistance of accomplices killed the civilian detainees by causing inhuman torture. Dead bodies of the victims could not be traced even.

Therefore, you Ali Ahsan Mohammad Mujahid are hereby charged for participating, abetting and facilitating the commission of offence of '**murder as crime against humanity**' by your conduct which was a part of 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) and 4(2) of the Act.

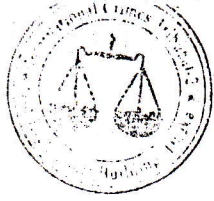
Charge 06

that during the War of Liberation in 1971 the occupation Pakistani Army set up a camp at Mohammadpur Physical Training Institute, Dhaka. The members of Razaker and Al-Badar

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Bench Officer, ICT-BD-2
Old High Court Building, Dhaka



Bahini used to receive their 'training' at that camp known as 'torture camp'. You Ali Ahsan Muhammad Mujahid being the Secretary of the then East Pakistan Islami Chatra Sangha and subsequently the head of Al-Badar Bahini and or as member of group of individuals used to visit the camp regularly with your co-leaders with intent to annihilate the 'Bangalee population', used to design planning and conspired with the senior army officers of the camp. Following such conspiracy and planning, 'intellectuals killing' was started from 10 December.

Therefore, you Ali Ahsan Mohammad Mujahid are hereby charged for abetting and facilitating the commission of offence of '**murder as crime against humanity**' by your conduct which was a part of planned attack against the civilian population as specified in section 3(2) (a) (g) of the Act or in the alternative, for abetting and facilitating the commission of offence of '**genocide**' committed targeting the 'intellectual group' with intent to destroy it 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) and 4(2) of the Act.

Charge 07

that on 13 May at about 02:00-02:30 pm during the War of Liberation in 1971 You Ali Ahsan Muhammad Mujahid being the Secretary of the then East Pakistan Islami Chatra Sangha and subsequently the head of Al-Badar Bahini and or as a member of group of individuals being accompanied by Razaker Kalubihari, Ohab, Jalal and others came to the office of the peace committee at Kahlilpur Bazar Community Center, P.S Kotwali district Faridpur by a jeep where you attended a meeting. At the end of meeting you along with your accomplices, with discriminatory and persecutory intent, launched attack upon the village '*Bakchar*' under kotwali PS directing against the 'Hindu Community'. By causing such attack villagers namely Birendra Saha, Nripen Sikder, Sanu Saha, Jogobandhu Mitra, Jaladhar Mitra, Satya Ranjan Das, Norod Bandhu Mitra, Prafulla Mitra, Upen Saha were tied up. Wife of Upen Saha requested to release her husband even in exchange of money and jewelries but the attempt became futile. Rather, following your instruction your accomplices (Razakers) killed all the apprehended civilians belonging to 'Hindu Community'. The Razakers, during the same transaction of the incident, committed rape upon Jharna Rani, daughter of Sushil Kumer Saha's sister. You and your accomplices looted and burnt the house of one Anil Saha and by such discriminatory and persecutory conducts you compelled the villagers to deport to India.

Therefore, you Ali Ahsan Mohammad Mujahid are hereby charged for participating and facilitating the commission of offence of '**murder as crime against humanity**' or in the alternative, for participating and facilitating the commission of offence of '**persecution as crime against humanity**' by your conduct which was a part of attack against the 'Hindu Community', belonging to 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) and 4(2) of the Act.

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

The aforesaid charges of crimes against humanity and genocide described under section 3(2)(a)(c)(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: *নাহি* *জিহাদ* *।*

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

Let 19. 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 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.

(A.T.M Fazle Kabir, Chairman)

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24.6.12

Bench Officer, ICT-BD-2
Old High Court Building, Dhaka.

(Obaidul Hassan, Member)

(Md. Shahinur Islam, Member)