

In the International Crimes Tribunal-1, Bangladesh
Old High Court Building,
Dhaka-1000.

Order No. 25

Order dated 28.05.2012

ICT-BD Case No.03 of 2011

Chief Prosecutor

Vs

Motiur Rahman Nizami

Accused Motiur Rahman Nizami has been produced in this Tribunal by the prison authority. Today is fixed for passing order on charge matter and as such the record is taken up for order. Before passing the order we want to provide a brief background and context of the case, its history and the arguments put forward by both the prosecution and defence before this Tribunal.

Introduction:-

International Crimes Tribunal-I (hereinafter referred to as the "Tribunal") was established under the International Crimes (Tribunals) Act, 1973 (Act No. XIX of 1973) (hereinafter referred to as the "Act") to provide for the detention, prosecution and punishment of persons for genocide, crimes against humanity, war crimes, and crimes under international law committed in the territory of Bangladesh. This Act was enacted to try the international crimes committed in Bangladesh in 1971 by Pakistan Army and auxiliary forces. This is a case bearing considerable significance for the people of Bangladesh as well as for the victims of international crimes committed in Bangladesh during the Liberation War, particularly between 25th March and 16th December 1971. As such, it is a significant moment in the legal history of Bangladesh when we are entrusted with the task to address the matter of framing the charge involving international crimes under Section 3(2) of the Act.

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Historical Context:

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

Ever since the creation of Pakistan, the Government adopted discriminatory policies backed by its bureaucracy and Army to rule over the people of East Pakistan that caused great disparity in every field including, economy, education, welfare, health, armed services, civil bureaucracy and social developments. One of the first patently discriminatory and undemocratic policies of the Government of Pakistan was manifested in 1952 when 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 recognise Bangla also as a state language that marked the beginning of historic language movement that eventually turned to the movement for greater autonomy and self-determination through the 6-point and 11-point movements and eventually the independence. Numerous Bangalees sacrificed their lives during these movements.

In the general election of 1970, the Awami League under the leadership of Bangabandhu Sheikh Mujibur Rahman won 167 seats out of 300 seats of the National Assembly of Pakistan of which 169 belonged to East Pakistan, and thus the Awami League became the majority party of Pakistan. Despite this overwhelming majority, Pakistan

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Government did not hand over power to the leader of the majority party Bangabandhu Sheikh Mujibur Rahman as democratic norms required. As a result, a populist movement started in East Pakistan to realise the mandate of the people given through the historic ballot. Bangabandhu Sheikh Mujibur Rahman in a historic speech of 7th March, 1971 called on the people of Bangladesh to struggle for freedom and independence if the people's verdict was not respected and power not handed over to the leader of the majority. The Pakistan Government did not accept the demands of the majority leader and instead on 25th March, the Pakistani Armed Forces launched an all out attack on the Bengali police, East Pakistan Rifles, Bengali members of the Army, students and on the civilian population and others under the code name 'Operation Searchlight'. Bangabandhu Sheikh Mujibur Rahman declared the independence of Bangladesh on 26th March just before his arrest by the Pakistani authorities.

Pursuant to Bangabandhu's Declaration of Independence, a provisional government-in-exile was formed on April 17, 1971 in Mujibnagar with Bangabandhu as the President of Bangladesh. In his absence, Syed Nazrul Islam was the Acting President and Tajuddin Ahmed was the Prime Minister who led the ensuing Liberation War to expel the occupying Pakistani armed forces, and to liberate Bangladesh.

With the Declaration of Independence, the war to liberate Bangladesh from the occupation of Pakistani armed forces began that ended on the 16th of December, 1971 with the surrender of all Pakistani military personnel occupying Bangladesh before the Joint Indian and Bangladeshi forces in Dhaka. In the war of liberation, almost all the people of Bangladesh 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 political parties joined and/or collaborated with the Pakistani military authorities

to actively oppose the independence of Bangladesh. Except those who opposed, the civilians, political leaders, Hindus, students, intellectuals and others who supported the Liberation War drew particular wrath of the Pakistani military and their local collaborators, as perceived pro-Indian and were made targets of attacks, killing, persecution, extermination and deportation etc.

To prosecute their policy of occupation and repression, and in order to crush the aspiration of the freedom-loving people of an independent Bangladesh, some political parties including the Jamaat-e-Islami, Muslim league (both Convention and Council), Pakistan Democratic Party (PDP) and other small parties, supported the actions of the Pakistani Government. A number of Auxiliary forces such as the Peace Committee, Razakars, Al-Badar, Al-Shams, etc. were set up to assist the Pakistani military in eliminating all those who supported or 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, Bengali intellectuals and civilian population of Bangladesh. Not only did these auxiliary forces collaborate in the crimes committed by the occupying Pakistani army, they themselves were also directly and actively involved in executing most of the alleged international crimes under the Act. The truth about the nature and extent of the atrocities and crimes perpetrated during the period by the Pakistani military and their allies came to attention of the wider world through numerous independent reports in the foreign media, reports by various international agencies, and dispatches sent home by the diplomatic officials stationed in Dhaka.

The road to freedom for the people of Bangladesh was arduous and tortuous, smeared with blood, toil and sacrifices. In the contemporary world history, perhaps no nation paid as dearly as the Bengalees did for their freedom and independence. In this process, an

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estimated 3 million (thirty lacs) people were killed, more than 2,00,000 (two lacs) women raped, about 10 million (one crore) people deported to India as refugees and million others were internally displaced. It also saw unprecedented destruction of properties all over Bangladesh.

In order to bring to justice the perpetrators of the crimes committed in 1971, the International Crimes (Tribunals) Act, 1973 was promulgated. Due to political reasons, the Pakistani Prisoners Of War were allowed to return to Pakistan upon the understanding that the Pakistan Government would try them which is yet to be done. During the liberation war, the Government of Bangladesh declared that perpetrators and collaborators of the crimes would be tried and punished after the liberation war and warned people not to take law in their own hands, and in compliance of the said declaration and in order to bring to justice the perpetrators of the crimes committed in 1971, the International Crimes (Tribunals) Act 1973 was promulgated although no Tribunal was set up pursuant to the Act until 25.03.2010.

In Bangladesh, for decades, the demand from all sections of the population, had always been an overwhelming one to ensure accountability, establish rule of law and end impunity. Responding to this overwhelming demand for justice, the Awami League incorporated in its Election Manifesto the pledge to initiate the long overdue justice process, which made all the difference in the General Election that followed, resulting in a landslide victory of the party. Then, the government established this International Crimes Tribunal on 25.03.2010 under the Act in order to prosecute the international crimes that were committed in 1971, through a process of investigation of individuals alleged to have committed these crimes regardless of their affiliations, political or otherwise.

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The Accused: The accused Motiur Rahman Nizami was born on 31.03.1943 in village-Monmothpur, Police Station-Sathia, District-Pabna. In his early life he studied in Boalmari Madrasha at Sathia and passed his Dakhil examination in 1955, then he passed Alim examination in 1959 and Fazil examination in 1961. He got his Kamil degree in Fiqh from Madrasha-e-Alia in Dhaka in 1963. He also got his graduation degree as private student in 1967 from University of Dhaka. During war of liberation he was the president of Pakistan Islami Chatra Shangha the student wing of Jamaat-e-Islami and also the chief of Al-Badars, an auxiliary force, most of the members of which were members of peace committee and Islami Chatra Shangha. He joined Jamaat-e-Islami after completion of his student life and he was Ameer of Dhaka city unit as well as member of central executive committee of Jamaat-e-Islami from 1978-1982. He was also assistant secretary general of Jamaat-e-Islami from 1983 to December, 1988. He became the secretary general of the said party in December, 1988 and he remained there till 2000, then he became the Ameer of Jamaat-e-Islami in 2000 and he is still continuing that post. He assisted Professor Golam Azam in forming the Shanti Committee, Razakars, Al-Badar, Al-Shams etc. He was elected member of parliament in 1991 and was the leader of parliamentary party of Jamaat-e-Islami from 1991 till 28 December, 1994. He was also elected a member of parliament in 2001 and he became the minister of the ministry of agriculture from 2001-2003 and thereafter, he was minister of the ministry of industries from 2003-2006.

Procedural History:- The investigation agency established under the Act began investigating the accused for crimes committed in 1971 on the basis of the complaint registered as serial no. 1, dated 21.7. 2010. During investigation upon an application filed by the prosecution, the Tribunal vide order dated 02.08.2010 passed in ICT-BD Misc. Case 01 of 2010 showed him arrested in connection with the instant case. During

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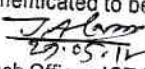
investigation he was also interrogated by the investigating officer in safe home vide order of this Tribunal. Since his arrest the Tribunal has disposed of a number of bail petitions which were disposed of in accordance with law. In addition on the prayer of the accused, the Tribunal directed the relevant authorities to ensure better treatment of the accused in the hospital as desired and also directed the concerned authorities to provide him with "heath friendly" transportation while transporting the accused from prison to hospital and this Tribunal.

After completion of the investigation the investigating officer submitted the investigation report to the chief prosecutor and on the basis of that investigation report, evidence of witnesses and documents received and collected during investigation, the prosecutors prepared the formal charge and submitted it on 11.12.2011 to this Tribunal. Upon perusal of the formal charge the Tribunal took cognizance on 09.01.2012 against the accused Motiur Rahman Nizami under section 3(2), 4(1) and 4(2) of the Act. Then this Tribunal fixed for hearing on the matter whether charge will be framed against the accused or not. The learned prosecutor Mr. Syed Haider Ali and Mr. Altafuddin Ahmed made elaborate submissions on behalf of the prosecutions while the learned defence counsels Mr. Abdur Razzak and Mr. Tajul Islam made elaborate submissions on behalf of the defence. The defence also filed an application for discharge of the accused from the case. In following paragraphs we summaries the submissions with the views of the Tribunal on the point whether charges will be framed against the accused and if framed, then on which counts.

Submission by the prosecution and the defence:-

The learned prosecutor Mr. Syed Haider Ali at the outset of his submissions drew our attention to atrocities and crimes committed by the Pakistan Army, its auxiliary forces and supporters including the members of different political parties, who actively collaborated with the

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Pakistan Army during the liberation war of 1971 in Bangladesh. It was submitted that the accused was the President of Islami Chatra Shangha, the student wing of Jamaat-e-Islami, and that he was personally involved in conspiracy and planning as well as in incitement and complicit to commit international crimes, and in crimes against humanity proscribed under section 3(2) of the Act. As President, he had superior status over the leaders, members and followers of his party and also gave orders, permissions or acquiesced in commission of crimes. He was involved in planning to perpetrate crimes and execution thereof with the leaders of Jamaat-e-Islami and through them with the Pakistani Army and authority. Moreover, he failed to discharge his superior status obligations to maintain discipline or exercise control or supervise the actions of subordinates while they committed such crimes and failed also to take necessary measures to prevent the commission of such crimes. Instead, he incited those acting under his authority, followers and others, to commit further crimes. He never restrained his followers and took any effective step to halt the crimes unleashed. It was further submitted that the accused was even personally involved in the commission of the offences which comes under the perview of section 3(2) of the Act.

It was also submitted that the documents collected during investigation and statement of witnesses establish beyond reasonable doubt that the allegations narrated in the Formal Charge were indeed committed by the accused, and in proving the same, they have ocular, documentary and other evidences to establish the offences mentioned therein committed during independent war of 1971. The offences of which the accused is liable to be charged and his superior status liability are adequately defined in the Act in sections 3(2), 4(1) and 4(2) and that the accused should be charged accordingly.

On the contrary, the learned counsel for the accused Mr. Abdur Razzak, by filing an application on 22.03.2012 to discharge the accused

emphatically argued that the purpose to enact the Act and establish the Tribunal was to prosecute only 195 prisoners of war who were all members of Pakistan Army, while for the trial of others, the Collaborators Order 1972 was promulgated pursuant to which many alleged collaborators were arrested, some of them tried and convicted. He submitted, that the said 195 prisoners of war, subject of the Act and the Tribunal, were given clemency by the government of Bangladesh, released and sent to Pakistan. When the principal and original offenders had been let go, he argued, that others who supported, collaborated, abetted cannot thus be tried for the commission of the same offence. It was further argued that the prosecution of Motiur Rahman Nizami has been for *mala fide* purpose in that only when Jamate Islami did not extend political support to the present government, did the government moved against the Jamate Islami leaders including the accused. As such he contended its being a clear case of *mala fide* and for collateral purposes and therefore the proceedings against Motiur Rahman Nizami is not sustainable in law. It was further contended that they have observed executive interferences affecting the trial because of which the process cannot continue. Moreover, trial also cannot proceed because the prosecution has not furnished reasoning as to why it has taken 40 years to start the proceedings, and in absence of such statement explaining the reasons for delay, fair trial demand that proceedings should not be allowed to continue. Mr. Abdur Razzak further submitted that in the Formal Charge, 15 counts of charges have been mentioned but on perusal of all the charges, it is clear that no prima facie case has been made therein and no relevant evidence has been provided with respect to any accusation, and maintained that not a single count speaks of an offence as such the accused should be discharged. He then placed before us that they do not deny that international crimes were committed during

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the war of liberation in 1971 but they assert that accused Motiur Rahman Nizami did not commit any of such crimes.

Finally, Mr. Razzak assailed holding of the trial under the Act on the ground of established principle of criminal law; the principle of non-retrospectivity, in that he submitted the offence was allegedly committed in 1971 whereas the Act was enacted in 1973, after alleged commission of crimes, and as such, the whole trial process is barred by law. The trial should have been held under laws which were prevailing in 1971 since the alleged crimes were committed in that year.

In response, the learned prosecutor submitted that at this stage of the process, as to whether charges will be framed or not, the submissions of the learned counsel of the accused are not relevant. He maintained that the Tribunal has to consider the Formal Charge, the statement of witnesses and other materials to decide as to whether there are materials to frame charge. Upon perusal of the Formal Charge, statements of the witnesses recorded by the investigation agency and the documents submitted therewith, if the Tribunal is of the opinion that there are sufficient materials that the accused has committed an offence under the Act, only then the charge will be framed, otherwise the accused shall be discharged. He further submitted that the offences being adequately defined and the allegations made in the Formal Charge being not vague, rather definite and clear, a prima facie case against the accused person has thus been established. He further submitted that on perusal of the Act, it cannot be said that it was enacted to try and prosecute only 195 prisoners of war. Even if this argument is accepted that the Act was promulgated for trial of 195 prisoners, still then there are no bar to try any other persons under the Act since section 3(1) categorically states that "A Tribunal shall have power to try and punish any individual or group of individuals, or any member of any armed, defence or auxiliary forces irrespective of his nationality, who commits or has committed in

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the territory of Bangladesh, whether before and after the commencement of this Act, any of the crimes mentioned in sub-section 2". He said, the amendment made in the Act in 2009 extending its jurisdiction to individual or group of individuals have been added which has further made it clear that not only the 195 prisoners of war but anyone who has committed the said offences as mentioned in section 3(2) of the Act would come under the purview of the section 3(1) of the Act and can be tried by this Tribunal. He maintained the trial has to be concluded on the basis of the Act as it stands today.

He further submitted that Collaborators Order was for trial of persons who allegedly collaborated with the Pakistan Army during 1971 liberation war. All offences mentioned in the schedule therein are offences of Penal Code but this Tribunal has to try those persons who have allegedly committed offence of section 3(2) of the Act, which are not offences of the Penal Code and as such there is no bar holding trial of this accused under the Act. He argued when the Tribunal has duly taken cognizance based on prima facie evidence found against the accused, the Tribunal should proceed to charge the accused. He further submitted that the question of clemency of 195 prisoners of war has no bearing to this process and cannot act in any way to bar the trial of this accused and as such this argument also does not stand. Then he submitted that whether the accused is the principal or main offender or that he only abetted has to be settled in trial and therefore the submission that when main accused have been released, the trial of the abettors cannot be held also does not stand. Moreover, abetment itself is an independent offence in this Act. He further submitted that the prosecution of Motiur Rahman Nizami is not at all malafide and/or for political purpose as the prosecution has proceeded only after completion of investigation by the Investigation Agency that found materials of his involvement in the atrocities committed during 1971 and submitted

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report to the prosecution. The prosecution then submitted the Formal Charge on the basis of the investigation report and other materials. He submitted, the question of malafide is a mixed question of fact and law and before examining witness, the accused cannot be discharged on the ground of mala fide. He pointed out that the question of non-retroactivity having been discussed and decided by this Tribunal in two earlier cases of Delwar Hossain Sayeedi and Salahuddin Qader Chowdhury resulting in rejection of the pleas of the accused persons, the same pleas cannot be considered as the issue has been conclusively decided. Finally, he submitted that the 15 counts submitted by the prosecution in the formal charge are all well founded allegations and whether there are evidence or not in support of those counts is a matter of evidence and cannot thus be decided at this moment, and therefore the discharge petition filed by the accused is liable to be rejected and charge may be framed against the accused. He urged the Tribunal to frame charge against the accused upon perusal of the Formal Charge, the statement of witness and other materials submitted.

We have heard the learned counsel for the accused and also the learned prosecutor and perused the materials on record. As regards the submission that Act was enacted to try 195 Pakistani prisoners of war and Collaborators Order was promulgated for trial of other persons, and that as such the trial under the Act for a non-military person is not legal; we are of the view that the Act is very clear in this regard. It was enacted to provide for detention, prosecution and punishment of persons for genocide, crimes against humanity war crime and other crimes under international law and that any individual or group of individuals, or any member of any armed defence or auxiliary forces, irrespective of his nationality, who commits or has committed in the territory of Bangladesh whether before or after the commencement of this Act, any of the crimes mentioned in the Act, could be tried. It is a fact that

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initially 195 prisoners of war were screened out for trial but the Act does not indicate that other persons who committed the said offences cannot be tried. After the amendment made in 2009, where individual or group of individuals were brought under the Act's jurisdiction, making it further clear that any person who is alleged to have committed offences could be tried under this Act and as such, on this basis, the trial can be held under the Act. The Collaborators Order, on the other hand, was promulgated to try the collaborators for committing different offences of Penal Code. And as such it cannot be said that the accused being a Bengali cannot be tried under this Act as the allegations are clear and comes under the purview of section 3(2) of the Act and not under the Penal Code under Collaborator's Order.

With regard to the clemency extended to the 195 prisoners of war, it is stated that the said clemency, if at all, apply only to the said prisoners of war, and not to others. Moreover, this clemency given to the prisoners of war does not in any way debar the trial of the present accused in any manner. And in regard the submission that when principal perpetrators have been released, the associates cannot be tried does not also stand because it is evidence and evidence alone that will determine who was the principal offender and who was an associate. Moreover, abetment has been made a specific and independent offence in the Act and on this ground alone, the preferred argument on this point also does not stand. Mr. Razzak further argued that the proceeding against the accused Motiur Rahman Nizami is malafide and for political purpose. In this case, there is no allegation that the accused is being tried as Amir of Jamaate-Islami. Rather we are trying to determine whether the accused Motiur Rahman Nizami has committed any offence under section 3(2) of the Act. On the question of this case being malafide, which is a combination of both fact and law, this cannot be determined without taking evidence. If on evidence it is found that this proceeding is a

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malafide proceeding then the accused will be released but it cannot be said at this stage that the proceeding is a malafide one and the accused is to be released. Mr. Razzak also submitted that the proceeding has being interfered by the executive and since it is being held after 40 years, he cannot be tried. In criminal proceedings, time is not a bar. We are to find only if the accused has committed any offence under this Act 40 years ago and that is dependent on evidence. Regarding the executive interference, we note here that we are receiving news reports from different corners in favour as well as against the proceedings but such reports do not and cannot in any way influence this Tribunal and as the Tribunal is an independent entity and is proceeding with this case independently and without any influence from any quarter, this point cannot come in aid of the defence. Mr. Razzak then submitted that in 61 counts mentioned in the formal charge, no prima facie case is made out. We have gone through the different counts and cannot find that the submission of Mr. Abdur Razzak possesses any substance. The allegation against the accused is that he has conspired with the occupation forces, planned, incited and was also complicit and responsible for the commission of crimes in 1971 by making speeches, giving directions, making press comments and by meeting with heads of different civilian and army administration and also he was personally involved in the crimes mentioned in section 3(2) of the Act and thus the submission that no prima facie case is available does not carry any weight.

With regard to retrospectivity of the offence, in the earlier orders passed in the case of Mr. Delowar Hossain Sayeedi and Mr. Salahuddin Qader Chowdhury, we discussed elaborately on this particular issue and concluded that the trial can be held for offences committed in 1971 under this Act. And now we do not intend to repeat those discussions in this order. As such Motiur Rahman Nizami can also be tried under this Act of 1973 for commission of offence in 1971. The word individual or

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group of individuals were included in 2009. We determined in the case of Salahuddin Qader Chowdhury that if a person can be tried for the offence committed in 1971 by the Act of 1973 then he can also be tried for the offence committed in 1971 by the Act of 1973, amended in 2009. As such the question of retrospectivity does not arise here for the purpose of debarring the trial of Motiur Rahman Nizami under the Act. Mr. Razzak has further placed some reported decisions of our national courts as well as from the foreign jurisdiction in support of his submissions. Those decisions or similar decisions have been considered by this Tribunal earlier and we arrived at those findings in the case of Delowar Hossain Sayeedi and Salahuddin Qader Chowdhury. Moreover, we have observed that if after taking of evidence we find that it requires reconsideration of all these findings, then, we will consider them. We have already found in the two earlier cases that the definitions of the crimes in this Act are quite clear and complete without any ambiguity. The crimes under the Act are adequate in all respect and therefore it is not necessary to visit with recent notions developed by the statutes of various international Tribunals. As regards nexus between armed conflict and crimes against humanity, we are of the view that the notion of armed conflict with crimes against humanity is not required under the Act.

In view of the above discussion, we are of the opinion that the discharge petition filed by the accused Motiur Rahman Nizami bears no merit in the eye of law and thus is liable to be rejected.

We have perused the Formal Charge, other documents and statements of witnesses upon which the prosecution intends to rely upon and considered the submissions made by both the sides on those materials. We are of the opinion that there are sufficient grounds to presume that the accused Motiur Rahman Nizami has committed offences under section 3(2), 4(1) and 4(2) of the Act and as we find that

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there is a prima facie case against the accused, charges will be framed against him in the following manner:

Charges:

We, Justice Md. Nizamul Huq, Chairman, Justice Anawarul Haque and A.K.M Zaheer Ahmed, Members of the International Crimes Tribunal-1, hereby charge you Matiur Rahman Nizami, son of late Md. Lutfor Rahman of village-Monmothpur, Police Station-Sathia, District- Pabna, at present -House No. 60, Road No. 18 Banani, Police Station- Gulshan, District-Dhaka as follows:

Charge Number 1:

That on 4.6.1971 Kasim Uddin, the Head Moulana of Pabna Zila School, was arrested by Pakistan Army from "Moslem Kha Te Matha" as he was perceived to be a supporter of the campaign to free Bangladesh of Pakistani occupation, and a social worker; you intended to eliminate him and at your instigation, he was arrested. After arrest, he was taken to the army camp at Nurpur WAPDA powerhouse in Pabna town, and there, in your presence, he was severely tortured. Later, on 10.6.1971 he was taken to the bank of Isamoti River along with two other persons. Then they were fired at and all three were killed. You were clearly responsible for causing arrest, detention, torture and killing of the above victims and in this regard, commission of the crimes specified in section 3(2) (a) of the Act.

Through your above acts and commissions, you caused arrest, detention, torture and murder of above victims as crimes against humanity specified in Section 3(2)(a) of the Act, and therefore you are charged under section 3(2)(a) read with section 4(1) and section 4(2) of the Act which is punishable under section 20(2) of the Act.

Charge Number 2:

That on 10.05.1971, you invited the inhabitants of village Baousgari under Sathia thana, Pabna, to gather, at around 11.00 a.m., at

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Baousgari Ruposhi primary school for a meeting, where you made a speech telling the villagers that soon Pakistan Army will arrive there to secure "peace" in the area. Indeed, on 14.05.1971 at about 6.00/6.30 a.m. the members of Pakistan army arrived there along with the Razakars and Asad, your accomplice. They surrounded the villages of Baousgari Ruposhi and Demra and then picked up about 450 civilians who were all shot-at and killed. Those killed, amongst others, were 1) Asgar Ali Pramanik, 2) Wazuddin Pramanik, 3) Ahes Fakir, 4) Afil Fakir, 5) Jobed Fakir, 6) Aken Fakir, 7) Abed Fakir, 8) Azhar Pramanik, 9) Jamal Uddin Pramanik, 10) Ofaz Uddin, 11) Abdul, 12) Moksed Ali Khan, 13) Khorshed Pramanik, 14) Jomiron, 15) Sonia Pramanik, 16) Hossain Ali, 17) Ismail Hossain Kha, 18) Bazlu Fakir, 19) Khude Roy, 20) Balaram Roy, 21) Dilip Kumar Ray, 22) Monindra Nondi, 23) Mahmood Ali, 24) Jabbar, 25) Abul Hossain, 26) Fazar Ali, 27) Knau Khan, 28) Kasim Uddin Khan, 29) Shahid Jadu Molla, 30) Hossain Molla, 31) Torap Ali, 32) Mohim Pramanik, 33) Alam Pramanik, 34) Moyeen Khan, 35) Khobir Ali, 36) Yusuf Ali, 37) Korban Ali, 38) Birendranath Sutrodhar, 39) Haren Chandra, 40) Anonto Ray, 41) Dr. Jitendranath Ray, 42) Nirendranath Roy, 43) Robindronath Ghosh, 44) Hiralal Das, 45) Barun Das, 46) Thakur Das Ghosh, 47) Nilmoni Talapatra, 48) Amalendranath Roy, 49) Nirmalendranath Roy. Before killing, the victims were compelled to stand together beside a large ditch. The entire operation was carried out pursuant to pre-arranged plan to indiscriminately eliminate civilians.

Killings over, the army and Razakars then raped about 30-40 women, as a result of which, many of the rape victims were forced to leave the country and as such effectively deported to India as refugees. The said Razakars, comprised of your followers, were organized under your direction. Your meeting at Bousgari Ruposhi Primary School on 10.05.1971, prima facie establishes that the said crimes of 14.05.1971

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were pre-planned and commissioned with your knowledge, and that you were responsible for conspiracy, killing, raping and deportation of the said civilian victims.

Through your above acts and commissions, you conspired to commit crimes under section 3(2)(g) of the Act, and caused murders, rapes and deportation of above victims as crimes against humanity specified in Section 3(2)(a) of the Act, and therefore you are charged under section 3(2)(a) and 3 (2)(g) read with section 4(1) and section 4(2) of the Act which is punishable under section 20(2) of the Act.

Charge Number 3:

From beginning of May, 1971, as a leader of Islami Chattra Shangha, you along with other leaders of Jamate-Islami regularly paid visit to Physical Training Institute, Mohammadpur, Dhaka, which was turned by Pakistan army into a training center for various auxiliary forces including Razakars and Al-Badar. The Center was used as a detention camp and torture center. It quickly earned notoriety and because mere utterance of its named chilled spine of the people in 1971 as it was killing ground and victims were always killed after brutal torture. It was also a center where practical arrangements were made to eliminate victims, plan drawn and executed.

As a Chief of Al-Badar Bahini, during your visits, you also conspired there with the army officers in order to commit different international crimes against the Bengalis, as a result of which throughout the country the auxiliary forces and the Pakistan army committed different international crimes.

Your visits to the torture and killing ground at the Physical Training Institute, Mohammadpur, Dhaka as leader of Islami Chattra Shangha and Al-Badar Bahini to conspire to commit crimes under section 3(2)(g) of the Act, confirmed and clearly demonstrate your complicity to the international crimes committed there.

Through your above acts and commissions, you conspired to commit crimes under section 3(2)(g) of the Act, and were complicit in torture, murder and rape committed there, and also for the trainings given to auxiliary forces who went on to commit further crimes of torture, murder and rape constitute crimes against humanity specified in Section 3(2)(a) and 3(2)(h) of the Act, and therefore you are charged under section 3(2)(h), section 3(2)(g) and section 3(2)(a) read with section 4(1) and section 4(2) of the Act which is punishable under section 20(2) of the Act.

Charge Number 4:

That along with a group of Razakars you went to the village Karamja and reminded the villagers that they will face consequences for not voting in your favor in the last election. Then on or about 24/25 April, 1971, on your direction and planning, you and others, along with local Razakar Afzal with help of other Razakars, killed Habibur Rahman Sarder of Purbo Karamja at the bus stand allegedly for helping the freedom fighters. Thereafter, sequence to your same plan, in early morning on 08.05.1971, member of your Al-Badar Bahini, Rafikunnabi Bablu along with Razakars reached the village Karamja with Pakistani military forces and surrounded the house of Megha Thakur, and started indiscriminate firing. Eventually, 1) Megha Thakur, 2) Sosthi Halder, 3) Adu Halder, 4) Karu Thakur, 5) Kartik Halder, 6) Suresh Chandra Halder, 7) Deju Halder 8) Mohammad Fakir Chand, 9) Santi Halder and 10) Murali Das were detained. They were directed to stand on a queue and then shot at and killed. Tara Halder was injured and he somehow managed to escape. Later on, members of the Pakistani military forces with the help of Razakars Asad, Muslem and Afjal raped Shebani, the daughter of Megha Thakur, son's wife and two other Muslim women. After departure of the Pakistani Army, the Razakars looted the

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belongings of Megha Thakur and destroyed the house of Wahed Pramanik by setting it on fire.

Thus, through your above acts and commissions, you conspired to commit crimes under section 3(2)(g) of the Act, and were complicit in murders, rapes, looting and destruction of properties committed in the village Karamja that constitute crimes against humanity as murder, rape and persecution specified in Section 3(2)(a) and 3(2)(h) of the Act, and therefore you are charged under section 3(2)(h), section 3(2)(g) and section 3(2)(a) read with section 4(1) and section 4(2) of the Act which is punishable under section 20 (2) of the Act.

Charge Number 5:

That at about 11.00 a.m. on 16.4.1971 with your help, your associates and Pakistan military forces attacked villages Arpara and Vutergari under Ishwardi Police Station and killed 21 unarmed civilians including 1) Hafez Omar Ali, 2) Abdur Rab, 3) Palan Sheikh, 4) Ahad Sheikh, 5) Hafez Omar Sheikh, 6) Abdur Rab Shiekh, 7) Jabbar Shiekh, 8) Jindar Sheikh, 9) Seraj Sheikh, 10) Sabir Sheikh, 11) Fatik Sheikh, 12) Nijamuddin Mollik of village arpara 13) Rustom Ali Mrida, 14) Jafor Mal, 15) Abdul Gafur Mal, 16) Waj Pramanik, 17) Asim uddin Pramanik, 18) Kasim uddin Pramanik of village Vutergari and 19) Ayej Fakir, 20) Reju Sarder of village patila khali and Kulsum Baoa of village Naricha. Many others too were killed, houses looted and then destroyed by fire.

Through your above acts and commissions, you were clearly complicit in murder and persecution of above victims as crimes against humanity specified in Section 3(2)(a) and 3(2)(h) of the Act, and therefore you are charged under section 3(2)(h), section 3(2)(a) read with section 4(1) and section 4(2) of the Act which is punishable under section 20(2) of the

Act.

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Charge Number 6:

That at about 3.30 a.m. on 27.11.1971, you along with Razakars and members of Pakistani military forces raided the house of Dr. Abdul Awal and other adjacent houses in the villages Dhulaura, on the pretext to find out freedom-fighters. At about 6.30 a.m. you along with your accomplice Razakars and members of Pakistani military got hold of number of men, women and children, and brought them to the field of Dhulaura School. Then they were shot at indiscriminately resulting in murder of about 30 persons.

After departure of members of Pakistani military, you along with your accomplices Razakars caught 22 other persons who survived from the hands of Pakistani military and took them to the bank of river Isamoti. All of them were bayoneted and killed. All the victims of this operation were unarmed civilians.

Through your above acts and commissions, you were clearly involved in and responsible for murder of above victims as crimes against humanity specified in Section 3(2)(a) of the Act, and therefore you are charged under section 3(2)(a) read with section 4(1) and section 4(2) of the Act which is punishable under section 20(2) of the Act.

Charge Number 7:

That after midnight on 3.12.1971, on receiving information from you and the Razakars, the Pakistan Army surrounded the village Brishalikhha and arrested Sohrab Ali from his house at about 5.30 in the morning. He was brought on to the road and tortured inhumanly, and asked questioned about whereabouts of his son Mohammad Abdul Latif Selim. Failing to extract information, he was shot-at and killed in presence of his wife and children.

Through your above acts and commissions, you were clearly complicit in torture and murder of the above victim as crimes against humanity specified in Section 3(2)(a) and 3(2)(h) of the Act, and

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therefore you are charged under section 3(2)(h), section 3(2)(a) read with section 4(1) and section 4(2) of the Act which is punishable under section 20(2) of the Act.

Charge Number 8:

That on August 30, 1971, you as President of Islami Chattra Sangha and Head of the Al Badr Bahini, accompanied by Ali Ahasan Mujahid, Secretary of the East Pakistan Islami Chattra Sangha, visited the Army Camp at the Old MP Hostel in Dhaka, where you verbally abused detained Jalal, Bodi, Rumi, Jewel and Azad. You told the Pakistani Captain there to kill all of them before the President declares the general amnesty. Subsequently, except one, all of them were killed following your suggestion.

Thus, through your above acts and commissions, you have committed the crime of murder of the above victim as crimes against humanity specified in Section 3(2)(a) of the Act, and therefore you are charged under section 3(2)(a) read with section 4(1) and section 4(2) of the Act which is punishable under section 20(2) of the Act.

Charge Number 9:

That on 3.12.1971 based on information supplied by you and the Razakars, the members of Pakistani military, past midnight, surrounded the village Brishalikha. After committing other crimes in the village, and in order to destroy in whole or in part the members Hindu religious group, with your help, members of Pakistani military and the Razakars killed (1) Profulla, (2) Vadu, (3) Manu, (4) Sosthi Pramanik, (5) Gyanendranath Hawlader, (6) Paltu and in total about 70 Hindus. Also, 72 houses of the village were set alight and destroyed.

Through your above acts and commissions, you have committed the crime of genocide as you intended to eliminate the above victims and others, in whole or in part, members of Hindu religious group as crime of genocide specified in Section 3(2)(c)(i) of the Act, and crime of

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persecution as crimes against humanity under section 3(2)(a) of the Act and therefore you are charged under section 3(2)(c)(i) and section 3(2)(a) read with section 4(1) and section 4(2) of the Act which is punishable under section 20(2) of the Act.

Charge Number 10:

That at the start of the liberation war, Onil Chandra Kundu along with his parents, brothers and sisters left the country and went to India as refugee for safety. However, in august 1971, he came back to his village Sonatala under police station Sathia You obtained information that he allegedly was taking part in liberation war; on your direction, the local Razakars destroyed their house and many other houses by setting-on fire.

Through your above acts and commissions, you have thus committed the crime of persecution as crimes against humanity specified in Section 3(2)(a) of the Act, and therefore you are charged under section 3(2)(a) read with section 4(1) and section 4(2) of the Act which is punishable under section 20(2) of the Act.

Charge Number 11:

That on August 03, 1971, during a meeting of the Chittagong City unit of the Islami Chattra Sangha held at the Muslim Institute of Chittagong, you as the President of the Pakistan Islami Chattra Sangha and the person holding all powers over fronts and subsidiaries opened by the Islami Chattra Sangha, stated that Pakistan was the house of Allah. You stated that Allah had protected Pakistan repeatedly and would do so in the future as well. Furthermore, you went on to say that there was no power on earth that could destroy Pakistan. You stated that Allah had taken custody of Pakistan through the Pakistan Army.

Through this speech invoking almighty Allah you intended to exploit religious sentiment of the people and incited the innocent and pious Muslims to commit crimes by acting against the Bangalees who

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were struggling to oust Pakistani occupation and auxiliary forces from Bangladesh. Pursuant to your such incitements, Islami Chattra Shangha, Al-Badar, Razakars and others carried out numerous widespread and systematic attacks throughout the country resulting in murder, torture, raping of civilians.

Moreover, during the above-mentioned meeting, Abu Naser, the President of the Chittagong University unit of Islami Chattra Sangha stated that there would never be any unity with Hindus as created a separate country Pakistan at the cost of the sacrifice of twenty lakh lives. Your presence and silence during such an inciting hateful speech confirms your intention to incite.

Through your above acts and commissions, you have thus committed the crime of incitement specified in Section 3(2)(f) of the Act, and therefore you are charged under section 3(2)(f) read with section 4(1) and section 4(2) of the Act which is punishable under section 20(2) of the Act.

Charge Number 12:

That on August 22, 1971, you during a speech given at a meeting organized in remembrance of Al Madani held at the Islamic Academy Hall, you stated that taking revenge for the Al Madani's blood would only prove their respect for Al Madani. You further stated that the taking of such revenge would only be possible by uprooting the enemies of Islam. You cautioned the audience by stating that the history of Islam was not only about people losing their lives, but were also about the destroying of Islam's enemies and the becoming of martyrs and upholding the principles of Allah. You clearly stated that those persons who wanted a separate Pakistan were also those very persons who wanted to uproot Islam from Pakistan. You mentioned that the enemies of Islam had taken up arms and urged everyone to follow the path left by Madani and dive into Jihad. This speech given by you solely intended to

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gravely incite minds of innocent people, members of your political party to go after and eliminate those who are struggling to free Bangladesh from Pakistani occupation, terming them as enemies of Pakistan and thus commit crimes under section 3 (2)(f) of the Act.

Thus through your above acts and commissions, you have committed the crime of incitement specified in Section 3(2)(f) of the Act, and therefore you are charged under section 3(2)(f) read with section 4(1) and section 4(2) of the Act which is punishable under section 20(2) of the Act.

Charge Number 13:

That on September 08, 1971, during your speech given the Arts Building premises at a gathering of students organized by the Dhaka City unit of Islami Chattra Sangha on the occasion of the Defence Day, you stated that all members of the Islami Chattra Sangha were fully committed to protecting every single inch of their country. You further stated that such members were even prepared to strike on the main land of India for the sake of protecting Pakistan and urged the authorities to grant permission to the members of the Islami Chattra Sangha in this regard. You stated that the main enemy of Pakistan was India and undertook oaths of all those present that they would eliminate the persons who were collaborating with India. This was a highly inciting speech made you intended to affect innocent people to incite them and members of your political party to take revenge and eliminate those struggling to free Bangladesh from occupation of Pakistani military forces who you consider collaborate with India and as such, target of attacks and commission of crimes under the Act.

Thus through your above acts and commissions, you have committed the crime of incitement specified in Section 3(2)(f) of the Act, and therefore you are charged under section 3(2)(f) read with section 4(1)

and section 4(2) of the Act which is punishable under section 20(2) of the Act.

Charge Number 14:

That on September 10 of 1971, you gave a speech addressing Razakars at the Jessore district Razakars headquarters during which you urged the Razakars to be fully aware of their holy duties at this time of national crisis by emphasizing upon verses 111 and 112 of Suraah Toubah of the Holy Quran. These two verses meant that Allah had surely purchased the life and soul from pious people in exchange for which there was heaven and that it was the duty of those pious persons to fight along the path set by Allah during which they would get killed and sometimes be killed. By quoting the Holy Quran and invoking religious sensitivities, you incited the members of the Razakars to take revenge and eliminate those fighting to free Bangladesh from Pakistani occupation, and thereby to commit crimes under the Act.

Thus through your above acts and commissions, you have committed the crime of incitement specified in Section 3(2)(f) of the Act, and therefore you are charged under section 3(2)(f) read with section 4(1) and section 4(2) of the Act which is punishable under section 20(2) of the Act.

Charge Number 15:

That during the period of liberation war, you frequently visited the Razakar camp situated at Sathia Pilot High School and conspired with the Razakar commander Samad Miah at his office to commit crimes. As a result such conspiracies, those Razakars have committed different crimes under the Act in the locality and you had complicity in those offences.

Thus through your above acts and commissions, you have committed the crime of conspiracy to commit crimes specified in Section 3(2)(g) of the Act, and were complicit in crimes committed under section

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3(2)(h) and therefore, you are charged under section 3 (2) (g), and section 3(2)(h) read with section 4(1) and section 4(2) of the Act which is punishable under section 20(2) of the Act.

Charge Number 16:

That throughout the period when crimes under section 3 (2) of the Act were committed in Bangladesh, you as President of Islami Chattra Sangha and Head of infamous Al-Badar, an auxiliary force, that committed said crimes all-over Bangladesh under the Act over the period, but when defeat of Pakistani occupation and auxiliary forces were imminent, your organization Islami Chattra Sangha and Al-Badar mounted Gestapo like attacks to devoid Bangladesh professionals and intellectuals, amongst others, and launched mortal blow to free and independent Bangladesh, by selective elimination of respected professionals and intellectuals, found their homes, dragged out, often blind-folded, tortured, murdered and their bodies then dumped in mass-graves and other places. Such attacks were largely carried out on or around 14 December 1971, hours before victory of Bangladesh from occupation of Pakistani and auxiliary forces. These well orchestrated and finely executed plans to eliminate a group of individuals who were all members of a national, ethnic and racial group.

Through your above acts and commissions, you have committed the crime of genocide as you intended to eliminate the above victims and others, in whole or in part, as members of national, ethnic and racial group as crime of genocide specified in Section 3(2)(c)(i) of the Act, and therefore you are charged under section 3(2)(c)(i), read with section 4(1) and section 4(2) of the Act which is punishable under section 20 (2) of the Act

Thus, you have committed the offences, under different provisions of section 3(2) and section 4 of the Act, which are punishable under section 20(2) of the Act and within the cognizance of this Tribunal. And

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we hereby direct you to be tried by this Tribunal on the said charges.
You have heard and understood the aforesaid charges.

Q Are you guilty or not-guilty?

Ans. Not guilty.

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

To 01.07.2012 for opening statement of prosecution and examination of prosecution witnesses. The trial shall be continuing on every working days until further order. The Defence Counsel is also directed to submit a list of witnesses, if any, along with four sets of documents thereof, which the defence intends to rely upon by the date fixed.

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J. A. Alam
27.05.12
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