

THE BANGLADESH INTERNATIONAL CRIMES TRIBUNAL OBSERVER

Issue No. 12 ■ Weekly Digest ■ 7-11 April 2013

Asian International Justice Initiative (AIJI), a project of East-West Center and UC Berkeley War Crimes Studies Center*

I. OVERVIEW

This week Tribunal 1 continued to hear the Defence's Closing Arguments in the *Gholam Azam* case. The Defence concluded their coverage of Charges 3 and 4, and requested one additional day to complete their arguments. The Defence however did not attend proceedings during hartal days. In the *Salauddin Qader Chowdhury* case, the Tribunal heard the testimony of Prosecution witness 25. Additionally, the Prosecution submitted the Formal Charges against Mubarak Hossain and both Parties submitted their arguments regarding the impending of indictment of Hossain.

TRIBUNAL 1: CASES IN SESSION THIS WEEK

- *SALAUDDIN QADER CHOWDHURY*
- *GHOLAM AZAM*
- *MUBARAK HOSSAIN*

In Tribunal 2 the Defence for Ali Ahsan Mohadded Mujahid began their cross-examination of Prosecution witness 17, the Investigation Officer. The case of *Kamaruzzaman* was repeatedly rescheduled for the Defence's Closing Arguments. However, the Senior Defence counsel did not attend on hartal days, and therefore the case was adjourned until the following week. In the case against Abdul Alim, the Prosecution conducted the examination-in-chief of Prosecution witnesses 14 and 15.

TRIBUNAL 2: CASES IN SESSION THIS WEEK

- *KAMARUZZAMAN*
- *MUJAHID*
- *ABDUL ALIM*

It should be noted that hartals were called for the 8, 9, 10, and 11th of April. Due to security concerns, our researchers are unable to attend proceedings on hartal days. Therefore our coverage of those days is compiled from media sources as well as discussion with the Defence and Prosecution.

II. TRIBUNAL 1: DETAILED WEEKLY CASE SUMMARIES

CHIEF PROSECUTOR VS. SALAUDDIN QADER CHOWDHURY

The Tribunal heard the Prosecution's examination-in-chief of Prosecution witness 25, Abu Taher Chowdhury, and Prosecution witness 26, Md Solaiman.

Chief Prosecutor vs. Salauddin Qader Chowdhury

Examination-in-Chief of Prosecution Witness 25

Abu Taher Chowdhury, a former freedom fighter, testified that he learned toward the end of July 1971 that Saleh Uddin, house tutor to Abdul Motaleb Chowdhury, had been detained by UP Chairman Shamsu of the nearby village, the Pakistani army, and others. The witness stated that he learned that Saleh Uddin had been taken to Fazlul Qader Chowdhury's home at Goods Hill. Abu Taher also testified that he planned to rescue Saleh Uddin, but was unable to do so. Therefore he went to the leaders of the Muslim League in his village, Badsha Miah Saudagar and Nurul Huda Qaderi, and asked them to help rescue Saleh Uddin. He testified that Badsha Miah Saudagar and Nurul Huda Qaderi went to Goods Hill the next day in the morning, and were able to negotiate Saleh Uddin's release. The witness testified that, after Saleh Uddin returned, he told them that Salauddin Qader Chowdhury and others had beat him because he would not reveal the whereabouts of freedom fighters. Abu Taher testified that Saleh Uddin had removed his Panjabi (long loose shirt) to show the injuries he had sustained. The witness stated that the Investigating officer interviewed him on 1 July 2011. He identified Salauddin Qader Chowdhury in the dock.

Cross-Examination of Prosecution Witness 25

The Defence questioned Abu Taher Chowdhury about personal details and his knowledge of the alleged victim, Saleh Uddin. He stated that in 1971 Saleh Uddin was a student of Chittagong University, but he did not know what year of studies the victim had completed at that time. The witness also could not say whether Saleh Uddin had been a resident student at Alaol Hall of the Chittagong University or not. The also questioned the witness about the political situation in 1971, in particular whether he knew about divisions within the Muslim League, and the roles of Shamsu Miah, Badsha Saudagar and Nurul Huda Qaderi Maizha Miah within the League. The witness simply said they were supporters of the Muslim League, but he did not know whether they supported the Kaiyum Muslim League in particular. Abu Taher asserted that Saleh Uddin was the teacher of Motaleb Miah's three sons in 1971, including Harun-ur-Rashid. He admitted that all three sons of Motaleb Miah are still alive along with the two daughters of Motaleb Miah.

The Defence posed numerous questions about the political affiliations of various persons, and asked whether the witness was aware of those allegiances. They also suggested that the witness was not a freedom fighter, and had lied in claiming that he attempted to

determine Saleh Uddin's whereabouts, or planned a rescue. The Defence also alleged that he did not tell the Investigating Officer about these plans, or even about knowing that Saleh Uddin had been taken to Goods Hill. The witness denied these allegations, but was unable to remember the name of the person who told him about Saleh Uddin's abduction. He denied that he read it in a book.

The Defence suggested that Saleh Uddin was not actually abducted or persecuted at Goods Hill. The witness admitted that he could not definitively give the date of the incident. He denied that Saleh Uddin was captured with arms by the Pakistani Army, and taken from Jamal Khan to the Chittagong Circuit House. He denied that Badsha Miah and Nurul Huda Qaderi actually freed Saleh Uddin from Chittagong Circuit House. He denied that Saleh Uddin did not tell him about the incident and that Shamsu Chairman captured Saleh Uddin due to a personal conflict. The witness also denied that he was lying about being a freedom fighter. He denied that he was providing false testimony at the insistence of the Hindu, Buddha, Christian Parishad.

Examination-in-Chief of Prosecution Witness 26

Prosecution witness 26, Md Solaiman, confirmed that Saleh Uddin worked and lived at the house of Abdul Motaleb Chowdhury as a house tutor. Towards the end of July 1971 he learned that Saleh Uddin had been taken to Goods Hill by Shamsu, the Pakistani Army, and some Razakars. He testified that Harun, a student of Saleh Uddin, found out about his teacher's abduction, and went to Goods Hill along with Badsha Miah Saudagar and Shamsul Huda Maizha Miah. The witness said they were able to bring back Saleh Uddin from Goods Hill. Solaiman testified that Solaiman and others went to visit Saleh Uddin after Saleh Uddin's return. Solaiman reportedly stated, in front of everyone present, that he had been persecuted based on the decision of Fazlul Qader Chowdhury and Salauddin Qader Chowdhury. Solaiman testified that he had been interviewed by the Investigating Officer on 1 July 2011. He identified Salauddin Qader Chowdhury in the dock.

Cross-Examination of Prosecution Witness 26

The Defence questioned Md Solaiman about his personal details including his schooling, age, profession and affiliation with Prosecution witness Abu Taher. He stated that Abu Taher Chowdhury (PW-25) is his uncle. He testified that he was 13 or 14 years old in 1971. The Defence asked him about his knowledge of the area where the incident occurred, and his connection with Motaleb and Chairman Shamsu. Solaiman stated that he was interviewed by the Investigating Officer in the house of Motaleb Chowdhury, and that his uncle, Humayon, and others were present during the interview. The witness stated that he is a supporter of BNP.

Solaiman testified that he did not go to the Chittagong Circuit House or Stadium in 1971. He additionally testified that he had not met or seen Salauddin Qader Chowdhury in person before 1979. He stated that, from 1979 until the present day, Salauddin Qader Chowdhury has been an elected member of Parliament. He thought that in the last

election Salauddin Qader Chowdhury may have campaigned for Earshad Ullah. He noted that most people know Salauddin Qader Chowdhury as a renowned politician. The witness claimed that he was not involved in student politics. He denied that he campaigned for Moinuddin Khan Badol in the last election.

The Defence suggested that Solaiman did not tell the version of events that he had previously testified to when being interviewed by investigators. The witness denied that Saleh Uddin was actually captured with arms on Jamal Khan road and taken to the Chittagong Circuit House, and that Badsha Miah and Nurul Huda Qaderi later freed him. He could not give a definitive date for the alleged incident, but claimed that it was around the end of July.

CHIEF PROSECUTOR VS. GHOLAM AZAM

The Defence continued their Closing Argumentsⁱ this week, addressing Charge 3 for incitement and Charge 4 for complicity.

Charge 3ⁱⁱ: Incitement

Charge 3 alleges 28 counts of incitement. However, as with Charges 1 and 2, the charge does not specify which crimes under Section 3(2) Gholam Azam incited others to commit. The Defence and Prosecution have both tended to focus their arguments around Crimes Against Humanity and Genocide. Therefore the Defence's Closing Arguments on Charge 3 addressed both incitement to commit Genocide and Crimes Against Humanity. They presented general legal arguments before addressing each alleged count.

Incitement to Commit Genocide

The Defence argued that, given the context of censorship surrounding news reports, the testimony of both Prosecution and Defence witnesses, and the submitted Exhibits, it is clear that Gholam Azam's statements cannot be interpreted as targeting members of the Hindu community, the Bengali civilian population or supporters of the Awami League. Secondly, the Defence argued that the Charge Framing Order does not adequately specify how Gholam Azam prompted, provoked or instigated criminal action, nor has the Prosecution brought any evidence on record to show that an identified perpetrator was so instigated, prompted or provoked into committing genocide. Thirdly, the Prosecution has made no attempt to establish that Gholam Azam had the required *intent* to destroy Hindus, members of the Awami League or the Bengali civilian population. Finally, Counsel argued, the Prosecution failed to prove that Gholam Azam intended to create genocidal intent amongst members of his audience through his statements. Therefore the Defence concluded that the Prosecution did not prove essential elements of the crime of incitement to commit Genocide.

Incitement to Commit Crimes Against Humanity

The Defence noted that Gholam Azam was charged under section 3(2)(f), which provides liability for "any other crimes under international law." The Defence asserted that "Incitement to Commit Crimes Against Humanity" is not recognized as a crime under International law, and therefore cannot be charged under Section 3(2)(f). Accordingly, Counsel for the Accused did not present further arguments specifically against the charge of incitement to commit Crimes Against Humanity.

Connection between Azam's Statements and Crimes Under Section 3(2) of the ICT Act

Reiterating a theme heard in the Defence arguments from last week, Counsel asserted generally that the Prosecution had made no effort to establish a nexus between Gholam Azam's statements and the offences alleged to have been committed under section 3(2) of the Act. The Defence noted that the Investigating Officer admitted that he did not find evidence of any specific person committing atrocities because they heard or read Gholam Azam's statements or speeches. Therefore, the Defence argued, there is no scope to determine whether the conduct of the Accused substantially contributed to the commission of Genocide or Crimes Against Humanity. Prosecution witnesses 1, 2 and 3 made general statements regarding the commission of atrocities by the Pakistani Army, Peace Committees, Razakars and Al-Badr. However, none of them established a connection between Gholam Azam's statements or actions and the offences committed in the country. Even if one assumes that crimes under section 3(2) of the Act were committed following statements made by Gholam Azam, Defence argued, the Prosecution failed to prove that Gholam Azam had the required *mens rea*, or mental state for incitement. According to the Defence, the Prosecution did not show that he intended that crimes be committed or was aware of the substantial likelihood that a crime would be committed because of his statements.

After making these general arguments, the Defence then addressed each of the 28 countsⁱⁱⁱ of incitement alleged in the Charge Framing Order under Count 3. They emphasized contradictions in the documentary evidence and witness testimony, procedural flaws in the investigation process, and the Prosecution's failure to provide evidence of Gholam Azam's intent and knowledge.

Charge 4: Complicity

The Defence next addressed Charge 4, which alleges that Gholam Azam was complicit in the commission of crimes under Section 3(2) of the ICT Act of 1973. They asserted that, in order to prove complicity in Genocide or Crimes Against Humanity, the Prosecution must establish: 1) conduct; 2) aiding and abetting, instigating, procuring, assisting or encouraging the crime; 3) the completion of the crime of Genocide or Crimes Against Humanity; 4) intent to or awareness that the conduct contributed to the commission of the crime of Genocide or Crimes Against Humanity; and 5) that the conduct substantially contributed to or had a substantial effect on the completion of the crime of Genocide or Crimes Against Humanity. The Defence cited the ICTR case of *Semanza*.^{iv}

The Defence addressed the first 13 of 23 counts^v of complicity alleged within Charge 4. The arguments against the multiple counts were generally uniform. First, the Defence asserted that none of Gholam Azam's statements could be validly interpreted to have aided, abetted, instigated, procured, assisted or encouraged attacks on members of any national, religious, ethnic or racial group. Secondly, no evidence had been presented to establish that Gholam Azam's conduct "substantially contributed" to the commission of Genocide or Crimes Against Humanity by either the Pakistani Army or its auxiliary forces. No specific incident of Genocide or Crimes Against Humanity, committed by the Army in a particular area of the country, had been shown to be the result of Gholam Azam's statements or actions. The Prosecution failed to present witness testimony or documentary evidence that identified members of the Pakistan Army and/or its auxiliary forces who heard or read Gholam Azam's statements prior to committing specific offences under section 3(2). Prosecution witnesses 1, 2 and 3 made general statements regarding the commission of atrocities by the Pakistani Army, Peace Committees, Razakars and Al-Badr. However, none of these witnesses made any statement connecting Gholam Azam's statements or actions and the offences committed in the country.

Thirdly, Defence argued, the Prosecution failed to present sufficient facts and evidence to establish that Gholam Azam had the requisite *mens rea*, or mental state, to be found guilty of complicity in Genocide. Equally, the Prosecution failed to produce evidence showing that Gholam Azam acted intentionally and with awareness that his conduct was contributing to the commission of Crimes Against Humanity, including all its material elements.

Administrative Matters

The Senior Defence counsel for Gholam Azam was absent from court on the hartal days this week. A junior Defence attorney requested adjournment of the case until Monday, 15 April. The Tribunal passed an order scheduling 15 April for the Defence's Closing Arguments, but stated that further requests for time extensions would not be allowed under any circumstances.

Additionally, proceedings were not video taped this week as they usually are.

CHIEF PROSECUTOR VS. MUBARAK HOSSAIN

Arguments Regarding Formal Charges

On 10 April the Prosecution finished its submissions in support of the Formal Charges filed against Mubarak Hossain. The following day, Defence counsel for Hossain, Ahsanul Huq Hena, submitted the Defence's request for the discharge of the charges against his client. The Defence also requested bail. The Tribunal scheduled 23 April for the passing of its order.

III. TRIBUNAL 2: DETAILED WEEKLY CASE SUMMARIES

CHIEF PROSECUTOR VS. KAMARUZZAMAN

Delay Due to Absence of Defence Counsel on Hartal Days

Although the *Kamaruzzaman* case was scheduled to continue hearing Defence Closing arguments this week, it was adjourned four days in a row due to the absence of senior Defence counsel. These four days were hartal days. The Defence does not attend proceedings on hartal days. The Tribunal expressed its dissatisfaction with the absence of the Defence, and noted that Ahsanul Huq Hena, Defence counsel for both Salauddin Qader Chowdhury and Abdul Alim, requested and was using security services from law enforcement agencies on hartal days. The Court recommended that the Defence for the Jamaat leaders do the same. The Judges stated that the absence of Defence lawyers is an injustice to the defendants. Given the political situation and the frequency of hartals, the Tribunal declared that it would consider Section 13 of the ICT Act of 1973 in deciding whether to allow further adjournments. Section 13 provides that “No trial before a Tribunal shall be adjourned for any purpose unless the Tribunal is of the opinion that the adjournment is in the interest of justice.” The Tribunal warned that it would close the Defence’s case should they fail to attend court on upcoming hartal days. Despite these warnings, the Defence was again absent on the following three days. The Tribunal granted their request for adjournment each day, although they reiterated their warnings.

CHIEF PROSECUTOR VS. ABDUL ALIM

Examination of Prosecution Witness 14

The Prosecution heard testimony from Prosecution witness 14, Awami League leader Mustafizur Rahman Chowdhury. The witness testified in support of allegations that Alim had worked alongside the Pakistani Army to loot and torch houses at Panchbibi of Joypurhat on 20th April 1971. He stated that he was not at home during the incident, having sought shelter in a relative’s house after learning that the Accused and other Peace Committee members had welcomed the Pakistani Army in Dinajpur Ghorarghat on the same day. The following day, the witness returned home and found that his house had been burned. The witness testified that his family supported the Awami League, and had given their support to the Awami League candidate Mafiz Chowdhury, the political rival of Abdul Alim in the 1970 Election. The witness also stated that Alim’s house was later attacked as an aftermath of the incident.

Examination in Chief of Prosecution Witness 15

The Tribunal also heard testimony from Prosecution witness 15, Mozammel Hossain. The witness is allegedly the survivor of an assault mission in Jaipurhat. The witness testified that at least 22 Awami League supporters were killed during the assault

conducted by the Pakistani Army in 1971. Hossain stated that the Pakistani Army acted based on a list of targets provided by Abdul Alim, who was a Muslim League leader and Peace Committee member at that time. The witness claimed that the alleged list contained his name. He said that the attack was directed against local Awami League supporters at the time. Hossain alleged that such supporters were first taken from their village mosque to the nearby village of Biralā where they were lined up. People whose names did not appear on the list were released, while the rest were taken to Chakpahananda village. There they were tortured and killed. The witness was one of the survivors. While describing the atrocities, the witness showed the Court scars from injuries he reportedly sustained during the incident.

CHIEF PROSECUTOR VS. ALI AHSAN MUHAMMAD MUJAHID

Cross-Examination of Prosecution Witness 17, Investigation Officer

The Defence began the cross-examination of Prosecution witness 17, Investigation Officer Abdur Razzaq. They highlighted various procedural flaws in the investigation process, and the underlying deficiencies in the officer's findings, thereby seeking to discredit his testimony.

The witness testified that the investigation into Mujahid began as part of Complaint Registrar case No. 1, on 21 July 2010. That case was lodged against four accused: Nizami, Mujahid, Kamaruzzaman and Qader Molla. Additionally, the witness testified that he used the judicial record of the Pallabi Case No. 60, which was filed under the regular Penal Code of Bangladesh.

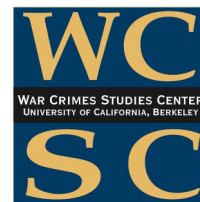
The witness acknowledged that he did not request or receive the Case Diary from the case filed in Pallabi, and did not look into the Police Report for the case either. The Defence asked the informant, Amir Hossain Molla, who named 14 witnesses that the Investigating Officer subsequently interviewed. The Defence suggested that the informant had not actually implicated Mujahid in the First Information Report (FIR), and that his name was added because of outside pressure. The witness insisted that Mujahid's name did in fact appear in the FIR, despite the absence of specific allegations against him. He explained that a subsequent FIR alleged crimes under Section 3(2) against the Accused. The Defence noted that the informant Amir Hossain Molla was not called as a witness in the *Mujahid* case, and again suggested it was because he had no information implicating the Accused.

The witness acknowledged that a similar case had been filed in Keraniganj Police Station (Case No. 34(12) 2007) and that he also did not request or receive the Case Diary from that court. He acknowledged that Mujahid's name did not appear in the FIR for the Keraniganj case.

The Investigating Officer was asked what steps he took to ascertain historical aspects of the case from independent sources. He acknowledged that he did not interview any professors or researchers at Dhaka University or other universities regarding the history of the emergence of Bangladesh. He stated that Mr. Muntasir Mamun had been interviewed, but he denied knowing that Mr. Muntasir Mamun had ties with the Ghatok Dalal Nirmul Committee (an organization that held mock trials for alleged war criminals in 1992). The Investigating Officer acknowledged that Mohammad Delwar Hossain, the author of “Muktijuddhey Dhaka,” had also been interviewed, but said that investigators had elected not to rely upon this evidence, due to various inaccuracies in the author’s findings. One of the judges interjected to ask how the Investigating Officer could say that the book contained inaccurate information, when the Prosecution had relied upon the book to prove its case. However, the witness displayed discomfort at the intensity of the questioning and eventually asked to be dismissed because he was not feeling well. The cross-examination is scheduled to continue next week.

* AIJI is a collaborative project between the East-West Center, in Honolulu, and the War Crimes Studies Center, at the University of California, Berkeley. Since 2003, the two Centers have been collaborating on projects relating to the establishment of justice initiatives and capacity-building programs in the human rights sector in South-East Asia. The Program is funded through the East-West Center, thanks to generous grants from the Open Society Foundation and private donors.

This issue of **ICT TRIAL OBSERVER** was authored by Cole Taylor, with contributions from Nuzhat Hossain, Suhan Khan, and Penelope Van Tuyl, as a product of AIJI’s Trial Observation Program in Bangladesh. A complete archive of daily summaries and weekly digests covering the progress of all cases pending before the ICT are available at www.bangladeshtrialobserver.org, and are cross-posted on the East-West Center’s AIJI portal (<http://www.eastwestcenter.org/research/asian-international-justice-initiative/>) as well as the War Crimes Studies Center homepage (<http://wcsc.berkeley.edu>).



ⁱ For previous coverage of the Defense’s Closing Arguments in the *Gholam Azam* case please refer to Weekly Digest Issue 10:

ⁱⁱ The Charge Framing Order against Gholam Azam can be viewed here: <http://bangladeshtrialobserver.org/chart/>

ⁱⁱⁱ For detailed coverage of Defence’s Closing Arguments addressing each of the counts of incitement alleged against Gholam Azam, please refer to the Daily Summary for 7 April 2013: <http://bangladeshtrialobserver.org/2013/04/18/7-april-2013-ict-1-daily-summary-gholam-azam-Defence-closing-arguments/#more-1052>

^{iv} *Prosecutor vs. Semanza*, ICTR, Trial Chamber, (2003).

^v For detailed coverage of the Defence’s arguments on each count of complicity alleged within Charge 4, please refer to the Daily Summary for 7 April 2013: <http://bangladeshtrialobserver.org/2013/04/18/7-april-2013-ict-1-daily-summary-gholam-azam-Defence-closing-arguments/#more-1052>