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

ICT- BD (ICT-2) Case No. 02 of 2013

Present:

Justice Obaidul Hassan, Chairman

Justice Md. Mozibur Rahman Miah, Member

Judge Md. Shahinur Islam, Member

Order No.08

01 August 2013

Chief Prosecutor Vs. A.K.M Yusuf (Accused)

Mr. Rishikesh Saha, Prosecutor : For the prosecution

Mr. Abdur Razzak, Senior Advocate For the defence

[Decision on Charge Framing Matter]

Accused A.K.M Yusuf has been brought before the Tribunal from prison.

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

I. Introduction and Formation of the Tribunal

1. This International Crimes Tribunal (hereinafter referred to as the “Tribunal”) was established under the International Crimes (Tribunals) Act enacted in 1973 (hereinafter referred to as the “Act”) by Bangladesh Parliament to provide for the detention, prosecution and punishment of persons responsible for genocide, crimes against humanity, war crimes, and crimes committed in the territory of Bangladesh, in violation of customary international law, particularly between the period of 25th March to 16th December 1971. However, no Tribunal was set up and as such no one could be brought to justice under the Act until the government established ‘Tribunal’ (Tribunal-1) on 25th of March 2010. It is to be noted that for ensuring expeditious trial, the government has set up this Tribunal (Tribunal-2) under section 6(1) of the Act on 22.3.2012.

II. Historical Context

2. 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.

3. 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.

4. 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.

5. 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.

6. 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.

III. Brief account of the Accused

7. Accused A.K.M Yusuf @ Abul Kalam Mohammad Yusuf (87) son of late Azim Uddin Howlader of village Rajoir under police station Sharonkhola district Bagerhat at present House no. 22, Dikhola Road, Tutpara, Khulna and House no. 37-A, First floor, Road no. 10-A, Dhanmondi, police station Dhanmondi, Dhaka Metropolitan Police[DMP], Dhaka. He started his teaching profession in Madrasah, on having 'title' degree from Alia Madrasah in 1952 and became the principal of Khulna Alia Madrasah in 1958.

8. A.K.M Yusuf, in his student life, was an active member of Jamiate-Talabee-e-Arabia and he joined Jamat E Islami in 1952 and became the chief of JEI, Khulna division in 1957. In 1962, A.K.M Yusuf was elected member of National Assembly. He was nominated Provincial Joint Secretary of Jamat E Islami in 1969 and in 1971, he was the Deputy Amir of the then East Pakistan Jamat E Islami.

9. It is alleged that A.K.M Yusuf was the chairman of 'Peace Committee', greater Khulna and formed the armed Razakar force and peace committee, at sub-division, Thana and union level in greater Khulna district. In 1971 he was the provincial minister and he allegedly led the anti-liberation section. He was the founder of armed 'Razakar force' as alleged. He was prosecuted and convicted under the Collaborators Order 1972 and later on released under the clemency granted by the Government.

IV. Procedural History

10. The Chief Prosecutor submitted the Formal Charge under section 9(1) of the Act on 28 April 2013, relying on the investigation report of the Investigating Agency, alleging that the accused as the chairman of peace committee of greater Khulna district and founder of 'armed Razakar force' in Khulna in 1971 or as well as member of a group of individuals had committed crimes against humanity, genocide and also abetted, aided, instigated, encouraged, facilitated and substantially contributed to the commission of such crimes in different places in greater Khulna district during the period of War of Liberation in 1971.

11. The Tribunal [ICT-1] however, took cognizance of offences as enumerated in the Act of 1973 on 12 May 2013 against the accused having found *prima facie* case in consideration of the documents together with the Formal Charge submitted by the prosecution and issued warrant of arrest against him directing that he be produced before the Tribunal-1, as prayed by the prosecution. Prosecution was then directed to furnish copies of the Formal Charge and documents submitted therewith which it intends to rely upon for supplying the same to the accused for preparation of defence as required under section 9(3) of the Act.

12. In execution of warrant of arrest issued the accused was arrested by the enforcement and then produced before the Tribunal (Tribunal-1) on 14 May 2013 and then he was sent to prison rejecting the bail application brought on behalf of him.

13. Initially the case record was with the Tribunal-1 where it was at the stage of hearing on charge framing matter. Subsequently, on application filed by the Chief Prosecutor the Tribunal-1 transmitted the case record to this Tribunal (Tribunal-2) under section 11A(1) of the Act. This Tribunal, on receipt of the case record on 19.04.2012, had to hear the charge framing matter as required under 11A(2) of the Act.

14. Before this Tribunal [ICT-2], in course of hearing the charge matter, the learned prosecutor Mr. Rishikesh Saha made his submissions showing justification to frame charges against the accused, in the light of the Formal Charge together with statement of witnesses and documents

submitted therewith. While Mr. Abdur Razzak, the learned senior counsel extended submission mainly on the fact of prosecuting the accused under the Collaborators Order 1972 and his release under the general amnesty granted by the government to justify the contention that now the accused cannot be prosecuted for the charge of ‘murder’.

V. Submission by the Prosecutor

15. The learned Prosecutor, at the out set, in brief described the context and background that involved organizational plan and policy in implementation of which the local pro-Pakistani persons belonging to fundamentalist Islamic political groups, peace committee, Razakar, an auxiliary force who substantially aided, abetted and facilitated the Pakistani occupation force in committing horrendous atrocities directing unarmed civilians, especially belonging to Hindu community. Thereafter, the Prosecutor drew our attention to the facts narrated in the Formal Charge constituting the offences allegedly committed by the accused during 1971 War of Liberation, in the capacity of chairman, peace committee, and the founder of Razakar force in greater Khulna.

16. It was further submitted that the statement of witnesses and documents will articulate the detail that the accused was an atrocious and potential leader of Razaker Bahini having authority and leadership as well as member of ‘group of individuals’ as mentioned in section 3(1) of the Act of 1973. The accused, apart from participating to the commission of offences, substantially contributed to the commission thereof as an aider and abettor as have been transpired from the narration made in the Formal Charge and the documents submitted therewith. The documents and statement of witnesses will show that the accused had ‘complicity’ in committing crimes against humanity and genocide, by aiding, abetting, ordering, encouraging and providing moral support to the members of armed Razakars on whom he had *de facto* reasonable and material ability to control, as a top leader or a ‘superior’ of Razakar force and peace committee of greater Khulna.

17. The context of the atrocities based on policy and plan and the nature and frequency of ‘attack’ causing murder, confinement, looting, arson, deportation, other inhuman acts sufficiently indicates that the ‘attack’ was directed against civilians constituting the offences of crimes against humanity and the killing of members of Bangalee pro-liberation national group, Hindu community with intent to destroy, either whole or in part of the group constituted the offence of genocide.

VI. Defence Submission

18. Mr. Abdur Razzak, learned senior Advocate appearing for the accused has mainly submitted that prosecuting the accused A.K.M Yusuf is *malafide* as he was earlier prosecuted, tried, convicted and sentenced under the Collaborators Order 1972 but he was then not arraigned of any charge of ‘murder’ and as such now he cannot be charged for the offence of ‘murder’ as crime against humanity and also for the charge of ‘genocide’ which involves massive killing. If in fact Mr. Yusuf had committed any offence of ‘murder’ he could have been duly prosecuted and tried even under the Collaborators

Order 1972. It has been further submitted that during pendency of appeal arising out of the conviction verdict under the Collaborators Order 1972 Mr. A.K.M Yusuf was released under the clemency granted by the government to persons who had been convicted for offences under the Collaborators Order 1972

19. The learned senior counsel for the accused continued to submit that the accused, in the instant case, may be charged only for the offence of 'confinement', looting and not for 'murder' as crimes against humanity and 'genocide' as he was not prosecuted earlier for any charge involving the event of 'murder[s]' under the Collaborators Order 1972. Long, inordinate and inexplicable delay in bringing the charges against the accused proves that simply for the reason of political rivalry he has been implicated in a case under the International Crimes (Tribunals) Act 1973.

20. By filing an application, discharge of the accused has been sought for on grounds stated therein. But instead of agitating grounds narrated therein the learned senior counsel for the accused has mainly submitted that the reasons of delay shown in the formal charge bringing prosecution against A.K.M Yusuf are insufficient; that prosecuting the accused under the Act of 1973 is *malafide*; that charges cannot be framed for the alleged offence of 'murder', 'genocide' and 'arson' as no such allegation was brought against him when he was prosecuted under the Collaborators Order 1972. Therefore, there has been no legal and factual basis of framing charges against the accused for the offence of 'murder' as crimes against humanity and 'genocide' as enumerated in the Act of 1973.

VII. Discussion and Decision

21. The Tribunal notes that the Act of 1973 is meant to prosecute and punish not only the armed forces but also the perpetrators who belonged to 'auxiliary forces', or who committed the offence as an 'individual' or member of 'group of individuals' and nowhere the Act says that without prosecuting the armed forces (Pakistani) the person or persons having any other capacity specified in section 3(1) of the Act cannot be prosecuted. Rather, it is manifested from section 3(1) of the Act of 1973 that even any person (individual or member of group of individuals), if he is *prima facie* found individually criminally responsible for the offence(s), can be brought to justice under the Act of 1973. In prosecuting an individual for the crimes enumerated in the Act of 1973 there has been no statutory bar.

22. It has been contended in the discharge application that the nature and scope of the superior relationship of the accused with his subordinates have been kept vague; that the prosecution has not been able to establish on which discriminatory basis the alleged victims were targeted; that prosecution has failed to characterize the alleged facts in accordance with the legal elements of a crime so as to provide the accused with the opportunity to raise his defence.

23. But the learned senior counsel for the accused remained refrained from making any submission on the above mentioned key contentions made in the discharge application. However, those issues deserve to be settled at trial stage, on having evidence and attending circumstances revealed and not at this stage. Prosecution, at this stage, is not required to prove the allegations brought beyond reasonable doubt. It is to be seen whether there has been reasonable ground of presuming the commission of alleged events constituting the offences and accused's alleged complicity, participation or involvement.

24. In paragraph 24 of the discharge application it has been contended that the accused A.K.M Yusuf was previously charged and convicted on similar allegation by the Special tribunal No. III, Dhaka under the Collaborators Order. But on perusal of the copy of judgment of the Special Tribunal [Special Tribunal case No. 52 of 1972] it appears that A.K.M Yusuf was charged on allegation of (i) waging war or attempted to do so or abetted the waging of war against Bangladesh (ii) attempting to bring into hatred or attempting to excite disaffection towards the government of Bangladesh and (iii) attempting to aid or aided the occupation army in furthering its design of perpetrating the forcible occupation of Bangladesh. Admittedly, during pendency of appeal against the judgment of conviction and sentence passed by the trial court the accused was released on General Amnesty granted by the government.

25. The Tribunal notes that the accused got the benefit of general amnesty as he was then not charged or convicted for the offence of 'murder' under the Collaborators Order 1972. But the mere fact of not prosecuting and trying the accused for the charge of 'murder' under the Collaborators Order 1972 does not make him absolved now of being prosecuted for the charge of 'murder' as defined in the Act of 1973. Admittedly, there has been no statutory bar in prosecuting an individual for criminal acts constituting the offence punishable under law. At this stage, we are not persuaded to readily discard the allegations involving the event of murder of unarmed civilians in 1971 brought against the accused merely for the reason that he was not prosecuted for any charge of 'murder' under the Collaborators Order 1972.

26. At the same time the submission extended by the defence side that the accused could have been prosecuted for the charge of 'murder' together with other charges under the Collaborators Order 1972, if really he was involved with the commission of the offence of 'murder', in any manner, deserves consideration, but not at this stage. It may be well adjudicated at trial whether prosecuting the accused for the charge of 'murder' as Crimes against humanity and genocide is *malafide*, by taking the evidence and relevant facts into account at trial.

27. Next, the mere fact that the accused was released on General Amnesty, during pendency of appeal before the High Court Division against conviction and sentence awarded by the Special Tribunal does not create any clog in bringing prosecution against the accused of the alleged offences of murder as enumerated in the Act of 1973.

28. At this stage there has been no scope to make final appraisal of evidence and documents which the prosecution intends to rely upon. It is to be examined merely whether there is sufficient and reasonable ground to believe *prima facie* that the accused was involved in committing offences. The statement of witnesses and documents and materials collected during investigation *prima facie* show the commission of series of unlawful acts constituting offences and complicity of the accused in the crimes which have been narrated in the Formal Charge. There are sufficient grounds of presuming that the accused was criminally liable for the commission of offences as mentioned in section 3(2) of the Act.

(i) Delay in bringing prosecution for a political purpose

29. It has been contended in paragraph 17 of the discharge application that the delay in the starting of criminal proceedings against the accused is totally unprecedented in the history of war crimes and proves conclusively that this is a prosecution for a political purpose.

30. On the above issue, the Tribunal reiterates its earlier finding recorded in the case of *Chief Prosecutor v. Md. Abdul Alim* we have already observed 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. Article I of the Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes Against Humanity adopted and opened for signature, ratification and accession by General Assembly resolution 2391 (XXIII) of 26 November 1968 provides protection against even any statutory limitation in prosecuting crimes against humanity, genocide etc. Thus, criminal prosecutions are always open and not barred by time limitation.

31. 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.

32. Admittedly, there has been no statutory limitation, as a procedural bar and thus only the delay itself does not preclude prosecutorial action to adjudicate the culpability of the perpetrator of core international crimes. Indubitably, a prompt and indisputable justice process cannot be motorized solely by the painful memories and aspirations of the victims. It requires strong public and political will together with favourable and stable political situation. Mere state inaction, for

whatever reasons, does not render the delayed prosecution readily frustrated and barred by any law.

33. There can be no recognised theory to insist that such a 'system crime' or 'group 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.

(ii) Offences: Whether well characterized

34. It has been contended in the discharge application that the facts narrated in the formal charge cannot be characterized as the offence of crimes against humanity and genocide as the offences enumerated in the Act are not well defined and as such it will cause prejudice the accused in preparing its own defence.

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

36. In establishing the 'Crimes against Humanity' in the Sierra Leon Court, there is no need to prove that the relevant crimes were committed with the knowledge of attack. We see that there is no actual consistency in the definition of 'Crimes against Humanity' as per the ICTY Statute, the ICTR Statute, the Rome Statute and the Sierra Leone Statute.

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

VIII. Concluding view

38. *Prima facie* it is depicted from the statement of witnesses and the documents that the accused was an influential person of the locality who was the founder of Razakar force and chairman of peace committee of greater Khulna district in 1971 and he was allegedly actively associated with

the criminal activities of Razakar force by exercising his position of authority on them and also providing support and abetment to the actual commission of alleged offences. The truthfulness of these pertinent factual issues may be well adjudicated at trial only. At this stage, we merely prefer to concentrate our attention to the allegations and facts disclosed in the Formal Charge as well as the statement of witnesses and documents submitted therewith. It is to be noted that framing charges will provide a due notice to the accused to answer all those issues, presuming him to be innocent until and unless he is found guilty.

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

40. 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 frame charges against the accused A.K.M Yusuf had allegedly committed offences in 1971 War of Liberation as specified under section 3(2) of the Act for which he is criminally liable under section 4(1) 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 Obaidul Hassan, Chairman

Justice Md. Mozibur Rahman Miah, Member and

Judge Md. Shahinur Islam, Member

of the International Crimes Tribunal -2

hereby charge you, Accused A.K.M Yusuf @ Abul Kalam Mohammad Yusuf (87) son of late Azim Uddin Howlader of village Rajoir under police station Sharonkhola district Bagerhat at present House no. 22, Dilkhola Road, Tutpara, Khulna and House no. 37-A, First floor, Road no. 10-A, Dhanmondi, police station Dhanmondi, Dhaka Metropolitan Police[DMP], Dhaka as follows:-

Charge 01

[Persecution as CAH: Looting and burning 400 shops and houses at Morelganj]

That on 17 May 1971 at about 10:30 am during the War of Liberation 1971 you the accused AKM Yusuf, chairman of greater Khulna Peace Committee and the founder of Razakar force or a member of 'group of individuals' arriving at Morelganj Bazar under

police station Morelganj and district Bagerhat by a launch ordered the Razakar men for launching attack directing the pro-liberation civilians and the civilians belonging to the Hindu religion at Morelganj Bazar and around it. With this the Razakar men looted 400 shops and 20/22 houses and afterwards destroyed those by setting on fire. Some freedom fighters, in disguise, and the people of the locality as well witnessed the event, by remaining in hiding.

Therefore, you A.K.M Yusuf are hereby charged for abetting and substantially contributing to the actual commission of offence of ‘persecution’ as crime against humanity by directing attack against the civilian population as specified in section 3(2) (a) (g) of the Act which are punishable under section 20(2) read with section 3(1) of the Act.

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

Charge 02

[Genocide or Persecution as CAH: at ‘Ranjitpur village’]

That during the War of Liberation 1971 you the accused AKM Yusuf, chairman of greater Khulna Peace Committee and the founder of Razakar force or a member of ‘group of individuals’ used to make inciting speech regularly in meetings of peace committee in territory of greater Khulna aiming to encouraging the members of peace committee and Razakar force to annihilate the Hindu community and pro-liberation people. With this, being incited and encouraged the group of 50/60 armed Razakars, on 13 May, 1971 at about 02:00 pm launched an attack directing the Hindu dominated village Ranjitpur, by crossing the river and with intent to destroy the Hindu community, either whole or in part, entering the crime village the perpetrators looted properties and destroyed the dwelling houses belonged to Hindu civilians with discriminatory intent and in conjunction with the event the attackers caused torture to 50/60 civilians and killed 50-60 civilians of Hindu community. After the attackers had left the crime site the murdered civilians were buried in a ditch. Some of dwellers of the crime village could see the event of massacre, by remaining them in hiding.

Therefore, you A.K.M Yusuf are hereby charged for abetting and substantially contributing, by act of your inciting speeches you made to the members of peace committee and Razakar force, to the actual commission of offence of ‘Genocide’ as specified in section 3(2) (a) (c)(i)(h) of the Act or in the alternative ‘persecution’ as crimes 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 03

[Genocide or Persecution as CAH at 'Morelganj Bazar' locality]

That on 19 May 1971 at about 09:30-12:00 at night during the War of Liberation 1971 you the accused AKM Yusuf, chairman of greater Khulna Peace Committee and the founder of Razakar force or a member of 'group of individuals' being accompanied by 15/20 Pakistani army came to Morelganj Bazar by a gunboat when the local Razakars welcomed you and then on your instruction and order 20/25 members of Razakar force and a group of army jointly had launched an 'operation' directing civilians belonging to Hindu community, with intent to destroy the community, either whole or in part and also with discriminatory intent and in conjunction with the attack they looted properties belonging to civilians and apprehended (1) Shanti Ranjan Das (2) Satyaranjan Das (3) Keshob Chandra Das (4) Shankar Das (5) Aamr Das and ((6) Oijush kanti Das from the locality of Morelganj Bazar and they were taken to Morelganj launch terminal where the attackers gunned down four of the apprehended Hindu civilians and their dead bodies were thrown to the river. Two other apprehended civilians managed to flee and Amar Das eventually deported to India and never came back. Some local people had occasion to witness the event of attack by remaining in hiding.

Therefore, you A.K.M Yusuf are hereby charged for abetting and substantially contributing, by act of your accompanying the attackers to the crime site and encouraging the principals belonging to Razakar force and Pakistani occupation army to the actual commission of offence of '**Genocide**' as specified in section 3(2) (a) (c)(i)(h) of the Act or in the alternative '**persecution**' as crimes 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 04

[Genocide: 600-700 Hindu civilians killing at village Dakra, Rampal, Bagerhat]

That on 21 May 1971 at noon during the War of Liberation 1971 on getting information through Liakat Ali Gajnabi and Altab Ali Gajnabi, Muslim League leaders of Dakara village under Rampal police station district Bagerhat that about 3-4 thousand Hindu civilians had assembled at Dakra village with a plan to quit for India you the accused AKM Yusuf, chairman of greater Khulna Peace Committee and the founder of Razakar force or a member of 'group of individuals' by sending a group of 40-50 armed Razakars led by Razakar Rajab Ali Fakir[now dead] ordered to kill those Hindu civilians. With this the group of attackers came to *Dakra* village by two boats and started indiscriminate

gun firing causing death of hundreds of civilians including 104 civilians as described in the formal charge[Event 11:6] , created climate of terror, the helpless civilians started to escape, the Razakars killed some of the civilians even by charging bayonet. The perpetrators looted the valuables and money and had burnt the houses of Hindu civilians and also set the houses on fire, in conjunction with the event. 200-300 dead bodies were some how buried by the bank of the river and rest dead bodies were thrown to river. Numerous injured victims deported to India and many of them had witnessed the event.

Therefore, you A.K.M Yusuf are hereby charged for abetting , by act of sending a group of 40-50 armed Razakars led by Razakar Rajab Ali Fakir[now dead] with order to kill the Hindu civilians at Dakra village substantially encouraging the principals belonging to Razakar force to the actual commission of offence of ‘**Genocide**’ as specified in section 3(2) (a) (c)(i)(h) of the Act or in the alternative ‘**persecution**’ as crimes 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

[Genocide or Persecution as CAH at ‘Chulkuthi Bazar’]

That on 14 October 1971 in between 10:00 am to 02:00 pm during the War of Liberation 1971 on instruction , advice and abetment of you the accused AKM Yusuf , chairman of greater Khulna Peace Committee and the founder of Razakar force or a member of ‘group of individuals’ a gang of 100-150 armed Razakars led by Razakar commander Rajab Ali Fakir attacking the Chulkuthi village under police station Bagerhat sadar district Bagerhat and the locality around it had created climate of terror, with intent to destroy Hindu community, either whole or in part. In conjunction with the attack the perpetrators apprehending civilians including those seven as named in the formal charge [six belonging to Hindu religion and one was unarmed freedom fighter] brought them at Chulkuthi Bazar by shooting and charging bayonet. The attackers with discriminatory intent looted and burnt down 42 dwelling houses of civilians.

Therefore, you A.K.M Yusuf are hereby charged for abetting and substantially encouraging the principals belonging to Razakar force led by Razakar Rajab Ali Fakir[now dead] to the actual commission of offence of ‘**Genocide**’ as specified in section 3(2) (a) (c)(i)(h) of the Act or in the alternative ‘**persecution**’ as crimes 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 06

[Genocide or Murder as CAH at 'Vasha Bazar' under Kachua PS]

That on 15 October 1971 at about 04:00 pm during the War of Liberation 1971 on instruction, advice and abetment of you the accused AKM Yusuf, chairman of greater Khulna Peace Committee and the founder of Razakar force or a member of 'group of individuals' a gang of 45/46 armed Razakars launched attack to Vasha Bazar under police station Kachua district Bagerhat directing the unarmed civilians chiefly belonging to Hindu religion and thus the attackers apprehended and detained 15 civilians as named in the formal charge [Event 11.8] and started torturing them indiscriminately terming them 'miscreants'. Eventually the victims were lineup and then the attackers gunned them down. One Sunil Kumar Dakua somehow escaped despite receiving bullet injury.

Therefore, you A.K.M Yusuf are hereby charged for abetting and substantially encouraging the principals belonging to Razakar force founded by you to the actual commission of offence of '**Genocide**' as specified in section 3(2) (a) (c)(i)(h) of the Act or in the alternative '**murder**' as crimes 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 07

[Genocide or Murder as CAH at 'Shakharikathi Bazar' under Kachua PS]

That in between evening of 05 November to the evening of 06 November 1971 during the War of Liberation 1971 on instruction, advice and abetment of you the accused AKM Yusuf, chairman of greater Khulna Peace Committee and the founder of Razakar force or a member of 'group of individuals' a gang of 50/60 Razakars armed with deadly weapons launched attack to 'Shakharikathi' Bazar under police station Kachua district Bagerhat directing the unarmed civilians belonging to Hindu community and with intent to destroy them, either whole or in part, the attackers apprehended and detained 40 Hindu civilians as named in the formal charge [Event 11.9] and started torturing them indiscriminately by creating a climate of severe havoc. Eventually the perpetrators killed the detained unarmed civilians and the gang had left the crime site leaving the dead bodies there. On the following day the Razakars came at the crime site and brought the dead bodies by a boat to 'Bishkhali Char' of village Ramchandrapur under police station Morelganj district Bagerhat and buried them in a ditch.

Therefore, you A.K.M Yusuf are hereby charged for abetting and substantially encouraging the principals belonging to Razakar force founded by you to the actual commission of offence of '**Genocide**' as specified in section 3(2) (a) (c)(i)(h) of the Act

or in the alternative ‘**murder**’ as crimes 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 08

[Genocide or Murder as CAH at ‘Shakharikathi’ Hindu dominated village under Kachua PS]

That on a day in the mid of July 1971 during the War of Liberation 1971 on planning and abetment of you the accused AKM Yusuf, chairman of greater Khulna Peace Committee and the founder of Razakar force or a member of ‘group of individuals’ the group of armed Razakars, with intent to destroy the Hindu community of village ‘Shakharikathi’ under police station Kachua district Bagerhat, either whole or in part, compelled the Hindu civilians of the village to convert their religion by taking meal with ‘beef curry’ and also reciting the holy ‘*kalema*’ and in this way 45 Hindu civilians [as named in the formal charge : Event 11.10] were forced to convert their religion of whom first 40 converted Hindu civilians were eventually killed on 05 November 1971 by the armed Razakars at ‘Shakharikathi bazaar’.

Therefore, you A.K.M Yusuf are hereby charged for abetting and substantially encouraging the principals belonging to Razakar force founded by you to the actual commission of offence of ‘**Genocide**’ as specified in section 3(2) (a) (c)(i)(h) of the Act or in the alternative ‘**murder**’ as crimes 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 09

[Murder of Abu Bakar Siddique as CAH at ‘Barukhali’ Razakar camp]

That on 13 May 1971 at about 02:00 am during the War of Liberation on instruction, advice and abetment of you the accused AKM Yusuf, chairman of greater Khulna Peace Committee and the founder of Razakar force or a member of ‘group of individuals’ being accompanied by 15/20 armed Razakars came to Morelganj by a military gunboat, in conjunction with the fight between local Razakars and a group of freedom fighters in the night and provided assistance to Razakars and with this the freedom fighters remained in hiding at the house of Ramjan Kaji at Morelganj Bazar. The armed accomplices of accused A.K.M Yusuf apprehended the unarmed freedom fighter Abu Bakar Siddique at 06:30 morning and brought him to ‘Baruikhali’ Razakar camp where he was subjected to brutal torture by charging bayonet and afterwards on order of accused A.K.M Yusuf his accomplices Razakars gunned him down. Accused A.K.M Yusuf allowed the relatives of the victim who came to the camp to bring his dead body.

Therefore, you A.K.M Yusuf are hereby charged for abetting and substantially contributing the principals belonging to armed Razakar force founded by you to the actual commission of offence of '**murder**' as crimes 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 10

[Murder of 03 unarmed freedom fighters at 'Raenda Bazar']

That on 07 June 1971 at about 10:00 am during the War of Liberation a group of armed Razakars led by you the accused AKM Yusuf, chairman of greater Khulna Peace Committee and the founder of Razakar force or a member of 'group of individuals' came to 'Raenda Bazar' under police station Sharonkhola district Bagerhat and launched attack directing the freedom fighters staying at Bazar. The freedom fighters tried to resist the Razakars and at a stage they had to be dispersed. At about 10:00 on the same day, the gang of Razakars apprehended three unarmed freedom fighters namely (1) captain Anwar Hossain Khan (2) Islamil Hossain Khan and (3) Asmat Ali Munshi from Raenda high school and inflicted inhuman torture to them and finally they killed them by charging bayonet and gun fire. The victims were buried afterwards near the Raenda high school.

Therefore, you A.K.M Yusuf are hereby charged for abetting and substantially contributing the principals belonging to armed Razakar force founded by you to the actual commission of offence of '**murder**' as crimes 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 11

[Murder of 02 unarmed freedom fighters at 'Tafalbari Bazar']

That on 09 June 1971 at about 03:00 pm during the War of Liberation 1971 a gang of 20/25 armed Razakars led by you the accused AKM Yusuf, chairman of greater Khulna Peace Committee and the founder of Razakar force or a member of 'group of individuals' raided the '*Tafalbari Bazar*' under police station Sharonkhola district Bagerhat and started searching for freedom fighters at the shops at Bazar and at a stage the gang apprehended one Joynal Fakir and you and your accomplices started beating him severely causing physical injuries. In conjunction with the event, another group of Razakars brought one

Basharat to you A.K.M Yusuf apprehending from the front of *Tafalbari* post office and then on your order the Razakars had dragged him to the river site. Finally they killed Basharat and Joynal Fakir by gun fire at a place known as 'Rajeshwar'. Their dead bodies were thrown to the river.

Therefore, you A.K.M Yusuf are hereby charged for abetting and substantially contributing the principals belonging to armed Razakar force founded by you to the actual commission of offence of '**murder**' as crimes 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 12

[Murder of Dr. Majid at 'Morelganj Bazar']

That on 26 July 1971 at about 05:00 pm during the War of Liberation on instruction and order of you the accused AKM Yusuf, chairman of greater Khulna Peace Committee and the founder of Razakar force or a member of 'group of individuals' a group of Razakars of Morelganj Razakar camp apprehended Dr. Majid from Morelganj Bazar and dragged him to the launch *ghat* where he was gunned down and his dead body was thrown to the river.

Therefore, you A.K.M Yusuf are hereby charged for abetting the principals belonging to armed Razakar force founded by you to the actual commission of offence of '**murder**' as crimes 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 13

[Murder of Salam at 'Raenda Bazar']

That on 29 July 1971 at about 12:30 pm during the War of Liberation a gang of armed Razakars apprehended one Abdus Salam, a freedom fighter, on chasing him while he was on the way to Raenda Bazar and produced him before you the accused A.K.M Yusuf, chairman of greater Khulna Peace Committee and the founder of Razakar force or a member of 'group of individuals' at the Razakar camp and afterwards on your order the Razakars started causing torture to him and finally brought him to the bank of river nearer to Raenda Bazar and they killed him by charging bayonet and gun fire.

Therefore, you A.K.M Yusuf are hereby charged for allegedly participating and abetting the principals belonging to armed Razakar force founded by you to the actual

commission of offence of ‘**murder**’ as crimes 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.

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

The aforesaid charges of crimes against humanity and also complicity to the commission of such crimes described under section 3(2)(a)(c)(i) (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: Not guilty.

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

Let 05.09.2013 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.

Justice Obaidul Hassan, Chairman

Justice Md. Mozibur Rahman Miah, Member

Judge Md. Shahinur Islam, Member