

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

ICT-BD Case No.03 OF 2014

Chief Prosecutor-Versus-Sheikh Sirajul Haque @ Siraj Master and others

Present:

Mr. Justice M. Enayetur Rahim, Chairman
Mr. Justice Jahangir Hossain, Member
Mr. Justice Anwarul Haque, Member

Order No.05

Order dated 05.11.2014

Mr. Syed Haider Ali, Advocate with

Mr. Syed Sayedul Haque, Advocate

.....for the prosecution

Mr. M. Sarwar Hossain, Advocate

.....for accused Abdul Latif Talukder
and Khan Akram Hossain

Mr. Mohammad Abul Hasan, Advocate

.....for accused Sheikh Sirajul Haque @
Siraj Master (State defence counsel)

Decision on charge framing matter

Accused 1) Sheikh Sirajul Haque @ Siraj Master, 2) Khan Akram Hossain and 3) Abdul Latif Talukder have been produced before this Tribunal today by the prison authority.

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

1. Introduction and Formation of the Tribunal

This International Crimes Tribunal-1 [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 and 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 the Tribunal on 25th March, 2010.

2. Historical Context

In August, 1947, the partition of British India based on two nation theory, gave birth to two new states, one a secular state named India and the other the Islamic Republic of Pakistan. The western zone was eventually named West Pakistan and the eastern zone was named East Pakistan, which is now Bangladesh.

In 1952 the Pakistani authorities made an attempt 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 in to the movement for greater autonomy and self-determination and eventually independence.

In the general election of 1970, the Awami League under the leadership of Bangabandhu Sheikh Mujibur Rahman became the majority party of Pakistan. Despite this overwhelming majority, Pakistan Government did not hand over power to the leader of the majority party as democratic norms required. As a result, movement started in this part of Pakistan and Bangabandhu Sheikh Mujibur Rahman in his historic speech of 7th March, 1971, called on the people of Bangladesh to strive for independence if people's verdict is not respected and power is not handed over to the leader of the majority party. On 26th March, following the onslaught of "Operation Search Light" by the Pakistani Military on 25th March, 1971 Bangabandhu declared Bangladesh independent immediately before he was arrested by the Pakistani authorities.

In the War of Liberation that ensued, all people of East Pakistan wholeheartedly supported and participated in the call to free Bangladesh but a small number of Bangalees, Biharis, other pro-pakistanis, as well as members of a number of different religion-based political parties joined and/ or collaborated with the Pakistani invading force 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 lakh] people were killed, more than 2,00,000 [two lakh] women raped, about 10 million [one crore] people deported to India as refugees and million others were internally displaced. It also experienced unprecedented destruction of properties all over Bangladesh.

The Pakistan Government and the military with the help of some pro-Pakistani leaders setup a number of auxiliary forces such as the Razakars, the Al-Badr, the Al-Shams, the Peace Committee etc, essentially to collaborate with the military in identifying and eliminating all those who were perceived to be sympathized with the liberation of Bangladesh, individuals belonging to minority religious groups especially the Hindus, political groups belonging to Awami League and other pro-Independence political parties, Bangalee intellectuals and civilian population of Bangladesh. Undeniably the road to freedom for the people of Bangladesh was arduous and torturous, smeared with blood, toil and sacrifices. In the contemporary world history, perhaps no nation paid as dearly as the Bangalees did for their emancipation.

3. Brief Account of the accused

i) Accused Sheikh Sirajul Haque alias Siraj Master, son of late Harejuddin Sheikh and late Saleha Begum of village Gotapara, at present village Mirzapur, Police Station Bagerhat Sadar, District Bagerhat having obtained BA(pass) degree joined as a teacher in Sayera Modhudia Colleziat School under Bagerhat Sadar Police Station and thereafter he joined as a teacher in Khulna Multilateral High School and he continued his service in the said school till 1971. Accused Sheikh Sirajul Haque was an activist of National Students Federation [NSF] during his student life and thereafter he joined Muslim League. In 2001 he joined Bangladesh Nationalist Party [BNP] and he was active in that party till 2006.

During the Liberation War in 1971 he joined the Rajakar Bahini, an auxiliary force of Pakistani occupation army and became the Deputy Commander of Rajakar Bahini of the then Bagerhat Sub-Division and being a potential member of Rajakar Bahini committed various crimes against Humanity in 1971 in different areas under the then Bagerhat Sub-Division.

ii). Accused Khan Akram Hossain, son of late Md. Joynal Abedin Khan and Zulika Begum of village-Daibaggahati, Police Station-Morelgonj , District-Bagerhat was born on 03.12.1955 as per the National Identity Card. He passed SSC examination in 1972 and served as a mechanic in Agriculture department and retired from the service in the year 2011. In 1971 during the War of Liberation, he joined the Rajakar Bahini and committed various crimes against Humanity in different areas of the then Bagerhat- Sub-Division.

iii). Accused Abdul Latif Talukder son of late Zender Ali Talukder and late Shamartaman Bibi of village Solarkola, Police Station-Kachua, District-Bagerhat read upto class V. In 1985 he was elected a member of Raripara Union Parishad under Kachua Police Station and was a local leader of Jatio Party. In 1990 he joined Bangladesh Awami League and since then has been working in Awami League as a worker. In 1971 during the Liberation War, he joined Rajakar Bahini and committed various crimes against Humanity in different areas of the then Bagerhat- Sub-Division.

4. Procedural History

Pursuant to the order of arrest dated 10.06.2014 passed by this Tribunal in ICT-BD Misc. Case No.03 of 2014, the members of law

enforcing agencies having arrested accused Abdul Latif Talukder, Khan Akram Hossain and Sheikh Sirajul Haque alias Siraj Master produced before this Tribunal on 12.06.2014, 22.06.2014 and 07.08.2014 respectively.

The Chief Prosecutor submitted formal charge under section 9(1) of the Act in the Tribunal on 14.09.2014 on the basis of Investigation Report of the Investigation Agency. It has been alleged in the Formal Charge that during the War of Liberation in 1971, the accused persons as the potential members of Razakar Bahini, an auxiliary force of Pakistani occupation army had committed crimes against Humanity, genocide including abetting, aiding, participating and providing moral support to commit such crimes in different places of the then Bagerhat Sub-Division. On perusal of Formal Charge, statement of witnesses and the documents submitted by the Prosecution, the Tribunal on 15.09.2014 took cognizance of offences as specified in section 3(2) read with section 4(1) and 4(2) of the Act of 1973 against the accused persons. Accused Sheikh Sirajul Haque alias Siraj Master has expressed his willingness to defend the case himself as he has no ability to appoint a lawyer. As such, the Tribunal by its order dated 15.09.2014 appointed Mr. Mohammad Abul Hasan as State defence counsel to defend the said accused and fixed the date for hearing on charge matter.

The prosecuton was then directed to furnish copies of Formal Charge and documents submitted therewith which it intends to rely upon, for supplying to the learned State defence lawyer and the

learned counsel for the other accused persons for preparation of the defence.

Before this Tribunal, in course of hearing the charge matter, the learned Prosecutor Syed Sayedul Haque has made submissions in support of framing charge against the accused persons in the light of the Formal Charge together with statements of witnesses and documents submitted therewith. While Mr. Mohammad Abul Hasan, the learned State defence counsel and Mr. M. Sarwar Hossain, the learned counsel for accused Khan Akram Hossain and Abdul Latif Talukder by submitting two separate applications for discharge of the accused, made submissions discharging the respective accused from the charges brought against them.

5. Submission advanced by the Prosecutor

The learned Prosecutor drawing our attention to the facts set out in the Formal Charge constituting the offences allegedly committed by the accused during 1971 War of Liberation, portrayed the context in brief to substantiate the organizational plan and policy in execution of which the local pro-Pakistani persons belonging to fundamentalist Islamic political groups, Peace Committee, Al-Badr Bahini, Rajakar Bahini and auxiliary forces took part in committing the offences as crimes against Humanity and also substantially aided and abetted the Pakistani occupation force in committing horrific atrocities. It has been submitted that commission of offences of crimes against Humanity and genocide in 1971 during the Liberation War are an undeniable facts of common knowledge that deserves judicial notice. It has also been submitted that the statement of witnesses, documents

and materials collected during investigation abundantly established that the accused persons abetted, facilitated the commission of atrocities and also had complicity to commit such offences in Bagerhat areas in 1971. The accused persons had also physical participation in the commission of offences narrated in the Formal Charge, apart from abetment and complicity to commit offences.

It has been further submitted by the learned Prosecutor that prosecution has sufficiently explained the delay of 42 years in bringing prosecution against the accused persons in the Formal Charge, moreover, a criminal proceeding can not be barred by limitation which is universally accepted by all. It has also been submitted that the accused persons as influential members of Razakar Bahini had committed crimes against Humanity and they also directly participated in the atrocities and as such they are also liable under sections 4(1) and 4(2) of the Act.

6. Submission advanced by the defence

Mr. Mohammad Abul Hossain, the learned State-defence Counsel for accused Sheikh Sirajul Haque alias Siraj Master, and Mr. M. Sarwar Hossain, the learned Counsel for the accused Khan Akram Hossain and Abdul Latif Talukder, placing their respective applications seeking discharge of the accused have argued that the allegations set up in the Formal Charge do not disclose or state specificity of general particulars and the required elements to constitute the offences of crimes against Humanity. The Formal Charge is based on vague and unspecified allegations and it does not disclose the mode of participation of the accused with the alleged atrocious acts.

They have further argued that apart from the Act of 1973 there had been the Collaborators Order 1972 meant to prosecute and try the local persons who allegedly collaborated with the Pakistani Army in committing atrocities. But the accused persons were not prosecuted under the Collaborators Order 1972. Thus, it may be validly said that the 1973 Act was enacted only to prosecute those 195 Pakistani armed force members. This prosecution is politically motivated one.

The learned defence counsels have further submitted that the prosecution against the accused persons has been brought after 42 years without reasonable explanation of such long delay and as such, the case is hopelessly barred by limitation; the alleged offences namely torture, abduction, confinement, conversion and deportation had no existence in the International customary laws before 1971 and as such no charge about the said offences can be legally framed against the accused persons. Learned defence Counsels have further contended that there was no document submitted by the prosecution as to whether the accused persons were the members of Razakar Bahini and they abetted and helped the auxiliary forces including the Rajakar Bahini in committing atrocities. It is a motivated case brought against them by the prosecution at the instance of interested quarter. The accused persons in no way are liable under sections 4(1) and 4(2) of the Act.

11. Before going into discussion and evaluation of the materials on record, it is needed to be mentioned here that this Tribunal has already resolved some common legal issues agitated by the defence in the cases of the Chief Prosecutor vs. Delwar Hossain Sayeedi [ICT-BD

Case No. 01/2011], The Chief Prosecutor Vs. Professor Ghulam Azam [ICT-BD case No. 06/2011], the Chief Prosecutor Vs. Salauddin Quader Chowdhury [ICT-BD Case No. 02/2011] and the Chief Prosecutor Vs. Motiur Rahman Nizami [ICT-BD Case No.03 of 2011] Apart from these, the Appellate Division of our Supreme Court in the cases of Abdul Quader Mollah Vs Government of Bangladesh vis-a-vis has also decided the legal issues involved in the cases under the Act of 1973.

The settled laws/ issues by the Appellate Division and the Tribunal are as follows:

- i. customary International Law [CIL] shall not be applied if it is contrary to the Act of 1973;
- ii. the inordinate delay in commencing any proceedings under the Act of 1973 *ipso facto* can not be a ground to doubt the truth or veracity of the prosecution case;
- iii. by the amendment of section 3(1) of the Act of 1973 through Act No.LV of 2009 the jurisdiction of the Tribunal has been extended to try and punish 'any individual' or 'group of individuals' besides any member of any armed, defence or auxiliary forces, irrespective of his nationality who has committed crimes against Humanity mentioned in the Act of 1973;
- iv. the Act of 1973 is a protected law and the moment, section 3(1) was amended by way of substitution, it became part of the Statute and it got the protection of any

legal challenge to be void or unlawful or even to have become void or unlawful in view of the provision of Article 47(3) of our Constitution;

- v. the clemency given to the admitted prisoners of War, pursuant to the tripartite agreement of 1974, in no way, either match the Act of 1973 or any of its provisions ineffective, invalid or void;
- vi. mere failure of the successive governments to act in accordance with the Act of 1973 for last more than forty years, in any way, gave any right to the accused to be exonerated from being tried for the commission of crimes against Humanity as mentioned in section 3(2) of the Act;
- vii. in the Act of 1973, no limitation has been prescribed for initiating proceedings against any individual or group of individuals or organization or any member of any armed, defence or auxiliary forces irrespective of his nationality for the commission of crimes mentioned in section 3(2) of the Act of 1973;
- viii. the Collaborators Order 1972 was a different legislation aiming to prosecute the persons for the offences punishable under the Penal Code, were scheduled in the Collaborators Order 1972, while the Act of 1973 has been enacted to prosecute and try the persons for crimes against Humanity, genocide and other crimes committed in violation of customary international law [CIL] and as

such there is no scope to characterize the offences indulging in the Collaborators Order 1972 to be the same offences as specified in the Act of 1973.

In view of the above proposition of law and considering the submissions advanced by the respective parties, we are of the opinion that the application seeking discharge of the accused persons having no substantial merit, are hereby, rejected. Rather, we have found prima facie allegations particularly from the particulars of facts narrated in the Formal Charge.

We have perused the Formal Charge, statement of witnesses along with other documents submitted by the prosecution, therefore we are initially convinced that there are sufficient and substantial materials before this Tribunal to presume that accused 1. Sheikh Sirajul Haque alias Siraj Master, 2. Khan Akram Hossain and 3. Abdul Latif Talukder committed offences of crimes against Humanity and genocide during the War of Liberation in 1971 as specified under section 3(2) of the Act for which they are criminally liable and also liable under section 4(1) of the Act. Since we find that there are prima facie allegations against the accused persons, the charges are thus framed against them in the following manner:

Charges

We,

Justice M. Enayetur Rahim, Chairman

Justice Jahangir Hossain and

Justice Anwarul Haque, Members

of the International Crimes Tribunal-1

do hereby charge you accused 1) Sheikh Sirajul Haque @ Siraj Master, son of late Harej Uddin Sheikh and late Saleha Begum of village-Gotapara, Police Station-Bagerhat Sadar under District-Bagerhat, at present of village-Mirzapur, Police Station Bagerhat Sadar, District-Bagerhat, and of village-Bhowalerpara, Ward No.8, Badda Union, Satarkul Road, Police Station Badda, DMP, Dhaka, 2) Khan Akram Hossain, son of late Md. Joynal Abedin Khan and Zulekha Begum of Village-Daibaggh Hati, Police Station Morelgonj under District-Bagerhat and 3) Abdul Latif Talukder, son of late Zendar Ali Talukder and Shamartaman Bibi of Village-Solarkola, Police Station Kachua, District-Bagerhat as follows:

Charge no.01

That On 13.05.1971 at about 2.00 P.M. under the leadership of you Sheikh Sirajul Haque alias Siraj Master, the then Deputy Commander of Rajakar Bahini of Bagerhat Sub-Division, and Rajob Ali Fakir along with a group of 50/60 Rajakars and other anti-liberation people having surrounded the village Ranojitpur under Bagerhat Sadar Police Station plundered many houses of that village and then set them on fire. At the time of said occurrence, you Sheikh Sirajul Haque alias Siraj Master and your accomplices also killed about 40/50 Hindu people of that village with intent to destroy, in whole or in part, the Hindu religious group.

Therefore, you Shiekh Sirajul Haque alias Siraj Master are hereby charged for abetting and facilitating the commission of offences of genocide, murder and other inhumane acts [plundering and arson] as crimes against Humanity as specified in section 3(2)(a)(c)(g)(h) and section 4(1) of the International Crimes (Tribunals) Act, 1973 which are punishable under section 20(2) of the Act.

Charge no.02

That during Liberation War, 1971, about 3/4 thousands Hindu people of different villages being afraid of took shelter in Dakra Kalibari temple under Rampal Police Station of the then Bagerhat Sub-Division to go to refugee-centre in India. Having been informed about the said assembly, with intent to destroy, in whole or in part the Hindu religious group, on 21.05.1971 between 3.00 P.M. and 5.00 P.M. under the leadership of you Sheikh Sirajul Haque alias Siraj Master, the then Deputy Commander of Rajakar Bahini of Bagerhat Sub-Division, and Rajob Ali Fakir along with a group of 40/50 armed Rajakars went to village Dakra and indiscriminately fired shots to the villagers who were running away hither and thither and then you and your accomplices came to that Kalibari temple and killed the persons assembled therein and thereby killed about 600/700 Hindu people. At the time of said occurrence you Sheikh Sirajul Haque alias Siraj Master and your accomplices also plundered many houses of that villages and then set them on fire.

Therefore, you Sheikh Sirajul Haque alias Siraj Master are hereby charged for abetting and facilitating the commission of offences of genocide, murder and other inhumane acts [plundering and arson]

as crimes against Humanity as specified in section 3(2)(a)(c)(g)(h) and section 4(1) of the International Crimes (Tribunals) Act, 1973 which are punishable under section 20(2) of the Act.

Charge no.03

That on 18.06.1971 at about 10.00 A.M., under the leadership of you Sheikh Sirajul Haque alias Siraj Master, the then Deputy Commander of Rajakar Bahini of Bagerhat Sub-Division, along with 20/25 Pakistani army men and 30/35 armed Rajakars having attacked the villages Besorgati, Kandapara and Kandapara Bazar abducted 20 [twenty] persons therefrom and took them to Kandapara Bazar and confined them there. Thereafter, you and your said accomplices having tortured all of them severely killed nineteen abductees and the other abductees namely Sheikh Sultan Ali luckily survived who died in 1984.

Therefore, you Shiekh Sirajul Haque alias Siraj Master are hereby charged for abetting and facilitating the commission of offences of murder, abduction, confinement and torture as crimes against Humanity as specified in section 3(2)(a)(g)(h) and section 4(1) of the International Crimes (Tribunals) Act,. 1973 which are punishable under section 20(2) of the Act.

Charge no. 04

That on 14.10.1971 at about 10.00 A.M, under the leadership of you Sheikh Sirajul Haque alias Siraj Master, the then Deputy Commander of Rajakar Bahini of Bagerhat Sub-Division, and Rajob Ali Fakir along with a group of 100/150 armed Rajakars attacked the villages namely, Chulkathi Bazar, Chulkathi, Ghanoshempur and

other neighbouring places and plundered about 42 houses and set them on fire. Thereafter, you and your said accomplices having abducted seven persons from those villages took them to Chulkathi Bazar and confined them there and then killed all of them after having tortured.

Therefore, you Sheikh Sirajul Haque alias Siraj Master are hereby charged for abetting and facilitating the commission of offences of murder, abduction, confinement, torture and other inhumane acts [plundering and arson] as crimes against Humanity as specified in section 3(2)(a)(g)(h) and section 4(1) of the International Crimes (Tribunals) Act, 1973 which are punishable under section 20(2) of the Act.

Charge no.5

That on 5th November 1971 at about 3.00 P.M you 1. Sheikh Sirajul Haque alias Siraj Master, 2. Khan Akram Hossain and 3. Abdul Latif Talukder, the local leaders of Rajakars, accompanied by 50/ 60 Rajakars having attacked surrounded Shakharikathi bazar under Kachua Police Station, presently District Bagerhat apprehend 40(forty) Hindu people and 2(two) supporters of liberation war amongst the persons who came to the bazar for marketing and thereafter said 42 [forty two] persons were killed and by you and your accompanied Rajakars by gun shots and bayonet stab.

Therefore, you all are hereby charged for abetting, contributing facilitating and complicity in the offences of abduction, murder and other inhumane acts as crimes against Humanity as specified in

section 3(2)(a)(g) and (h) of the Act of 1973 and section 4(1) of the Act of 1973 which are punishable under section 20(2) of the said Act.

Charge no.6

That on 22.10.1971 between 10.00 A.M and 05.00 P.M you 1. Sheikh Sirajul Haque alias Siraj Master, 2. Khan Akram Hossain and 3. Abdul Latif Talukder with a prior plan apprehended 1. Shatish Chandra Mondal of village Tengrakhali, 2. Babu Khan of village-Kachua, 3. Nazarul Islam Sheikh of village Hazrakhali, 4. Monindra Nath Shaha of village Baruikhali and 5. Hashem Ali Sheikh of village Char-tengrakhali under Kachua Police Station, Bagerhat, the freedom loving people, from their respective houses, and they all were taken to Rajakars camp situated at Kachua Sadar and thereafter you Sheikh Sirajul Haque alias Siraj Master ordered to kill them and accordingly they were taken to the north bank of the river near 'Thana parishad' and then the Rajakars killed all of them by gun shots and the dead bodies were thrown into the river.

Therefore, you all are hereby by charged for conspiracy, complicity, in abetting and facilitating the commission of offences of abduction and murder as crimes against Humanity as specified in section 3(2)(a)(g) and (h) of the Act of 1973 and section 4(1) of the Act of 1973 which are punishable under section 20(2) of the said Act.

Charge no.7

That on 13.12.1971 at the evening [about 06.00 P.M] while freedom fighter Fazlur Rahman Shikder along with 4[four] other freedom fighters were going to their respective houses from freedom fighters camp situated at Bhatkhali in order to meet their inmates and

reached near Teligati Bazar at that time Fazlur Rahman was some how captured by you accused 1. Khan Akram Hossain and 2. Abdul Latif Talukder and other Rajakars and having tortured on him he was taken near the river and thereafter he was killed by gun shots.

Therefore, you 1. Khan Akram Hossain and 2. Abdul Latif Talukder are hereby charged for complicity in the commission of abduction and murder as crimes against Humanity as specified under section 3(2)(a) of the Act of 1973, and section 4(1) of the Act of 1973 which are punishable under section 20(2) of the said Act.

Question: Do you plead guilty or not guilty?

Answers:

The charges framed by the Tribunal are read over in the open court and explained to the accused persons present in the dock to which they pleaded not guilty and claimed to have fair trial and justice.

Let the case be fixed on 02.12.2014 for opening statement and examination of prosecution witnesses. The trial shall be continuing on every working day until further order. The defence counsels are directed to submit a list of witnesses along with documents, if any, which they intend to rely upon as required under section 9(5) of the Act.

(M. Enayetur Rahim, Chairman)

(Jahangir Hossain, Member)

(Anwarul Haque, Member)