

International Crimes Tribunal-1
Old High Court Building, Dhaka, Bangladesh
ICT-BD [ICT-1] Case No.05 of 2018

Present:

Justice Md. Shahinur Islam, Chairman

Justice Amir Hossain, Member

Justice Md. Abu Ahmed Jamadar, Member

Order No.03

08 August, 2018

The Chief Prosecutor

Vs.

Md. Abdus Sattar @ Tipu Razakar @ Tipu Sultan

For the prosecution:

Mr. Mukhlesur Rahman, Prosecutor

Ms. Sabina Yesmin Khan, Prosecutor

For the defence:

Mr. Gazi M.H Tamim, Advocate, Bangladesh Supreme Court: Engaged counsel for accused Md. Abdus Sattar @ Tipu Razakar @ Tipu Sultan

[Decision on framing charges]

On closure of hearing on charge framing matter on 17.07.2018 today the record is taken up for rendering order on indictment matter. The sole accused Md. Abdus Sattar @ Tipu Razakar @ Tipu Sultan is present on dock as has been produced from prison.

The alleged offences which are known as ‘system crimes’ were committed in context of the war of liberation in 1971 in violation of international

humanitarian law in the territory of Bangladesh. Thus, before we pass the order, we consider it indispensable to go over a brief portrayal of the settled historical context and backdrop of the case and succinct argument advanced by both the prosecution and the defence, in course of hearing.

I. Formation of the Tribunal

1. This International Crimes Tribunal-1 (hereinafter referred to as the “Tribunal”) has been constituted under the International Crimes (Tribunals) Act enacted in 1973 (hereinafter referred to as the “Act”) by the sovereign Parliament of Bangladesh intending to provide provisions for the detention, prosecution and punishment of member of armed force[Pakistani occupation army], individual or group of individuals or member or members of auxiliary force as defined in the Act responsible for the offences of ‘genocide’, ‘crimes against humanity’, ‘war crimes’ as enumerated in sub section (2) of section 3 of the Act perpetrated in the territory of Bangladesh in 1971, during the war of liberation. The preamble of the Act reflects this core objective. However, the government established ‘Tribunal’ (Tribunal-1) on 25th of March 2010.

II. Brief Historical Context

2. In all the earlier cases, already disposed of, the Tribunal considered it essential to portray the settled historical context that imbued the Bengali nation to begin struggling for self-determination and long cherished independence of the motherland—Bangladesh. Bangabandhu Sheikh Mujibur Rahman the Father of the Nation in his historic speech of 7th March, 1971, called on the people of Bangladesh to go all-out for independence.

3. We reiterate that long 46 years after the nation achieved its independence the historic March 7 speech of Bangabandhu Sheikh Mujibur Rahman, the Father of the Nation has been recognized as a world documentary heritage by the UNESCO which is indeed the stamp of immense pride for the nation. This recognition shall prevent distortion of the history and the 7 March glowing speech of Bangabandhu calling on the freedom-loving Bangalees indispensably activated and stimulated the entire nation, excepting a few pro-Pakistan people to get equipped for the war of liberation.

4. On the 26th March, following the onslaught of “Operation Search Light” by the Pakistani Military on 25th March, Bangabandhu declared independence of Bangladesh immediately before he was arrested by the Pakistani authorities.

5. It is now the settled history that in the War of Liberation that ensued in 1971 under the leadership of Bangabandhu the Father of the Nation, all people of the then East Pakistan wholeheartedly supported and participated in the call to free Bangladesh but a small number of Bangalee, Biharis, other pro-Pakistanis, as well as members of a number of different religion-based political parties including JEI joined and/or collaborated with the Pakistani occupation army to actively resist the birth of independent Bangladesh and most of them committed and facilitated the commission of appalling atrocities in the territory of Bangladesh, directing non-combatant pro-liberation civilians. As a result, 3 millions (thirty lacs) people were killed, more than 2,00,000 (two lacs) women were subjected to sexual violence, about 10 million (one crore) people were forced to deport to India as refugees and million others were internally displaced. The nation also experienced

unprecedented and devastating destruction of properties all over Bangladesh, in violation of laws of war and fundamental rights of protected civilians.

6. The Pakistan government and the occupation armed force created number of auxiliary forces such as the Razakars, the Al-Badar, the Al-Shams, the Peace Committee etc. essentially to collaborate with it in identifying and facilitating to wipe out all those who were perceived to be sympathized with the liberation of Bangladesh, individuals belonging to Hindu religious groups, individuals belonging to Awami League and other pro-independence political parties, Bangalee intellectuals, non-combatant freedom-fighters and unarmed civilian population of Bangladesh.

7. In the case in hand, the arraignments as have been pressed by the prosecution, by submitting formal charge involve the deliberate brutal atrocious attacks and mass killing allegedly carried out around the localities under Police Station-Boalia of District-Rajshahi directing unarmed civilian population in 1971 to which the accused persons, in exercise of his affiliation with the locally formed Razakar Bahini, allegedly participated and culpably contributed, in violation of international humanitarian law and the laws of war, prosecution alleges.

III. Brief account of the accused

8. It is essentially needed to paint an account of the accused that he had in 1971 which is indispensably chained to the arraignments brought. The brief account of the accused as has been described in the formal charge is as below:

Md. Abdus Sattar @ Tipu Razakar @ Tipu Sultan

Md. Abdus Sattar @ Tipu Razakar @ Tipu Sultan[66] the son of late Dr. Md. Abul Hossain and late Fatema Begum of Holding no. 379 Raninagar under police station-Boalia[under Rajshahi metropolitan Police] of District-Rajshahi was born on 12.06.1951. He passed HSC in 1969 and B.A [Hons.] in 1979 from Rajshahi University and finally obtained MA degree in 1980 from Rajshahi University. Prior to 1971 he was an active follower of Islami Chatra Sangha [ICS] , the student wing of Jamat E Islami[JEI]. In 1971 he was a member of Razakar Bahini. In May, 1972 he was arrested under the Collaborators Order, 1972 but however got release on 10.08.1974. He was so arrested not in relation to any of arraignments brought now under the International Crimes (Tribunals) Act, 1973.

IV. Procedural History

9. The Investigation Agency of the Tribunal constituted under the Act of 1973 started investigation pursuant to complaint register's serial no. 82 dated 02.05.2017, in respect of commission of offences enumerated in section 3(2) of the Act of 1973 allegedly perpetrated in 1971 during the war of liberation around the localities under Police Station-Boalia of District-Rajshahi.

10. During investigation, on prayer of the IO through the Chief Prosecutor the Tribunal on 14.05.2017 issued production warrant against the accused as he was detained on 09.05.2017 in connection with Motihar Police station of Rajshahi metropolitan Police Case no.37 dated 19.01.2017 under sections 3 and 6 of The Explosive Substance Act, 1908. Accordingly the accused was

produced before the Tribunal on 10.07.2017 when he was sent to prison, showing him arrested in connection with this case.

11. On 27.03.2018, the Investigation Officer [IO] submitted report together with documents and materials collected and statement of witnesses before the Chief Prosecutor, wrapping up of investigation against the suspected accused Abdus Sattar @ Tipu Razakar @ Tipu Sultan.

12. The Chief Prosecutor, on the basis of the report and documents submitted therewith by the Investigation Agency, after completion of investigation, submitted the 'Formal Charge' in the form of petition on 29.05.2018 under section 9(1) of the Act of 1973 before this Tribunal alleging that accused was engaged in committing the offences as enumerated in section 3(2) of the Act of 1973 during the period of War of Liberation in 1971 around the localities under Police Station-Boalia [now under Rajshahi Metropolitan Police] of District-Rajshahi, recommending his prosecution.

13. On 29.05.2018, the Tribunal, under Rule 29(1) of the Rules of Procedure, took cognizance of offences as mentioned in section 3(2) of the Act of 1973, by application its judicial mind to the Formal Charge, materials and documents submitted therewith.

14. On hearing charge framing matter on 17.07.2018 in presence of the accused detained in prison date 08.08.2018 was fixed for rendering decision. In course of hearing on charge framing matter both sides placed their

respective submission, drawing attention to the formal charge and documents submitted therewith.

15. Mr. Gazi M.H Tamim the learned state defence counsel defending the accused Md. Abdus Sattar @ Tipu Razakar @ Tipu Sultan advanced his respective submission by drawing attention to the application seeking discharge, on the grounds stated therein.

V. Submission by the Prosecutor

16. Mr. Mukhlesur Rahman, the learned prosecutor drawing attention to the events narrated in the formal charge and the materials including statement of witnesses collected during investigation submitted that the accused person in exercise of his active and culpable membership in locally formed Razakar Bahini was engaged in accomplishing the offences of which already cognizance has been taken by the Tribunal. He is found to have had prima facie involvement with the commission of those offences.

17. The learned prosecutor further submitted that the accused was an active follower of Islami Chatra Sangha [ICS], prior to 1971. After the war of liberation ensued, the accused consciously in exercise of his membership in auxiliary force remained engaged in accomplishing prohibited criminal acts directing civilian population that facilitated commission of the offences of crimes against humanity. The accused was arrested under the Collaborators Order, 1972 in 1972 but not in relation to any of arraignments brought now under the International Crimes (Tribunals) Act, 1973. Victims and relatives of victims who had occasion of experiencing the criminal acts related to the

crimes committed have been cited as witnesses in this case, the learned prosecutor added.

Submission by the Defence

18. Mr. Gazi M.H Tamim the learned engaged counsel defending the accused came up with an application seeking discharge of the accused. In course of hearing the learned defence counsel drawing attention to the grounds agitated in the application submitted that the accused did not belong to any auxiliary force in 1971 and he was not associated with the perpetration of any of crimes alleged; that he has been falsely implicated in this case.

19. The learned defence counsel further submits that formal charge itself states that the accused was arrested in 1972 under the Collaborators Order, 1972 but however he got release in 1974 and it indicates that he was not involved in committing any offence punishable under the Collaborators Order of 1972. The learned defence counsel finally agitated the issue of delayed prosecution. He submitted that the prosecution could not bring any explanation of decayed prosecution and such accusation suffers from grave doubt. Thus the accused deserves discharge, the learned counsel added.

VI. Deliberation and decision

20. The Act of 1973 permits to prosecute even an individual or group of individuals for the offences enumerated in section 3(2) of the Act committed in 1971, during the war of liberation. Whether the accused belonged to any auxiliary or para militia force in 1971 is of course a pertinent issue. But this issue may be well adjudicated only on evaluation of materials and evidence to

be presented in course of trial only. This issue and the matter of alleged involvement of the accused persons with the commission of alleged crimes relate to factual matrix the truthfulness of which can only be weighed in trial.

21. We are not convinced with the submission place by Mr. Gazi M.H Tamim in respect of delayed prosecution. Delay by itself is no bar in prosecuting an individual for a criminal offence. We have already rendered our reasoned decision in this regard in earlier cases. The offences alleged are not isolated crimes. These are ‘group crimes’ or ‘system crimes’. Thus, there is no limitation in bringing criminal prosecution, particularly when it relates to ‘international crimes’ committed in violation of customary international law. Thus, we are not convinced with the submission made in this regard by the learned defence counsel Mr. Gazi M.H Tamim.

22. We reiterate that 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 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.

23. We again say that the settled norm that at this stage the accused shall be treated innocent, till he is found guilty as neither the guilt nor the innocence can be adjudicated decisively merely on the basis of hearing on charge

framing matter. His culpability, if any, can be well determined only at trial, not at this stage.

24. Now, on *prima facie* scrutiny of the record, we are convinced that the proposed arraignments deserve to be considered and resolved which may only be done at trial, on presentation of evidence by the prosecution. At this stage, we are to just concentrate to the allegations and facts of attacks disclosed in the Formal Charge as well as the statement of witnesses and documents submitted therewith.

25. We have cautiously gone through the formal charge, statement of witnesses and the documents submitted therewith. It appears that the formal charge and the statement of witnesses *prima facie* disclose participation, substantial contribution and abetment of the accused person in accomplishing the alleged offences as enumerated in section 3(2) of the Act of 1973.

26. Prosecution avers that the accused was the potential member of locally formed auxiliary forces and in exercise of affiliation with this auxiliary force the accused person was actively engaged in accomplishing horrendous atrocious activities directing unarmed civilians and Hindu community around the localities under Police Station-Boalia of District-Rajshahi in 1971.

27. Conversely, the defence argument placed by Mr. Gazi M.H Tamim is that the accused persons being defended by him did not belong to Razakar Bahini or any auxiliary force and that he has been falsely termed as members of such force.

28. The above crucial issue can be well resolved at trial only. Beside, not only a member of an auxiliary force as defined in the Act of 1973 but even an individual may also be prosecuted and tried for the offence or offences as enumerated in the Act of 1973.

29. Now, at this stage, we are to merely see the *prima facie* complicity and participation of the accused person with the commission of alleged offence and of course, treating the accused person innocent till they are found guilty for the alleged offences of which he has been recommended for prosecution.

30. Mr. Gazi M.H Tamim the learned engaged counsel submitted that the accused person was not involved with the offences alleged as the evidence collected during investigation does not indicate it. This submission merits no consideration at this stage.

31. In view of the discussion as made above and considering the submissions advanced by both sides, we have found *prima facie* the nexus of the accused person with the commission of the alleged offences, mostly from the particulars of facts narrated in the Formal Charge.

32. Thus, we are of the view that there are sufficient and substantial materials before this Tribunal which demonstrate sufficient ground of proceeding and to presume *prima facie* that accused was involved with the commission of offences during the War of Liberation in 1971 as specified under section 3(2) of the Act of 1973 for which he now needs to stand trial.

33. In view of above, now, we proceed to read out the charges framed. We are of the view that there are sufficient and substantial materials before this Tribunal to frame charges against accused Md. Abdus Sattar @ Tipu Razakar @ Tipu Sultan[66] the son of late Dr. Md. Abul Hossain and late Fatema Begum of Holding no. 379 Raninagar under police station-Boalia[under Rajshahi metropolitan Police] of District-Rajshahi for the offences allegedly committed during the War of Liberation in 1971 as specified under section 3(2) of the Act of 1973 for which he is alleged to be criminally liable under sections 4(1) of the Act of 1973. The charges are thus framed against him in the following manner.

Charges

We,

Justice Md. Shahinur Islam, Chairman

Justice Amir Hossain, Member

Justice Md. Abu Ahmed Jamadar, Member

Of the International Crimes Tribunal -1

Do hereby charge you the accused Md. Abdus Sattar @ Tipu Razakar @ Tipu Sultan as follows:

Charge No.01

[Event no.01 as narrated in page nos.23-25 of the formal charge]

[Offences of abduction, confinement, torture and murder of Babar Mandal, on forcible capture from Gadi no.01 of Shaheb Bazar under police station –Boalia of District-Rajshahi , as crimes against humanity.]

That on 26 September 1971 at about 01:30 P.M a group formed of 15/16 Pakistani occupation army being accompanied by you the accused Md. Abdus Sattar @ Tipu Razakar @ Tipu Sultan and your 8/10 cohort Razakars forcibly captured Babar Mandal from Gadi no.01 of Shaheb Bazar, now known as zero

point and started causing torture to him. The captured victim was then taken away by a truck to the torture camp set up at Shaheed Samsuzzoha Hall of University of Rajshahi where he was subjected to torture in captivity and eventually in the midnight of 27 September 1971 he was shot to death taking him at the place east to the Shaheed Samsuzzoha Hall. The victim was buried there and a commemorative plaque has been built there.

Therefore, you the accused Md. Abdus Sattar @ Tipu Razakar @ Tipu Sultan participated, facilitated, abetted and substantially contributed, by your culpable act and conduct forming part of systematic attack to the commission of offences of 'abduction', 'confinement', 'torture' and 'murder' as crimes against humanity as specified in section 3(2)(a)(g)(h) of the International Crimes (Tribunals) Act 1973 read with section 4(1) of the Act, 1973 which are punishable under section 20(2) of the said Act.

Charge No.02

[Event no.02 as narrated in page nos.25-29 of the formal charge]

[Offences of abduction, confinement, torture, plunder and murder of numerous civilians at Talaimari under police station–Boalia of District-Rajshahi, as crimes against humanity.]

That on 02 November 1971 at about 02:00 A.M a group formed of 40/50 Pakistani occupation army being accompanied by you the accused Md. Abdus Sattar @ Tipu Razakar @ Tipu Sultan and your 15/20 armed cohort Razakars by launching systematic attack at village- Talaimari under police station- Boalia of District-Rajshahi, as the gang had information about staying of freedom fighters with their family there, started hunting of freedom fighters and got (1) Chand Mia (2) Ajahar Ali Sheikh (3) Md. Keyamat Ali Mnadal (4) Abul Hossen (5) Md. Afiluddin (6) Md. Safiuddin (7) Md. Shafiqur

Rahman @ Kalu Mia (8) Md. Bazlar Rahman (9) Md. Jalaluddin (10) Akbar Ali and (11) Md. Kurman Ali forcibly captured from their houses.

In conjunction with the attack, on instigation of you the accused Md. Abdus Sattar @ Tipu Razakar @ Tipu Sultan your cohort Razakars and Pakistani occupation army plundered the houses of those freedom-fighters and looted households. Then the detained non-combatant freedom-fighters were taken away by a truck to the torture camp set up at Shaheed Samsuzzoha Hall of University of Rajshahi where they were subjected to inhuman torture in captivity. Relatives of victims moved toward the camp for securing release of the victims but were not allowed to enter into the camp.

On 04 November 1971 in the midnight you the accused Md. Abdus Sattar @ Tipu Razakar @ Tipu Sultan being accompanied by your cohort Razakars and Pakistani occupation army took away 09 detained victims (1) Chand Mia (2) Ajahar Ali Sheikh (3) Md. Keyamat Ali Mnadal (4) Abul Hossen (5) Md. Afiluddin (6) Md. Safiuddin (7) Md. Shafiqur Rahman @ Kalu Mia (8) Md. Bazlar Rahman (9) Md. Jalaluddin to the place, the killing field east to Shaheed Samsuzzoha Hall of University of Rajshahi where they were gunned down to death. The two other detainees Akbar Ali [now dead] and (11) Md. Kurman Ali were forced to get engaged with manual labours and as such they got survived.

Therefore, you the accused Md. Abdus Sattar @ Tipu Razakar @ Tipu Sultan participated, facilitated, abetted and substantially contributed, by your culpable act and conduct forming part of systematic attack to the commission of offences of 'abduction', 'confinement', 'torture', 'plunder' and 'murder'

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

34. Thus, you the accused Md. Abdus Sattar @ Tipu Razakar @ Tipu Sultan has been indicted as above for committing the offences under section 3(2)(a)(g)(h) of the International Crimes(Tribunals) Act, 1973, punishable under section 20(2) read with section 4(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.

35. You accused Md. Abdus Sattar @ Tipu Razakar @ Tipu Sultan[present on dock]heard and understood the aforesaid charges which have been read out and explained [**in Bangla**] in the open court in your presence.

Question: Do you plead guilty or not.

Answer:

36. The charges so framed have been read over and explained to the accused Abdus Sattar @ Tipu Razakar @ Tipu Sultan to which he pleaded not guilty and claimed to be tried according to law.

37. Let 23.09.2018 be fixed for opening statement and examination of prosecution witnesses. Prosecution is directed to submit copy of all the documents it relies upon, for the purpose of furnishing the same with the defence, if meanwhile the same are not supplied to the defence.

38. At the same time the learned engaged defence counsel is asked to submit a list of witnesses along with documents, if any, which the defence intends to rely upon , as required under section 9(5) of the Act on or before the date fixed.

Justice Md. Shahinur Islam, Chairman

Justice Amir Hossain, Member

Justice Md. Abu Ahmed Jamadar, Member