

International Crimes Tribunal-1

Old High Court Building, Dhaka, Bangladesh.

ICT-BD [ICT-1] Case No.08 of 2017

Present:

Justice Md. Shahinur Islam, Chairman

Justice Amir Hossain, Member

Justice Md. Abu Ahmed Jamadar, Member

Order No.-08

30 August 2018

Chief Prosecutor

Vs.

(1) S.M Aminuzzaman Faruk (2) A.K.M Akram Hossain (3) Md. Emdadul Haque @ Khaja Doctor and (4) Md.Maklesur Rahman @ Tara

Ms. Rezia Sultana Begum, Prosecutor: For the prosecution

Mr. Abdus Sobhan Tarafdar, Advocate, Bangladesh Supreme Court: **Engaged Counsel** For 02 accused (1) S.M Aminuzzaman Faruk and (2) Md. Emdadul Haque @ Khaja Doctor

Mr. Abdus Sobhan Tarafdar, Advocate, Bangladesh Supreme Court: **State Defence Counsel** For 01 accused (3) Md.Maklesur Rahman @ Tara [absconding]

Mr. Md. Hadiul Islam, Advocate, Bangladesh Supreme Court: **Engaged Counsel** For 01 accused (4) A.K.M Akram Hossain

[Decision on framing charges]

Three accused (1) S.M Aminuzzaman Faruk (2) A.K.M Akram Hossain and (3)

Md. Emdadul Haque @ Khaja Doctor are present before this Tribunal. They

have been brought before the Tribunal from prison. The other accused Md.Maklesur Rahman @ Tara has been absconding.

Hearing on charge framing matter got concluded on 16.05.2018. Today is fixed for rendering decision on it and as such the record is taken up for order on indictment matter. Before passing the order, we would prefer to provide a brief context of the case, brief account of the accused persons that they had in 1971, succinct arguments put forward by both prosecution and defence before this Tribunal-1.

I. Introduction and Formation of the Tribunal

1. This International Crimes Tribunal-1 (hereinafter referred to as the “Tribunal”) has been established under the International Crimes (Tribunals) Act enacted in 1973 (hereinafter referred to as the “Act” of 1973) by Bangladesh Parliament to provide for the detention, prosecution and punishment of persons responsible for genocide, crimes against humanity, war crimes as enumerated in sub section (2) of section 3 of the Act committed in the territory of Bangladesh, before or after commencement of the Act.

II. Brief Historical Context

2. In the earlier cases, already disposed of, the settled historical context that pushed the Bengali nation for achieving Bangladesh an independent state through the war of liberation in 1971 has been portrayed by this Tribunal. Now, in brief, we reiterate that despite the overwhelming majority in the general election of 1970, Pakistan Government did not hand over power to Bangabandhu Sheikh Mujibur Rahman 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 the father of nation in his historic speech of 7th March, 1971, called on the people of Bangladesh to strive for independence. On 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.

3. It is now settled history that in the War of Liberation that ensued in 1971 under the leadership of Bangabandhu the father of 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 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 diabolical atrocities in the territory of Bangladesh. As a result, 3 million (thirty lacs) people were killed, more than 2,00,000 (two lacs) women were 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.

4. The Pakistan government and the occupation military created number of auxiliary forces such as the Razakars, the Al-Badar, the Al-Shams etc. essentially to collaborate with the Pakistani occupation army 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. In 1971 Al Badar Bahini was known as 'death squad' and had carried out monstrous crimes directing civilian population, it is now settled history.

III. Brief account of the Accused Persons

5. It is essentially needed to focus on brief account of the accused persons they had in 1971 which is indispensably chained to the arraignments brought. The brief account of the accused persons as has been described in the formal charge is as below:

(i) S.M Aminuzzaman Faruk

Accused S.M Aminuzzaman Faruk the son of late Samsuzaman and late Amena Khatun of village-Eshibpur, Ward no.05, Nokla Pourashava under police station-Nokla of District [now]- Sherpur was born on 01.07.1957. He obtained M.A degree and served as a lecturer in Haji Jalal Mamud College, Nokla, Sherpur. In 1971 his father was the leader of Nokla Peace Committee. He got enrolled in Al Badar Bahini and had acted as the leader of Nokla Thana Al Badar Bahini and Razakar Bahini .He in exercise of his affiliation with Al Badar Bahini collaborated with the Pakistani occupation army in accomplishing atrocious activities around the localities, prosecution alleges.

(ii) A.K.M Akram Hossain

Accused A.K.M Akram Hossain the son of late Azizur Rahman and late Amena Khatun of village-Bibirchar under police station-Nokla of District[now]- Sherpur, at present- 80/6 Etakhula Road under police station-Kotwali of District-Mymensingh was born on 30.10.1955. He obtained M.A and LL.B degree in 1979. In 1971 he was a Muslim League activist and joined in Nokla Al Badar Bahini and actively participated in committing atrocious activities around

the localities , in collaboration with the Pakistani occupation army, prosecution alleges.

(iii) Md. Emdadul Haque @ Khaja Doctor

Accused Md. Emdadul Haque @ Khaja Doctor the son of late Tamij Uddin Ahmed and late Fatema Khatun of village Kursha Badagair, Ward no.06, Nokla Pourashava under police station- Nokla of District[now]- Sherpur was born on 24.09.1942. He studied up to SSC and homeopathic course. He was a follower of Muslim League since prior to 1971. In 1971 he joined in locally formed Al Badar Bahini as its leader. In exercise of affiliation with the said auxiliary force he collaborated with the Pakistani occupation army in perpetrating atrocious activities around the localities, prosecution alleges.

(iv) Md. Makleshur Rahman @ Tara

Accused Md. Makleshur Rahman @ Tara is the son of late Moyej Uddin Ahmed and late Maleka Khatun of village-Kursha Badagair, Ward no.06, Nokla Pourashava under police station-Nokla of District[now]- Sherpur. He studied up to HSC. In 1971 he got enrolled in locally formed Al Badar Bahini and in exercise of his affiliation with it he collaborated with the Pakistani occupation army in carrying out barbaric atrocious activities around the localities, prosecution alleges.

IV. Procedural History

6. The investigation Agency of the Tribunal started investigation pursuant to compliant register no.60 dated 19.11.2015, in respect of commission of offences enumerated in section 3(2) of the Act of 1973 allegedly perpetrated around the localities under police station-Nokla of District[now]-Sherpur.

7. During investigation, on prayer of the IO submitted through the Chief Prosecutor seeking arrest of the suspected accused S.M Aminuzzaman Faruk for the purpose of proper and effective investigation. Tribunal ordered issuance of warrant of arrest on 22.08.2016 in execution of which the suspected accused after having arrested was produced before the Tribunal-1 when on hearing the prosecutor it directed to send him to prison.

8. The arrested suspected accused S.M Aminuzzaman Faruk was interrogated on 02.10.2016 at the safe home of the Investigation Agency as permitted by the Tribunal-1.

9. On an application moved by the Chief Prosecutor Tribunal issued warrant of arrest against the three other suspected accused (2) A.K.M Akram Hossain (3) Md. Emdadul Haque @ Khaja Doctor and (4) Md.Maklesur Rahman @ Tara.

10. In execution of the W/A issued the two other accused A.K.M Akram Hossain and Md. Emdadul Haque @ Khaja Doctor were arrested and were produced before the Tribunal when they were sent to prison. The other accused Md.Maklesur Rahman @ Tara could not be arrested.

11. On application Tribunal permitted the Investigation Officer to interrogate the accused A.K.M Akram Hossain and Md. Emdadul Haque @ Khaja Doctor in the Dhaka Central Jail and they were accordingly interrogated on 11.06.2017 and 12.06.2017 respectively.

12. On conclusion of investigation, the IO submitted its report together with documents and materials collocated and statement of witnesses, before the Chief

Prosecutor on 26.07.2017 in relation to ICT-BD Miscellaneous Case no.11 of 2016 arising out of the compliant register serial no. 60 dated 19.11.2015.

13. 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' on 30.10.2017 under section 9(1) of the Act of 1973 before this Tribunal recommending joint prosecution of four accused persons alleging that they had committed the offences as crimes against humanity, including abetting and also for complicity to commit such crimes narrated in the formal charge during the period of War of Liberation in 1971 around the localities under police station-Nokla of District[now]-Sherpur.

14. On 14.11.2017 the Tribunal-1, 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 and materials and documents submitted therewith.

15. Out of four accused one accused Md.Maklesur Rahman @ Tara could not be arrested. After having the report in execution of warrant of arrest issued against him the Tribunal, for the purpose of holding proceeding in absentia against him and jointly with other accused ordered publication of notice in two daily news papers. But despite publication of such notification this accused did not turn up and as such treating him absconding the Tribunal ordered for hearing the charge framing matter by appointing Mr. Abdus Sobhan Tarafdar, Advocate Supreme Court of Bangladesh as the state defence counsel to defend the absconding accused Md.Maklesur Rahman @ Tara .

16. The hearing on charge framing matter took place on 16.05.2018 when both sides submitted their respective submission and placing an application seeking discharge of accused A.K.M Akram Hossain.

V. Submission by the Prosecutor

17. Ms. Rezia Sultana Begum drawing attention to the formal charge and other materials collected during investigation submitted that the accused persons belonged to locally formed Al Badar Bahini and in exercise of affiliation with it they consciously and culpably collaborated with the Pakistani occupation army in accomplishing group crimes directing civilians of the localities under police station- Nokla of District[now] Sherpur. It has been asserted too that the materials including the statement of witnesses obtained during investigation prima facie point towards involvement and complicity of the accused persons with the commission of the offences narrated in the formal charge.

VI. Submission on behalf of accused

18. On contrary, Mr. Abdus Sobhan Tarafdar the learned counsel engaged for accused (1) S.M Aminuzzaman Faruk and (2) Md. Emdadul Haque @ Khaja Doctor and as state defence counsel for absconding accused Md.Maklesur Rahman @ Tara submitted that false accusation has been brought against these accused, out of enmity although the statement of witnesses made to the IO prima facie indicated their involvement with the commission of the offences alleged.

19. The learned counsel defending the other accused A.K.M Akram Hossain came up with an application seeking discharge of this accused on the ground that in 1971 this accused was not against the war of liberation; that he has been implicated in this case out of local rivalry and that he was not associated with

any auxiliary force and involved with the commission of any of alleged offences. The learned counsel concluded his submission seeking discharge of this accused.

VII. Deliberations and Decision

20. Prosecution specifically avers that in 1971 the accused persons belonged to Al Badar Bahini formed in Nokla police station of District [now] Sherpur. This issue relates to the arraignments brought. But the International Crimes (Tribunals) Act, 1973 permits to prosecute and try even an individual or group of individuals. Next, at this stage conclusive finding on the issue of accused persons' affiliation with any auxiliary force cannot be given, without trial.

21. The above issue relevant to determine liability of the accused persons cannot be resolved without evidence to be presented. However, now we are to just see whether the documents and evidence collected during investigation demonstrate it prima facie that the accused persons were engaged in committing the crimes alleged.

22. Alleged involvement and participation of the accused persons with the events of attacks that resulted in murder, torture abduction, confinement and other criminal acts constituting the offences of crimes against humanity cannot be determined at this stage and without evaluating evidence to be presented in trial.

23. Defence submitted that the accused persons were not engaged in accomplishing any of the offences alleged as the evidence collected during investigation does not indicate it and they have been falsely implicated in this case out of local rivalry.

24. But the above submission relates to factual aspect intending to negate alleged involvement of accused persons to the commission of the offences which may be well proved only in trial, and not at this stage and thus the above submission does not deserve consideration at this stage. However, we reiterate the settled norm that at this stage the accused persons shall be treated innocent, till they are found guilty as neither the guilt nor the innocence can be adjudicated decisively. Their culpability, if any, can only be well determined only at trial, not at this stage.

25. We have found *prima facie* the nexus of the accused persons with the commission of the alleged offences, mostly from the particulars of facts narrated in the Formal Charge. The alleged offences were system crimes committed against the civilian population constituting the offences as crimes against humanity committed in context of the war of liberation in 1971.

26. 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.

27. 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 (1) S.M Aminuzzaman Faruk of village-Eshibpur, Ward no.05, Nokla Pourashava under police station-Nokla of District [now]- Sherpur (2) A.K.M Akram Hossain of village-Bibirchar under police station-Nokla of District[now]-Sherpur, at present- 80/6 Etakhula Road under police station-Kotwali of District-Mymensingh (3) Md. Emdadul Haque @

Khaja Doctor of village Kursha Badagair, Ward no.06, Nokla Pourashava under police station- Nokla of District[now]- Sherpur and (4) Md.Maklesur Rahman @ Tara[absconding] of village-Kursha Badagair, Ward no.06,Nokla Pourashava under police station-Nokla of District[now]- Sherpur **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 they are alleged to be criminally liable under sections 4(1) of the Act of 1973. The charges are thus framed against them 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 (1) S.M Aminuzzaman Faruk (2) A.K.M Akram Hossain (3) Md. Emdadul Haque @ Khaja Doctor and (4) Md.Maklesur Rahman @ Tara[absconding] as follows:

Charge 01: [04 accused indicted]

[Event no.01 as narrated in page nos. 29- 33 of the formal charge]

[Offences of abduction, confinement, torture, arson and murder committed at villages Ramer Kandi, Bibirchar, Majid Bari under police station Nokla of District [now]- Sherpur]

Charge: That on 21 July 1971 at about 03:30 A.M a group formed of you the accused (1) S.M Aminuzzaman Faruk (2) A.K.M Akram Hossain (3) Md. Emdadul Haque @ Khaja Doctor and (4) Md.Maklesur Rahman @ Tara, self-declared OC Mojibur Rahman[now dead], Abdul Qadir[now dead] and 8/10 Razakars by launching attack at village Bibirchar under Nokla police station of

District Sherpur forcibly captured Sohrab Uddin and caused inhuman torture to him and burnt down his house.

In conjunction with the attack, at about 05:00/05:30 A.M the gang being accompanied by you the accused persons then moved to the house of Abdul Mannan taking the detainee Sohrab Uddin with you. Then you the accused persons and 4/5 army men forcibly captured Abdul Mannan's brother-in-law **Abdul Quddus** and his cousin **Mobarak @ Mogar Ali** and on instigation provided by you the accused persons they were shot to death by Razakars and Al Badars and then their house was set on fire.

Detainee **Sohrab Uddin** somehow managed to flee there from but later on was apprehended by Razakars and Al Badars at the place east to the culvert located at South Ramer Kandi and Bibirchar where he was tortured and gunned down to death.

Then the gang being accompanied by you the accused persons moved towards Majid Bari under Talki union and attacked at about 07:00 A.M at the house of Md. Abdul Kadir and then at about 08:00 A.M at the house of Afaz Uddin a freedom-fighter. But on failure in finding them the gang burnt down the houses of those civilians and their relatives.

Therefore, you the accused (1) S.M Aminuzzaman Faruk (2) A.K.M Akram Hossain (3) Md. Emdadul Haque @ Khaja Doctor and (4) Md.Maklesur Rahman @ Tara **are hereby** charged for participation, abetment , facilitating and substantial contribution, by your act and conduct forming part of systematic attack to the commission of criminal acts constituting the offences of **'abduction', 'confinement', 'torture' , 'arson' and 'murder'** as crimes

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

Charge 02: [02 accused indicted]

[Event no.02 as narrated in page nos. 34- 37 of the formal charge]

[Offences of abduction, confinement, torture and murder of Md. Abdul Hannan of village-Jalalpur under police station Nokla of District [now]-Sherpur]

Charge: That on 27 August 1971 at about 12:00 P.M you the accused (1) S.M Aminuzzaman Faruk seeing Md. Abdul Hannan[15/16 years old] standing beside Nokla-Sherpur road forcibly picked him up on the Pakistani army vehicle by which you were coming towards Nokla from Sherpur and took him away to Nokla camp.

In the evening the father of Md. Abdul Hannan and others moved to the camp when they saw you the accused S.M Aminuzzaman Faruk and your associates including Shamsuzzaman Master present there and also saw one Md. Sahjahan Ali Saju of their neighbouring village detained there. Shamsuzzaman Master ordered the father and relatives of the victim to bring 13,000 taka as ransom.

Afterwards, on the same day at about 08:00 P.M the father and relatives of the victim collecting the said amount of money came to the camp when they knew that the detained victim was transferred to the Al Badar camp set up at Nokla Bilateral High School. With this the father and relatives of the victim then moved to the said camp where they met Shamsuzzaman Master who informed them that the victim Hannan was being interrogated to extract information about the freedom-fighters.

But later on, on the same day at about 12:00 A.M you the accused S.M Aminuzzaman Faruk started causing torture to the victim by charging bayonet and at a stage the victim attempted to escape by jumping into the adjacent pond when you the accused S.M Aminuzzaman Faruk and Md.Maklesur Rahman @ Tara and your accomplices by getting him hold in the pond bayoneted him to death. After independence his body was buried on the bank of the said pond.

Therefore, you the accused (1) S.M Aminuzzaman Faruk and (2) Md.Maklesur Rahman @ Tara **are hereby** charged for participation, abetment , facilitating and substantial contribution, by your act and conduct forming part of systematic attack to the commission of criminal acts constituting the offences of **‘abduction’, ‘confinement’, ‘torture’ and ‘murder’** as crimes against humanity as enumerated in section 3(2)(a)(g)(h) of the International Crimes(Tribunals) Act of 1973 read with section 4(1) of the Act of 1973 which are punishable under section 20(2) of the said Act of 1973.

Charge 03: [02 accused indicted]

[Event no.03 as narrated in page nos. 37- 40 of the formal charge]

[Offences of abduction, confinement, torture and murder of Sajahan Ali @ Saju of village-Bajerdi under police station Nokla of District [now]-Sherpur]

Charge: That on 27 August 1971 at about 05:00 P.M a group formed of you the accused S.M Aminuzzaman Faruk being accompanied by your accomplices Md. Mojibur Rahman [now dead], Abdul Kader [now dead] and others forcibly captured Md. Shahjahan Ali @Saju, an organiser of the war of liberation from the place adjacent to Nokla Bazaar when he was returning from mosque after saying Asar prayer and then he was taken away to Nokla police station.

On getting information, brother and other family members of the victim rushed to the said police station where they saw one Md. Hannan of Jalalpur village

detained there. Defying appeal one self-proclaimed Daroga Mojibur denied setting the victim on release as instructed by you the accused (1) S.M Aminuzzaman Faruk and (2) Md.Maklesur Rahman @ Tara . The victim and another detained Md. Hannan were then shifted to the torture cell set up at Nokla Bilateral High School adjacent to the Nokla police station.

Later on, at night of 27 August 1971 Md. Shahjahan Ali @Saju was gunned down to death on the bridge of Nokla Subarnakhali canal. On 29.8.1971 his body was found floating in Badagoir Bil. The body of the victim was buried after getting it recovered.

Therefore, you the accused (1) S.M Aminuzzaman Faruk and (2) Md.Maklesur Rahman @ Tara are hereby charged for participation, abetment , facilitating and substantial contribution, by your act and conduct forming part of systematic attack to the commission of criminal acts constituting the offences of **abduction, confinement, torture and murder** as crimes against humanity as enumerated in section 3(2)(a)(g)(h) of the International Crimes(Tribunals) Act of 1973 read with section 4(1) of the Act of 1973 which are punishable under section 20(2) of the said Act of 1973.

Charge 04: [04 accused indicted]

[Event no.04 as narrated in page nos. 40- 44 of the formal charge]

[Offence of enslavement [forced labour]

Charge: That Pakistani occupation army got stationed in Nokla in May 1971 and then with the assistance on part of you the accused (1) S.M Aminuzzaman Faruk (2) A.K.M Akram Hossain (3) Md. Emdadul Haque @ Khaja Doctor and (4) Md.Maklesur Rahman @ Tara they established their camps at Nokla Bilateral High School and Nokla Police station. Since then you the accused persons

started confining civilians and compelling them in digging and making bunkers for the army men at those camps. You the accused persons used to cause torture to civilians who denied carrying out your order. The coercive situation forced many people to be displaced. Such forced labour continued till 09 December 1971 when Nokla got freed.

Therefore, you the accused (1) S.M Aminuzzaman Faruk (2) A.K.M Akram Hossain (3) Md. Emdadul Haque @ Khaja Doctor and (4) Md.Maklesur Rahman @ Tara **are hereby** charged for participation, abetment , facilitating and substantial contribution, by your act and conduct forming part of systematic attack to the commission of criminal acts constituting the offences of ‘**enslavement**’ [**forced labour**] as crimes against humanity as enumerated in section 3(2)(a)(g)(h) of the International Crimes(Tribunals) Act of 1973 read with section 4(1) of the Act of 1973 which are punishable under section 20(2) of the said Act of 1973.

28. Thus, you the accused persons have 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.

29. You accused (1) S.M Aminuzzaman Faruk (2) A.K.M Akram Hossain and (3) Md. Emdadul Haque @ Khaja Doctor 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:

30. The charges so framed have been read over and explained to the accused (1) S.M Aminuzzaman Faruk (2) A.K.M Akram Hossain and (3) Md. Emdadul Haque @ Khaja Doctor to which they pleaded not guilty and claimed to be tried according to law.

31. The charges framed as above could not be explained to the accused (4) Md.Maklesur Rahman @ Tara as he remained absconded.

32. Let 30.09.2018 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.

33. At the same time the learned engaged counsel and also the learned state defence counsels are asked to submit a list of witnesses along with documents which the defence intends to rely upon or if any, 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