

International Crimes Tribunal-1
Old High Court Building, Dhaka, Bangladesh
ICT-BD [ICT-1] Case No.10 of 2017

Present:

Justice Md. Shahinur Islam, Chairman

Justice Amir Hossain, Member

Justice Md. Abu Ahmed Jamadar, Member

Order No.08

15 July, 2018

The Chief Prosecutor

Vs.

(1) Md. Abdus Salam (2) Suruj Ali Fakir (3) Md. Join Uddin Faruki @ Joynal Abedin @ Joynal Moulavi (4) Md. Abdur Rahim @ Md. Abdur Rahim Master @ Nur B.S.C (5) Md. Jalal Uddin (6) Md. Rostam Ali (7) Md. Shamsheer Ali @ Md. Shamsheer Fakir @ Shamsheer Moulavi (8) Md. Fazlul Haque @ Fazlu Kazi[**absconding**] and (9) Md. Shamsul Haque[**absconding**]

For the prosecution:

Mr. Abul Kalam, Prosecutor

For the defence:

Mr. Abdus Sobhan Tarafdar, Advocate, Bangladesh Supreme Court: **Engaged counsel** for 01 accused Md. Shamsheer Ali @ Shamsheer Fakir @ Shamsheer Moulavi

Mr. Abdus Sobhan Tarafdar, Advocate, Bangladesh Supreme Court: **State defence counsel** for four [04] present accused Md. Abdus Salam, Md. Join Uddin Faruki @ Joynal Abedin @ Joynal Moulavi , Md. Jalal Uddin and Rostam Ali

Mr. Gazi M.H Tamim, Advocate, Bangladesh Supreme Court: **Engaged Counsel** For two [02] accused Suruj Ali Fakir and Md. Abdur Rahim @ Md. Abdur Rahim Master @ Nur B.Sc.

Mr. Gazi M.H Tamim, Advocate, Bangladesh Supreme Court: **State defence counsel** for two [02] absconding accused Md. Fazlul Haque @ Fazlu Kazi and Md. Shamsul Haque

[Decision on framing charges]

On closure of hearing on charge framing matter on 09.05.2018 today the record is taken up for rendering order on indictment matter.

Seven [07] accused (1) Md. Abdus Salam (2) Suruj Ali Fakir (3) Md. Join Uddin Faruki @ Joynal Abedin @ Joynal Moulavi (4) Md. Abdur Rahim @ Md. Abdur Rahim Master @ Nur B,S,C (5) Md. Jalal Uddin (6) Md. Rostam Ali (7) Md. Shamsheer Ali @ Md. Shamsheer Fakir are present on dock as have been produced from prison. The rest two [02] accused (8) Md. Fazlul Haque @ Fazlu Kazi and (9) Md. Shamsul Haque have been absconding.

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. 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 directing unarmed civilian population and the civilians belonging to Hindu community of the localities under Police Station-Muktagacha of District-Mymensingh in 1971 to which the accused persons, in exercise of their 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 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:

(i) Md. Abdus Salam

Accused Md. Abdus Salam [75] the son of late Javed Ali Munshi and Mariam Begum of village-Binodbari Mankon at present village-Kuripara under police station-Muktagacha of District-Mymensingh was born on 06.03.1942[according to NID]. He passed SSC in 1961 from Padurbari High School. He joined the then East Pakistan Railway as office assistant in 1962. In 1971 he joined in locally formed Al Badar Bahini and got engaged in committing atrocious activities directing civilian population around the localities under police station- Muktagacha of District- Mymensingh, prosecution alleges.

(ii) Suruj Ali Fakir

Accused **Suruj Ali Fakir** [62] the son of late Tamij Uddin Fakir and Sakhina Khatun of village-Fakir Bari under police station-Muktagacha of District-Mymensingh was born on 10.03.1955[according to NID]. In 1971 he joined in locally formed Razakar Bahini and got engaged in perpetrating heinous atrocious activities directing civilian population around the localities under police station- Muktagacha of District- Mymensingh, prosecution alleges.

(iii) Md. Join Uddin Faruki @ Joynal Abedin @ Joynal Moulavi

Accused Md. Join Uddin Faruki @ Joynal Abedin @ Joynal Moulavi [60] the son of late Nayeb Ali Munshi and Fatikjan of village-Shasa Kanda Para under police station-Muktagacha of District-Mymensingh was born on 01.01.1957 [according to NID]. He passed Alim in 1970. In 1971 he joined in locally formed Razakar Bahini and got engaged in perpetrating atrocious activities directing civilian population around the localities under police station- Muktagacha of District- Mymensingh, prosecution alleges.

(iv) Md. Abdur Rahim @ Md. Abdur Rahim Master @ Nur B.Sc.

Accused Md. Abdur Rahim @ Md. Abdur Rahim Master @ Nur B.Sc. [67] the son of late Abdur Rouf and Ochhima Khatun of village-Kolakanda under police station-Muktagacha of District-Mymensingh, at present 85, Dholadia under police station-Kotwali of District-Mymensingh was born on 03.02.1950[according to NID]. He passed B.Sc in 1970. In 1971 he joined In Birashi High School as Assistant teacher. He served in several schools as teacher and finally went on retirement in 2007. In 1971 he joined in locally formed Razakar Bahini and got engaged in accomplishing atrocious activities

directing civilian population around the localities under police station- Muktagacha of District- Mymensingh, prosecution alleges.

(v) Md. Jalal Uddin

Accused Md. Jalal Uddin [59] the son of late Bashir Uddin Mondol and Bibijan of village-Nimtala under police station-Kotwali of District- Mymensingh was born on 01.01.1958[according to NID]. He studied up to class VII. In 1971 he got enrolled in locally formed Razakar Bahini and got engaged in accomplishing atrocious activities directing civilian population around the localities under police station- Muktagacha of District- Mymensingh, prosecution alleges.

(vi) Md. Rostam Ali

Accused Md. Rostam Ali [70] the son of late Jasim Uddin @ Jashi Sheikh and late Ebarjan of village-Barkahaniya under police station-Muktagacha of District-Mymensingh was born on 16.06.1937[according to NID]. He studied up to class VIII. In 1971 he got enrolled in locally formed Razakar Bahini and got engaged in committing atrocious activities directing civilian population around the localities under police station- Muktagacha of District- Mymensingh, prosecution alleges.

(vii) Md. Shamsheer Ali @ Md. Shamsheer Fakir @ Shamsheer Moulavi

Accused Md. Shamsheer Ali @ Md. Shamsheer Fakir @ Shamsheer Moulavi [66] the son of late Arfan Bepari and Nesamon of village-Darikrishnapur under police station-Muktagacha of District-Mymensingh was born on

01.12.1950[according to NID]. He passed Kamil in 1970. In 1971 he got enrolled in locally formed Razakar Bahini under leadership of Razakar Chan Kazi and got engaged in committing atrocious activities directing civilian population around the localities under police station- Muktagacha of District- Mymensingh, prosecution alleges.

(viii) Md. Fazlul Haque @ Fazlu Kazi

Accused Md. Fazlul Haque @ Fazlu Kazi [59] the son of late Nayeb Ali @ Nayeb Ali Munshi and late Fatikjan of village-Shasa Kanda Para under police station-Muktagacha of District-Mymensingh was born on 01.11.1959[according to NID]. He passed Dakhil in 1970 and Kamil in 1996. In 1971 he got enrolled in locally formed Razakar Bahini under leadership of Razakar Chan Kazi and got engaged in committing atrocious activities directing civilian population around the localities under police station- Muktagacha of District- Mymensingh, prosecution alleges.

(ix) Md. Shamsul Haque

Accused Md. Shamsul Haque [70] the son of late Ohed Ali @ Wahed Ali and late Hazeran of village-Barkahaniya under police station-Muktagacha of District-Mymensingh was a farmer. In 1971 he got enrolled in locally formed Razakar Bahini under leadership of Razakar Chan Kazi and got engaged in committing atrocious activities directing civilian population around the localities under police station- Muktagacha of District- Mymensingh, prosecution alleges.

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. 68 dated 17.05.2016, 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-Muktagacha of District-Mymensingh.

10. Investigation started against nine [09] suspected accused (1) Md. Abdus Salam (2) Suruj Ali Fakir (3) Md. Join Uddin Faruki @ Joynal Abedin @ Joynal Moulavi (4) Md. Abdur Rahim @ Md. Abdur Rahim Master @ Nur B.Sc. (5) Md. Jalal Uddin (6) Md. Rostam Ali (7) Md. Shamsheer Ali @ Md. Shamsheer Fakir (8) Md. Fazlul Haque @ Fazlu Kazi and (9) Md. Shamsul Haque.

11. During investigation, on prayer of the IO through the Chief Prosecutor the Tribunal issued warrant of arrest in execution of which 05 accused were arrested on 08.08.2016 and they were sent to prison when they were produced before the Tribunal. Another one accused Rostam Ali was arrested on 08.02.2017 and was sent to prison on his production before the Tribunal.

12. In this way 06 suspected accused could be arrested at pre-trial stage in execution of W/A issued by the Tribunal, on prayer of the Investigation Officer. Later on, allowing the prayer of investigation officer as pressed by the Chief Prosecutor Tribunal permitted to interrogate these detained accused at the safe home of the Investigation Agency. And they were duly interrogated on 20.02.2017.

13. On 26.02.2017, before submitting investigation report one accused Md. Shamsheer Ali was produced before the Tribunal by causing his arrest in execution of warrant of arrest issued earlier and he was then sent to prison.

14. On 29.03.2017, 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 09[nine] suspected accused of whom 02 could not be arrested.

15. 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 18.06.2017 under section 9(1) of the Act of 1973 before this Tribunal alleging that accused persons were 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-Muktagacha of District-Mymensingh, recommending their joint prosecution.

16. On 14.12.2017, 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.

17. The law enforcement agency could not secure arrest of two accused Md. Fazlul Haque @ Fazlu Kazi and Md. Shamsul Haque. Thus, after having the report in execution of warrant of arrest issued against these accused the Tribunal, for the purpose of holding proceeding in *absentia* against them, ordered publication of notice in two national daily news papers as required

by law. But these accused did not turn up despite such notification published in two national daily news papers and as such treating them absconding the Tribunal ordered for hearing the charge framing matter by appointing Mr. Gaji M.H Tamim to defend those two absconding accused.

18. It is to be noted that Mr. Abdus Sobhan Tarafdar the learned engaged counsel for accused Md. Shamsheer Ali has been appointed as the state defence counsel to defend four[04] present accused Md. Abdus Salam, Join Uddin Faruk , Md. Jalal Uddin and Rostom Ali as they did not engage counsel of their own.

19. Thus hearing on charge framing matter took place on 09.05.2018 in presence of 07 accused detained in prison and in absentia of 02 accused who have been absconding. In course of hearing on charge framing matter both sides placed their respective submission, drawing attention to the formal charge and documents submitted therewith.

20. Mr. Gazi M.H Tamim the learned state defence counsel defending two accused detained in prison Abdur Rahim Master and Suruj Ali Fakir by submitting two separate applications prayed discharge on the grounds stated therein.

V. Submission by the Prosecutor

21. Mr. Abul Kalam, 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 all the accused persons in exercise of their culpable membership in locally formed Razakar

Bahini were engaged in accomplishing the offences of which already cognizance has been taken. In all 09 accused are found to have had prima facie involvement of those offences.

Submission by the Defence

22. Mr. Abdus Sobhan Tarafdar the learned engaged counsel for accused Md. Shamsheer Ali and also as the state defence counsel to defend four[04] present accused Md. Abdus Salam, Join Uddin Faruk, Md. Jalal Uddin and Rostam Ali in fact made no submission seeking discharge of these accused. He simply submitted that truthfulness of alleged arraignments may be well determined at trial as there was no scope of weighing the credibility of materials relied upon by the prosecution, at this stage.

23. Mr. Gazi M.H Tamim the learned engaged counsel for 02 present accused and also as the state defence counsel for 02 absconding accused placed his submission. Questioning alleged involvement of two accused with the alleged events of attack and drawing attention to two separate applications seeking discharge of accused Abdur Rahim Master and Suruj Ali Fakir the learned counsel submitted these accused have been implicated in this case out of local rivalry; that they have been recommended to be prosecuted long 45 years after the alleged events happened; that they were not affiliated with any auxiliary force as averred by the prosecution and that the investigation officer could not bring any documentary evidence intending to substantiate the arraignments brought. Thus these two accused deserve discharge, the learned counsel adds.

24. The learned defence counsel Mr. Gazi M.H Tamim also questioned the unexplained delay in prosecuting the accused persons for the alleged crimes. It has been argued that unexplained inordinate delay of long more than four decades occurred in prosecuting the accused persons impairs the truthfulness of the case. Such unexplained delay not only casts doubt on the allegations brought but leads to discharge of the accused as well.

VI. Deliberation and decision

25. 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. We appreciate the submission advanced in this regard by Mr. Abdus Sobhan Tarafdar the learned defence counsel for accused Md. Shamsheer Ali and also the state defence counsel defending four[04] present accused Md. Abdus Salam, Join Uddin Faruk, Md. Jalal Uddin and Rostam Ali.

26. 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.

27. 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

28. At the outset we say again that 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 merely on the basis of hearing on charge framing matter. Their culpability, if any, can be well determined only at trial, not at this stage.

29. 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.

30. 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.

31. 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 persons were actively engaged in accomplishing horrendous atrocious activities directing unarmed civilians and Hindu community around the localities under police station-Muktagacha of District-Mymensingh in 1971.

32. 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.

33. 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.

34. 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.

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

36. 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.

37. 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 persons were 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 they are now need to stand trial.

38. 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) Md. Abdus Salam of village-Binodbari Mankon at present village-Kuripara under police station-Muktagacha of District-Mymensingh (2) Suruj Ali Fakir of village-Fakir Bari under police station-Muktagacha of District-Mymensingh (3) Md. Join Uddin Faruki @ Joynal Abedin @ Joynal Moulavi of village-Shosa Kanda Para

under police station-Muktagacha of District-Mymensingh (4) Md. Abdur Rahim @ Md. Abdur Rahim Master @ Nur B.Sc. of village-Kolakanda under police station-Muktagacha of District-Mymensingh, at present 85, Dholadia under police station-Kotwali of District-Mymensingh (5) Md. Jalal Uddin of village-Nimtala under police station-Kotwali of District-Mymensingh (6) Md. Rostam Ali of village-Barkahaniya under police station-Muktagacha of District-Mymensingh (7) Md. Shamsheer Ali @ Md. Shamsheer Fakir @ Shamsheer Moulavi of village-Darikrishnapur under police station-Muktagacha of District-Mymensingh (8) Md. Fazlul Haque @ Fazlu Kazi[absconding] of village-Shasa Kanda Para under police station-Muktagacha of District-Mymensingh and (9) Md. Shamsul Haque[absconding] of village-Barkahaniya under police station-Muktagacha of District-Mymensingh **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) Md. Abdus Salam (2) Suruj Ali Fakir (3) Md. Join Uddin Faruki @ Joynal Abedin @ Joynal Moulavi (4) Md. Abdur Rahim @ Md. Abdur Rahim Master @ Nur B.S.C (5) Md. Jalal Uddin

(6) Md. Rostam Ali (7) Md. Shamsheer Ali @ Md. Shamsheer Fakir @ Shamsheer Moulavi (8) Md. Fazlul Haque @ Fazlu Kazi[**absconding**] and (9) Md. Shamsul Haque[**absconding**] as follows:

Charge No.01:[02 accused indicted]

[Event no.01 as narrated in page nos. 27-29 of the formal charge]

[Offences of arson and killing of 04 Hindu civilians of village -Binodbari Mankon under police station-Muktagacha of District-Mymensingh]

Charge: That on 02 August 1971 at about 06:00 A.M a group formed of Pakistani occupation army, you the accused Al Badar (1) Md. Abdus Salam, Razakar (2) Md. Shamsheer Ali @ Md. Shamsheer Fakir@ Shamsheer Moulavi and your accomplice Razakars and Al Badar by launching attack at the house of Jitendra Prasad Thakur at village-Binodbari Mankon under police station-Muktagacha of District-Mymensingh killed **04** Hindu civilians Jitendra Prasad Thakur, Jotindra Kumar Roy, Dilip Kumar Thakur and Narayan Chandra Dey by gun shots and burnt down the house of Jitendra Chandra Thakur.

Therefore, you the accused (1) Md. Abdus Salam and (2) Md. Shamsheer Ali @ Md. Shamsheer Fakir @ Shamsheer Moulavi participated, facilitated, abetted and substantially contributed, by your culpable act and conduct forming part of systematic attack to the commission of offences of ‘**arson**’ 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:[02 accused indicted]

[Event no.02 as narrated in page nos. 30-32 of the formal charge]

[Offences of arson, torture and murder of 07 civilians of village - Binodbari Mankon under police station-Muktagacha of District-Mymensingh]

Charge: That on 02 August 1971 at about 07:00 A.M a group formed of Pakistani occupation army, you the accused Al Badar (1) Md. Abdus Salam, Razakar (2) Md. Shamsheer Ali @ Md. Shamsheer Fakir @ Shamsheer Moulavi and your accomplice Razakars and Al Badar by launching attack at the house of Hazor Ali Mondol at village-Binodbari Mankon under police station-Muktagacha of District-Mymensingh gunned down 07 civilians Khaletonna, Rohimon Nesa, Hamedha Khatun, Nobiron Nesa, Julekha, Maleka and Ferdousi to death when Abdul Hye @ Joban Ali and Rahaton Nesa got severely injured. The house of freedom-fighter Taj Uddin was conflagrated too in conjunction with the attack.

Therefore, you the accused (1) Md. Abdus Salam and (2) Md. Shamsheer Ali @ Md. Shamsheer Fakir @ Shamsheer Moulavi participated, facilitated, abetted and substantially contributed, by your culpable act and conduct forming part of systematic attack to the commission of offences of ‘arson’ ‘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.03:[02 accused indicted]

[Event no.03 as narrated in page nos. 32-36 of the formal charge]

[Offences of extermination, arson, torture of 14 civilians of village - Binodbari Mankon under police station-Muktagacha of District-Mymensingh]

Charge: That on 02 August 1971 at about 08:00 A.M to 08:15 A.M a group formed of Pakistani occupation army, you the accused Al Badar (1) Md. Abdus Salam, Razakar and (2) Md. Shamsheer Ali @ Md. Shamsheer Fakir @ Shamsheer Moulavi and your accomplice Razakars and Al Badar by launching successive attack at the house of Shamsul Huda[once Speaker of the Parliament], Imam Kawari and Nazim Uddin at village-Darikrishnapur under police station-Muktagacha of District-Mymensingh gunned down **14** civilians[**as named in the formal charge**] to death. In conjunction with the attack Hafiza the daughter of victim Nazim Uddin got seriously injured and now she is citizen of Canada and known as Sita Edward.

Therefore, you the accused (1) Md. Abdus Salam and (2) Md. Shamsheer Ali @ Md. Shamsheer Fakir @ Shamsheer Moulavi participated, facilitated, abetted and substantially contributed, by your culpable act and conduct forming part of systematic attack to the commission of offences of **‘arson’**, **‘torture’ and ‘extermination’** 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.04:[02 accused indicted]

[Event no.04 as narrated in page nos. 36-39 of the formal charge]

[Offences of extermination by causing death of 19 civilians of village-Darikrishnapur under police station-Muktagacha of District-Mymensingh]

Charge: That on 02 August 1971 at about 09:00 A.M a group formed of Pakistani occupation army, you the accused Al Badar (1) Md. Abdus Salam , Razakar (2) Md. Shamsheer Ali @ Md. Shamsheer Fakir @ Shamsheer

Moulavi and your accomplice Razakars and Al Badar by launching attack at the house of Rahmat Ali at Paschim Para of village-Darikrishnapur under police station-Muktagacha of District-Mymensingh dragged out the inmates and the civilians who got sheltered there and shot **19 civilians [as named in the formal charge]** to death. In conjunction with the attack some civilians under attack received bullet hit injuries.

Therefore, you the accused (1) Md. Abdus Salam and (2) Md. Shamsheer Ali @ Md. Shamsheer Fakir @ Shamsheer Moulavi participated, facilitated, abetted and substantially contributed, by your culpable act and conduct forming part of systematic attack to the commission of offences of **'extermination'** 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.05:[02 accused indicted]

[Event no.05 as narrated in page nos. 40-44 of the formal charge]

[Offences of arson, and extermination by causing death of large number of civilians torture and murder of 28/30 civilians of village-MIRZAKANDA Katolsar under police station-Muktagacha of District-Mymensingh]

Charge: That on 02 August 1971 at about 11:00 A.M a group formed of Pakistani occupation army, you the accused Razakar (1) Md. Shamsheer Ali @ Md. Shamsheer Fakir @ Shamsheer Moulavi , (2) Suruj Ali Fakir and your accomplice Razakars and Al Badar by launching attack at village-Mirzakanda Katolsar under police station-Muktagacha of District-Mymensingh unlawfully apprehended 35/40 villagers and then took them away to the place near Koya Bil where keeping them guarded some members

of the gang moved to the village Katolsar when houses were set on fire. Coming back there from you the accused persons and your accomplices made the detainees stood in a line on the bank of Koya Bil where **28/30** detainees including Hasen Ali, Shahed Ali Mandol, Kumed Ali, Abed Ali, Rajab Ali, Raj Mahmud, Meher Ali Mandol, Kanu Mondol, Monnes Ali, Khorshed Ali, Ahad Ali, Shahab Uddin, Jobed Ali were shot to death. Some of villagers so taken to the killing site on forcible capture however got survived despite receiving bullet hit injuries.

Therefore, you the accused (1) Md. Shamsher Ali @ Md. Shamsher Fakir@ Shamsher Moulavi and (2) Suruj Ali Fakir participated, facilitated, abetted and substantially contributed, by your culpable act and conduct forming part of systematic attack to the commission of offences of ‘**arson**’ and ‘**extermination**’ 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.06:[04 accused indicted]

[Event no.06 as narrated in page nos. 44-49 of the formal charge]

[Offences of extermination by causing death of large number of Hindu civilians or in the alternative the offence of genocide committed at villages-Kabirpur Bagshipur and Barkahania under police station-Muktagacha of District-Mymensingh]

Charge: That on 19 August 1971 at about 07:00 A.M a group formed of Pakistani occupation army, you the accused (1) Md. Join Uddin Faruki @ Joynal Abedin @ Joynal Moulavi, (2) Md. Jalal Uddin, (3) Md. Rostam Ali and (4) Md. Shamsul Haque by launching systematic attack at village-

Kabirpur under police station-Muktagacha of District-Mymensingh shot 05 Hindu civilians Nogendra Chandra Kar, Jogendra Chandra Kar, Monindra Chandra Kar, Gourango Paul, Jamini Chokroborty to death.

In conjunction with the attack the gang being accompanied by you the accused persons forcibly captured and pinioned 11 Hindu civilians Modhusudan Dey, Shachindra Chandra, Avimunnu Das, Sreekanta Bardhan, Modan Mohon Banda, Nitai Chandra Das, Modhusudan Hangsa, Morol , Pancha Dey , Mohini Mohan Banda and Montu Banda from their respective house and took them away in front of the mosque at village-Banshipur where they were subjected to torture and then there from the detainees were taken to the Haner ghat of village-Barkahonia at about 12:00 noon where they excepting Mohini Mohon Banda and Montu Banda were gunned down to death. Later on victim Mohini Mohon succumbed to injuries and Montu Banda somehow managed to escape by jumping into the river.

Therefore, you the accused you the accused (1) Md. Join Uddin Faruki @ Joynal Abedin @ Joynal Moulavi, (2) Md. Jalal Uddin, (3) Md. Rostam Ali and (4) Md. Shamsul Haque participated, facilitated, abetted and substantially contributed, by your culpable act and conduct forming part of systematic attack to the commission of offences of **‘extermination’** as crimes against humanity as specified in section 3(2)(a)(g)(h) of the International Crimes (Tribunals) Act 1973 or in the alternative the offence of **‘genocide’** as specified in section 3(2)(c)(g)(h) of the Act of 1973 read with section 4(1) of the Act, 1973 which are punishable under section 20(2) of the said Act.

Charge No.07:[04 accused indicted]

[Event no.07 as narrated in page nos. 49-52 of the formal charge]

[Offences of arson, torture and rape at village- Birashi Purbo Para under police station-Muktagacha of District-Mymensingh]

Charge: That on 08 September 1971 at about 10:00/11:00 A.M a group formed of Pakistani occupation army of Pyarpur army camp , you the accused (1) Md. Join Uddin Faruki @ Joynal Abedin @ Joynal Moulavi, (2) Md. Fazlul Haque @ Fazlu Kazi,(3) Md. Abdur Rahim @ Md. Abdur Rahim Master @ Nur B.Sc. and (4) Md. Jalal Uddin by launching systematic attack at village-Birashi Purbo Para under police station-Muktagacha of District-Mymensingh burnt down 30/35 houses of villagers who used to provide shelter and medical assistance to freedom-fighters.

In conjunction with the attack you the accused Md. Join Uddin Faruki @ Joynal Abedin @ Joynal Moulavi forced one Sobina Khatun to enter inside the house and then set it on fire. You the accused Md. Join Uddin Faruki @ Joynal Abedin @ Joynal Moulavi committed rape upon Rahima Khatun the wife of Abdul Aziz, taking her inside the kitchen, in conjunction with the attack.

Therefore, you the accused you the accused (1) Md. Join Uddin Faruki @ Joynal Abedin @ Joynal Moulavi, (2) Md. Fazlul Haque @ Fazlu Kazi,(3) Md. Abdur Rahim @ Md. Abdur Rahim Master @ Nur B.Sc. and (4) Md. Jalal Uddin participated, facilitated, abetted and substantially contributed, by your culpable act and conduct forming part of systematic attack to the commission of offences of **'arson', 'torture' and 'rape'** 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.08:[03 accused indicted]

[Event no.08 as narrated in page nos. 52-56 of the formal charge]

[Offences of extermination or in the alternative genocide committed at village- Shoshanich under police station-Muktagacha of District-Mymensingh]

Charge: That on 12 October 1971 at about 05:00 A.M a group formed of Pakistani occupation army of Pyarpur army camp , you the accused (1) Md. Join Uddin Faruki @ Joynal Abedin @ Joynal Moulavi,(2) Md. Abdur Rahim @ Md. Abdur Rahim Master @ Nur B.Sc. and (3) Md. Jalal Uddin by launching systematic attack at village-Shoshanich under police station-Muktagacha of District-Mymensingh forcibly captured numerous Hindu civilians[as named in the formal charge] and shot them to death, with intent to destroy the Hindu religious group, in whole or in part. Some of detainees however got survived despite receiving bullet hit injuries.

Therefore, you the accused you the accused (1) Md. Join Uddin Faruki @ Joynal Abedin @ Joynal Moulavi,(2) Md. Abdur Rahim @ Md. Abdur Rahim Master @ Nur B.Sc. and (3) Md. Jalal Uddin participated, facilitated, abetted and substantially contributed, by your culpable act and conduct forming part of systematic attack to the commission of offences of **‘extermination’** as crimes against humanity as specified in section 3(2)(a)(g)(h) of the International Crimes (Tribunals) Act 1973 or in the alternative the offence of **‘genocide’** as specified in section 3(2)(c)(g)(h) of the Act of 1973 read with section 4(1) of the Act, 1973 which are punishable under section 20(2) of the said Act.

39. Thus, you the accused persons have been indicted as above for committing the offences under section 3(2)(a)(c)(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.

40. You accused (1) Md. Abdus Salam (2) Suruj Ali Fakir (3) Md. Join Uddin Faruki @ Joynal Abedin @ Joynal Moulavi (4) Md. Abdur Rahim @ Md. Abdur Rahim Master @ Nur BSc. (5) Md. Jalal Uddin (6) Md. Rostam Ali (7) Md. Shamsheer Ali @ Md. Shamsheer Fakir @ Shamsheer Moulavi 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:

41. The charges so framed have been read over and explained to the accused (1) Md. Abdus Salam (2) Suruj Ali Fakir (3) Md. Join Uddin Faruki @ Joynal Abedin @ Joynal Moulavi (4) Md. Abdur Rahim @ Md. Abdur Rahim Master @ Nur B.Sc. (5) Md. Jalal Uddin (6) Md. Rostam Ali (7) Md. Shamsheer Ali @ Md. Shamsheer Fakir @ Shamsheer Moulavi to which they pleaded not guilty and claimed to be tried according to law.

42. The charges framed as above could not be explained to the accused (8) Md. Fazlul Haque @ Fazlu Kazi [absconding] and (9) Md. Shamsul Haque [absconding] as they remained absconded.

43. Let 11.09.2018 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.

44. At the same time the learned engaged counsels and also the learned state defence counsels are 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