

International Crimes Tribunal-1-
Old High Court Building, Dhaka, Bangladesh
ICT-BD [ICT-1] Case No.04 of 2018

Present:

Justice Md. Shahinur Islam, Chairman

Justice Amir Hossain, Member

Justice Md. Abu Ahmed Jamadar, Member

Order No.04

09 September, 2018

The Chief Prosecutor

Vs.

Md. Abdus Samad alias Musa alias Firoz Kha

Mr. Zahid Imam, Prosecutors: For the prosecution

Mr. Abdus Sattar Palwan, Advocate: For accused Md. Abdus Samad alias Musa alias Firoz Kha.

[Decision on framing charges]

Accused Md. Abdus Samad alias Musa alias Firoz Kha is present on dock as has been produced from prison. On closure of hearing on charge framing matter and discharge applications filed today the record is taken up for rendering order on indictment matter.

Before we pass the order, we consider it indispensable to go over a brief portrayal of the settled historical context 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 enthused the entire nation, excepting a few pro-Pakistan people to get equipped for the war of liberation.

4. 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.

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 Pakistan 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 allegedly carried out directing unarmed civilian population of the localities under Police Station-Puthia of District-Rajshahi in 1971 to which the accused person, in exercise of his affiliation with locally formed

Razakar Bahini, allegedly participated actively and culpably contributed to the commission of crimes, in violation of international humanitarian law and the laws of war.

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:

Md. Abdus Samad alias Musa alias Firoz Kha

9. Accused Md. Abdus Samad alias Musa alias Firoz Kha the son of late Abbas Ali and late Sohagi Bewa of village-Kathalbaria, Puthia Trimohini Bazar (6) Buildings under police station-Puthia of District-Rajshahi was 19/20 years old in 1971 although the NID shows his date of birth as 15.3.1957. In 1971 he had a daughter who got married in 1984. He studied up to class IV and was affiliated with the politics of Muslim League a pro-Pakistan political part since prior to the war of liberation. In 1971 he being a follower of Jamat E Islami got enrolled in locally formed Razakar Bahini. His name as a Razakar finds place in the list of no.04 Valukgasi Union of Puthia Thana Razakars. In exercise of membership in Razakar Bahini he actively collaborated with the Pakistani occupation army in accomplishing atrocious activities constituting the offences of crimes against humanity around the locality under Puthia police station of District Rajshahi, prosecution alleges.

IV. Procedural History

10. The Investigation Agency of the Tribunal constituted under the Act of 1973 started investigation pursuant to complaint register's serial no. 74 dated 11.12.2016, 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-Puthia of District-Rajshahi. Investigation started against only one suspected accused Md. Abdus Samad alias Musa alias Firoz Kha.

11. During investigation, on prayer of the IO through the prosecution the Tribunal on 24.01.2017 ordered to produce the suspected accused Md. Abdus Samad alias Musa alias Firoz Kha as he was detained in connection with Puthia Police Station Case no.09 dated 05.11.2016 under the Anti terrorism Act, 2009[amended in 2013] together with the Explosive Substance Act 1908[amended in 2002]. The suspected accused was then produced before this tribunal on 20.03.2017 and then considering the submission made by the prosecution he was sent to prison showing him arrested in connection with this case by issuing custody warrant accordingly.

12. On 14.01.2018, the Investigation Officer [IO] submitted report together with documents and materials collected and statement of witnesses before the Chief Prosecutor, wrapping up of investigation.

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 12.04.2018 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-Puthia of District-Rajshahi.

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

15. The Tribunal ordered for hearing the charge framing matter by appointing Mr. Abdus Shukur Khan, Advocate as the state defence counsel, at the cost of Government, to defend the absconding accused Md. Abdus Samad alias Musa alias Firoz Kha as he did not engage counsel of his own.

16. Then on 30.07.2018 hearing on charge framing matter took place when prosecution placed submission, drawing attention to the formal charge and documents submitted therewith. The accused engaged Mr. Abdus Sattar Palwan as his counsel and thus appointment of Mr. Abdus Shukur Khan as state defence counsel has been cancelled and the newly engaged counsel prayed time for placing submission, on perusal of the formal charge and materials. Accordingly, on 14.08.2018 the learned defence counsel Mr. Abdus Sattar Palwan placed his respective submission drawing attention to the grounds stated in the application seeking discharge.

V. Submission by the Prosecutor

17. Mr. Zahid Imam the learned prosecutor drawing attention to the formal charge and materials collected during investigation that the accused belonged to locally formed Razakar Bahini; that he was actively involved with the commission of offences, by launching systematic attack directing civilians and a protected religious group as narrated in the formal charge; that the accused physically participated to the commission of atrocious activities including genocide around the localities under police station-Puthia of District Rajshahi. The materials and evidence collected prima facie demonstrate accused persons' involvement and complicity with the offences of crimes against humanity and genocide.

VI. Submission by the Defence Counsels

18. On contrary, Mr. Abdus Sattar Palwan the learned defence counsel submitted that credible evidence could not be collected in support of the alleged arraignments and complicity of the accused therewith; that in 1971 the accused was a minor boy and did not belong to Razakar Bahini ; that he has been falsely implicated out of local rivalry; that the individuals who alleged were with the group formed of Pakistani occupation army have not been brought to justice and that the accused has been prosecuted on pick and choose basis which creates doubt as to his involvement and complicity with the alleged events of attacks. The accused deserves discharge taking all these matters into account.

VII. Deliberations and Decision

19. At the outset we reiterate that at this stage neither the guilt nor the innocence can be adjudicated decisively. However, the accused person shall be treated innocent, till he is found guilty. His culpability, if any, can only be well determined at trial, not at this stage.

20. On *prima facie* examination 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 focus our mind to the allegations and facts of attacks disclosed in the Formal Charge as well as the statement of witnesses and documents submitted therewith.

21. 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.

22. Prosecution avers that the accused was the potential member of locally formed Razakar Bahini and in exercise of affiliation with this auxiliary force the accused was actively engaged in accomplishing atrocious activities against unarmed civilians around the localities under police station-Puthia of District-Rajshahi in 1971.

23. Conversely, the defence argument is that the accused was minor in 1971 and did not belong to Razakar Bahini and that he has been falsely implicated in this case.

24. 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. Prima facie the formal charge demonstrates that it has been found in investigation that in 1971 the accused was not a minor boy as averred by the defence . However, anything contrary on this matter may be well proved in trial only, not at this stage.

25. 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.

26. Defence submitted that the accused person was not involved with the offences alleged as the evidence collected during investigation does not indicate it. This submission does not have merit. Besides, at this stage this matter necessary to determine liability of the accused persons cannot be resolved.

27. 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.

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

29. 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 Samad alias Musa alias Firoz Kha 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 Md. Abdus Samad alias Musa alias Firoz Kha the son of late Abbas Ali and late Sohagi Bewa of village-Kathalbaria, Puthia Trimohini Bazar (6) Buildings under police station-Puthia of District-Rajshahi as follows:

Charge No.01

[Narrated as event no. 01: page 17-22 of the Formal Charge]

[Offences of looting, arson, abduction, confinement, torture and murder as crimes against humanity at villages Damdoma, Shukdebpur, Bashbari and Gotia of no.04 Valukgasi union under police station Puthia of District Rajshahi]

30. That on 19 April 1971 at about 05:00 A.M a group formed of 50/60 Pakistani occupation army being accompanied by you the accused Md. Abdus Samad alias Musa alias Firoz Kha by launching attack at villages Damdoma, Shukdebpur, Bashbari and Gotia of no.04 Valukgasi union under police station Puthia of District Rajshahi forcibly captured 21 civilians including Adam Ali Bepari, Md. Zafor Ali Sikder, Md. Sirajul Islam, Md. Mofiz Uddin and took them at the house of Md. Nurul Islam[now dead], the Chairman of the Peace Committee of no.04 Valukgasi Union at about 09:00 A.M where the detainees were made assembled in a line and were subjected to grave torture. You the accused then identified the detainees Adam Ali Bepari, Md. Zafor Ali Sikder , Md. Sirajul Islam and

Md. Mofiz Uddin as pro-liberation civilians and thus the rest of detainees were set free excepting these four detained civilians.

In conjunction with the attack the above four detainees identified by you as pro-liberation civilians were then taken in an open place in front of Khalek's house 300 yards far from the house of the Chairman, Peace Committee where detained Adam Ali Bepari, Md. Zafor Ali Sarder were shot to death and then intimidated the locals to dump their bodies in a hole.

On the same day, at about 10:30 A.M the Pakistani occupation army then gunned down two other detainees Md. Sirajul Islam and Md. Mofiz Uddin to death taking them to an open place about 100 yards far from the previous killing site. You the accused Md. Abdus Samad alias Musa alias Firoz Kha, your accomplices and Pakistani occupation army also carried out looting households and destroyed houses by setting those on fire when the victim Md. Zafor Ali Sarder.

Therefore, you the accused Md. Abdus Samad alias Musa alias Firoz Kha 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, arson, other inhumane act and murder as crimes against humanity as specified in section 3(2)(a)(g)(h) read with section 4(1) of the International Crimes(Tribunals) Act, 1973 which are punishable under section 20(2) of the said Act.

Charge No.02

[Narrated as event no. 02: page 22-26 of the Formal Charge]

[Offences of abduction, confinement, torture and murder of 06 civilians as crimes against humanity committed at villages Gondogohali, Chakpolashi, Bairagibazar and Bashbari under police station Puthia of District Rajshahi]

31. That on 19 April 1971 at about 12:00 noon 40/50 freedom loving civilians of villages Gondogohali, Chakpolashi, Bairagibazar and Bashbari moved to the house of you the accused Md. Abdus Samad alias Musa alias Firoz Kha and asked him why he was collaborating with the Pakistani occupation army in committing atrocious activities and with this you the accused being angry attacked them by a sharp sword that resulted in injury to 04 civilians--Md. Ismail Sarker, Badiuzzaman, Omar Ali alias Md. Kala Boba and afterwards you the accused rushed to the Pakistani occupation army camp at Mohonpur. Md. Ismail Sarker, Badiuzzaman, Omar Ali alias Md. Kala Boba succumbed to injuries later on.

In conjunction with the attack a group formed of 30/35 Pakistani occupation army being accompanied by you the accused Md. Abdus Samad alias Musa alias Firoz Kha coming to village Bashbari by 3-4 vehicles at about 03:00 P.M forcibly detained Anes Khalifa, Abdus Satter and Rahmat Shah as identified by you the accused from their house and picked them up on the vehicle and at about 05:00 P.M at the place of crossing three roads at Bashbari Paschimbag getting down from vehicle the three detainees were made stood in a line and were shot to death. The bodies were then buried by the villagers in a bamboo garden as asked and intimidated by the Pakistani army men.

On the same day at about 06:00 P.M the gang being accompanied by you the accused and your accomplices coming to village Paschimbag took away the dead body of Ismail Sarker and seriously injured Badiuzzaman with them by vehicle and since then their bodies could not be traced even.

Therefore, you the accused Md. Abdus Samad alias Musa alias Firoz Kha 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)

read with section 4(1) of the International Crimes(Tribunals) Act, 1973 which are punishable under section 20(2) of the said Act.

Charge No.03

[Narrated as event no. 02: page 26-30 of the Formal Charge]

[Offences of looting, arson, torture and murder as crimes against humanity or in the alternative the offence of genocide at Santal Para of village Paschimbag under no.04 Valukgasi Union under police station Puthia of District Rajshahi]

32. That on 19 April at about 07:30 P.M a group formed of 30-35 Pakistani occupation army being accompanied by you the accused Md. Abdus Samad alias Musa alias Firoz Kha and your cohorts attacked the Santal Para of village Paschimbag under no.04 Valukgasi Union under police station-Puthia of District Rajshahi and on your identification the army men gunned down the Head man of Santal Lade Hemron to death and then destroyed the house setting it on fire.

In conjunction with the attack, you the accused killed Kanu Hasda, Tunu Maddy and Jotu Soren by inflicting sword blows and looted valuable of 8/9 houses and then burnt down 40/50 houses belonging to Santals as named in the formal charge.

Killing four civilians and destructive acts carried out by the gang accompanied by you the accused were intended to destroy the Santal group, in whole or in part on account of their membership in Hindu religion.

Therefore, you the accused Md. Abdus Samad alias Musa alias Firoz Kha participated, facilitated, abetted and substantially contributed, by your culpable act and conduct forming part of systematic attack to the commission of offences of '**looting**', '**arson**', '**torture**' and '**murder**' 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 read with section 4(1) of the Act, 1973 which are punishable under section 20(2) of the said Act.

Charge No.04

[Narrated as event no. 02: page 20-32 of the Formal Charge]

[Offences of confinement and murder of 01 civilian of village Dhokrakul of no.04 Valukgasi Union under police station Puthia of District Rajshahi]

33. That on 20 April 1971 in early morning 07:30 A.M you the accused Md. Abdus Samad alias Musa alias Firoz Kha and your accomplices killed Chandu Soren of village- Mohipara under police station-Puthia of District-Rajshahi by inflicting sword blow on chasing him at a place west to Putihia-Taherpur road of village Dhokrakul when he was on the way to meet his relative at Santal Para of village-Paschimbag.

On hearing the event of killing Chandu Soren the son of the victim and victim's family inmates got sheltered at Godagari, Rajshahi, quitting their house being feared. 10/12 days later they returned back home and found the victim's body lying at the place where he was killed. The scrappy body was then buried near their house.

Therefore, you the accused Md. Abdus Samad alias Musa alias Firoz Kha participated, facilitated, abetted and substantially contributed, by your culpable act and conduct forming part of systematic attack to the commission of offences of **'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.

34. Thus, you 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.

35. You accused Md. Abdus Samad alias Musa alias Firoz Kha have 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 Md. Abdus Samad alias Musa alias Firoz Kha to which he pleaded not guilty and claimed to be tried according to law.

37. Let **03.10.2018** 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 defence counsel is directed 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