

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

**ICT-BD Case No.01 OF 2014**

Chief Prosecutor-Versus- Md. Abdul Jabbar Engineer

Present:

Mr. Justice M. Enayetur Rahim, Chairman

Mr. Justice Jahangir Hossain, Member

Mr. Justice Anwarul Haque, Member

**Order No.08**

**Order dated 14.08.2014**

Mr. Rishi Kesh Shaha with

Mr. Md. Jahid Imam

.....for the prosecution

Mr. Mohammad Abul Hasan

.....for the defence

**Decision on charge framing matter**

Accused Md. Abdul Jabbar Engineer has been absconding from the beginning of its inception. So, the trial has been started in absentia against the accused after complying with the provisions of Rule 31 and Rule 32 of the Rules of Procedure, 2010.

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

**1. Introduction and Formation of the Tribunal**

This International Crimes Tribunal [hereinafter referred to as the "Tribunal"] was established under the International Crimes (Tribunals)

Act enacted in 1973 [hereinafter referred to as the Act] by Bangladesh Parliament to provide for the detention, prosecution and punishment of persons responsible for genocide, crimes against Humanity, war crimes, and crimes committed in the territory of Bangladesh, in violation of customary international law, particularly between the period of 25<sup>th</sup> March and 16<sup>th</sup> December, 1971. However, no Tribunal was set up and as such no one could be brought to justice under the Act until the government established the Tribunal (Tribunal-1) on 25<sup>th</sup> of March 2010.

## **2. Historical Context**

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

In 1952 the Pakistani authorities attempted to impose Urdu as the only State language of Pakistan ignoring Bangla, the language of the majority population of Pakistan. The people of the then East Pakistan started movement to get Bangla recognized as a state language thus marking the beginning of language movement that eventually turned to the movement for greater autonomy and self-determination and eventually independence.

In the general election of 1970, the Awami League under the leadership of Bangabandhu Sheikh Mujibur Rahman became the majority party of Pakistan. Despite this overwhelming majority,

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

In the War of Liberation that ensued, all people of East Pakistan wholeheartedly supported and participated in the call to free Bangladesh but a small number of Bangalees, Biharis, other pro-pakistanis, as well as members of a number of different religion-based political parties joined and/ or collaborated with the Pakistani invading force to actively oppose the creation of independent Bangladesh and most of them committed and facilitated the commission of atrocities in the territory of Bangladesh. As a result, 3 million [thirty lakh] people were killed, more than 2,00,000 [two lakh] women raped, about 10 million [one crore] people deported to India as refugees and million others were internally displaced. It also experienced unprecedented destruction of properties all over Bangladesh.

The Pakistan Government and the military with the help of some pro-Pakistani leaders setup a number of auxiliary forces such as the

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

### **3. Brief Account of the accused**

Accused Md. Abdul Jabbar, locally known as Engineer Abdul Jabbar, son of late Saden Ali alias Samed Ali Hawlader and late Sawhar Banu of village-Khetachira, Police Station Mathbaria, District-Pirojpur and House No.136/A, West [Paschim] Nakhalpara, police station Tejgaon, Dhaka was born on 30.11.1932. He having obtained BSC Engineering degree from Dhaka joined the politics of Muslim League and became an influential leader of that political party and elected as an MPA [Member of Provincial Assembly] in 1964. He also elected as the Member of Parliament [MP] in 1986 and 1988 respectively as a nominee of Jatio Party and was also a vice Chairman of central committee of Jatio Party. In 1971 when the liberation war was started he being an influential leader of Muslim League formed peace (Santi) Committee in Mathbaria area under presently Pirojpur

District and became its Chairman to collaborate the Pakistani occupation Army and its auxiliary forces like Rajakar Bahini, Al-Badr, Al-Shams etc. Under his patronization Rajakar Bahini was formed in Mathbaria area, and as per his direction, plan and conspiracy the Pakistani Army, Rajakar Bahini and members of Peace Committee committed various crimes against Humanity in 1971 in that locality.

#### **4. Procedural History**

The Chief Prosecutor submitted formal charge under section 9(1) of the Act in the Tribunal on 11.05.2014 on the basis of Investigation Report of the Investigation Agency. It has been alleged in the Formal Charge that during the War of Liberation in 1971, the accused as Chairman of Peace Committee of Mathbaria Police Station, Faridpur, had committed crimes against Humanity, genocide including abetting, aiding, participating and providing moral support to commit such crimes in different places of Mathbaria Police Station. The Tribunal on 12.05.2014 on perusal of Formal Charge, statement of witnesses and the documents submitted by the Prosecution, took cognizance of offences as specified in section 3(2) read with section 4(1) of the Act against the accused. The Tribunal issued warrant of arrest against him and the same was found unserved as he was absconding. Thereafter, the Registrar of the Tribunal by order dated 12.06.2014 was directed to take necessary measures as per provision of Rule 31 of the Rules of Procedure. Accordingly, it was complied with as it appears from order No.3 dated 06.07.2014. As the accused did not turn up after publication of its context in the two daily national news papers,

the Tribunal by its order dated 20.07.2014 appointed Mr. Mohammad Abul Hasan as State defence counsel to defend absconding accused Md. Abdul Jabbar Engineer and fixed the date for hearing on charge matter.

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

Before this Tribunal, in course of hearing the charge matter, the learned Prosecutor Mr. Rishi Kesh Shaha assisted by Mr. Md. Jahid Imam has made submissions in support of framing charge against the accused in the light of the Formal Charge together with statements of witnesses and documents submitted therewith. While Mr. Mohammad Abul Hasan, the learned State defence counsel by filing an application for discharge of the accused, made elaborate submissions in support of discharging the accused from the charges brought against him.

#### **5. Submission advanced by the Prosecutor**

The learned Prosecutor, before drawing our attention to the facts set out in the Formal Charge constituting the offences allegedly committed by the accused during 1971 War of Liberation, portrayed the context in brief to substantiate the organizational plan and policy in execution of which the local pro-Pakistani persons belonging to fundamentalist Islamic political groups, Peace Committee, Al-Badr Bahini, Rajakar Bahini and auxiliary forces took part in committing the offences as crimes against Humanity and also substantially aided

and abetted the Pakistani occupation force in committing horrific atrocities. It has thus submitted that commission of offences of crimes against Humanity and genocide in 1971 during the Liberation War is an undeniable fact of common knowledge that deserves judicial notice. It has also submitted that the statement of witnesses, documents and materials collected during investigation abundantly established that the accused abetted, facilitated the commission of atrocities and also had complicity to commit such offences in Mathbaria Thana area of Pirojpur district in 1971. The accused had also physical participation to the commission of offences narrated in the Formal Charge, apart from abetment and complicity to commit offences.

It has further submitted by the learned Prosecutor that prosecution has sufficiently explained the delay of 41 years in bringing prosecution against the accused in the Formal Charge, moreover, a criminal proceeding can not be barred by limitation which is universally accepted by all. It has also further submitted that the accused as influential leader of Muslim League and Chairman of Peace Committee, Mathbaria Thana Unit directed auxiliary forces to commit crimes against Humanity and he also directly participated in the atrocities and as such he is also liable under sections 4(1) and 4(2) of the Act.

#### **6. Submission advanced by the defence**

The learned State-defence Counsel by filing an application seeking discharge of the accused has argued that the allegations set up in the Formal Charge do not disclose or state specificity of general

particulars and the required elements to constitute the offences of crimes against Humanity. The Formal Charge is based on vague and unspecified allegations and it does not disclose the mode of participation of the accused with the alleged atrocious acts.

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

The learned State defence counsel has further submitted that the prosecution against the accused has been brought after 41 years without reasonable explanation of such long delay and as such, the case is hopelessly barred by limitation; the alleged offences namely torture, abduction, confinement, conversion and deportation had no existence in the International customary laws before 1971 and as such no charge about the said offences can be legally framed against the accused. Learned State defence Counsel has further contended that there was no document submitted by the prosecution as to whether the accused was the Chariman of the peace committee of Mathbaria Thana Unit and he abetted and helped the auxiliary forces including the Rajakar Bahini in committing atrocities. It is a motivated case brought against him by the prosecution at the instance of interested quarter. The accused is a very popular man in the locality and as such



he had been elected as the member of Parliament on various occasions; the accused never took part in the alleged atrocities mentioned in the formal charge and he was never a leader or commander of any auxiliary forces having control over them and as such he is in no way liable under section 4(1) and 4(2) of the Act.

11. Before going into discussion and evaluation of the materials on record, it is needed to be mentioned here that this Tribunal has already resolved some common legal issues agitated by the defence in the following cases of the Chief Prosecutor vs. Delwar Hossain Sayeedi [ICT-BD Case No. 01/2011], The Chief Prosecutor Vs. Professor Ghulam Azam [ICT-BD case No. 06/2011] and the Chief Prosecutor Vs. Salauddin Quader Chowdhury [ICT-BD Case No. 02/2011]. Apart from this, the Appellate Division of our Supreme Court in the cases of Abdul Quader Mollah Vs Government of Bangladesh vis-a-vis has also decided the legal issues involved in the cases under the Act of 1973.

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

- i. customary International Law [CIL] shall not be applied if it is contrary to the Act of 1973;
- ii. the inordinate delay in commencing any proceedings under the Act of 1973 *ipso facto* can not be a ground to doubt the truth or veracity of the prosecution case;
- iii. by the amendment of section 3(1) of the Act of 1973 through Act No.LV of 2009 the jurisdiction of the Tribunal

has been extended to try and punish 'any individual' or 'group of individuals' besides any member of any armed, defence or auxiliary forces, irrespective of his nationality who has committed crimes against Humanity mentioned in the Act of 1973;

- iv. the Act of 1973 is a protected law and the moment, section 3(1) was amended by way of substitution, it became part of the Statute and it got the protection of any legal challenge to be void or unlawful or even to have become void or unlawful in view of the provisions of Article 47(3) of our Constitution;
- v. the clemency given to the admitted prisoners of War, pursuant to the tripartite agreement of 1974, in no way, either match the Act of 1973 or any of its provisions ineffective, invalid or void;
- vi. mere failure of the successive governments to act in accordance with the Act of 1973 for last more than forty years, in any way, gave any right to the accused to be exonerated from being tried for the commission of crimes against Humanity as mentioned in section 3(2) of the Act;
- vii. in the Act of 1973, no limitation has been prescribed for initiating proceedings against any individual or group of individuals or organization or any member of any armed, defence or auxiliary forces irrespective of his nationality

for the commission of crimes mentioned in section 3(2) of the Act of 1973;

viii. the Collaborators Order 1972 was a different legislation aiming to prosecute the persons for the offences punishable under the Penal Code, were scheduled in the Collaborators Order 1972, while the Act of 1973 has been enacted to prosecute and try the persons for crimes against Humanity, genocide and other crimes committed in violation of customary international law [CIL] and as such there is no scope to characterize the offences indulging in the Collaborators Order 1972 to be the same offences as specified in the Act of 1973.

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

We have perused the Formal Charge, statement of witnesses along with other documents submitted by the prosecution. We are of the view that there are sufficient and substantial materials before this Tribunal to presume that accused Md. Abdul Jabbar Engineer committed offences during the War of Liberation in 1971 as specified under section 3(2) of the Act for which he is criminally liable under section 4(1) of the Act. Since we find that there are prima facie

allegations against the accused, the charges are thus framed against him in the following manner.

**Charges**

**We,**

**Justice M. Enayetur Rahim, Chairman**

**Justice Jahangir Hossain and**

**Justice Anwarul Haque, Members**

**of the International Crimes Tribunal-1**

do hereby charge you Accused Md. Abdul Jabbar, locally known as Engineer Abdul Jabbar, son of late Saden Ali alias Somed Ali Hawlader and late Shawhar Banu of villatge-Khetachira, Police Station Mathbaria, District-Pirojpur and House No.136/A, West (Paschim) Nakhalpara, police station Tejgaon, Dhaka as follows:

**Charge No. 01**

That you Md. Abdul Jabbar Engineer were a leader of Muslim League, an anti-liberation political party, and had been member of peace committee of Pirojpur district. You took over the charge of peace committee of Mathbaria as chairman during the War of Liberation in 1971. At your instigation a Rajakar Bahini was formed under the leadership of late Iskandar Ali Mridha. You Md. Abdul Jabbar Engineer being the chairman of peace committee and your accomplice Iskandar Ali Mridha along with armed members of Rajakar Bahini held a public meeting at Toshkhali school field on 16<sup>th</sup> May, 1971 at 10:00/11:00 A.M and gave a speech directing your followers to bring freedom fighters Abdur Razzak Biswas and Motaleb Sharif after

apprehending them. According to your instruction Rajakars and other anti-liberation supporters under the leadership of Iskandar Ali Mridha went to the houses of those freedom fighters Abdur Razzak Biswas and Motaleb Sharif of Fuljhury village at about 04:00 P.M and gun fired at them seeing them in the house. On the spot Motaleb Sharif succumbed to his severe injuries while Abdur Razzak Biswas died three days later due to sustaining bullet injures. In continuation to that incident, on the same day at the eve of the evening armed Rajakars and others made an attack and plundered the houses of around 100/150 Hindu people at Kulupara and Nathpara and set fire to those houses before their departure by your instance. Subsequently many Hindu family members as well as freedom loving people of the aforesaid two villages deported to India leaving their own houses in order to save their lives and took shelter at refuge centre in India.

Therefore, you are hereby charged for abetting, instigating, aiding and facilitating the commission of offences of looting, arson, murder and deportation as crimes against Humanity as specified in section 3(2)(a)(g)(h) of the International Crimes (Tribunals) Act, 1973 which are punishable under section 20(2) of the Act. You are also liable for commission of above mentioned offences under section 4(1) of the Act.

### **Charge No. 02**

That you Md. Abdul Jabbar Engineer being the chairman of Mathbaria Peace Committee along with 30/35 Pakistani occupation

forces and another group of around 40/45 armed members of Rajakar Bahini under the leadership of late Iskandar Ali Mridha went to Fuljhury village on 17<sup>th</sup> May, 1971. From 09:00 A.M to till night in a pre-planned manner you and your aforementioned accomplices jointly again made attack on the houses of Abdur Razzak Biswas @ Rizu and Motaleb Sharif and set fire to both the houses after plundering. During arson dead body of freedom fighter Motaleb sharif was in the house and burnt to ashes. You Md. Abdul Jabbar Engineer ordered your armed accomplices to kill Saroda Kanta Paik seeing him while he was attempting to flee away and according to your instruction your armed Bahini shot him dead in front of his house at a field. Under your leadership Pakistani invading force along with Rajakars cordoned the Fuljhury village and set fire on around three hundred sixty houses of Muslim and Hindu families after looting and vandalising the same.

Therefore, you are hereby charged for abetting, instigating, aiding, facilitating and substantially contributed to the commission of offences of looting, arson and murder as crimes against Humanity as specified in section 3(2)(a)(g)(h) of the International Crimes (Tribunals) Act, 1973 which are punishable under section 20(2) of the Act. You are also liable for commission of above mentioned offences under section 4(1) of the Act.

**Charge No. 3:**

That on 22.05.1971 at about 9.00 A.M. you Md. Abdul Jabbar Engineer, the then chairman of Mathbaria Thana Peace Committee,

along with armed members of local Peace Committee, Rajakar Bahini and other anti-liberation people having gone to Naligram under Mathbaria police station, District Pirojpur, started attacking and firing there. At that time the unarmed innocent villagers being afraid of were fleeing away and then you yourself with your pistol shot Sokhanath Kharati son of late Shita Nath Kharati to death, and you and your accomplices, under your order, by firing shots also killed Zitendra Nath Biswas, Nishi Kanta Biswas, Surendra Nath Biswas, Sokhanath Kharati son of late Basanto Kumar Mistri, Gonesh Chandra Mistri, Nepal Chandra Mistri, Upandra Nath Mistri, Basanto Halder, Baloram Mistri, Upendra Nath Biswas and Shasti Hawlader with intent to destroy, in whole or in part the Hindu religious group. At the time of said occurrence you and your accomplices also plundered houses of sixty Hindu families of that village and then set them on fire.

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

**Charge No. 4:**

That any day of the last week of May, 1971 at about noon you Md. Abdul Jabbar Engineer, the then chairman of Mathbaria Thana Peace Committee, sent local Rajakar Hossain Kerani (now dead), Quader Jamadar (now dead) and the Imam of Sapa mosque to the

Hindu para of village Fuljhuri, with a direction, who having gone to that village told the people of the Hindu community that you had given an order that the Hindus could only survive and reside in the country peacefully if they were converted to Muslims. Accordingly, about two hundred Hindus of that village having been threatened assembled on the bank of a pond of the house of Kumud Bandhu of village Fuljhuri who were compelled to be converted to Muslims against their wills under threat by reciting Kalema and wearing caps, and they were also given Muslim names.

Therefore, you are hereby charged for abetting and facilitating the commission of offences of persecutions as crimes against Humanity as specified in section 3(2) (a)(g)and (h) read with section 4(1) of the International Crimes (Tribunals) Act, 1973 which are punishable under section 20(2) of the Act.

#### **Charge No.5**

That pursuant to the plan, conspiracy and direction of you Md. Abdul Jabbar Engineer, the then Chairman of 'Peace (Santi) Committee' of Mathbaria Thana, the members of Rajakar Bahini in between the sunset of 06.10.1971 and the morning of 07.10.1971 had attacked two Hindu populated villages namely, Angulkata and Mathbaria and abducted 37 persons belonging to Hindu community from their respective houses and eventually, out of them 22 persons were killed by gun shots and 15 persons were injured by the Rajakar Bahini and the Rajakar Bahini also plundered the houses of those persons.



Therefore, you are hereby charged for conspiracy, abetting and facilitating the commission of offences of abduction, murder, torture, plundering (other in human act) and persecutions on religious ground as crimes against Humanity as specified in section 3(2)(a)(g) (h) of the International Crimes (Tribunals) Act, 1973 which are punishable under section 20(2) of the said Act. You are also liable for the commission of above offences under section 4(1) of the Act.

The charges framed by the Tribunal is read over in the open court but it could not be explained to the accused as he is absconding since inception of the case.

Let the case be fixed on 07.09.2014 for opening statement and examination of prosecution witnesses. The trial shall be continuing on every working day until further order. The state 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.

**(M. Enayetur Rahim, Chairman)**

**(Jahangir Hossain, Member)**

**(Anwarul Haque, Member)**