

# Summary of ICT verdict in Abul Kalam Azad Case

FROM PAGE 15

*(v) The accused could have been prosecuted and tried under the Collaborators Order 1972 and if prosecuted present prosecution for same offences is barred by the doctrine of Doctrine of Double Jeopardy*

37. There has been no proof that the accused was prosecuted and tried under the Collaborators Order 1972. It is not correct to say that the accused could have been prosecuted if actually he had perpetrated any of crimes enumerated in the Act of 1973 for which he has been charged now. Next, even if the accused was really prosecuted and tried under the Collaborators Order 1972 the present prosecution under the Act of 1973 cannot be said to be barred by the doctrine of double jeopardy.

38. The Collaborators Order 1972 was a different legislation aiming to prosecute the persons responsible for the offences enumerated in the schedule thereof. It will appear that the offences punishable under the Penal Code were scheduled in the Collaborators Order 1972. While the 1973 Act was enacted to prosecute and try the crimes against humanity, genocide and other system crimes committed in violation of customary international law. There is no scope to characterize the offences underlying in the Collaborators Order 1972 to be the same offences as specified in the Act of 1973.

39. Therefore, we are disinclined to accept the argument that merely for the reason that since the accused was not brought to justice under the Collaborators Order 1972 now he is immune from being prosecuted under the Act of 1973.

*(vi) Whether the accused can be prosecuted without prosecuting accomplices*

40. According to the charges it will reveal that apart from the accused, some other armed Razakars and co-perpetrators accompanied the accused at the crime scene in committing the crimes. But excepting accused, none of his accomplices has been brought to justice. It is true. But that by itself does not make the horrendous episode of atrocities directing the civilian population belonging to Hindu community constituting crimes against humanity and genocide untrue or give any immunity to accused Abul Kalam Azad @ Bachchu. If the accused is found guilty and criminally liable beyond reasonable doubt for his culpable acts, inaction in prosecuting his accomplices cannot be the reason for holding the former innocent or relieved from liability. In this regard we may recall the provision as contained in section 4(1) of the Act of 1973.

*(vii) Definition and Elements of Crime*

41. We are not agreed with the submission advanced by the learned defence counsel that Section 3(2) of the ICTA 1973 does not explicitly contain the 'systematic' element for constituting the crimes against humanity and in this regard this Tribunal may borrow the elements and definition of crimes as contained in the Rome Statute.

42. Section 3(2)(a) of the Act is self contained and fairly compatible with the international jurisprudence.

43. The definition of 'Crimes against humanity' as contemplated in Article 5 of the ICTY Statute 1993 neither requires the presence of 'Widespread and Systematic Attack' nor the presence of 'knowledge' thereto as conditions for establishing the liability for 'Crimes against Humanity'. True, the Rome Statute definition differs from that of both ICTY and ICTR Statutes.

44. The phrase 'directed against any civilian population' as contained in section 3(2) (a) of the Act of 1973 is an expression which specifies that in the context of a crime against humanity the civilian population is the primary object of the attack. The Rome Statute says, the definition etc. contained in the Statute is 'for the purpose of the Statute'. So, use of the phrase "for the purpose of the Statute" in Article 10 of the Rome Statute means that the drafters were not only aware of, but recognized that these definitions were not the final and definitive interpretations, and that there are others.

45. Thus, our Tribunal (ICT) which is a domestic judicial body constituted under a legislation enacted by our Parliament is not obliged by the provisions contained in the Rome Statute. The Rome Statute is not binding upon this Tribunal for resolving the issue of elements requirement to constitute the offence of crime against humanity.

46. The specific offences of 'Crimes against Humanity' which were committed during 1971 are tried under 1973 Act and thus it is obvious that they were committed in the 'context' of the war of liberation in 1971. This context itself is sufficient to prove the existence of a 'systematic attack' on Bangladeshi self-determined population in 1971.

47. An "attack against a civilian population" means the perpetration against a civilian population of a series of acts of violence, or of the kind of mistreatment referred to in sub-section (a) of section 3(2). Conducts constituting 'Crimes' directed against 'civilian population' thus refers to organized and systemic nature of the attack causing acts of violence to the number of victims belonging to civilian population.

48. Therefore, the claim as to the non-existence of a consistent international standard for the definition of 'crimes against humanity' as enumerated in the 1973 Act is visibly baseless.

*XV. Adjudication of Charges*

49. Charge no.7 relates to the crime of 'genocide' as specified in section 3(2)(c)(i) of the Act while the remaining 07 charges relate to the criminal acts constituting the offences of 'crimes against humanity' as specified in section 3(2) (a) of the Act. For the sake of convenience of discussion we consider it expedient to adjudicate the charge no.7 first as the nature of crimes related to it differs from that as described in the latter ones.

**Adjudication of Charge No 07**

[Charge relates to the horrific event of genocide committed at village Hasamdia and Moindia Bazar under police station Boalmari district Faridpur]

50. Form evidence it is proved that Perpetration of the horrific event including murder of numerous civilians targeting the Hindu group including the father of PW.19 on the date time and manner as narrated by a live witness PW.19 has been proved. At the same time we have found from evidence of PW.19 that the accused accompanied the gang of perpetrators and how he had directly participated to the commission of destructive crimes. All these facts remain totally undisputed in cross-examination of PW.19. We have found that the prosecution has been able to prove culpability of the accused by the evidence of PW.16, PW.17, PW.19 and PW.20 of whom PW.16 and PW.19 are the live witnesses.

51. The massive atrocities and mass scale killing and destruction compelled the members of Hindu community of the crime village to deport. Displacement from own residing place does not conform to the internationally recognised principle of human rights, the cumulative effect of the atrocities including killing, destruction and looting of properties, mental harms compelling the Hindu community of the crime village inevitably imprints an unmistakable notion that the aim and intent of the perpetrators was to destroy the 'Hindu group or community', in part. This notion is qualified as 'genocidal intent' as required to constitute the offence of

'genocide'. It remains totally uncontroversial.

52. Evidence, without a doubt, shows that the accused and his accomplices intended to destroy a substantial part of the local Hindu community. Considering the pattern of destructive atrocities together with the killing of about 10 members of Hindu community, number of persons killed becomes immaterial in arriving at a decision as to 'genocidal intent'. The alleged attack was perpetrated at a segment of the crime village which was dominantly Hindu populated and thus targeting and killing about 10 Hindu individuals is to be evaluated for inferring 'genocidal intent'.

53. It is inferred that, in addition to his direct participation of killing at the time of commission of the event of massacre, he substantially provided practical assistance, encouragement and moral support to the principals i.e co-perpetrators in perpetration of the offence of genocide that resulted in mass killing of individuals belonging to 'Hindu Community' which is a 'distinct religious group' and mass destruction and thereby he incurs liability under section 4(1) of the Act for the offence of genocide as specified in section 3(2)(c) (i) of the Act of 1973.

**Adjudication of Charge No. 01**

[Abduction, confinement and torture of Ranjit Nath @ Babu Nath]

54. It has been proved beyond reasonable doubt that accused Abul Kalam Azad @ Bachchu a close associate of the Pakistani army and a member of Razakar force was not only much more pro-active in encouraging the wrongs caused to him (PW.5) but he himself physically participated to the commission of offence of torture, confinement, and inhuman acts caused to Ranjit Nath (PW.5). Why PW.5 was targeted? The answer is simple. At the army camp at Faridpur circuit house, according to PW.5, he found Mujahid (a potential leader and the President of the then East Pakistan Islami Chatra Sangha), on seeing him, had told "he is a freedom fighter, he is a Hindu" and then handed him over to accused Abul Kalam Azad @ Bachchu.

55. Accused Abul Kalam Azad @ Bachchu is thus criminally liable under section 4(1) of the Act of 1973 for physical participation and also for providing substantial contribution to the commission of offence of abduction, confinement and torture as crime against humanity as specified in section 3(2)(a) of the Act which are punishable under section 20(2) read with section 3(1) of the Act.

**Adjudication of Charge No. 02**

[Abduction, confinement and torture on Abu Yusuf Pakhi]

56. Since it could not be established that accused himself had involvement with the alleged act of abducting and handing him (PW.18) over to the army camp the mere fact revealed from evidence of PW.18 that the accused used to visit the camp and remained present while torture was caused to other detainees does not give rise to an irresistible inference that the accused himself was involved with the act of confining and causing torture to PW.18, the victim.

57. We are thus, on careful evaluation of evidence adduced in support of the charge no.2, persuaded that the offence of abducting, keeping confined at the army camp and causing torture to PW.18 has been believably proved. But prosecution, as we have found, has been failed to establish it beyond reasonable doubt that the accused Abul Kalam Azad @ Bachchu by his act or conduct contributed or facilitated to the commission of the offence of abduction, confinement and torture as crimes against humanity as specified in section 3(2) (a) of the Act and therefore, he is not found to have incurred criminally liability under section 4(1) of the Act for the offences as listed in the charge no.2.

**Adjudication of Charge No.03**

[Sudhangsu Mohon Roy Killing]

58. We have found from the corroborative and unimpeachable evidence of PW.1 and PW.3 that at the time of commission of the crime alleged the accused having fire arms with him led the armed gang of 10-12 accomplices. It may be validly inferred too that the accused on having training received rifle for the purpose of accomplishment of attack in furtherance of policy of Pakistani army and the pro-Pakistani political organization collaborating them in 1971. Both the PW.1 and PW.3 are the live witnesses and we do not see any reasonable ground to discard their testimony made before us.

59. The killing of Sudhangshu Mohan Roy and the criminal acts committed in conjunction of the event by the accused and his accomplices were not isolated for which the accused Abul Kalam Azad @ Bachchu is found criminally responsible under section 4(1) of the Act of 1973. The criminal acts on part of the accused and his accomplices was certainly a part of attack against civilian population which qualifies the offence alleged as murder as crime against humanity as specified in section 3(2) (a) of the Act of 1973 which are punishable under section 20(2) read with section 3(1) of the Act.

**Adjudication of Charge 04**

[Madhab Chandra killing]

60. Concatenation of incriminating facts narrated by the PW.6, PW.8 and PW.10 coupled with relevant facts are suffice to prove the commission of the event of the offence of murder of Madhab Chandra Biswas and Gyannedra Mondol as crimes against humanity and mode of participation of the accused therewith. We have found that it has been established beyond reasonable doubt from the evidence of PW.6 and PW.8 and PW.10 the residents of the crime village and live witnesses that on the date, time and in the manner an armed gang of Razakars led by accused Abul Kalam Azad @ Bachchu had launched attack to the house of Madhab Chandra Biswas who was a supporter of Awami League and after looting the ornaments and household etc., they dragged Madhab Chandra Biswas out of his house and took him to east bank of a pond of PW.10 where accused Abul Kalam Azad @ Bachchu himself gunned down him to death and afterwards the accused also killed Gyanendra Mondol at the same spot. Attack targeting the Hindu village and killing of Awami League supporter indicates that the criminal acts of looting and murders were part of 'systematic attack' in furtherance of policy and plan directed against civilian population.

61. The accused, as has been proved, had directly participated to the commission of offence of murder as described in the charge no.4 and thus he incurs individual criminal liability under section 4(1) of the Act and he is found guilty for perpetration of the offence as listed in charge no. 04 which is punishable under section 20(2) read with section 3(1) of the Act.

**Adjudication of Charge No.05**

[Committing Rape upon Devi Rani and Shova Rani]

62. The act of accompanying the gang of armed perpetrators in attacking the house of the victims and keeping them detained in the room of Shova Rani are sufficient to qualify the

constitution of the offence of rape as crime against humanity. It is to be borne in mind that in certain circumstances even a single act comprises a crime against humanity when it occurs within the necessary context.

63. The context speaks that it was not possible for civilians to resist the armed perpetrators led by the accused who were actually meant to execute the policy and plan of the Pakistani army and the pro-Pakistan political organization which had acted as its key auxiliary organisation. The pattern of the attack and acts indicates that the gang targeted the house of the victims belonging to Hindu community, a part of civilian population and the accused and his co-perpetrators finding no male inmates at the crime site, approached to cause harm to female members of the family in furtherance of which accused Abul Kalam Azad @ Bachchu and some of his accomplices dragged the victims to Shova Rani's room where they were kept detained and at that time the other female members were kept guarded by other accomplices outside the room. We thus inescapably consider it just to pen our view that the victims were sexually ravished and the accused cannot be exonerated from criminal liability of committing the offence of rape as crime against humanity as specified in section 3(2) (a) of the Act.

64. The accused Abul Kalam Azad @ Bachchu, as has been proved, had directly participated to the commission of the offence of rape as described in the charge no.4 and thus he incurs individual criminal liability under section 4(1) of the Act and is found guilty for perpetration of the offence listed in charge no.05 which is punishable under section 20(2) read with section 3(1) of the Act.

**Adjudication of Charge No 06**

[Killing of Chitta Ranjan Das]

65. Having regard to the evidence of PW.2, PW.4 and PW.9 we are thus convinced in arriving at decision that the atrocious event of attack launched directing the crime village Phulbaria by the gang of armed Razakars led by accused Abul Kalam Azad @ Bachchu on the date time and in the manner has been proved beyond reasonable doubt. It is inferred unerringly too that intent of acts forming such attack was to cause destructive wrongs to the civilian population. It has also been established that the destructive and atrocious acts that resulted in killing of Chitta Ranjan and Badal Debnath and looting of numerous houses eventually compelled the victims and sufferers of the crime village including the PW.2 to deport to India leaving their houses and properties. We have found how as a leader of the armed gang of Razakars the accused acted directly in committing the crimes. The event was simply horrific and was done in grave breaches of Humanitarian law and Geneva Convention too.

66. The accused Abul Kalam Azad @ Bachchu being accompanied by his armed accomplices, as has been proved, had directly participated to the commission of the offence of murder and the gang of co-perpetrators led by the accused indubitably had committed the criminal acts as part of the attack directing the civilians belonging to Hindu community and thereby the accused Abul Kalam Azad @ Bachchu is found to have incurred individual criminal liability under section 4(1) of the Act and found guilty for committing the offence of murder as crime against humanity as specified in section 3(2) (a) of the Act which is punishable under section 20(2) read with section 3(1) of the Act.

**Adjudication of Charge No. 08**

[Anjali Das abduction and torture]

67. From evidence of PW.11 and PW. 12 we have found it proved that on the date time and in the manner accused Abul Kalam Azad @ Bachchu being accompanied by armed accomplices launched attack to the house of Anjali Das and defying oral communication they forcibly took away Anjali Das with them. That is to say, the accused is found to have directly participated to the act of abduction alleged. It remains unshaken too.

68. It sufficiently indicates that the accused had substantially contributed and facilitated to the act of confinement of the victim Anjali Das with full knowledge.

69. At the same time it may also be validly presumed that the purpose of keeping the victim under such confinement for 7-8 days was not of course anything lawful and certainly mental and physical harm including sexual abuse was caused to her that resulted in her severe sickness as stated by PW.12.

70. The accused, in furtherance of policy and plan of the Pakistani army and the organization collaborating it launched such attack directing the Hindu community, a part of civilian population and the criminal acts were done in context of the war of liberation in 1971. Therefore, the accused Abul Kalam Azad @ Bachchu is found to have incurred criminal liability under section 4(1) of the Act and found guilty for committing the offence of abduction, confinement and torture as crimes against humanity as specified in section 3(2) (a) of the Act which is punishable under section 20(2) read with section 3(1) of the Act.

**XVI. Context prevailing in 1971 in the territory of Bangladesh**

71. It is indeed a history now that the Pakistani army with the aid of its auxiliary forces, pro-Pakistan political organizations implemented the commission of atrocities in 1971 in the territory of Bangladesh in furtherance of following policies:

- Policy was to target the self-determined Bangladeshi civilian population
- High level political or military authorities, resources military or other were involved to implement the policy
- Auxiliary forces were established in aiding the implementation of the policy
- The regular and continuous horrific pattern of atrocities perpetrated against the targeted non combatant civilian population.

72. The above facts in relation to policies are not only widely known but also beyond reasonable dispute. The context itself reflected from above policies is sufficient to prove that the offences of crimes against humanity as specified in section 3(2)(a) of the Act of 1973 were the inevitable effect of part of systematic attack directed against civilian population. This view finds support from the observation made by the Trial Chamber of ICTY in the case of Blaskic (ICTY).

73. It may be legitimately inferred from the phrase "directed against any civilian population" as contained in the Act of 1973 that the acts of the accused comprise part of a pattern of 'systematic' crimes directed against civilian population.

74. Anthony Mascarenhas in a report titled 'Genocide' published in The Sunday Times, June 13, 1971 found as below:

- "SO THE ARMY is not going to pull out. The Government's policy for East Bengal was spelled out to me in the Eastern Command headquarters at Dacca. It has three elements:-
- (1) The Bengalis have proved themselves "unreliable" and must be ruled by West Pakistanis;
  - (2) The Bengalis will have to be re-educated along proper Islamic lines. The "Islamisation of the masses" this is the official jargon is intended to eliminate secessionist tendencies and provide a strong religious bond with West Pakistan;
  - (3) When the Hindus have been eliminated by death and

flight, their property will be used as a golden carrot to win over the under-privileged Muslim."

[Source: [http://www.docstrangelove.com/uploads/1971/foreign/19710613\\_tst\\_genocide\\_center\\_page.pdf](http://www.docstrangelove.com/uploads/1971/foreign/19710613_tst_genocide_center_page.pdf)]

**XVII. Conclusion**

75. It has been proved from testimony of witnesses that the accused had directly participated to the commission of crimes as an armed member of Razakar force. Besides, we have found that for the reason of his atrocious acts in the locality the accused was widely known as 'Razakar'. According to Section 3(1) of the Act of 1973 it is manifested that even any person (individual or a member of group of individuals) is liable to be prosecuted if he is found to have committed the offences specified in section 3(2) of the Act. That is to say, accused Abul Kalam Azad @ Bachchu, even in the capacity of an 'individual' or member of 'group of individuals' comes within the jurisdiction of the Tribunal if he is alleged to have committed crimes specified in section 3(1) of the Act.

76. According to section 4(1) of the Act of 1973 an individual incurs criminal liability for the direct commission of a crime, whether as an individual or jointly. In the case in hand, in dealing with the charges we have found that the accused Abul Kalam Azad @ Bachchu himself had physically participated being accompanied by his armed accomplices to the commission of crimes and as such he held criminally responsible for the direct commission of crimes proved.

77. The accused cannot be considered merely as an absentee accused. He is an absconded accused. Evading trial for the offences of which he has been charged with signifies his culpability too. The accused deliberately waived his right to be present at trial. This conduct adds further to his culpability.

78. Therefore, the fact of absconding of the accused can also be taken as an adverse and material incriminating circumstance to reinforce the evidence and circumstances available in the case.

**XVIII. VERDICT ON CONVICTION**

79. For the reasons set out in this Judgement and having considered all evidence and arguments, the Tribunal unanimously finds the accused Abul Kalam Azad @ Bachchu

**Charge No.1: GUILTY** of the offence of abduction, confinement and torture as 'crimes against humanity' as specified in section 3(2)(a) of the Act and he be convicted and sentenced under section 20(2) of the Act.

**Charge No.2: NOT GUILTY** of the offence of abduction, confinement and torture as 'crimes against humanity' as specified in section 3(2)(a) of the Act and thus he be acquitted.

**Charge No.3: GUILTY** of offence of murder as 'crimes against humanity' as specified in section 3(2)(a) of the Act he be convicted and sentenced under section 20(2) of the Act.

**Charge No.4: GUILTY** of offence of murder as 'crimes against humanity' as specified in section 3(2)(a) of the Act he be convicted and sentenced under section 20(2) of the Act.

**Charge No.5: GUILTY** of offence of rape as 'crimes against humanity' as specified in section 3(2)(a) of the Act he be convicted and sentenced under section 20(2) of the Act.

**Charge No.6: GUILTY** of offence of murder as 'crimes against humanity' as specified in section 3(2)(a) of the Act he be convicted and sentenced under section 20(2) of the Act.

**Charge No.7: GUILTY** of offence of 'genocide' for 'killing the members of Hindu community as specified in section 3(2)(c)(i) of the Act he be convicted and sentenced under section 20(2) of the Act.

**Charge No.8: GUILTY** of offence of abduction, confinement and torture as 'crimes against humanity' as specified in section 3(2)(a) of the Act he be convicted and sentenced under section 20(2) of the Act.

**XIX. VERDICT ON SENTENCE**

80. We have taken due notice of the intrinsic gravity of the offence of 'genocide' and murders as 'crimes against humanity' being offences which are particularly shocking to the conscience of mankind. We are of agreed view that justice be met with if a single 'sentence of death' under section 20(2) of the Act of 1973 is awarded to accused Abul Kalam Azad @ Bachchu for convictions relating to the offences of murder as 'crimes against humanity' (listed in charge no.s 3, 4 and 6) and for the offence of 'genocide' (listed in charge no.7) of which he has been found guilty beyond reasonable doubt.

81. However, we are of further view that considering the proportionate to the gravity of offences the accused Abul Kalam Azad @ Bachchu deserves imprisonment i.e. lesser punishment for convictions relating to the remaining offences as crimes against humanity (listed in charge no.s 1, 5 and 8). Accordingly, we do hereby render the following ORDER on SENTENCE.

Hence, it is ORDERED

That the accused Abul Kalam Azad @ Bachchu son of late Abdus Salam Mia & late Magfura Khatun of village Barakhardia (Choi ani), Police Station- Saltha, District-Faridpur at present sector no. 07, road no. 33, house no. 06, Police Station Uttara, DMP, Dhaka and 'Azad Villa', 279/6 Chan Para, Uttarkhan, Dhaka is found guilty of the offences of 'crimes against humanity' (listed in charge no.s 3, 4 and 6) and for the offence of 'genocide' (listed in charge no.7) and he be convicted and sentenced to death and be hanged by the neck till he is dead under section 20(2) of the International Crimes (Tribunals) Act, 1973.

No separate sentence of imprisonment is being awarded to the accused Abul Kalam Azad @ Bachchu for convictions relating to the offences of crimes against humanity as listed in charge nos. 1, 5 and 8 of which too he has been found guilty as the 'sentence of death' has been awarded to him in respect of four other charges as mentioned above.

The accused Abul Kalam Azad @ Bachchu is however found not guilty of offence of crimes against humanity as listed in charge no.2 and he be acquitted thereof.

Since the convicted accused has been absconding the 'sentence of death' as awarded above shall be executed after causing his arrest or when he surrenders before the Tribunal, whichever is earlier. The sentence of death awarded as above under section 20(2) of the International Crimes (Tribunals) Act, 1973 [The Act No.XIX of 1973] shall be carried out and executed in accordance with the order of the government as required under section 20(3) of the said Act.

Issue conviction warrant. Let a copy of the Judgment be transmitted together with the conviction warrant to the Inspector General of Police, Bangladesh Police, Police Head Quarters, Dhaka for information and necessary action and compliance. Let a copy of the judgement be transmitted also to the District Magistrate, Dhaka for information and necessary compliance.

Justice Obaidul Hassan, Chairman

Justice Md. Mozibur Rahman Miah, Member

Judge Md. Shahinur Islam, Member

(CONCLUDES)