

# Summary of verdict in Quader Mollah case

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Considering the context and pattern of attack we are satisfied that the aforementioned killing formed part of a systematic or organised attack against the civilian population. The victim of the alleged killing was a member of pro-liberation civilian population. The Tribunal is thus satisfied that the aforementioned killing constitutes the offence of murder as a crime against humanity committed in violation of customary international law.

76. We have already observed that actual physical participation when the crime is committed is not necessary and an accused can be considered to have participated 'in the commission of a crime' if he is found to be 'concerned' with the killing. Since the testimony of P.W.5 as to the fact of bringing the victim to Mirpur by Non-Bangalee accountant Abdul Halim by his car who handed him over to accused Abdul Quader Molla and at the time of slaughtering the victim accused was present at the crime site carries sufficient probative value the accused is considered to have acted so intending to provide moral support and encouragement to the principals with whom he maintained continuous and culpable association, accused Abdul Quader Molla incurs criminal liability for 'complicity' in commission of the murder of Khandoker Abu Taleb constituting the offence of crimes against humanity as specified in section 3(2)(a)(h) of the Act of 1973 which are punishable under section 20(2) read with section 3(1) of the said Act.

#### Adjudication of Charge No.4

##### [Ghatar Char and Bhawal Khan Bari killing]

77. Like all elements of a crime, the identification of the Accused must be proved by the Prosecution beyond reasonable doubt. In assessing identification evidence, it is to be taken into account a number of relevant factors, including: the circumstances in which each witness claimed to have observed the accused; the length of the observation; the familiarity of the witness with the Accused prior to the identification; and the description given by the witness of his or her identification of the accused. But as we see, the evidence does not inspire us to believe that the P.W.7 and P.W.8 were familiar as to identity of the accused even since prior to the alleged event. None of these two witnesses claim so.

78. In view of above discussion and reasons the Tribunal notes unanimously that it has not been proved beyond reasonable doubt that the accused Abdul Quader Molla accompanied the Pakistani perpetrators to the crime site having rifle in hand and that the person whom P.W.8 claims to have seen at the crime site was none but the accused. It is not plausible too that P.W.8 had learnt from P.W.7 that accused Abdul Quader Molla accompanied the principals to the crime site to the accomplishment of the offence of mass killing. Because. Testimony of P.W.7, in this regard, has been found to be disgustingly conflicting and contradictory inspiring no credence.

79. Mere fact that P.W.1 saw the accused standing in front of Physical Training center, Dhaka having rifle in hand, on one day prior to the alleged event, does not connect the accused with the commission of the event of massacre as listed in charge no.4. However, we are persuaded to note that the commission of the event of mass killing by launching attack directing the civilians as crimes against humanity on the date time and in the manner causing deaths of numerous civilians has been proved. Besides, commission of crimes alleged is not disputed. But for the reasons as stated above we are not convinced to arrive at decision that the guilt of accused has been proved. Prosecution has failed to prove participation or complicity or act on part of the accused to the commission of the offence of crimes against humanity by adducing lawful and credible evidence. As a result accused Abdul Quader Molla is not found to have incurred criminal liability for the commission of offence of mass killing as crimes against humanity as listed in charge no.4.

#### Adjudication of Charge No.05

##### [Alubdi Mass Killing]

80. On final evaluation of evidence and relevant facts and circumstances, we are convinced to arrive at decision that the prosecution has been able to prove it beyond reasonable doubt by lawful and credible evidence of live witnesses that the accused knowing the intent of the main perpetrators accompanied the gang and remained physically present at the crime site having rifle in hand. Prosecution has been able to show that the accused Abdul Quader Molla, his Bihari accomplices and the Pakistani army, acting pursuant to a common design possessed the same criminal intention in accomplishment of the massacre.

81. It is validly inferred that the accused Abdul Quader Molla with full 'awareness' of the consequence of the attack accompanied the principals with intent to assist and encourage the execution of the 'operation'. Such acts forming attack are sufficient to characterize the outcome of the attack causing mass killing of unarmed civilians as crimes against humanity.

82. Section 4(1) of the Act of 1973 contains provision as to liability of crimes. It reads as below:

"When any crime as specified in section 3 is committed by several persons, each of such person is liable for that crime in the same manner as if it were done by him alone".

83. It has been proved that the horrific event of mass killing of 300-350 unarmed civilians of Alubdi village was perpetrated by a gang of local Bihari hooligans and their accomplice accused Abdul Quader Molla and Pakistani army. Accused Abdul Quader Molla physically accompanied the gang to the crime site having rifle in hand and therefore he is liable for the atrocious event of massacre in the same manner as if it was done by him alone. Therefore, accused Abdul Quader Molla incurs criminal liability under section 4(1) of the Act of 1973 for the offence of mass killing as crimes 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 said Act.

#### Adjudication of Charge No.06:

##### [Hazrat Ali and his family inmates killing and Rape]

84. The Tribunal notes that accused Abdul Quader Molla had physically participated in the attack targeting the father and family members of the P.W.3 as her father belonged to Awami League politics and was a pro-liberation civilian. Testimony of P.W.3 demonstrates evidently that the accused, by his acts of 'accompanying' the gang of Bihari and local Aktar goonda and also by an act of forcibly dragging Hazrat Ali Laskar out of house, Abdul Quader Molla's presence in the crime site made him criminally linked with the commission of the offence of killing of Bangalee civilians. Thus, it is lawfully presumed that the accused had *actus reus* in providing moral support and aid to the commission of offence. The

*actus reus* of abetting requires

assistance, encouragement or moral support which has a substantial effect on the perpetration of the crimes.

85. Now the question has been raised by the defence that the principal offenders have not been identified and brought to the process of justice and thus the accused cannot be held responsible as aider and abettor. It has been held by the Appeal Chamber of ICTY, in the case of *Kristic* that –

"A defendant may be convicted for having aided and abetted a crime which requires specific intent even where the principal perpetrators have not been tried or identified (April 19, 2004 para 143 of the judgement)."

86. No person of normal human prudence will come to a conclusion that at the time of incident of part of systematic attack, the accused who accompanied the principal perpetrators had a different or innocent intent. Rather, the evidence of P.W.3 demonstrates that the accused and the principals made the attack with common intent to accomplish their explicit and similar intent of killing.

87. The testimony of a single witness on a material fact does not, as a matter of law, require corroboration. In such situations, the Tribunal has carefully scrutinized the evidence of P.W.3 the live witness before relying upon it to a decisive extent. Since the horrific event was committed in a dwelling house, the inmates of the house are natural witnesses. If murder is committed in a street, only passerby will be witnesses. P.W.3 is the only survived member of victim family and thus her evidence cannot be brushed aside or viewed with suspicion

88. Indeed, within a single attack, there may exist a combination of the enumerated crimes, for example murder, rape etc. In view of discussion as made above and taking the settled jurisprudence into account eventually we are persuaded that the acts of accused Abdul Quader Molla, as has been testified by the P.W.3, in the course of implementation of the actual crime of killings and rape, render him criminally responsible for the commission of the crime that has been established to have taken place as a part of systematic attack and as such the accused Abdul Quader Molla is found to have incurred criminal liability under section 4(1) of the Act for the offence as mentioned in section 3(2)(a) of the Act of 1973 which are punishable under section 20(2) read with section 3(1) of the said Act.

#### XV. Contextual requirement to qualify the offences

##### proved as crimes against humanity

89. From the segment of our discussion on adjudication of charges we have found the events of atrocities constituting crimes against humanity were perpetrated directing the unarmed civilians belonging to pro-liberation ideology. The offences narrated in charge nos. 1,2,3,5 and 6 took place between 26<sup>th</sup> March 1971 to 24th April 1971 i.e within the period of one month of 'operation search light' on 25 March 1971. Only the event narrated in charge no.4 allegedly took place on 25.11.1971.

90. Admittedly. Accused was the President of Islami Chatra Sangha(ICS), Shahidullah Hall Unit, University of Dhaka, at the relevant time. We have also found from the Exhibit-2 a book titled 'Sunset at Midday'[*Mohi Uddin Chowdhury*, Qirtas Publications, 1998, Karachi, Pakistan] wherein the paragraph two at page 97 speaks that "The workers belonging to purely Islami Chatra Sangha were called Al-Badar". But in absence of any other evidence it would be rather confusing to infer that the accused acted during the period of 26<sup>th</sup> March 1971 to 24th April 1971 as a member of Al-Badar to the commission of offences narrated in charge nos. 1,2,3,5 and 6. Rather, it is found that the accused acted and participated by accompanying the principals as an 'individual' and a member of 'group of individuals' to the actual commission of crimes alleged.

91. However, We have also found it proved from evidence as discussed above that the accused Abdul Quader Molla physically accompanied the principals and acted with knowledge and common intent or had complicity to the commission of those atrocities and he (accused) committed criminal acts in the capacity of a member of 'group of individuals' (relating to charge nos. 1,2,3, and 6) and in the capacity of an 'armed member' of 'group of individuals' (relating to charge no.5) Under what context the accused committed such acts forming part of attack directed against civilian population? We need to have look to the contextual backdrop of perpetration of such crimes in furtherance of 'operation search light' on 25 March 1971.

92. It is essential to be established that the crimes for which the accused has been found criminally liable and guilty, as discussed above, were not isolated in nature and the same were committed under a different context and pattern in implementation of organizational policy and plan, although policy or plan are not considered as elements of the offence of crime against humanity.

93. In determining the fact as to whether the atrocious acts which are already proved to have been committed were directed against Bengali civilian population constituting the crimes against humanity in 1971 during the War of Liberation it is to be considered that the criminal acts committed in violation of customary international law constituting the offences enumerated in section 3(2)(a) of the Act of 1973 were connected to some policy of the government or an organization. It is to be noted too that such policy and plan are not the required elements to constitute the offence of crimes against humanity. These may be taken into consideration as factors for the purpose of deciding the context upon which the offences were committed.

#### Context prevailing in 1971 in the territory of Bangladesh

94. 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.

95. 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* as mentioned above.

96. *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 :

See also: Bangladesh Documents, page 371: Ministry of External Affairs, New Delhi]

97. From the backdrop and context it is thus quite evident that the existence of factors, as discussed above, lends assurance that the atrocious criminal acts 'directed against civilian population' formed part of 'systematic attack'. Section 3(2) (a) of the Act of 1973 enumerates which acts are categorized as the offence of crimes against humanity. Any of such acts is committed 'against any civilian population' shall fall within the offence of crimes against humanity. The notion of 'attack' thus embodies the notion of acting purposefully to the detriment of the interest or well being of a civilian population and the 'population' need not be the entire population of a state, city, or town or village.

98. Thus, the phrase acts 'committed against any civilian population' as occurred in section 3(2)(a) clearly signifies that the acts forming attack must be directed against the target population to the accomplishment of the crimes against humanity and the accused need only know his acts are part thereof .

#### XVI. Defence Plea of Alibi

99. No specific defence case could be attributed from the trend of cross-examination of prosecution witnesses by the defence. Rather we have found that contradictory suggestions have been put to prosecution witnesses, in order to prove the plea of *alibi*. The evidence adduced at trial demonstrated that for the most part, the accused did not dispute the facts alleged. He disputes by examining himself as D.W.1 that (i) since mid-March 1971 to November-December 1972, he was not in the locality of Mirpur, Dhaka (ii) he used to stay in Shahidullah hall of the University of Dhaka and on 12 March 1971 leaving Dhaka he went to his native home at Amirabad in Faridpur where he stayed till November-December 1972 (iii) he was not associated with the election campaign in 1970 and (iv) he had no link with the Jamat-e-Islami and Bihari hooligans of Mirpur locality.

100. As has been held by the Appeals Chamber in the *Celibici Case*, the submission of an *alibi* by the Defence does not constitute a defence in its proper sense. It has been observed in the judgment that

"It is a common misuse of the word to describe an alibi as a "Defence". If a defendant raises an alibi, he is merely denying that he was in a position to commit the crime with which he is charged. That is not a Defence in its true sense at all. By raising this issue, the defendant does no more [than] require the Prosecution to eliminate the reasonable possibility that the alibi is true."

101. However, in order to establish the plea of *alibi*, defence has come up with another story. D.W.1 Abdul Quader Molla stated that on 23 March 1971 in the locality of his native village one Mafizur Rahman started organizing training for freedom fighters locally and accordingly he and 30-40 others received training till the Pakistani army entered into Faridpur on 30 April 1971.

102. But the above defence cases do not appear to have confronted the prosecution case for excluding complicity of the accused. Besides, how far the claim of receiving training at own native village for joining freedom fight is believable? Admittedly, the accused was the president of Islami Chatra Sangha, Shahidulla Hall Unit, Dhaka University and prior to it he was the president of this student wing of Jamat E Islami (JEI) when he was student of Faridpur Rajendra College. We do not find any rationale to believe that being a potential leader of the student wing of a regimented political organisation Jamat E Islami accused Abdul Quader Molla was inspired to receive such training to join as freedom fighter.

103. Exhibit-2 a book titled 'Sunset at Midday' [*Mohi Uddin Chowdhury*, Qirtas Publications, 1998, Karachi, Pakistan] wherein the paragraph two at page 97 speaks that "The workers belonging to purely Islami Chatra Sangha were called Al-Badar". Fox Butterfield wrote in the New York Times, January 3, 1972 that—" Al Badar is believed to have been the action section of Jamat-e-Islami, carefully organised after the Pakistani crackdown last March." Therefore, story of receiving training by accused Abdul Quader Molla at own native village, in the month of March 1971, to join freedom fight is nothing but a cock and bull story.

104. In view of reasons enumerated above we are thus persuaded to conclude that the accused herein has miserably failed to bring on record any credible facts or circumstances which would make the plea of his absence even probable, let alone, being proved beyond reasonable doubt. But it could not be proved with absolute certainty so as to completely exclude the possibility of the presence of the accused in the locality of Mirpur, Dhaka at the relevant time.

#### XVII. Conclusion

105. We are convinced from the evidence, oral and documentary, led by the prosecution that the accused, at the relevant time of commission of alleged crimes proved, acted as an atrocious member of 'group of individuals' in perpetrating the crimes. As a result, we conclude that the accused Abdul Quader Molla had 'complicity' to the commission of the offences in relation to charge nos. 1, 2 and 3 for which he has been charged in the capacity of an 'individual' and a member of atrocious 'group of individuals'.

106. 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 charge nos. 5 and 6 we have found that the accused Abdul

Quader Molla himself had participated and accompanied the armed gang of perpetrators to the accomplishment of crimes and as such he is held criminally responsible under section 4(1) of the Act of 1973 for the commission of crimes proved as listed in charge nos. 5 and 6.

107. C.L. Sulzberger wrote in the New York Times, June 16, 1971 describing the horrific nature and untold extent of atrocities committed in the territory of Bangladesh. It shakes the conscious of mankind. It imprints colossal pains to the Bangalee nation. C.L. Sulzberger wrote that – "Hiroshima and Nagasaki are vividly remembered by the mind's eye primarily because of the novel means that brought holocaust to those cities. Statistically comparable disasters in Hamburg and Dresden are more easily forgotten; they were produced by what we already then conceived of as "conventional" methods.

Against this background one must view the appalling catastrophe of East Pakistan whose scale is so immense that it exceeds the dolorimeter capacity by which human sympathy is measured. No one can hope to count the dead, wounded, missing, homeless or stricken whose number grows each day.

[Source: Bangladesh Documents: Volume, page 442:

Ministry of External Affairs, New Delhi]

108. The above observation made on 16 June 1971 gives an impression as to the scale and dreadful nature of atrocities which were carried out throughout the war of liberation in 1971. The offences for which the accused Abdul Quader Molla has been found responsible are the part of such atrocities committed in context of the war of liberation 1971 in collaboration of anti-liberation and antagonistic political organization Jamat E Islami, group of pro-Pakistan people and the occupation Pakistani army with intent to annihilate the Bengali nation.

#### XVIII. VERDICT ON CONVICTION

109. For the reasons set out in this Judgment and having considered all evidence, materials on record and arguments advanced by the learned counsels in course of summing up of their respective cases, the Tribunal unanimously finds the accused Abdul Quader Molla Charge No.1: GUILTY of the offence of 'complicity' to commit murder as 'crimes against humanity' as specified in section 3(2)(a)(h) of the Act of 1973 and he be convicted and sentenced under section 20(2) of the said Act.

Charge No.2: GUILTY of the offence of 'complicity' to commit murder as 'crimes against humanity' as specified in section 3(2)(a)(h) of the Act of 1973 and he be convicted and sentenced under section 20(2) of the said Act.

Charge No.3: GUILTY of the offence of 'complicity' to commit murder as 'crimes against humanity' as specified in section 3(2)(a)(h) of the Act of 1973 and he be convicted and sentenced under section 20(2) of the said Act.

Charge No.4: NOT GUILTY of the offence of 'abetting' or in the alternative 'complicity' to commit murders as 'crimes against humanity' as specified in section 3(2)(a)(g)(h) of the Act of 1973 and he be acquitted thereof accordingly.

Charge No.5: GUILTY of the offence of murders as 'crimes against humanity' as specified in section 3(2)(a) of the Act of 1973 and he be convicted and sentenced under section 20(2) of the said Act.

Charge No.6: GUILTY of the offences of murder and rape as 'crimes against humanity' as specified in section 3(2)(a) of the Act of 1973 he be convicted and sentenced under section 20(2) of the said Act.

#### XIX. VERDICT ON SENTENCE

110. We have taken due notice of the intrinsic magnitude of the offence of murders as 'crimes against humanity' being offences which are predominantly shocking to the conscience of mankind. We have carefully considered the mode of participation of the accused to the commission of crimes proved and the proportionate to the gravity of offences. The principle of proportionality implies that sentences must reflect the predominant standard of proportionality between the gravity of the offence and the degree of responsibility of the offender. In assessing the gravity of the offence, we have taken the form and degree of the Accused's participation in the crimes into account.

111. We are of agreed view that justice be met if for the crimes as listed in charge nos. 5 and 6 the accused Abdul Quader Molla who has been found guilty beyond reasonable doubt is condemned to a single sentence of 'imprisonment for life' And for the crimes as listed in charge nos. 1, 2 and 3 to a single sentence of 'imprisonment for fifteen (15) years' under section 20(2) of the Act of 1973. Accordingly, we do hereby render the following unanimous ORDER on SENTENCE.

Hence, it is

#### ORDERED

That the accused Abdul Quader Molla son of late Sanaulah Molla of village Amirabad Police Station Sadarpur District-Faridpur at present Flat No. 8/A, Green Valley Apartment, 493, Boro Moghbazar PS. Ramna, Dhaka is found guilty of the offences of 'crimes against humanity' enumerated in section 3(2) of the International Crimes (Tribunals) Act, 1973 as listed in charge no.s 1, 2, 3, 5 and 6 and he be convicted and condemned to a single sentence of 'imprisonment for life' for charge nos. 5 and 6 And also for the crimes as listed in charge nos. 1, 2 and 3 to a single sentence of 'imprisonment for fifteen (15) years' under section 20(2) of the Act of 1973. The accused Abdul Quader Molla is however found not guilty of offence of crimes against humanity as listed in charge no.4 and he be acquitted thereof.

However, as the convict Abdul Quader Molla is sentenced to 'imprisonment for life', the sentence of 'imprisonment for 15 years' will naturally get merged into the sentence of 'imprisonment for life'. This sentence shall be carried out under section 20(3) of the Act of 1973. The sentence so awarded shall commence forthwith from the date of this judgment as required under Rule 46(2) of the Rules of Procedure, 2012 (ROP) of the Tribunal-2(ICT-2) and the convict be sent to the prison with a conviction warrant to serve out the sentence accordingly.

Let copy of the judgment be sent to the District Magistrate, Dhaka for information and causing necessary action.

Let certified copy of the judgment be furnished to the prosecution and the convict at once.  
Justice Obaidul Hassan, Chairman  
Justice Md. Mozibur Rahman Miah, Member  
Judge Md. Shahinur Islam, Member