

Summary of ICT verdict in Sayeedi Case

International Crimes Tribunal-1 (ICT-1)

Old High Court Building, Dhaka, Bangladesh.
ICT-BD Case No.01 OF 2011

(Charges:- Crimes against Humanity and genocide as specified in section 3(2)(a) and 3(2)(c)(i)(g)(h) of the Act of XIX of 1973)

The Chief Prosecutor
Versus
Delowar Hossain Sayeedi

Present:
Mr. Justice A.T.M. Fazle Kabir, Chairman
Mr. Justice Jahangir Hossain, Member
Mr. Justice Anwarul Haque, Member
Date of delivery of judgment 28 February, 2013.

Prosecutors:-
Mr. Golam Arif Tipu, Chief Prosecutor
Mr. Syed Haider Ali,
Mr. Abdur Rahman Howlader,
Mr. Altab Uddin Ahmed,
Mrs. Nurjan Begum Mukta,
Mr. A.K.M. Saiful Islam,
Mr. Shahidur Rahman
Mr. Sultan Mahmud
Mr. Hrishikesh Saha
Mr. Mir Iqbal Hossain

Defence Counsels:-
Mr. Md. Abdur Razzak Senior Counsel with
Mr. Mizanul Islam,
Mr. Monjur Ahmed Ansari,
Mr. Kafil Uddin Chowdhury,
Mr. Tajul Islam,
Mr. Tanvir Ahmed Al-Amin,
Mr. Imran Siddique,
Mr. Abu Bakar Siddique

SUMMARY JUDGMENT

(Under section 20(1) of the Act XIX of 1973)

I. Introduction:

1. It is a remarkable occasion that after creation of this Tribunal-1, today it is going to deliver the first judgment of the first case after completion of its trial. This 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 for genocide, crimes against Humanity, war Crimes and other Crimes under International law committed in the territory of Bangladesh during the War of Liberation particularly between 25th March to 16th December 1971.

II. Commencement of proceedings.

2. It is evident on record that the learned Chief prosecutor having received investigation report along with documents therewith by the Investigation Agency, submitted the formal charge along with documents to this Tribunal on 11.7.2011 under section 9(1) of the Act of 1973. Sole accused Delowar Hossain Sayeedi was in the custody in connection with other cases. He was produced before the Tribunal on 14.07.2011 following a production warrant issued by this Tribunal on that date, on perusal of the documents submitted by the prosecution, this Tribunal took cognizance of offence against the accused as mentioned under section 3(2) of the Act as required under Rule 30 of the Rules of procedure (ROR) on hearing of the learned lawyers of both the sides, this Tribunal framed charges against accused Delowar Hossain Sayeedi on 03.10.2011 under sections 3(2) (a) and 3(2)(c), (g)(h) of the Act which are punishable under section 20(2) read with section 3(1) of the Act. The charges framed were read over and explained to the accused on dock to which he pleaded not guilty and claimed to have fair justice and thus the trial started.

III. Historical Background:

3. In 1971, during the War of Liberation of Bangladesh, atrocities in a large scale, crimes against Humanity, War Crimes and genocide were committed by Pakistani forces, auxiliary forces and their associates which resulted the birth of Bangladesh as an independent country. It was estimated that during nine month long War, about three million people were killed, nearly quarter million women were raped, and over 10 million people were deported to India causing brutal persecution upon them.

4. In the general election of 1970, the Awami League under the leadership of Bangabandhu Sheikh Mujibur Rahman won 167 seats out of 300 seats of the National Assembly of Pakistan and thus became the majority party of Pakistan. Of the 300 seats 169 were allocated to East Pakistan of which Awami League won 167 demonstrating an absolute majority in the Parliament. 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 7th 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 26th March, following the onslaught of "Operation Search Light" by the Pakistani military on 25th March, Bangabandhu declared Bangladesh independent immediately before he was arrested by the Pakistani authorities.

5. With this declaration of independence, the war to liberate Bangladesh from the occupation of Pakistan military began that ended on 16th of December 1971 with the surrender of all Pakistani military personnel present in Bangladesh before the joint Indian and Bangladeshi forces in Dhaka. 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 military to actively oppose the creation of independent Bangladesh. Except those who opposed, Hindu communities like others in Bangladesh, supported the Liberation War which in fact drew particular wrath of the Pakistani military and their local collaborators, who perceived them as pro-Indian and made them targets of attack, persecution, extermination and deportation as members belonging to a religious group.

6. As a result, 3 million (thirty lacs) people were killed, more than 2(two) lakh women raped, about 10 million (one crore) people deported to India as refugees and million others were internally displaced. It also saw unprecedented destruction of properties all over Bangladesh.

7. In order to bring to justice the perpetrator of the crimes committed in 1971, the International Crimes (Tribunals) Act, 1973 was promulgated. However, no Tribunal was set up and no trial took place under the Act until the government established this International Crimes Tribunal on 25th of March 2010.

IV. Brief account of the accused:-

8. Accused Delowar Hossain Sayeedi alias Delu son of late Yusuf Ali Sayeedi of village South Khali, Police Station Indurkhan (Zianagar) Dist.-Pirojpur was born on 01.02.1940 in his village. He passed Dhakil Examination from Darns Sunnat Madrasa Sarsina in 1957 and he also passed the Alim Examination in 1960 from Barroipara Madrasa. He has got one wife and four sons. He was elected Member of the parliament in the election held in 1996 and 2001. He joined Jamaat-e-Islam and now the Nayb-e-Amir of Jamaat-e-Islami Central Committee. He is a writer by profession.

V. Jurisdiction of the Tribunal:-

9. The International Crimes (Tribunals) Act, 1973 has empowered the Tribunal to prosecute and punish not only armed forces but also the perpetrators who belonged to auxiliary forces or who committed the offence as an 'individual' or a group of individuals and no where in the Act it has been said that without prosecuting the armed forces (Pakistani) the person or the group of persons having any other capacity specified in section 3(1) of the Act cannot be prosecuted. Rather, it is manifested in section 3(1) that even any person if he is prima facie found criminally responsible for the offences specified in section 3(2) of the Act can be brought to justice. Thus, the Tribunals set up under the Act of 1973 are absolutely domestic Tribunal but empowered to try internationally recognized crimes committed in violation of customary international law.

VIII. Procedural History:

10. At pre-trial stage, a complaint petition was filed by one Md. Mahbubul Alam Houlader on 20.07.2010 with the investigation agency constituted under section 3(1) of the Act of 1973. Accused Delowar Hossain Sayeedi was in the jail custody in connection with other criminal cases pending in different courts of Bangladesh. This Tribunal issued production warrant against the accused and he was produced before this Tribunal on 2.11.2010 by the prison authority. Several bail applications filed by the accused were disposed of in accordance with law in presence of the accused and the learned lawyers of both the parties upon hearing an application filed by the accused, this Tribunal directed the prison authority to arrange proper treatment of the accused in Bangabandhu Sheikh Mujib Medical University Hospital (BSMMU) and accordingly he was provided proper treatment thereof. The accused informed the court that he being a diabetic patient needs treatment in BIRDEM Hospital. Then this Tribunal allowed the accused to have treatment in BIRDEM Hospital. The jail authority was directed to provide green vegetable as specialized food to the accused considering him to be a diabetic patient and also directed to provide health friendly vehicle to the ailing accused for his transport.

11. On the basis of investigation report, the chief prosecutor submitted formal charge on 11.07.2011 against the accused before this Tribunal. It is alleged that the accused as a member of group of individuals as well as a member of Rajakar Bahini Committed crimes against Humanity, genocide and other Crimes in different places of the then Pirojpur Sub-division. This Tribunal upon consideration of the formal charge and documents attached therewith took cognizance of offence on 14.07.2011. An application on behalf of the accused was submitted for discharge of him. Hearing on charge matter was continued for four days by the learned lawyers of both the parties. After completion of hearing on charge matter, the application for discharge of the accused was rejected and as many as 20 charges under section 3(2) a and 3(2) (c)(i) (g) (h) of the ICT Act of 1973 were framed on 03.10.2011 against accused Delowar Hossain Sayeedi.

X. Witnesses adduced by the parties:-

12. The prosecution submitted a list of 138 witnesses including formal witnesses while the defence submitted a list of 48 witnesses in support of defence case. At the time of trial, the prosecution examined 28 witnesses of whom 20 were witnesses of occurrence, 07 were seizure list witnesses and one was the investigation officer. On the other hand, this Tribunal allowed the defence to examine maximum 20 witnesses but it examined 17 witnesses of whom 14 were listed witnesses and the rest three were examined by the defence with the permission of the Tribunal. It may be mentioned that out of said three witnesses one was the listed prosecution witness but he deposed as a defence witness.

XIII. Summing up the prosecution case by the prosecutor:-

13. Mr. Syed Haider Ali, the learned prosecutor contents that as many as 20 charges relating to crimes against Humanity, genocide and other crimes described under section 3(2) of the Act, were framed against accused Delowar Hossain Sayeedi who committed the said crimes within Pirojpur Sub-Division during the War of Liberation of Bangladesh. The accused as a member of group of individuals as well as a member of local peace committee and sometimes as a member of Razakar Bahini took part in killing, torture, rape, looting, setting fire on the houses of civilians, forceful conversion of Hindus to Muslims and systemic attack on the Hindu community with intent to destroy it. It is further contended that the prosecution has successfully proved 19 charges by oral testimony and documentary evidence and 5 charges namely charges 1-4 and 13 have been proved by statements for want of live witnesses those charges have been proved by the statements of witnesses, recorded by the investigation officer as per provision of section 19(2) of the Act.

XIV. The Summing up the defence case by the counsel:-

14. Mr. Abdur Razzak, the learned senior counsel for the defence submits that in committing international crimes, attack must be widespread or systematic with a clear knowledge about commission of offence but the Act does not contemplate this and crimes are not adequately defined as such alleged charges suffer from vagueness and element of crimes are hopelessly absent. It is contended that the accused used to live in Jessore upto June 1971, thereafter he went to Pirojpur in the Month of July and he never joined the local peace committee or Rajakar Bahini or took part in any atrocities committed by Pakistan Army. It is contended that the Government of Bangladesh made press release on 17.4.1973 and accordingly enacted the International Crimes (Tribunals) Act 1973 in order to try only 195 war criminals and the then Government passed the collaborators order 1972 aiming at to try the civilians responsible for the offence and as such the accused as a civilian could be tried under collaborators order but the present Government with a malafide intention has brought the case against him though such proceeding is barred by the tripartite agreement dated 02.07.1972 where clemency was granted to the War Criminals. It is further argued that the prosecution has committed delay of about 40 years in bringing criminal charge against the accused without explanation and as such unexplained inordinate delay is sufficient to disbelieve the prosecution case. It is submitted that the Tribunal received statement of 16 witnesses in evidence recorded by the investigation officer under section 19(2) of the Act, though those witnesses were available in their locality. It is lastly contended that recently skype conversations between the former Chairman of this Tribunal with one Ahmed Ziauddin which go to show that the order of framing charge and other 4 orders were transmitted from Belgium and as such the defence has been materially prejudiced by such unfair process of the Trial.

XVI. Discussion and decision:-

15. Before discussing the charges brought against the accused, we consider it expedient to address some of the legal issues upon which the learned counsel for the defence drew our attention.

Tripartite Agreement and immunity to 195 Pakistani war criminals:-

It is not acceptable to say that no individual or member of auxiliary force as stated in section 3 of the Act of 1973 can be brought to justice under the Act for the offence (s) enumerated therein for the reason that 195 Pakistani war criminals belonging to Pakistan Armed Force were allowed to evade justice on the strength of 'tripartite agreement' of 1974. Such agreement was an 'executive act' and it cannot create any clog to prosecute member of 'auxiliary force' or an 'individual' or member of 'group of individuals' as the agreement showing forgiveness or immunity to the persons committing offences in breach of customary international law was derogatory to the existing law i.e. the Act of 1973 enacted to prosecute those offences.

16. Delay in bringing prosecution

From the point of morality and sound legal dogma, time bar should not apply to the prosecution of human rights crimes. Neither the Genocide Convention of 1948, nor the Geneva Conventions of 1949 contain any provisions on statutory limitations to war crimes and crimes against humanity. Article 1 of the Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes Against Humanity adopted and opened for signature, ratification and accession by General Assembly resolution 2391 (XXIII) of 26 November 1968 provides protection against even any statutory limitation in prosecuting crimes against humanity, genocide etc. Thus, criminal prosecutions are always open and not barred by time limitation.

17. It may be cited here that the second world war was concluded in 1945 but still the Nazi War Criminals are being prosecuted. Similarly, the trial of internationally recognised crimes committed during Chilean revolution in 1973 is still going on. Internationally recognised crimes were also committed during Pol Pot regime of Cambodia in the year 1973 to 1978 but due to internal conflicts and lack of political will of the then government could not start prosecution against the perpetrators in time. The Royal Government of Cambodia waited 25 years for attaining a strong political will, thereafter in association with the United Nations, they established a Hybrid Tribunal and thus trial against the perpetrators was started in 2003 which is still going on. In fact, the criminal prosecution as regards international crimes is always open and not barred by any time limit. The sovereign immunity of Slobodan Milosevic of Serbia, Charles Taylor of Liberia and Augusto Pinochet of Chile, as the head of the state could not protect them from being detained and prosecuted for committing genocides, crimes against Humanity and war crimes.

18. In view of above settled position and in the absence of any statutory limitation, as a procedural bar, only the delay itself does not preclude prosecutorial action to adjudicate the culpability of the perpetrator of core international crimes. Indubitably, a prompt and indisputable justice process cannot be motorized solely by the painful memories and aspirations of the victims. It requires strong public and political will together with favourable and stable political situation. Mere state inaction, for whatever reasons, does not render the delayed prosecution readily frustrated and barred by any law.

19. Considerations of material justice for the victims should prevail when prosecuting crimes of the extreme magnitude is on the process. Therefore, justice delayed is no longer justice denied, particularly when the perpetrators of core international crimes are brought to the process of justice. However, there can be no recognized theory to insist that such a 'system crime' can only be perused within a given number of years. However, delay may create a doubt but the matter is addressed after taking all the factual circumstances into consideration.

XVII. Whether accused Delowar Hossain Sayeedi was a member of local Razakar Bahini /Peace Committee?

20. It is a fact of common knowledge that during the War of Liberation in 1971, Pakistani Occupation forces organized auxiliary forces namely, Razakar, Al-Badar, Al-Shams and Peace Committee for the purpose of their operational support in implementing its atrocious activities in furtherance of making policy to execute their missions. The Razakar Bahini was composed of mostly pro-pakistani Bangalee Razakars who actively associated with many of the atrocities committed by Pakistani Army during nine-month of the War of Liberation.

21. Now let us discuss the oral and documentary evidence produced by the prosecution as to proving the accused as a member of local Razakar Bahini.

22. P.W. 1 Md. Mahbubul Alam Howlader deposed that during Liberation War, 1971, Parerhat Peace Committee was formed with accused Delowar Hossain Sayeedi and some others who were against the independence of Bangladesh. He also deposed that Razakar Bahini was formed there with some members of the said Peace Committee including accused Delowar Hossain Sayeedi and some students of different Madrasas and members of different organizations who were against the independence of Bangladesh.

23. P.W. 2 Ruhul Amin Nobin deposed that during Liberation War, 1971, a Peace Committee was formed at Parerhat with the accused Delowar Hossain Sayeedi and others. He also deposed that a Razakar Bahini was also formed there under the leadership of accused Delowar Hossain Sayeedi, Sekander Ali Sikder, Danesh Ali Molla, Mowlana Moslehdin and some other anti-liberation people with intent to kill the supporters of Liberation War and freedom-fighters.

24. P.W. 3 Md. Mizanur Rahman Talukder deposed that during Liberation War, 1971, accused Delowar Hossain Sayeedi along with his accomplices (Razakars) tortured his brother Abdul Mannan.

25. P.W. 4 Sultan Ahmed Howlader deposed that on 1st May, 1971, he having gone to his village home he came to know that leaders of Jamat-E-Islami namely Sekander Ali Sikder, Danesh Ali Molla, accused Delowar Hossain Sayeedi and Moslem Mowlana, formed a Peace Committee at Parerhat. Under the leadership of accused Delowar Hossain Sayeedi, a Razakar Bahini was also formed at Parerhat with the students of different Madrasas, workers of Jamaat-E-Islam and the persons of different anti-liberation organizations.

26. P.W. 5 Md. Mahtabuddin Howlader deposed that during Liberation War, 1971, Md. Moslemuddin, accused Delowar Hossain Sayeedi, Danesh Molla and Sekander Sikder formed a Peace Committee. He also deposed that 2/3 days after the Peace Committee having formed the said persons themselves formed Razakar Bahini.

27. P.W. 6 Manik Posari deposed that during Liberation War, 1971, Razakar Bahini and Peace Committee were formed and accused Delowar Hossain Sayeedi formed the Peace Committee at Parerhat with the persons who were against the Liberation War, and thereafter the members of said Peace Committee formed Razakar Bahini.

28. P.W. 7 Md. Mofizuddin Posari deposed that during Liberation War, 1971, there were people of Razakar Bahini and Peace Committee in their area and he knew them. He further deposed that the goods of the house of Saijuddin Posari were burnt by kerosene oil at the direction of Razakars, namely, Sekander Sikder, Danesh Molla, Momin, Razzaque, Delu Sikder (accused Delowar Hossain Sayeedi) and some other Rajakars. He

identified the accused in the dock.

29. P.W. 8 Mostafa Howlader deposed that during Liberation War, 1971, accused Delowar Hossain Sayeedi was a member of Peace Committee and Rajakar Bahini and he along with the members of Peace Committee and Razakar Bahini looted the goods of the houses and shops of Hindus of Parerhat.

30. P.W. 9 Altaf Hossain Howlader deposed that on 7th May, 1971, Pakistani Army came to Parerhat and 6/7 days prior to their arrival, a Peace Committee was formed at Parerhat and thereafter accused Delowar Hossain Sayeedi himself formed Razakar Bahini there with the members of the Peace Committee.

31. P.W. 10 Basudev Mistri deposed that during Liberation War, 1971, accused Delowar Hossain Sayeedi, Sekander Sikder, Danesh Molla, Moslem Mowlana, Hakim Kari, Ruhul Amin, Momin along with others formed a Razakar Bahini at Parerhat. He identified the accused in the dock.

32. P.W. 11 Abdul Jalil Sheikh deposed that on 8th May, 1971 he saw that some Razakars including Rajakar Delwar Hossain Sayeedi (accused) along with 10/15 Pakistani Army having come to their village Chitholia, proceeded to the house of Manik Posari and then the accused along with two other Rajakars caught hold of Kutti and Mofizuddin therefrom and tied them with rope and then they looted the goods of that house and, thereafter they having poured kerosene oil burnt that house.

33. P.W. 26 Abed Khan is a journalist. He deposed that he was the editor of Dainik Samokal in 2007; that on 10.02.2007 a news report was published on the first page of that daily newspaper under the headline "জাতীয়ত্বের গুরুদণ্ডের ধোকার বাইছে" about four persons and of them accused Delowar Hossain Sayeedi was number one. He further deposed that it was reported in the newspaper amongst others accused Delowar Hossain Sayeedi had been Razakar in Parerhat Bondar.

34. Ext. 35 is a list of Razakars, prepared by Dr. M. A. Hasan, Convener, War Crimes Facts Finding Committee, Truth Commission For Genocide in Bangladesh, the name of accused Delowar Hossain Sayeedi appears to have been in the said list under district Pirojpur.

35. Dr. M. A. Hasan, as one of the researchers on war crimes wrote a book named "যুক্তিপূর্ণ রাজাকার ও বিচার প্রস্তর" published in February 2009 in which the name of Delowar Hossain Sayeedi has been published at page No. 148 as one of the Razakars of District Pirojpur. The defence side has filed a book named "Santi Committee 1971" (Exhibit NO. FV) in the case of Professor Ghulam Azam which also speaks that the name of Delowar Hossain Sayeedi has been listed as one of the Razakars of District Pirojpur.