

**IN THE SUPREME COURT OF BANGLADESH**  
**APPELLATE DIVISION**

**PRESENT:**

Mr. Justice Md. Muzammel Hossain, Chief Justice  
Mr. Justice Surendra Kumar Sinha  
Mr. Justice Md. Abdul Wahhab Miah  
Mr. Justice Syed Mahmud Hossain  
Mr. Justice A.H.M. Shamsuddin Choudhury

**CRIMINAL APPEAL NOS.24-25 OF 2013.**

(From the judgment and order dated 5.2.2013 passed by the International Crimes Tribunal No.2 (ICT-2), Dhaka in ICT-BD Case No.02 of 2012.)

Government of the People's Republic of Bangladesh, represented by the Chief Prosecutor, International Crimes Tribunal, Dhaka, Bangladesh:

Appellant.

(In Crl. A. No.24 of 2013)

Abdul Quader Molla:

Appellant.

(In Crl. A. No.25 of 2013)

=Versus=

Abdul Quader Molla:

Respondent.

(In Crl.A.No.24 of 2013)

Government of the People's Republic of Bangladesh, represented by the Chief Prosecutor, International Crimes Tribunal, Dhaka, Bangladesh:

Respondent.

(In Crl.A.No.25 of 2013)

For the Appellant:  
(In Crl. A. No.24 of 2013)

Mr. Mahbubey Alam, Attorney General (with Mr. M.K. Rahman, Additional Attorney General, Mr. Murad Reza, Additional Attorney General, Mr. Momtazuddin Fakir, Additional Attorney General, Mr. Biswajit Debnath, D.A.G., Mr. A.S.M. Nazmul Hoque, D.A.G., Mr. Ekramul Hoque, D.A.G., Mr. Amit Talukder, D.A.G. Mr. Masud Hasan Chowdhury, D.A.G., Mr. Bashir Ahmed, A.A.G., Mr. S.M. Quamrul Hasan, A.A.G., Mr. Titus Hillol Rema, A.A.G., Mr. Protikar Chakma, A.A.G., instructed by Mr. Syed Mahbubur Rahman, Advocate-on-Record.

For the Appellant:  
(In Crl. A. No.25 of 2013)

Mr. Khon. Mahbub Hossain, Senior Advocate, Mr. Abdur Razzag, Senior Advocate, instructed by Mr. Zainul Abedin, Advocate-on-Record.

For the Respondent:  
(In Crl. A. No.24 of 2013)

Mr. Abdur Razzag, Senior Advocate, instructed by Mr. Zainul Abedin, Advocate-on-Record.

For the Respondent:  
(In Crl. A. No.25 of 2013)

Mr. Mahbubey Alam, Attorney General (with Mr. M.K. Rahman, Additional Attorney General, Mr. Murad Reza, Additional Attorney General, Mr. Momtazuddin Fakir, Additional Attorney General, Mr. Biswajit Debnath, D.A.G., Mr. A.S.M. Nazmul Hoque, D.A.G., Mr.

Ekramul Hoque, D.A.G., Mr. Amit Talukder, D.A.G. Mr. Masud Hasan Chowdhury, D.A.G., Mr. Bashir Ahmed, A.A.G., Mr. S.M. Quamrul Hasan, A.A.G., Mr. Titus Hillol Rema, A.A.G., Mr. Protikar Chakma, A.A.G., instructed by Mr. Syed Mahbubur Rahman, Advocate-on-Record.

As Amicus Curiae:

Mr. T.H. Khan, Senior Advocate, Mr. Rafiqueul-Huq, Senior Advocate, Mr. M. Amirul Islam, Senior Advocate, Mr. Mahmudul Islam, Senior Advocate, Mr. Rokanuddin Mahmud, Senior Advocate, Mr. Ajmalul Hossain, Senior Advocate, Mr. A.F. Hassan Ariff, Senior Advocate.

Date of hearing: 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup>, 5<sup>th</sup>, 6<sup>th</sup>, 12<sup>th</sup>, 13<sup>th</sup>, 16<sup>th</sup>, 17<sup>th</sup>, 18<sup>th</sup>, 19<sup>th</sup>, 20<sup>th</sup> June, 2013, 8<sup>th</sup>, 9<sup>th</sup>, 10<sup>th</sup>, 14<sup>th</sup>, 21<sup>st</sup>, 22<sup>nd</sup>, 23<sup>rd</sup> July, 2013 and 17<sup>th</sup> September, 2013.

Date of Judgment: 17<sup>th</sup> September, 2013.

### J U D G M E N T

Md. Muzammel Hossain, C.J.: I have gone through the judgments to be delivered by my learned brothers, Surendra Kumar Sinha, J. and Md. Abdul Wahhab Miah, J. and A.H.M Shamsuddin Choudhury, J. I agree with the judgment of my learned brother Surendra Kumar Sinha, J.

C.J.

Surendra Kumar Sinha, J.: These statutory appeals arise out of the following facts.

The birth of Bangladesh has been preceded by injustice; false promise and economic and social abuse suspending the session of the elected National Assembly of 1970 sine die followed by the persecution of the legally elected people entitled to form the Government and frame the Constitution, by resorting to commit mass killing, rape and arson by an illegal regime headed by a usurper. These atrocities were perpetrated by the

Pakistan's occupation army with their cohorts, i.e., the Rajakar, Al-Badr, Al-shams and various other local killing squads in 1971. Although the killing of unarmed civilians during late March seemed abrupt and sporadic, it soon became a planned act of violence with operation 'Search Light' enforced at midnight, on 25<sup>th</sup> March, 1971 as part of the central planning and conspiracy hatched at Larkana<sup>1</sup> and reinforced at Rawalpindi by General Yahya Khan and other Generals preparing an operation plan executed in collaboration with their quisling under the umbrella of politico religious military alliance creating formation of local militia as auxiliary force for perpetrating "the cleansing process" and treacherously declared a war on the unarmed people of East Pakistan and started the worst genocide in history, with a view not only to frustrating the result of 1970 election and its fruits but to drive the leaders and supporters of Awami League and the Hindu and minority population in Bangladesh bringing a huge demographic change turning people of the eastern zone a numerical minority by committing genocide and in fact the military regime held a so called election by declaring the seats of the members of the National Assembly (NA) vacant purporting

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<sup>1</sup>. S.A. Karim, *Triumph and Tragedy: The University Press Limited 2009* p.172-176., quoted Mohammed Asghar Khan, *Generals in Politics: Pakistan 1958-1982*, p.28)



to reconstitute the NA with handpicked people nominated by the then regime.

This age of violence has been witnessed to some of the most gruesome crimes against humanity-bombing of cities of Hiroshima and Nagasaki; death in the gas chamber by the millions; the horrors of the concentration camps and the war in Vietnam. But the devastation and misery wrought on the people of Bangladesh by the Pakistani army is the most horrifying. Invaded and devastated by the vengeful Pakistani army with active participation and collaboration of local Rajakar, Al-Badr, Al-shams the tortured land of Bangladesh cried out for relief and justice. The people of Bangladesh were robbed of everything they owned and the women raped. The military junta committed atrocities in Bangladesh that have no parallel in the world history.

The history of the Pakistani massacres in Bangladesh can be divided into three distinct phases. The first began in Dhaka at dawn of 26<sup>th</sup> March, 1971. Numerous eye-witness accounts on the spot have revealed that the West Pakistani troops went on a week-long rampage of murder and terror, mainly in Dhaka. Their principal target was the local intelligentsia. At least 50 scholars and intellectuals of Bangladesh including professors of Dhaka University were shot dead by Pakistani army. Dr. A. Rashid and Dr. A. Sharif-all heads of department of the

University-were among those shot dead. All the resident girl students of the Dhaka University were missing.<sup>2</sup>

According to an eyewitness account the whole of Dhaka town and its suburbs were the scene of the Pakistani army's wanton and almost unchallenged atrocities. The army gave no warning before indulging in arson and butchery. They fired at each and every citizen they met, shot or trampled children to death. Those who peered through the windows were sprayed by bullets. In fact the entire Dhaka town looked like a graveyard with thousands of vultures and dogs relishing the dead bodies to their great delight.<sup>3</sup>

The second phase of the slaughter campaign started soon after the happenings in Dhaka. Islamabad decided that the best way to end the threat to its dominance over Bangladesh was to destroy or drive out entire sections of the population that were sympathetic to the Awami League. This campaign was directed particularly against the Bangalee population. Giving evidence of the atrocities committed by the army of Pakistan, United States Senator Adlai Stevenson observed at a news conference that the atrocities were "a calculated policy to extinguish Bengali culture." This was truly genocide. It was a case of killing or causing "serious bodily or mental harm" to members of a group "with intent to destroy, in whole or

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<sup>2</sup>. War crimes and Genocide- B.N. Mehrish.

<sup>3</sup>. Ibidem.

in part, a national, ethnical, racial or religious group."<sup>4</sup>

The third phase began around the time of the surrender of the Pakistani troops to the combined forces of the Indian army and Mukti Bahini in Dhaka. There are several well-authenticated reports to suggest that just before they surrendered, Pakistani soldiers and the paramilitary forces under their command-the so-called Al Badr and other Razakar groups-sought out Bangalee intellectuals and brutally mutilated and murdered them in a last desperate act of vengeance. Some 200 such bodies were discovered in places as widely separated as Khulna, Dhaka, Sylhet and Brahmanbaria in Bangladesh.<sup>5</sup>

There can be no doubt that some of the acts perpetrated by the Pakistani troops against the civilian Bangalee population of Bangladesh fall under the rubric of "crimes against humanity". Such crimes formed part of the international inquiry by the Nuremburg Military Tribunal set up by the victorious 4 powers-the USA, USSR, Britain and France-to punish the officers of the Axis armed forces at the end of the Second World War in 1945. The Nazi officers found guilty by the tribunal were convicted and sentenced for, among other things, the genocide of Jews perpetrated by Hitler before and during that war. Since then, the UN's Genocide Convention is an

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<sup>4</sup> . Ibid.

<sup>5</sup> . Ibid.



additional reason for taking action against the Pakistani Officers, particularly for the crimes against helpless civilians committed by those who were under the military discipline that an armed force of any civilised country is expected to observe.<sup>6</sup>

It was the devil's day, March 25, 1971, when the Pakistani troops, who were clandestinely moved into East Pakistan during the period of talks, brutally machine-gunned the Awami League Party workers and their sympathisers in the streets of Dhaka and everywhere. The Pakistani Army indulged in indiscriminate killings. The houses were razed to ground, women raped and killed and children mercilessly butchered.<sup>7</sup>

This was a holocaust and the political activities in Pakistan were banned and the Awami League Party of Sheikh Mujibur Rehman completely outlawed. The black martial law was reimposed and the press was strictly censored. Foreign correspondents in East Pakistan were huddled together and bundled out. This resulted in a national uprising of an unprecedented character and everyone, men, women, and young and old raised their voice as ONE MAN to safeguard their democratic rights and to free themselves from the tyrannical rule of Yahya Khan.

The stories passed on to by foreign and Indian press correspondents and the refugees who crossed into India,

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<sup>6</sup>. Ibid.

<sup>7</sup>. Ibid.

gave a harrowing tale of the brutalities perpetrated against an unarmed and innocent people. What happened after March 25, 1971, was a gruesome and a tragic story of a helpless people, who were being crushed by a powerful military machine. The Swadhin Bangla Betar Kendra reported on March 29, 1971, that the Pakistani Army, Air Force and Navy had massacred 300,000 people and urged free Nations of the world to check this genocide. Pakistan's military authorities selected targets for extinction and fell upon the youth and intellectuals like mad wolves. Dhaka University was fired upon, killing hundreds of students, professors and scholars. Many girl students residing in the University campus were kidnapped by the army and molested. Later, on April 13, the Pakistani troops forced 300 students of St. Francis Xavier School in Jessore to line up and machine-gunned them.<sup>8</sup>

Although the Pakistan Government bundled out all the foreign correspondents, a few of them, however, managed to smuggle out of East Pakistan stories of death and destruction and the horrible cruelties indulged in by the Pakistani army in Bangladesh. In an editorial 'A Massacre in Pakistan, *The Guardian*, London, March 31, 1971 wrote:

*"Only now are we getting Pakistani facts to abet fears. President Yahya Khan has written to*

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<sup>8</sup>. Ibid.