

Court Correspondent

A defence counsel for Jamaat-e-Islami leader ATM Azharul Islam, also a 1971 'Al Badr' commander, on Wednesday termed 'procedural error' the tribunal's action that had taken cognizance of the offence against his client as no such thing exists in the International Crimes (Tribunals) Act, 1973, the substantive law.

Advocate A Sobhan Tarafder came up with the view while submitting the defence case summing-up arguments for the fourth day.

On July 25, last year, in exercise of its power under section 29 (1) of the International Crimes Tribunal Rules of Procedure, the three-member tribunal, took cognizance of the offence against detained accused Azharul, upon examination of the formal charge, the investigation report, the papers, documents and the evidence submitted by the prosecution disclosing a prima facie case for trial of the accused.

And on November 12, the same year, the tribunal framed formal charge against the accused Jamaat-e-Islami assistant secretary general under sections 3(2) and 4(1) (2) of the International Crimes (Tribunals) Act 1973.

The defence counsel further argued that though there is no specific definition of offence under the ICT Act, the tribunal had defined it on its own.

Referring to the Rules of Procedure, counsel Tarafder submitted that the tribunal made a 'wrong' action in framing the charge against the accused under section 4 (1) and 4 (2) -- the joint criminal enterprise (JCE) and liability for crimes the charge of superior command responsibility as civilian.

According to the Rules of Procedure, he said the definition of offence means any of the crimes described under section 3 (2) of the ICT Act. So section 4(1) and 4 (2) does not fall under the definition of it as liability of crimes is not an offence, he added.

Interrupting the defence counsel, the three-member tribunal, headed by Justice M Enayetur Rahim, said: "What is the harm in taking cognizance with the two separate sections? The charge of liability for crimes has been framed to determine whether the accused had any liability for crimes during committing the offence under section 3 (2) of the ICT Act."

In reply, Tarafder said that if the tribunal takes cognizance of the charge of abetment against the accused, in that case the section 4 (1), the charge of JCE, is not applicable as JCE is not an offence, it's a liability for crimes. Besides, the question of the charge of liability for crimes comes not before but after completion of the trial, he contended.

Moreover, the defence counsel said, the definition of the charge abetment does not exist in the ICT Act and the Rules of Procedure.

About the framing of charge by the tribunal, he described it as defective since five out of six charges are almost identical, not specific.

Tarafder said the accused has the right to know specifically the charges brought against him so that he can defend himself properly over the charges.

The law-point arguments over, the defence counsel concentrated on his submissions charge-wise and finished arguments on charge No. 1 that accused his client of abetting, persecuting and killing 11 pro-liberation people along with his Jamaat-e-Islami activists and in collaboration with the Pakistan occupation forces in the launching of the Liberation War against Pakistan junta.

He claimed that the evidence of the prosecution witnesses in proving the abetment charge

against his client was full of contradictions based on basically hearsay stories.

“How far the prosecution charges are believable that Azharul, a mere intermediate student, also then Rangpur unit president of ICS -- student wing of Jamaat-e-Islami -- had committed the offences in connivance with the Pakistan army through planning, conspiracy and blue print?” Tarafder asked.

He said the prosecution put his client, a Jamaat leader, in the dock to take revenge politically. The defence summing-up arguments remained inconclusive.

According to the prosecution case, Azharul had been involved in the killing of more than 1,200 unarmed innocent civilians in Rangpur during the Liberation War in collaboration with the Pakistan occupation army.

It mentioned that Azharul Islam had played a key role in the killing of intellectuals, cultural personalities, physicians and lawyers in different areas of Rangpur during the 1971 war.

On August 22, 2012, police arrested Azharul from his Moghbazar house in the capital in connection with the war crimes case, after the tribunal issued a warrant for his arrest upon a prosecution plea.