

**International Crimes Tribunal-1 (ICT-1)
Old High Court Building, Dhaka,
Bangladesh**

ICT-BD Case No.01 OF 2015

[Charges:- Participating, abetting, contributing, facilitating and complicity in the commission of offences constituting crimes against humanity as specified in section 3(2)(a)(g)(h) of the Act No. XIX of 1973]

The Chief Prosecutor

Versus

- 1. Shamsuddin Ahmed**
- 2. Gazi Md. Abdul Mannan [absconded]**
- 3. Nasiruddin Ahmed alias Md. Nasir alias
Captain ATM Nasir [absconded]**
- 4. Md. Hafizuddin [absconded], and**
- 5. Md. Azharul Islam [absconded]**

Present:

**Mr. Justice Anwarul Haque, Chairman
Mr. Justice Md. Shahinur Islam, Member
Mr. Justice Md. Shohrwardi, Member**

Prosecutors:

Mr. Golam Arif Tipu, Chief Prosecutor with
Mr. Syed Haider Ali
Mr. Rana Das Gupta
Mr. Zead-Al-Malum
Mr. Hrishikesh Saha
Mr. Sultan Mahmud
Mr. Md. Altab Uddin
Ms. Turin Afroz
Mr. Abul Kalam
Mr. Md. Zahid Imam
Ms. Rezia Sultana
Mr. Tapas Kanti Baul

Defence Counsels:

Mr. M. Masud Rana
... For accused Shamsuddin Ahmed
Mr. Abdus Sukur Khan
... State defence counsel for absconding accused Gazi Md.
Abdul Mannan, Nasiruddin Ahmed alias Md. Nasir alias

Captain ATM Nasir, Md. Hafizuddin and Md. Azharul Islam

Date of delivery of Judgment: 3 May 2016.

JUDGMENT

[Under section 20(1) of the Act No.XIX of 1973]

I. Introductory Words

01. Accused **(1)** Shamsuddin Ahmed son of late Abdur Razzak Munshi and late Safurennesa alias Lutfor Nahar Lata of village Karimganj Modhopara (Dulipara), Police Station Karimganj, District- Kishoreganj, at present 411/1, Banani Morh, Chorsholakia, Police Station Kishoreganj, District Kishoreganj, **(2)** Gazi Md. Abdul Mannan son of late Ibrahim and late Moharajer Ma of village Charpara, Police Station Karimganj, District Kishoreganj, **(3)** Nasiruddin Ahmed alias Md. Nasir alias Captain ATM Nasir son of late Abdur Razzak and late Safurennesa alias Lutfor Nahar Lata of village Karimganj Modhopara (Dulipara), Police Station Karimganj, District Kishoreganj, at present 270, Charsholakia (Zenith View Bananir Morh), Police Station Karimganj, District Kishoreganj, **(4)** Md. Hafizuddin son of late Ismat Ali and late Mosammat Fulbanu of House No. 129, Village- Khudir Jangal, Police Station- Karimganj, District Kishoreganj, and **(5)** Md. Azharul Islam son of late Md. Abdur Rahim and late Mosammat Umme Saleh of village Haidhonkhali, Police Station Karimganj, District Kishoreganj have been put on trial before this Tribunal-1 at

the instance of the Chief Prosecutor to answer charges under section 3(2)(a)(g)(h) read with section 4(1) of the International Crimes (Tribunals) Act, 1973.

02. This International Crimes Tribunal-1 [hereinafter referred to as the "**Tribunal**"] was established under the International Crimes (Tribunals) Act enacted in 1973 [hereinafter referred to as the '**Act of 1973**'] by Bangladesh Parliament to provide for the detention, prosecution and punishment of persons responsible for genocide, crimes against humanity, war crimes and other class crimes committed in the territory of Bangladesh, in violation of customary international law, particularly in between the period of 25 March and 16 December, 1971. However, no Tribunal was set up, and as such, no one could be brought to justice under the Act of 1973 until the government established the Tribunal on 25 March, 2010.

II. Jurisdiction of the Tribunal under ICT Act of 1973.

03. The International Crimes (Tribunals) Act, 1973 states about the jurisdiction of the Tribunal and crimes in section 3 as follows:

"(1) A Tribunal shall have the power to try and punish any individual or group of individuals, or organisation, or any member of any armed, defence or auxiliary forces, irrespective of his nationality, who commits or has committed, in the territory of Bangladesh , whether before or after the

commencement of this Act, any of the crimes mentioned in sub-section(2).

(2) The following acts or any of them are crimes within the jurisdiction of a Tribunal for which there shall be individual responsibility, namely:-

(a) Crimes against Humanity: namely, murder, extermination, enslavement, deportation, imprisonment, abduction, confinement , torture, rape or other inhumane acts committed against any civilian population or persecutions on political, racial, ethnic or religious grounds, whether or not in violation of the domestic law of the country where perpetrated;

(b) Crimes against Peace: namely, planning, preparation, initiation or waging of a war of aggression or a war in violation of international treaties, agreements or assurances;

(c) Genocide: meaning and including any of the following acts committed with intent to destroy, in whole or in part, a national, ethnic, racial, religious or political group, such as:

(i) killing members of the group;

- (ii) *causing serious bodily or mental harm to members of the group;*
 - (iii) *deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;*
 - (iv) *imposing measures intended to prevent births within the group;*
 - (v) *forcibly transferring children of the group to another group;*
- (d) *War Crimes: namely, violation of laws or customs of war which include but are not limited to murder, ill-treatment or deportation to slave labour or for any other purpose of civilian population in the territory of Bangladesh; murder or ill-treatment of prisoners of war or persons on the seas, killing of hostages and detainees, plunder of public or private property, wanton destruction of cities, towns or villages, or devastation not justified by military necessity;*

- (e) violation of any humanitarian rules applicable in armed conflicts laid down in the Geneva Conventions of 1949;*
- (f) any other crimes under international law;*
- (g) attempt, abetment or conspiracy to commit any such crimes;*
- (h) complicity in or failure to prevent commission of any such crimes."*

To our understanding the proper construction of this section should be-

04. Crimes against humanity can be committed even in peace time; existence of armed conflict is, by definition, not mandatory. Neither in the preamble nor in the jurisdiction sections of the Act of 1973 was it mentioned that crime against humanity requires the existence of an armed conflict. Indiscriminate attack on civilian population based on their political, racial, ethnic or religious identity can be termed as crimes against humanity even if it takes place after 1971. However, no one denies the fact that there was an armed conflict in 1971.

III. Consistency of the Act of 1973 with other Statutes on International Crimes

05. We have already quoted section 3 of the International Crimes (Tribunals) Act, 1973 where jurisdiction of the Tribunal and crimes

have been stated. Now let us see the jurisdiction of other International Tribunals and definition of crimes against humanity provided in their Statutes on international crimes.

Article-7 of the Rome Statute

06. According to Article 7 of the Rome Statute, “crime against humanity” means any of the following acts when committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack:

- (a) Murder; (b) Extermination; (c) Enslavement; (d) Deportation or forcible transfer of population; (e) Imprisonment or other severe deprivation of physical liberty in violation of fundamental rules of international law; (f) Torture; (g) Rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, or any other form of sexual violence of comparable gravity; (h) Persecution against any identifiable group or collectivity on political, racial, national, ethnic, cultural, religious, gender as defined in paragraph 3, or other grounds that are universally recognized as impermissible under international law, in connection with any act referred to in this paragraph or any crime within the jurisdiction of the Court; (i) Enforced disappearance of persons; (j) The crime of apartheid; (k) Other inhumane

acts of a similar character intentionally causing great suffering, or serious injury to body or to mental or physical health.

Article 3 of the ICTR

07. The International Criminal Tribunal for Rwanda [ICTR] shall have the power to prosecute persons responsible for the following crimes when committed as part of a widespread or systematic attack against any civilian population on national, political, ethnic, racial or religious grounds of (a) murder, (b) extermination, (c) enslavement, (d) deportation, (e) imprisonment, (f) torture, (g) rape, (h) persecutions on political, racial and religious grounds and (i) other inhumane acts.

Article 5 of the ICTY

08. The International Criminal Tribunal for former Yugoslavia [ICTY] shall have the power to prosecute persons responsible for the (a) murder, (b) extermination, (c) enslavement, (d) deportation, (e) imprisonment, (f) torture, (g) rape, (h) persecutions on political, racial and religious grounds and (i) other inhumane acts when committed in armed conflict, whether international or internal in character, and directed against any civilian population.

09. Under the Rome Statute [Article 7] and Statute of the International Criminal Tribunal for Rwanda [Article 3] the jurisdiction of the Tribunals were given to try offences of 'crimes

against humanity' such as murder, extermination, deportation, torture, rape etc. of the person / persons when the offences committed as a **widespread or systematic attack directed against any civilian population on national, ethnic, racial or religious grounds**. According to ICTY [Article 5] existence of armed conflict is the key element to try offences of crimes against humanity, directed against the civilian population.

10. But the Appellate Division of our Supreme Court in the case of **Abdul Quader Molla Vs. Government of Bangladesh**, vis-a-vis has observed to the effect [majority view]:

"Whereas, under our Act, 1973 the tribunal has jurisdiction to prosecute and punish any person irrespective of his nationality who being a member of any armed, defence or auxiliary forces commits, whether before or after the commencement of the Act, Crimes against Humanity, Crimes against Peace, Genocide and other crimes connected therewith during the period of war of liberation. The offences of murder, extermination, rape or other inhumane acts committed against civilian population or persecutions on political, racial, ethnic or

religious grounds are included in the offence of crimes against Humanity. "

"For commission of the said offence [crimes against Humanity], the prosecution need not require to prove that while committing any of offences there must be 'widespread and systematic' attack against 'civilian population'. It is sufficient if it is proved that any person/ persons attack against 'civilian population'. It is sufficient if it is proved that any person/ persons committed such offence during the said period or participated or attempted or conspired to commit any such crime during operation search light in collaboration with the Pakistani Regime upon unarmed civilian with the aim of frustrating the result of 1970 National Assembly election and to deprive the fruits of the election result." [Page,241-242].

11. In view of the above observation of the Appellate Division it is now well settled that in our jurisdiction for constituting the offence of crimes against humanity the element 'the attack must be widespread and systematic against civilian population' is not at all necessary or mandatory.

12. However, after making comparative analysis of the definitions provided for crimes against humanity, crimes against peace, genocide and war crimes under section 3(2)(a), (b), (c) and (d) of the Act of 1973 those are found to be fairly consistent with the manner in which these terms are defined under recent Statutes for the International Criminal Tribunal for the former Yugoslavia [ICTY], the International Criminal Tribunal for Rwanda [ICTR], the International Criminal Court [ICC] Rome Statute, and the Statute of the Special Court for Sierra Leone [SCSL], it can be safely said that the Act of 1973 legislation with its amendments upto 2013 provides a system which broadly and fairly compatible with the current international standards.

13. As per section 3(2) of the Act of 1973 to constitute an offence of crime against humanity, the element of attack directed against any civilian population is required. The “*population*” element is intended to imply crimes of a collective nature and thus exclude single or isolated acts. Thus, the emphasis is not on the individual victim but rather on the collective, the individual being victimized not because of his individual attributes but rather because of his membership of a targeted civilian population. This has been interpreted to mean that the acts must occur on a large scale basis [widespread] or, that there must be some form of a governmental, organizational or group policy to commit these acts

[systematic, targeted] and that the perpetrator must know the context within which his actions are taken [knowledge and intent], and finally that attack must be committed on discriminatory grounds in case of persecution.

14. The attack must be directed against any civilian population. The term “*civilian population*” must be interpreted broadly and refers to a population that is predominantly civilian in nature. A population may qualify as “*civilian*” even if non-civilians are among it, as long as it is predominantly civilian. The presence within a population of members of armed resistance groups, or former combatants, who have laid down their arms, does not as such alter its civilian nature.

15. However, for our better understanding it is needed to know the meaning and scope of 'widespread' and 'systematic' attack. '*Widespread*' refers to the large-scale nature of the attack which is primarily reflected in the number of victims. '*Systematic*' refers to the organized nature of the acts of violence and the '*non-accidental repetition of similar criminal conduct on a regular basis.*'

Widespread is quantitative while systematic is qualitative.

IV. Salient features of ICT Act of 1973 and International Crimes (Tribunal-1) Rules of Procedure, 2010 [ROP, 2010] applicable to trial procedure.

16. The proceedings before the Tribunal shall be guided by the Act of 1973 and International Crimes (Tribunal-1) Rules of Procedure, 2010 [hereinafter referred to as the 'ROP, 2010'].

Section 23 of the Act of 1973 prohibits the applicability of the Code of Criminal Procedure, 1898 and the Evidence Act, 1872. The Tribunal is authorized to take into its judicial notice of facts of common knowledge and some official documents which are not needed to be proved by adducing evidence [sub-sections (3) and (4) of section 19 of the Act of 1973]. The Tribunal may admit any evidence without observing formality, such as reports, photographs, newspapers, books, films, tape recordings and other materials which appear to have probative value [section 19(1) of the Act of 1973]. The Tribunal shall have discretion to consider hearsay evidence too by weighing its probative value as per rule-56(2) of the ROP, 2010. The defence shall have right to cross-examine prosecution witnesses on their credibility and to take contradiction of the evidence given by them before the Tribunal as per rule-53(2) of the ROP, 2010. Accused deserves right to conduct his own case or to have assistance of his counsel [section 17 of the Act of 1973]. The Tribunal may release an accused on bail subject to conditions as imposed by it as per rule 34(3) of the ROP, 2010. The Tribunal may, as and when necessary, direct the concerned authorities of the government to ensure protection, privacy, and well-being of the witnesses and victims as per rule 58 A of the ROP, 2010.

17. The Act of 1973 is meant to prosecute and try the persons responsible for the offences of crimes against Humanity, genocide and other class crimes committed in violation of customary international law in accordance with the provisions of the said Act. However, the Tribunal is not precluded from borrowing those international references which are not found inconsistent with the provisions of the Act of 1973 in the interest of fair justice.

18. The Act of 1973 has ensured all the universally recognized rights to accused in order to make fair trial. The fundamental and key elements of fair trial are (i) right to disclosure, (ii) holding trial in public, (iii) presumption of innocence of the accused, (iv) adequate time for preparation of defence case, (v) expeditious trial, (vi) right to examine defence witness, and (vii) right to defend by engaging counsel.

19. All the aforesaid rights have been provided to the accused to ensure fair justice. In addition to observation of those elements of fair justice, the Tribunal has adopted a practice by passing an order that while an accused in custody is interrogated by the investigation officer, at that time, the defence counsel and a doctor shall be present in the adjacent room of the interrogation room, and the defence counsel is permitted to meet the accused during break time and at the end of such interrogation. The doctor is also allowed to check-up the physical condition of the accused, if necessary. All

these measures are being taken by the Tribunal to ensure fair investigation as well as trial.

20. Before going into discussion and evaluation of the evidence on record, it is needed to be mentioned here that this Tribunal has already resolved some common legal issues agitated by the defence in the following cases of the Chief Prosecutor vs. Delwar Hossain Sayeedi [ICT-BD Case No. 01/2011], The Chief Prosecutor Vs. Professor Ghulam Azam [ICT-BD Case No. 06/2011], the Chief Prosecutor Vs. Salauddin Qader Chowdhury [ICT-BD Case No. 02/2011] and the Chief Prosecutor Vs. Motiur Rahman Nizami [ICT-BD Case No.03 of 2011]. Apart from this, the Appellate Division of our Supreme Court in the cases of Abdul Quader Molla Vs Government of the People's Republic of Bangladesh and vis-a-vis [Criminal Appeal Nos. 24-25 of 2013], Muhammad Kamaruzzaman vs. The Chief Prosecutor [Criminal Appeal No. 62 of 2013], Ali Ahsan Muhammad Mujahid vs. The Chief Prosecutor [Criminal Appeal No. 103 of 2013], Salauddin Qader Chowdhury vs. The Chief Prosecutor [Criminal Appeal No. 122 of 2013], Allama Delwar Hossain Sayedee vs. The Government of the People's Republic of Bangladesh and vis-a-vis [Criminal Appeal Nos. 39-40 of 2013] and Motiur Rahman Nizami vs. The Government of Bangladesh [Criminal Appeal No. 143 of 2014] has

also decided the legal issues involved in the cases under the Act of 1973.

V. The settled laws/ issues by the Appellate Division and the Tribunal are as follows:

- i. Customary International Law [CIL] shall not be applied if it is contrary to the Act of 1973;
- ii. There is no rule of CIL that prohibits our domestic Tribunal to proceed with the trial as per our domestic legislation;
- iii. Our domestic Tribunal has the jurisdiction to continue with the trial in any manner acting in derogation of rules of public international law;
- iv. There is nothing repugnant to CIL in the Act of 1973, rather it is consonant with the provisions of CIL;
- v. The inordinate delay in commencing any proceedings under the Act of 1973 *ipso facto* can not be a ground to doubt the truth or veracity of the prosecution case;
- vi. By the amendment of section 3(1) of the Act of 1973 through Act No.LV of 2009 the jurisdiction of the Tribunal has been extended to try and punish 'any individual,' 'organization' or 'group of individuals' besides any member of any armed, defence or auxiliary forces, irrespective of his nationality who has committed crimes against Humanity mentioned in section 3(2) of the Act of 1973;

vii. The Act of 1973 is a protected law and the moment, sub-section (1) of section 3 was amended by way of substitution, it became part of the Statute and it got the protection of any legal challenge to be void or unlawful or even to have become void or unlawful in view of the provisions of Article 47(3) of our Constitution;

viii. The clemency given to the admitted prisoners of War, pursuant to the tripartite agreement of 1974, in no way, either match the Act of 1973 or any of its provisions ineffective, invalid or void;

ix. Mere failure of the successive governments to act in accordance with the Act of 1973 for last more than forty years, in no way, gave any right to the accused to be exonerated from being tried for the commission of crimes against Humanity as mentioned in section 3(2) of the Act of 1973;

x. In the Act of 1973, no limitation has been prescribed for initiating proceedings against any individual or group of individuals or organization or any member of any armed, defence or auxiliary forces irrespective of his nationality for the commission of crimes mentioned in section 3(2) of the Act of 1973;

xi. The Collaborators Order, 1972, a different legislation aiming to prosecute the persons for the offences punishable under the Penal Code, were scheduled in the Collaborators Order, 1972, while the Act of 1973 has been enacted to prosecute and try the persons for crimes against Humanity, genocide and other crimes committed in violation of customary international law [CIL], and as such, there is no scope to characterize the offences indulging in the Collaborators Order, 1972 to be the same offences as specified in the Act of 1973;

xii. The Act of 1973 is a codified law, thus, it is not needed to travel to seek assistance from other trials held or is being held by the tribunals/ courts either under the charter of agreements of the nations or under other arrangements under the mandate of United Nations or other International body, such as Nuremburg trial and the Balkan trials.

VI. Historical Backdrop and Context

21. In August, 1947 the partition of British India based on two-nation theory, gave birth to two new States, one a secular State named India and the other the Islamic Republic of Pakistan of which the western zone was eventually named as West Pakistan and the eastern zone as East Pakistan, which is now Bangladesh.

22. In 1952, the Pakistan authorities attempted to impose 'Urdu' as the only State language of Pakistan ignoring 'Bangla', the language of the majority population of Pakistan. The people of the then East Pakistan started movement to get Bangla recognized as a State language, eventually turned to the movement for greater autonomy and self-determination and ultimately independence.

23. In the general election of 1970, the Awami League under the leadership of Bangabandhu Sheikh Mujibur Rahman became the majority party of Pakistan. 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 7 March, 1971, called on the Bangalee people of the eastern zone to strive for independence if people's verdict would not be respected and power was not handed over to the leader of the majority party. On 26 March, 1971 following the onslaught of "**Operation Search Light**" by the Pakistani Military on 25 March, Bangabandhu Sheikh Mujibur Rahman declared Bangladesh independent immediately before he was arrested by the Pakistani army.

24. In the War of Liberation that ensued, all people of the then 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 Pakistan military to actively oppose the creation of independent Bangladesh and most of them committed and facilitated the commission of atrocities in the territory of Bangladesh. As a result, 3 million [thirty lakh] people were killed, more than [two lakh] women were raped, about 10 million [one crore] people deported to India as refugees and million others were internally displaced. It also experienced unprecedented destruction of properties all over Bangladesh.

25. The Pakistan government and the military with the help of some pro-Pakistani leaders set up a number of auxiliary forces, such as, the Razakar Bahini, the Al-Badr Bahini, the Al-Shams, the Peace Committee etc, essentially to collaborate with the Pakistani army in identifying and eliminating all those who were perceived to be sympathized with the liberation of Bangladesh, individuals belonging to minority religious groups especially the Hindus, political groups belonging to Awami League and other pro-independence political parties, Bangalee intellectuals and civilian population of Bangladesh. Undeniably the road to freedom for the people of Bangladesh was arduous and torturous, smeared with blood, toil and sacrifices. In the contemporary world history,

perhaps no nation paid as dearly as the Bangalees did for their emancipation.

26. Having regard to the fact that during the period of War of Liberation in 1971 parallel forces i.e Razakar Bahini, Al-Shams, Al-Badr Bahini and Peace Committee were formed as auxiliary forces of the Pakistani armed forces that provided moral support, assistance and substantially contributed and also physically participated in the commission of horrendous atrocities in the territory of Bangladesh. It is the fact of common knowledge that thousands of incidents happened through out the country as part of organized and planned attacks against the pro-liberation Bangalee civilian population, Hindu community, pro-liberation political group, freedom fighters and finally the 'intellectuals'. We are to search for answers of all these crucial questions which will be of assistance in determining the culpability of the accused persons for the offences for which they have been charged.

VII. Brief Account of the Accused Persons:

(i) Accused Shamsuddin Ahmed [60] son of late Abdur Razzak Munshi and late Safurennesa alias Lutfor Nahar Lata was born on 12.7.1956[according to school record]of village Karimganj Modhopara (Dulipara) under Police Station Karimganj of the then Kishoreganj Sub-Division, at present 411/1, Banani Morh, Chorsholakia, Police Station and District Kishoreganj. He obtained

his B.A. degree in 1982, LL.B degree in 1991 and B. Ed. degree in 1995 from Mymensingh Teachers Training College. He also served as an Assistant teacher in Neamotpur Government Primary School since 21.10.1985. He continued to serve as a teacher in Tamoni Bhuiyan Para Government Primary School till 11.12.2003 and went on retirement on 15.2.2004. Then he got enrolled in Mymensingh District Bar Association as an Advocate. He joined the Razakar Bahini in 1971 and he and his brother accused Nasiruddin Ahmed alias Md. Nasir alias Captain ATM Nasir [absconded] got involved with the atrocious activities constituting offences of crimes against humanity, prosecution alleges. After independence, he went into hid from the locality.

(ii) Accused Gazi Md. Abdul Mannan [88] son of late Ibrahim and late Moharajer Ma of village Charpara under Police Station Karimganj of the then Kishoreganj Sub-Division was born on 04.05.1927[according to national ID card]. He studied up to class VIII. He was the commander of local Razakar Bahini and was involved with the atrocious activities constituting the offences of crimes against humanity in 1971 in the localities under Police Station Karimganj, prosecution alleges.

(iii) Accused Nasiruddin Ahmed alias Md. Nasir alias Captain ATM Nasir [62] son of late Abdur Razzak and late Safurenessa alias Lutfor Nahar Lata of village Karimganj Modhopara (Dulipara)

under Police Station Karimganj of the then Kishoreganj Sub-Division, at present 270, Charsholakia (Zenith View Bananir Morh) under Police Station Karimganj of the then Kishoreganj Sub-Division was born on 09.02.1954[according to school record]. He is the elder brother of accused Shamsuddin Ahmed. He studied in Karimganj Subhania Madrasa and passed SSC Examination in 1971 from *Jangal Bari* High School. He went to forced retirement from Bangladesh Army on 13.01.2002 on allegation of moral turpitude. He and his brother Shamsuddin Ahmed allegedly joined the Razakar Bahini and received training under Razakar Commander accused Gazi Md. Abdul Mannan [co-accused] and got involved actively in carrying out atrocious activities constituting the offences of crimes against humanity directing the pro-liberation civilians around the locality of Karimganj Police Station in 1971 during the war of liberation. After the independence, he went into hid from the locality, prosecution alleges.

(iv) Accused Md. Hafizuddin [66] son of late Ismat Ali and late Mosammat Fulbanu of House No. 129, Village- Khudir Jangal, Police Station- Karimganj of the then Kishoreganj Sub-Division was born on 08.03.1949[according to national ID card]. He studied in Madrasa. In 1971, during the war of liberation, he joined the local Razakar Bahini and had played a culpable role, prosecution alleges.

(v) Accused Md. Azharul Islam [60] son of late Md. Abdur Rahim and late Mosammat Umme Saleh of village Haidhonkhali under Police Station Karimganj of the then Kishoreganj Sub-Division was born on 01.03.1956[according to national ID card]. He studied in Madrasa. In 1971, during the war of liberation, he joined the local Razakar Bahini and had played a culpable role, prosecution alleges.

VIII. Procedural History

27. Chief Prosecutor submitted 'formal charge' on having considered the report and documents submitted therewith by the Investigation Agency. Out of five accused persons only accused Shamsuddin Ahmed has been in detention since pre-trial stage. The other four accused persons neither could have been arrested nor did they surrender.

28. On 13.05.2015 this Tribunal-1 took cognizance of offences, perpetration of which has been unveiled in course of investigation and also ordered publication of notice in two daily news papers as required under rule 31 of the ROP, 2010 against the four absconding accused (1) Gazi Md. Abdul Mannan, (2) Nasiruddin Ahmed alias Md. Nasir alias Captain ATM Nasir, (3) Md. Hafizuddin, and (4) Md. Azharul Islam as the execution of warrant of arrest issued against them earlier was found unserved.

29. Accordingly, despite publication of the notice in the 'Daily Janakantha' and the 'Daily Sun' on 04.06.2015 the four absconding accused persons did not make them surrendered, and as such, the Tribunal ordered for holding trial *in absentia* against them and appointed Mr. Abdus Shukur Khan to defend them as State defence counsel. The Tribunal also ordered the prosecution for furnishing documents it relies upon to the State defence counsel and fixed 13.09.2015 for hearing the charge framing matter.

30. On 13.09.2015 the Tribunal heard the charge framing matter and fixed 21.09.2015 for decision on it. But meanwhile, by a government notification dated 15.09.2015 the Tribunal-1 has been reconstituted, and as such, instead of rendering decision on charge framing matter, it fixed 22.09.2015 for hearing the charge framing matter afresh.

31. On 22.09.2015 prosecution and the learned State defence counsel placed their respective submissions and on oral prayer seeking adjournment on part of the accused Shamsuddin Ahmed, 28.09.2015 was fixed for further hearing on the matter. But on 28.09.2015, accused Shamsuddin Ahmed, present on dock, informed the Tribunal that his engaged counsel shall not continue to conduct proceedings on behalf of him and thus he needed to appoint a counsel afresh. Accordingly, having regard to the submission of his own, the matter was adjourned and 04.10.2015

was fixed for hearing submission, on behalf of him, in respect of charge framing matter.

32. On 04.10.2015 due to failure of appointing counsel afresh, the Tribunal appointed Mr. Abdus Shukur Khan as State defence counsel to represent him who having due consultation with the accused Shamsuddin Ahmed made submission seeking his discharge. Thus, the hearing on charge framing matter was concluded. On 12.10.2015 7[seven] charges were framed against the accused persons for committing the offences under section 3(2)(a)(g)(h) of the Act of 1973. The charges so framed [charge nos. 01, 03, 04 and 05] were read over to accused Shamsuddin Ahmed, present on dock, to which he pleaded not guilty and claimed to be tried. The other four accused persons were in absconsion, and as such, they could not be asked whether they plead guilty or not, after reading over the charges framed against them [charge nos. 01, 02, 03, 04, 06 and 07] in open court. The said four accused persons have been in absconsion till today. It may be mentioned here that subsequently on 23.11.2015 Mr. M. Masud Rana , the learned counsel filed a Wokalatnama on behalf of accused Shamsuddin Ahmed.

IX. Witnesses adduced by the parties

33. The prosecution submitted a list of 46[forty six] witnesses along with formal charges and documents. But at the time of the trial, the prosecution has examined in all 25 [twenty five] witnesses

including the investigation officer. The prosecution has also adduced some documentary evidence which were duly marked as exhibits 1-14.

34. On behalf of accused Shamsuddin Ahmed a list of 03[three] witnesses was submitted under section 9(5) of the Act of 1973, but eventually no witness was examined on behalf of that accused. On the other hand no list of witnesses was submitted on behalf other four absconding accused persons. But the learned defence counsels for all the accused persons have cross-examined all the prosecution witnesses.

X. Defence case of the accused persons

35. It is the defence case that accused Shamsuddin Ahmed, Gazi Md. Abdul Mannan, Nasiruddin Ahmed alias Md. Nasir alias Captain ATM Nasir , Md. Hafizuddin and Md. Azharul Islam were never Razakars. Exhibit-8, a list locally prepared showing the names of accused persons as Razakars is an unauthenticated document, and as such, it does not prove the accused persons' membership in local Razakar Bahini in 1971. Prosecution has failed to substantiate this fact by any reliable documentary evidence. Mere oral testimony is not enough to arrive at a conclusion in this regard. Besides, accused Shamsuddin Ahmed was 12 years old in 1971 , and as such, it was impracticable to claim that he belonged to Razakar Bahini. The further defence case is that during the liberation war in 1971, the accused persons never went to the

alleged crime sites and also never participated, abetted or facilitated the commission of the offences as alleged by the prosecution, and as such, all the charges brought against the accused persons involving with the offences of crimes against humanity are false, fabricated and politically motivated and that those offences might have been committed by the Pakistani occupation army and in some other manner.

XI. Burden of the prosecution

36. The prosecution, in the light of the charges framed, is burdened to prove (a) the commission of crimes narrated in charges, (b) mode of participation of the accused persons in committing the crimes for which they have been charged, (c) what was the status and role of the accused persons at the relevant time and how they had maintained association with the Pakistani occupation army, and (d) the context of carrying out of alleged atrocious crimes directed against civilian population and a particular group of population. In determining culpability of the accused persons prosecution is to establish too that (i) the perpetrators must know of the broader context in which the acts committed, and (ii) the acts must not have been carried out for purely personal motives of the perpetrators.

XII. Summing up of the prosecution case

37. Mr. Sultan Mahmud, the learned prosecutor before placing submission in respect of the charges framed drew our attention to

the context of the war of liberation in 1971. He submitted that the accused persons were the potential members of Razakar Bahini formed in the locality of Police Station Karimganj of the then Kishoreganj Sub-Division and they had carried out numerous atrocious activities around the locality directing civilian population, to further policy and plan of the Pakistani occupation army. The offences they had committed were not indivisible from the horrific and recurrent systematic atrocities carried out across the territory of Bangladesh in 1971.

38. Learned prosecutor then started arguing on the charges brought against the accused persons, drawing evidence adduced in support thereof. He submitted that to prove the charges framed prosecution adduced and examined in all 25 witnesses of whom 22 are private witnesses, 02 are seizure witnesses and the other one is Investigation Officer [IO]. Many of the private witnesses examined are direct witnesses to the material facts having nexus with the perpetration of the principal offence, the learned prosecutor submitted and some had occasion to witness the actual accomplishment of crimes for which the accused persons have been charged with. However, we consider it convenient to focus on the argument placed on the part of prosecution in support of each charge independently while adjudicating the charges on due evaluation of evidence presented.

39. Ms. Rezia Sultana, the learned prosecutor who significantly conducted the trial on behalf of the prosecution finally and in brief submitted that the prosecution has been able to prove all the charges brought against the accused persons and the defence could not impeach the testimony of the prosecution witnesses by cross-examining them.

XIII. Suming up of the defence case

[On behalf of accused Shamsuddin Ahmed]

40. Mr. M. Masud Rana, the learned counsel defending the accused Shamsuddin Ahmed in advancing argument chiefly submitted that this accused did not belong to locally formed Razakar Bahini and he was not involved with any of events for which he has been indicted and that in 1971 this accused was a boy of 12 years old. Prosecution has failed to prove the arraignment brought by adducing reliable evidence. Benefit of doubt created as to accused person's complicity with the alleged offences for which he has been charged with goes in favour of the accused.

41. It has been further submitted by the learned defence counsel that the relatives of victims would not have testified the alleged events implicating this accused long more than four decades after the events committed if really the accused had complicity with the offences alleged. Bringing delayed accusation indicates that the accused has been prosecuted out of political motivation. The learned counsel submitted that this accused Shamsuddin Ahmed

has been indicted for the offences narrated in charge nos. 01, 03, 04 and 05 and thus he agitated his argument independently relating those charges drawing attention to the evidence presented and thus it would be convenient to concentrate the same while adjudicating those charges together with the process of appraisal of evidence presented. The learned counsel finally submitted that the offence of single murder cannot be characterized as the offence of crimes against humanity as it was not directed against 'civilian population'.

[On behalf of four absconded accused Gazi Md. Abdul Mannan, Nasiruddin Ahmed alias Md. Nasir alias Captain ATM Nassir, Md. Hafijuddin and Md. Azharul Islam]

42. Mr. Abdus Sukur Khan, the learned State defence counsel defending the rest four accused Gazi Md. Abdul Mannan, Nasiruddin Ahmed alias Md. Nasir alias Captain ATM Nassir, Md. Hafijuddin and Md. Azharul Islam argued that these accused persons were not the members of locally formed Razakar Bahini, that they were not engaged in committing any of offences alleged in any manner, that the event of attack as narrated in charges framed would have been launched by some other Razakars. The learned State defence counsel further submitted that testimony of direct witnesses suffers from inconsistencies and they do not appear to be reliable and these accused persons have been prosecuted leaving the real offenders aside. Bringing arraignment long more than four

decades after the events committed in 1971 creates doubt as to complicity of these accused persons with the alleged offences.

XIV. Rebuttal by the prosecution

43. On rebuttal, the learned prosecutor Mr. Sultan Mahmud submitted by citing references of adhoc tribunals that (i) hearsay evidence is admissible (ii) even an act of single murder constitutes the offence of crimes against humanity (iii) the attack that resulted in killing and other criminal acts was 'systematic' as it happened in war time situation directing civilian population. It has also been submitted that (iv) to prove death of victim that constituted the offence of murder as crime against humanity recovery of dead body is not required and (v) minor age of the witness at the relevant time cannot be ground to discard his sworn testimony.

XV. Whether the accused persons can be prosecuted without prosecuting their accomplices

44. The learned defence counsels referring to the evidence on record and rule 36 of ROP, 2010 have raised a legal question that some Razakars and co-perpetrators, who are still alive, accompanied the accused persons at the crime sites in committing the crimes have not been brought to book by the prosecution as well as the investigation agency, and as such, initiation of the proceeding against the present accused persons on the basis of '**pick and choose**' policy is malafide one and it has vitiated the whole trial.

45. It is true that from the testimonies of some prosecution witnesses it is revealed that some armed Razakars and co-perpetrators accompanied the accused persons at the crime sites in committing the crimes. Excepting the present accused persons, none of their accomplices have been brought to justice, but that by itself does not make the horrendous episode of atrocities directing attack on the civilian population constituting the offences of crimes against humanity and genocide untrue or give any immunity to the present accused persons. If the accused persons are found guilty and criminally liable beyond reasonable doubt for their culpable acts, inaction in prosecuting their 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 which states that when any crime as specified in section 3 of the said Act 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. Further, we have no hesitation to hold that rule 36 of ROP, 2010 is not mandatory but directory. Non compliance of the said rule *ipso-facto* does not vitiate the trial.

46. It may be mentioned here that we did not find any provision within the four corners of the Act of 1973 that all the perpetrators of an offence must be tried in one trial, failing which one of the perpetrators against whom if any proceeding is brought that would

be vitiated. There is a basic principle of criminal jurisprudence that a man cannot be vexed twice for the same cause of action. But one of the perpetrators of an offence cannot be absolved *ipso facto* for non bringing the other perpetrators in the same trial with him. So, the submission made by the learned defence counsels in respect of this issue has no leg to stand. In this regard we find support from the case of the **Prosecutor vs. Brdjanin [Case No. IT-99-36-T, September 1, 2004, para -728]** where the ICTY Trial Chamber observed –

“An individual can be prosecuted for complicity in genocide even when the perpetrator of genocide has not been tried or even identified.”

47. The ICTY Trial Chamber in the case of Prosecutor vs. Stakic [Case No. IT-97-24-T, July 31, 2003, para 533] also observed that –

“The trial Chamber is aware that an individual can be prosecuted for complicity even where the perpetrator has not been tried or even identified and that the perpetrator and accomplice need not know each other.”

48. However, the failure of the Investigation Agency and the prosecution in not bringing all the co-perpetrators who are still alive in one trial is no doubt frustrating, disappointing and

undesirable. We are constrained to express our dissatisfaction on such unmindful investigation of the case. In this connection we would like to mention that as per sections 9 and 10 of the Act of 1973 the Tribunal is not empowered to initiate any proceeding or frame charge [s] against any person [s], against whom formal charge has not been submitted.

XVI. General Considerations Regarding the Evaluation of Evidence in a case of Crimes against Humanity

49. The accused persons who were allegedly the members of ‘auxiliary forces’ as defined in section 2(a) of the Act of 1973 have been charged for the offences enumerated in section 3(2) of the Act of 1973. The offences for which they have been indicted were ‘system crimes’ committed in violation of international humanitarian law in the territory of Bangladesh in 1971.

50. The accused persons have been brought to justice more than four decades after the barbaric offences occurred. The case so far as it relates to the alleged facts of criminal acts constituting the alleged offences is predominantly founded on oral evidence presented by the prosecution. Together with the circumstances to be divulged it would be expedient to have a look to the facts of common knowledge of which Tribunal has jurisdiction to take into its judicial notice [section 19(3) of the Act of 1973], for the purpose of unearthing the truth. Inevitably, determination of the

related legal issues will be of assistance in arriving at decision on facts in issues.

51. Totality of its horrific profile of atrocities committed in 1971 naturally left little room for the people or civilians to witness the entire events of the criminal acts. Some times it also happens that due to the nature of international crimes, their chaotic circumstances, and post-conflict instability, these crimes usually may not be well-documented by post-conflict authorities.

52. We reiterate that section 23 of the Act of 1973 provides that the provisions of the Criminal Procedure Code, 1898 [V of 1898] and the Evidence Act, 1872 [I of 1872] shall not apply in any proceedings under this Act. Section 19(1) of the Act provides that the Tribunal shall not be bound by technical rules of evidence and it shall adopt and apply to the greatest possible extent non-technical procedure and may admit any evidence which it deems to have probative value.

53. In adjudicating the atrocious events alleged and complicity of the accused persons therewith we have to keep the 'context' in mind in the process of assessment of evidence adduced. The reason is that the term '**context**' refers to the events, organizational structure of the group of perpetrators, *para militia* forces, policies that furthered the alleged crimes perpetrated in 1971 during the war of liberation.

54. It is to be noted too that the testimony even of a single witness on a material fact does not, as a matter of law, require corroboration for a finding to be made. This jurisprudence as propounded by our own jurisdiction shall seem compatible to the principle enunciated by *ad hoc* tribunal [ICTR] wherein it has been observed as under -

“Corroboration of evidence is not necessarily required and a Chamber may rely on a single witness’ testimony as proof of a material fact. As such, a sole witness’ testimony could suffice to justify a conviction if the Chamber is convinced beyond all reasonable doubt.”

**[Nchamihigo, (ICTR Trial Chamber),
November 12, 2008, para. 14].**

55. In the earlier cases disposed of by this Tribunal in exercise of its jurisdiction it has been settled that hearsay evidence is not readily inadmissible *per se* but it is to be evaluated in light of probability based on corroboration by ‘other evidence’. That is to say, hearsay evidence is admissible and the court can act on it in arriving at decision on fact in issue, provided it carries reasonable probative value [rule 56(2) of the ROP, 2010]. We have already recorded our same view on this issue in different cases. This view finds support too from the principle enunciated in the case of *Muvunyi* which is as below:

"Hearsay evidence is not per se inadmissible before the Trial Chamber. However, in certain circumstances,

there may be good reason for the Trial Chamber to consider whether hearsay evidence is supported by other credible and reliable evidence adduced by the Prosecution in order to support a finding of fact beyond reasonable doubt." [Muvunyi, (ICTY Trial Chamber), September 12, 2006, para. 12]

56. Next, it has already been settled by the Tribunal and the Apex Court as well, in earlier cases, that an insignificant discrepancy does not tarnish witness's testimony in its entirety. Any such discrepancy, if found, needs to be contrasted with surrounding circumstances and testimony of other witnesses. In this regard, in the case of **Nchamihigo it has been observed by the Trial Chamber of ICTR** that --

"The events about which the witnesses testified occurred more than a decade before the trial. Discrepancies attributable to the lapse of time or the absence of record keeping, or other satisfactory explanation, do not necessarily affect the credibility or reliability of the witnesses.....The Chamber will compare the testimony of each witness with the testimony of other witness and with the surrounding circumstances."

[The Prosecutor v. Simeon Nchamihigo, ICTR-01-63-T, Judgment, 12 November 2008, para 15]

57. The alleged events of atrocities were committed not at times of normalcy. The offences for which the accused persons have been charged occurred during the war of liberation of Bangladesh

in 1971. Requirement of production of dead body as proof to death does not apply in prosecuting crimes enumerated under the Act of 1973. A victim's death may be established even by circumstantial evidence provided that the *only* reasonable inference is that the victim is dead as a result of the acts or omissions of the accused constituting the offence.

58. In order to assess the culpability of accused persons, their act and conduct forming part of the attack have to be taken into account to see whether such act or conduct facilitated or substantially contributed to the commission of the crimes alleged. Physical participation to the actual commission of the principal offence is not always indispensable to incur culpable responsibility. The act and conduct of accused are sufficient to form part of the attack if it had a substantial link to the perpetration of the principal crime. It has been observed in the case of *Tadic*, [Trial Chamber: ICTY, May 7, 1997, para. 691] that:

"Actual physical presence when the crime is committed is not necessary . . . an accused can be considered to have participated in the commission of a crime . . . if he is found to be 'concerned with the killing.'"

59. However, according to universally recognised jurisprudence and the provisions as contained in the ROP, 2010 onus squarely lies upon the prosecution to establish accused persons' presence, acts or conducts, and omission forming part of attack that resulted

in actual commission of the offences of crimes against humanity and genocide as enumerated in section 3(2) of the Act of 1973 for which they have been arraigned. Therefore, until and unless the accused persons are found guilty they shall be presumed innocent. Keeping this universally recognised principle in mind we shall go ahead with the task of evaluation of evidence provided.

60. The accused persons and the witnesses and victims, as we find in the case in hand, were the residents of the same locality. In absence of anything contrary, it was thus quite natural for the people of being aware as to which persons of their locality were the Razakars.

61. In the case in hand, most of the prosecution witnesses have testified the acts, conducts of the accused persons which allegedly facilitated and substantially contributed to the commission of the principal events. Naturally, considerable lapse of time may affect the ability of witnesses to recall facts they heard and experienced with sufficient and detail precision. Thus, assessment of the evidence is to be made on the basis of the totality of the evidence presented in the case before us and also considering the context prevailing in 1971 in the territory of Bangladesh. Credibility of evidence adduced is to be weighed in the context of its relevance and circumstances.

XVII. Razakar Bahini: It's Objective in 1971

62. We felt it indispensable to focus on this issue as the accused persons allegedly belonged to local Razakar force in 1971. In assessing the charges brought against them and their alleged culpability and also the motivation of their being associated with the Pakistani army and local Razakars we must have a clear portrayal about the Razakar Bahini and its activities carried out in 1971 in the territory of Bangladesh.

63. Let us examine some citations from nationally and internationally reputed news reportings as well as citations from books written by renowned writers to have a true picture about the role of Jamaat-e-Islami during the War of Liberation. In this regard some citations are quoted below:

“The Jamaat-e-Islami and specially its student wing, Islami Jamaat-e-Talaba (IJT) joined the military’s efforts in May 1971 to launch two para military counter insurgency units. The IJT provided a large number of recruits. The two special brigades of Islamist cadres were named Al-shams (the sun in Arabic) and Al-Badr (the moon). A separate Razakars Directorate was established. Two separate wings called Al-Badr and Al-shams were recognized. Well-educated and properly motivated students from the schools and Madrasas were put in Al-Badr wing, where they were trained to undertake specialized operations, where the remainders were grouped together under Al-shams, which was responsible for the protection of bridges, vital points and other areas. Bangladeshi scholars accused the Al-Badr and Al-shams militias of being fanatical. They allegedly acted as the Pakistan army’s death squads and “exterminated leading left wing professors, journalists, litterateurs and even doctors.”

[Source:- “Pakistan between Mosque And Military” -written by Hossain Haqqani, page 79 published in 2005, Washington D.C. USA.]

64. The Jamaat-e-Islami, a religion based political party and brain child of controversial Islamist thinker Maulana Maududi was significantly pro-active in its mission to destroy the Bangalee nation in the name of safeguarding Pakistan in collaboration with the Pakistan occupation army. We deem it indispensable to get a scenario on the role and stand of the Jamaat-e-Islami in 1971, particularly when it established various militia Bahinis, namely Peace Committee, Razakar, Al-Badr, Al-shams and Al-Mujaheed, etc. in association with Pakistan Army.

65. The vital role of Jamaat-e-Islami in creating the para-Militia Bahinis is also reflected from the narrative of the book titled “**Sunset at Midday**” which is cited below:

“To face the situation, the Razakar Bahini consisting of pro-Pakistani elements was formed. Al-Badr Bahini was formed mainly with the workers of the student wing of Jamaat-e-Islami, named Islami Chhatra Sangha (I.C.S. now Islami Chhatra Shibir). The general public belonging to Jamaat-e-Islami, Muslim League, Nizam-e-Islami, etc were called Al-shams and the urdu speaking generally known as Biharis were called Al-Mujaheed.”

[Source:- ‘Sunset at Midday’,-written by Mohiuddin Chowdhury, a former leader of Peace Committee of Noakhali District, published in 1998, Karachi, Pakistan.]

66. It is pertinent to state that it is a fact of common knowledge by the people at large that the Pakistani invading force made attacks

on Bangalee people on the very night of 25 March 1971 in the name of so called ‘**operation search light**’ and subsequent their further actions were assisted by anti-liberation people like accused-perpetrators. Anti-liberation forces started their atrocious activities from the very day when Pakistani military ruler secretly decided not to handover the power to the party which won majority seats in the general election held in 1970. Early atrocious activities of anti-liberation forces can be authenticated by the statements of some people which have been embodied in **Bangladesher Shadhinata Juddya Dalilpatra, Astom Khonda [volume-08] at page nos.301,126 and 90, and Dosom Khonda [volume-10] at page 435** respectively as under :

tgvt রফিকুল্লাহ, খাম-কিম্বি নিম্বদ, _vbi-mgvi vg, tRj v-tbvqvLij x|

*015B GwCj 15 Rb ivRvi Kvi Avgvt`i Mtg Avtm, Avig ZLb
Avgvt`i Mtgi `wY Pivq avb KmUtZwQ| ivRvKvi Avmqv AvgvtK
etj th, tZvt`i Mtg nBtZ Avgvt`i Pvdj Zvj qv w`tZ nBte|*

-----|0

tgvt tMj vg tgv`Zdv gUj, Mtg-RqcjnvU, tRj v-e, ov|

*0.....tg gvami gvSvgnS Ggnbfvte KwZcq tj vKtK Mrtovqvbiv
evsvt`tki mxgvbvq titL Avmvi ct_ ivRvKvii v H pjU` 16/17
Rb Mrtovqvbtk tMdzvi Kti RqcjnvU njc`KugwU Awdtm wbtq
Avtm| ivtZ tmLvtb ex`x Kti titL ciw`b UtK Kti kvxg wenvixi tbZtZ;
Zvt`i Avt`j cy wgvj Uvix K`vt`c wbtq hvq| tmLvtb Zvt`i fij K`v
evtki tgvUv tMvov w`tq Kwctq Kwctq H mg`Z Mrtovqvbtk nZ`v
Kti | -----|0*

Ave`jy gvij K, `Mey, ivRkvix|

*0njc`KugwU Ges ivRvKvii`i mieivnKZ.Zt`i Dci wfwE Kti
wgvj Uvixiv wvfbæ GvKvq Gtm Acvtikb Kti`Q| Zviv jYcvU
Kti`Q, AvMmsthvM Kti`Q, bvixalP Kti`Q Ges gvby nZ`v*

Kti#Q| Zvt`i Acv#kb ,wj i gta" wbt#y³ ,wj c#vb| Zviv tg
gv#mi gvSvgnS thvM#mb cij kvq Acv#kb Kti 42 Rb wv`#K
nZ`v Kti | #mLv#b tqtq#`i Dci AZ`vPvi Kti#Q| Rly gv#m Zviv
`M#ej Acv#kb Kti 8/9 Rb#K nZ`v Kti | -----|0

mv#v#Kvi t kvgmj Avj g Avj #`vi

0.....Rly gv#mi c#g mBv#n kiY#Lvj v _vbt#Z ivRvKvi ew#bx
`Zix nq cvK ivR`^j#»£ gbm#ji tbZ#Zj| tg gv#mi gvSvgnS
bvtqK m#e`vi gayZvi wR`^`j wbtq tgvj M# _vbvq hvq| gay
_vbt#Z #cv#tj Avig Ges gay#h#_f#te KvR`ii" Kw# | 40 Rb
ivRvKvi BwZgta" tgvj M# _vbt#Z Av#m | -----
--|0

67. Regarding numerous atrocious acts committed by Razakars in the territory of Bangladesh after 26 March,1971 a news report was published on 20 June,1971 in the world famous news paper "The Sunday Times' under the following caption-

" POGROM IN PAKISTAN

**Teachers, Writers, Journalists eliminated
Magistrates shot, Doctors disappear
Gestapo-like raids, rape, extortion."**

In the said report it was narrated to the effect:

".....A new element in the regime of terror is the Gestapostyle pick-up. Some of those wanted for questioning are arrested openly. Others are called to the army cantonment for interrogation. Most of them do not return. Those who do are often picked up again by secret agent known as RAZAKARS, a term used by the volunteers of the Nizam of Hyderabad who resisted the Indian takeover of the State in 1948

.....

Some University teachers reported for duty on 1st June at the instigation of General Tikka Khan, the Martial Law Administrator, but some of them have since fallen into the hands of the RAZAKARS.

The activities of RAZAKARS are known, if not overtly approved, by the military administration.

Occasionally, they are a source of concern. -----

*-----
Organisations caring for the refugees who came into East Pakistan at the time of Partition and the Razakar backed 'Peace Committee' are publishing press notices inviting applications for "allotment" of shops and houses left by Bengalis....."*

[Source: Bangladesher Sawdhinata Juddha Dalilpattra: Volume 8, Page 527].

68. It is found from the book titled '*Muktijudhdhe Dhaka 1971*' that in 1971, Jamat-e-Islami with intent to provide support and assistance to the Pakistani occupation army by forming armed Razakar and Al-Badr force obtained government's recognition for those *para militia* forces. The relevant narration is as below:

"RvgvqvZ Bmjvgx gyw³hyxi üy †_K †kl chš@ mvgwiK Rvš@vK mg_b K†i/ Zv†i mnvqZvi Rb Ab`vb` agvÜ` j wb†q cÖ_gZ MVb K†i kvš@ KwgwU/ cieZx© mg†q mk` ; evwnbx ivRvKvi I Avje`i MVb K†i Ges miKvix ^xK...Zx Av`vq K†i/ hyxK ag©hyx wn†m†e cÖPviYv Pvwj†q DMÖ agx©q DbYv`bv m,,wói †Pón K†i/ Avi Gi Avov†j `mb`†i mnvqZvq Pvjvq wbwe©Pv†i b,,ksm MYnZ`v, jyU, bvix wbhv©Zb, AcniY I Pvu`v Av`vq/ me†©kl RvwZi we†eK eyw×Rxex†i nZ`v Kiv nq/!"

[Source: Muktijudhdhe Dhaka 1971: edited by Mohit Ul Alam, Abu Md. Delowar Hossain, Bangladesh Asiatic Society , page 289]

69. It is a fact of common knowledge now that Razakar Bahini was an armed *para militia* force which was created for 'operational' and 'static' purpose of the Pakistani occupation army and it acted under the government management. What was the objective of forming such *para militia* force in war time situation? Of course, intention was not to safeguard lives and properties of civilians.

Rather, it is undisputed that the Razakar force had acted in furtherance of policy and plan of Pakistani occupation army and in so doing it had carried out recurrent atrocities committed in a systematic manner against the unarmed Bengali civilians throughout the territory of Bangladesh in 1971. Pro-liberation civilians, freedom fighters, intellectual group, Hindu community were their key targets.

70. Razakar force was thus formed with intent to provide support and assistance to the Pakistani occupation army and later on it obtained government's recognition as its *para militia forces*. As members of an auxiliary force, Razakars were provided with training and allocated fire arms. Razakars, an auxiliary force was thus formed to collaborate with the Pakistani occupation army in annihilating the Bengali nation. Pro-Pakistan political parties including Jamaat-e-Islami, Muslim League etc. had played key role in forming this auxiliary force and they symbolized the pro-liberation Bengali people as their '*enemies*' and '*miscreants*'. It is now settled history.

XVIII. Whether the accused persons belonged to Razakar Bahini

71. At the outset, objective of forming Razakar Bahini in 1971 in Karimganj Thana locality is to be focused. It is quite evident from evidence of witnesses that the Pakistani occupation army

rolled into Kishoreganj town on 20 April 1971, in furtherance of 'operation search light' ensued on 25 March 1971 in Dhaka and all the events of atrocities as listed in the charges, in the case in hand, took place since formation of Razakar Bahini in Karimganj Thana locality under the guidance of Pakistani occupation army stationed in Kishoreganj to further policy and plan targeting the pro-liberation civilians, freedom fighters and civilians belonging to Hindu community.

72. It is evinced from the testimony of P.W.01 Md. Mehdi Ul Alam, a freedom fighter that on 19 April the Pakistani occupation army arrived in Kishoreganj town and had set up its camp there. On 20 April 1971, the Pakistani occupation army came to Karimganj Thana headquarter and formed Peace Committee making local Muslim League President Abdur Razzak its head. Similarly, the Pakistani army formed Kishoreganj Peace Committee under the leadership of Moulana Mosleh Uddin, the Vice President of Kishoreganj Sub-Division PDP. Accused Nasiruddin Ahmed alias Md. Nasir alias Captain ATM Nasir, Shamsuddin Ahmed, Md. Hafizuddin and Md. Azharul Islam joined the local Razakar Bahini together with accused Gazi Md. Abdul Mannan.

73. It also transpires from evidence that the Razakar Bahini in Karimganj Thana locality was formed under the leadership of accused Gazi Md. Abdul Mannan [absconded] and accused

Shamsuddin Ahmed, Nasiruddin Ahmed alias Md. Nasir alias Captain ATM Nasir [absconded], Md. Hafizuddin [absconded] and Md. Azharul Islam [absconded] also joined the said Razakar Bahini.

74. The key objective of forming Razakar force was to collaborate with the Pakistani occupation army. In carrying out which activity or executing which plan and policy it [Razakar Bahini] was supposed to collaborate with the Pakistani armed force? It was formed not for any holy purpose. Its objective was to collaborate with the Pakistani occupation army to wipe out the pro-liberation Bengali civilians. Accordingly, Karimganj Razakar Bahini too had allegedly carried out atrocious activities directing civilian population, violating laws and customs of war and international humanitarian law across the territory of Bangladesh, to further policy and plan of annihilation of pro-liberation Bengali civilians.

75. In the case in hand, it has been alleged that the members of Razakar Bahini of Karimganj forming 'group' themselves had carried out such vicious horrific atrocious activities constituting the offences of murder, abduction, torture, arson, looting and wanton destruction. The protected persons staying in the territory of Bangladesh in 1971 had to experience dreadful and untold experience of criminal acts done even by the Razakar Bahini alone

as its loyalty to Pakistani occupation army together with extreme antagonistic mindset to the war of liberation made them culpably enthused in launching attack directing civilian population.

76. It is further seen that all the events alleged constituting the offences narrated in all the charges framed happened in the Karimganj Thana locality and only the group of Razakar Bahini formed locally committed the crimes alleged and no Pakistani army man was with them in accomplishing the crimes by launching attack.

77. Unshaken and corroborative evidence of P.W.05, P.W.06 and P.W.07, the residents of village Ayela under Karimganj Police Station of the then Kishoreganj Sub-Division also demonstrates that Razakar Bahini in Karimganj Thana locality was formed of 70/80 Razakars under the leadership of accused Gazi Md. Abdul Mannan and accused Shamsuddin Ahmed, ATM Nasir, Md. Hafizuddin, Md. Azharul Islam and others belonged to the said Razakar Bahini. Corroborating the above fact, P.W.03 stated too that Abdur Razzak, the head of Karimganj Thana Peace Committee contributed in forming the said local Razakar force.

78. P.W.08 Md. Abdus Salam is from village Ayela. He was 22/23 years old in 1971. He stated that Pakistani army came to Karimganj Thana Sadar at the end of April 1971 when it formed Peace Committee under the leadership of former Union Parishad

Chairman Abdur Razzak, and a Razakar Bahini of 70/80 Razakars including accused Shamsuddin Ahmed, Md. Hafizuddin, ATM Nasir and Md. Azharul Islam was also formed making accused Gazi Md. Abdul Mannan its commander.

79. From the corroborative evidence of P.W.03 and P.W.08 it stands proved that the Pakistani occupation army had played the key role in forming Razakar Bahini in Karimganj Thana locality and simultaneous formation of local Peace Committee was also done under their guidance. Indisputably infamous Razakar Bahini, an ‘auxiliary force’ as defined in section 2 of the Act of 1973 was also formed in Karimganj Thana locality intending to collaborate with the Pakistani occupation armed force by maintaining ‘static relation’ for ‘operational’ purpose.

80. Collecting documentary evidence to prove all the facts related to the events alleged, particularly more than long four decades after the atrocities committed was challenging indeed. Necessary documents, by this time, might have been destroyed. In this regard we recall the observation of the **Appellate Division of the Supreme Court of Bangladesh in the case of Allama Delwar Hossain Sayedee** which is as below:

"In most cases, the perpetrators destroy and/or disappear the legal evidence of their atrocious acts. Normally the investigation, the prosecution and the adjudication of those crimes often take place years or even decades after their actual commission. In Bangladesh this has caused

because of fragile political environment and the apathy of the succeeding government. In case of Bangladesh the process has started after 40 years."

[Criminal Appeal Nos. 39-40 of 2013, Judgment: 17 September 2014, page 43]

81. But however, in the case in hand, in addition to oral evidence of locals who were reasonably acquainted with the identity of the accused persons beforehand the list of members of Razakar Bahini formed in Karimganj Police Station [Material Exhibit-8] also depicts that the accused Gazi Md. Abdul Mannan, Shamsuddin Ahmed, ATM Nasir, Md. Hafizuddin and Md. Azharul Islam were the members of the said Razakar Bahini. Their names find place in serial nos. 25-28 and in serial no.111 in the list [page 13-14 of the Prosecution's Documents Volume]. The list [Material Exhibit-8] contains the particulars of 176 Razakars, Al-Badrs etc. including the accused persons. Defence does not attack the authoritativeness of this list which has been prepared by the Karimganj Upazilla Nirbahi Officer and was communicated to the Deputy Commissioner, Kishoreganj by an official memo dated 5.9.2010. In the absence of anything contrary, presumably the job of preparing the list was done relying on authoritative information. We find no reason to exclude it from consideration. In the absence of any doubt as to authoritativeness of the list [Material exhibit-8] it rather provides legitimate assurance to the oral testimony which proves that the accused persons were the members of locally

formed Razakar Bahini. The list [Material exhibit-8] also proves that accused Gazi Md. Abdul Mannan was the commander of Karimganj Razakar Bahini.

82. The defence avers that the Pakistani occupation army had set up their camp in Karimganj Thana locality and it was the Pakistani army who had committed the criminal acts alleged around the locality. The prosecution witnesses denied it. But the defence could not adduce any evidence to prove this affirmative assertion. Prosecution does not allege that Pakistani army men were engaged in committing the crimes alleged. The charges framed describe the commission of the crimes alleged by the group of Razakars belonging to local Razakar Bahini arraigning the accused persons as well and it may be effectively determined at the time of independent adjudication of the charges framed.

83. Defence further avers, to negate prosecution's contention, that accused Shamsuddin Ahmed was 12 years old in 1971, and thus, he was not a member of Karimganj Razakar Bahini. But this defence claim remained unsubstantiated and glaringly contradictory suggestion has been put to the prosecution witnesses in this regard.

84. It transpires that once the defence suggests that the accused Shamsuddin Ahmed started his teaching profession 2-3 years after independence i.e in 1973-1974 and next it suggests too that he started teaching profession in 1985. Which one is plausible? If it is

true that in 1971 accused Shamsuddin Ahmed was 12 years old then how is it possible to enter teaching profession 2/3 years after independence? All these appear to be futile efforts which are not persuasive to negate prosecution's contention. Besides, in absence of any credible evidence we are not convinced with the defence claim agitated, particularly when prosecution has been able to prove by adducing reliable documentary and oral evidence that accused Shamsuddin Ahmed was a member of Karimganj Razakar Bahini.

85. The above deliberation impels an unerring conclusion that the Razakar force formed in Karimganj Thana locality was also not beyond the objective of forming Razakar Bahini, an auxiliary force, to further plan and policy of the Pakistani occupation army which accordingly had allegedly carried out criminal activities around the locality of Karimganj Thana in 1971. And thus the alleged criminal acts of the Razakars of Karimganj Thana were not isolated ones – the same were part of systematic attack directed against civilian population belonging to Bengali nation.

86. However, local Razakar Bahini of 70/80 Razakars under the guidance of Pakistani occupation army and Peace Committee was formed locally at the end of April 1971, and all the five accused persons were the active and potential members of the Razakar Bahini formed, it stands proved. It could not be refuted. Naturally,

the Razakar Bahini of Karimganj locality was formed of pro-Pakistan minded people of the locality and accused persons belonged to this locally formed Razakar Bahini, evidence adduced leads to this irresistible conclusion.

XIX. Adjudication of charges

Adjudication of Charge No. 01

[Killing of 08 civilians, abduction, torture and other inhumane acts committed in villages Bidyanagar and Ayla under Police Station Karimganj]

87. Summary Charge: That on 12 November 1971 in between 01:00 P.M. and 05:00 P.M., a group formed of 80/90 armed Razakars including accused (1) Shamsuddin Ahmed (2) Nasiruddin Ahmed alias Md. Nasir alias Captain ATM Nasir [absconded] (3) Md. Hafizuddin [absconded] and (4) Md. Azharul Islam [absconded] led by local Razakar Commander accused (5) Gazi Md. Abdul Mannan [absconded] had carried out atrocious activities by launching attack directing the villages Bidyanagar and Ayla and neighbouring localities under Police Station Karimganj of the then Kishoreganj Sub-Division.

88. In conjunction with the said attack, at about 01:00 P.M. / 01:30 P.M. accused Nasiruddin Ahmed alias Md. Nasir alias Captain ATM Nasir and accused Shamsuddin Ahmed dragged Abdul Barek and his son Mojibur Rahman Mongol out of their house at village Bidyanagar on order of accused Gazi Md. Abdul

Mannan and they were forcibly brought towards the road in front of their house where they were subjected to torture and afterwards accused Nasiruddin Ahmed alias Md. Nasir alias Captain ATM Nasir gunned down Abdul Berek to death there.

89. The accused persons accompanying the group of armed Razakars, in conjunction with the attack, forcibly dragged Abdul Berek's neighbours Sheikh Chandu Mia, Sheikh Malek alias Malu, their domestic servant Aftabuddin, Serajuddin, a maid of Abdul Mazid and Sheikh Hasu, on capture, at a place behind the house of Sheikh Chandu Mia and gunned them down to death there excepting Sheikh Hasu who luckily survived despite sustaining bullet injury.

90. Afterwards, at about 02:00 / 02:30 P.M. on the same day and in conjunction with the same transaction of the attack launched, the accused persons accompanying the group of armed Razakars had killed Md. Habib Ullah, a civilian by gun shot on apprehending him from a place known as Fatergope Beel. The accused persons accompanying the group of armed attackers at about 03:00 P.M. also gunned down Abdul Mazid to death by apprehending him from a seed-bed adjacent to village Bidyanagar.

91. At about 04:00 P.M., on the same day and in conjunction with the same attack the accused persons and their cohort Razakars gunned down Md. Abdul Jabbar to death by apprehending him

from Kiraton Beel of village Ayla and the accused persons and their accomplices had carried out the act of plundering houses and properties of civilians and caused torture to civilians of villages Bidyanagar and Ayla, in conjunction with the total attack.

92. Thereby, the accused (1) Shamsuddin Ahmed (2) Gazi Md. Abdul Mannan (3) Nasiruddin Ahmed alias Md. Nasir alias Captain ATM Nasir (4) Md. Hafizuddin, and (5) Md. Azharul Islam have been charged for participating, facilitating, abetting and substantially contributing and also for ‘complicity’ to the commission of offences of ‘murder’, abduction, torture and ‘other inhumane acts’ as crimes against humanity as part of systematic attack directing unarmed civilians as specified in section 3(2) (a)(g) (h) of the Act of 1973 which are punishable under section 20(2) for which the accused persons have incurred liability under section 4(1) of the Act.

Evidence of Witnesses Presented

93. Prosecution adduced and examined as many as 09 witnesses [P.Ws. 01, 02, 03, 04, 05, 06, 07, 08 and 09] in support of this charge. Of them some are near relatives of victims. Before we enter the task of evaluation of their evidence lets us first see what they have testified on oath before the Tribunal.

94. P.W.01 Md. Mehdi Ul Alam [60] is a freedom fighter. In 1971 he was 16 years old and a student of class X. He stated that on

listening the 07 March's historic speech of Bangabandhu Sheikh Mujibur Rahman he became inspired and started taking preparation to join the war of liberation. He went on to state that on 19 April 1971 the Pakistani occupation army arrived at Kishoreganj town and had set up its camp there. On 20 April 1971, the Pakistani army came to Karimganj Thana headquarter and formed Thana Peace Committee making local Muslim League President Abdur Razzak its head. Similarly, the Pakistani army formed Kishoreganj Sub-Division Peace Committee under the leadership of Moulana Mosleh Uddin, the Vice President of Kishoreganj Sub-Division PDP. Thereafter, the Pakistani army formed Karimganj Thana Razakar Bahini and made accused Gazi Md. Abdul Mannan its commander.

95. In respect of accused persons' identity, P.W.01 stated that accused ATM Nasir, elder than him, was a Razakar and used to continue his study staying at the house of Mannan Mohajan of village Ayla under Karimganj Police Station. Accused Shamsuddin had been in lodging at village Atkapara Gujadia under Karimganj Police Station to continue his study. Accused ATM Nasir, Shamsuddin, Hafizuddin and Azharul Islam joined the local Razakar Bahini together with accused Gazi Abdul Mannan. Afterwards, he [P.W. 01] along with some of his friends went to India to join the war of liberation and on receiving training they returned back to the locality under Kalmakanda Police Station and

participated freedom fight in the localities under Kalmakanda and Barahatta Police Stations.

96. P.W.01 further stated that some groups of freedom fighters came to the locality under Karimganj Police Station and got stationed around the *haor* localities under Police Stations Itna, Mithamoin, Bajitpur and Oshtogram treating them to be safe. They[the freedom fighters] having apprehended that then Pakistani army would have attacked them coming through river from 'chamra bandar', they [freedom fighters] blew out the bridge at Kiraton Beelpara situated on the road from Kishoreganj to chamra bandar through Karimganj, by blasting mine.

97. Next, the P.W.01 made the account of the event happened on 12 November 1971 as narrated in charge no.01 that he heard from their sources. P.W.01 stated that on 12 November 1971 a group of 70/80 Razakars accompanied and led by Razakar Commander accused Abdul Mannan and his accomplice Razakars accused ATM Nasir, Shamsuddin Ahmed, Hafizuddin and Azharul Islam carried out indiscriminate killing at villages Bidyanagar, Ayla, Fatergope , Kiraton Beelpara and in conjunction with the attack his [P.W.01] co-freedom-fighter Habibur Rahman Pashu's father Abdul Barek, Malu, Chandu Sheikh, Aftabuddin, Serajuddin, Habibullah, Abdul Mazid, Jabbar and others were killed. And one Hasu survived despite receiving bullet hit on his leg.

98. After independence, they [the freedom fighters] came back to their respective locality and then went to village Bidyanagar along with his co-freedom fighter Habibur Rahman Pashu when he [P.W.01] learnt the event from Mongol and Adam Ali [the sons of victim Abdul Barek], the brothers of Habibur Rahman Pashu and other locals.

99. In cross-examination, defence suggested P.W.01 that accused Gazi Md. Abdul Mannan was not the commander of Razakar Bahini, that accused Shamsuddin was 13 years old boy in 1971, that the event of the attack that resulted in killing of civilians as stated by him [P.W.01] was carried out by the Pakistani army under the guidance of Razakar Commander Abdur Razzak, that accused ATM Nasir, Shamsuddin Ahmed, Hafizuddin and Azharul Islam did not belong to Razakar Bahini. P.W.01 denied all these defence assertions put to him in the form of 'suggestions'. P.W.01 also denied that accused Gazi Md. Abdul Mannan was engaged in providing training to freedom fighters and after independence he joined Bangladesh army. However, P.W.01 stated that he heard that accused ATM Nasir joined the Bangladesh army but he could not say whether he got promoted to the rank of Captain. P.W.01 admitted that accused Shamsuddin Ahmed is an advocate by profession and prior to it he had been in teaching profession, but he

could not say whether accused Shamsuddin Ahmed retired from teaching profession in 2004 due to his ailment.

100. P.W.02 Md. Adam Ali [61] is the son of victim Abdul Barek. In 1971 he used to work as a tailor at Karimganj bazaar. He stated that during the war of liberation in 1971, his brother Habibur Rahman Pashu and many others of their locality went to India intending to join the war of liberation. On 01 November 1971 many freedom-fighters took shelter around their locality. There had been a road towards chamra bandar from Kishoreganj and the Razakars used to move towards *haor* [wet land] area through this road. The freedom- fighters blew out Perua bridge at their locality to resist movement of Razakars to *haor* area through that road. Afterwards, with this, he heard from the locals at Karimganj bazaar that Razakars would have attacked the freedom fighters and Awami League supporters of their locality.

101. In respect of the event of attack P.W.02 stated that on 12 November 1971 it started at Karimganj bazaar that Razakars were moving towards villages Ayla, Bidyanagar, Fatergope, Beelpara under Karimganj Police Station, and then at about 12:00/12:30 P.M. he came back to his home [from bazaar] when he saw the Razakars led by Razakar accused Gazi Md. Abdul Mannan keeping northern and southern end of their village Bidyanagar and neighbouring village Ayla besieged and about 30/35 Razakars had

been at each end. Razakars accused ATM Nasir, Shamsuddin Ahmed, Md. Hafizuddin, Md. Azharul Islam and many others were also with the group. He further stated that being feared, on seeing them, he went into hid inside a banana bush near the pond where from he saw accused ATM Nasir and Shamsuddin tying up his younger brother Mojibur Rahman Mongol with a betel nut tree on capture. At that time his [P.W.02] father who was also in hid came out and requested accused ATM Nasir to release his son Mojibur Rahman Mongol. But accused ATM Nasir responded by saying— ‘your son Habibur Rahman Pashu joined the war of liberation, you get him brought’. By saying this accused ATM Nasir hit on his father’s back by rifle and thus his father fell down. This incident happened at the house of Hasu Mia adjacent to their house. Accused ATM Nasir gunned then down his father to death when he got up from the ground.

102. P.W.02 went on to state that next, he saw accused Gazi Md. Mannan, Hafizuddin, Azharul Islam and 20/25 other Razakars taking Sheikh Chandu Mia, Sheikh Malu Mia, Aftabuddin, Seraj and Hasu Mia to accused ATM Nasir on forcible capture and keeping those detained persons under the care of accused ATM Nasir and Shamsuddin those Razakars moved towards north and then accused Shamsuddin Ahmed and ATM Nasir brought the said detained persons behind the house of Chandu Mia. Afterwards,

he[P.W.02] heard 5/6 gun shots and accused Shamsuddin Ahmed and ATM Nasir moved towards north and then he[P.W.02] unfastening his brother Mojibur Rahman Mongol who was kept tied up with the tree fled to southern end and the dead body of their father was lying at the crime site. They did not come back home during day time on that day. On the same day, after the dusk they came back home and found dead bodies of the detained persons behind the house of Chandu Mia. They also found there injured Hasu receiving bullet hit wound on leg and Hasu [survived victim] told them that accused ATM Nasir and Shamsuddin Ahmed shot to them [detained persons] when he[Hasu] received bullet hit injury on his leg and other detainees succumbed to bullet injury.

103. In cross-examination, P.W.02 stated in reply to question put to him that his brother Habibur Rahman Pashu joined the war of liberation almost immediately after the war started. Freedom fighters Helal, Kutubuddin and Azimuddin of their locality were also with the freedom fighters who took shelter at their village on 01 November 1971. P.W.02 also stated that he heard that accused Gazi Md. Abdul Mannan retired from Pakistan army before the war of liberation ensued. He also heard that accused ATM Nasir joined the Bangladesh army after independence but he did not know whether accused ATM Nasir was known as Captain Nasir in 1971.

104. In cross-examination, defence suggested P.W.02 that Gazi Md. Abdul Mannan was not the commander of Razakar Bahini, that accused Gazi Md. Abdul Mannan was engaged in providing training to freedom fighters. P.W.02 denied it. He could not say on which date the Pakistani army first came to Karimganj bazaar but they came there for once and did not set up any camp at Karimganj bazaar. P.W.02 also denied that the Pakistani army coming from Kishoreganj Sadar facilitated the commission of the event he narrated. Defence finally suggested that the account he [P.W.02] made in respect of the event implicating the accused persons was untrue, baseless and false. P.W.02 also denied it.

105. P.W.03 Md. Golam Mostofa [58] is a resident of village Ayla, one of crime sites. In 1971 he was 13/14 years old, he stated. He made an account in respect of formation of Peace Committee in Kishoreganj Sub-Division and Karimganj Thana. He stated too that Abdur Razzak, the Chairman of Karimganj Peace Committee formed local Razakar Bahini consisting of 70/80 people under the leadership of accused Razakar Gazi Md. Abdul Mannan. Amongst those Razakar he knew accused ATM Nasir, Shamsuddin Ahmed, Md. Azharul Islam, Md. Hafizuddin and many others. The said locally formed Razakar Bahini had carried out atrocious activities including killing, looting, arson, rape around the localities of Karimganj Thana.

106. P.W.03 further stated that during the first part of November 1971, the freedom-fighters had selected the localities of villages Ayla, Bidyanagar, Fatergope and Kiraton Beelpara under Karimganj Police Station as their sanctuary. There had been a road to *chamra bandar* from Kishoreganj and to resist the movement of Razakars and Pakistani army through this road, the freedom-fighters had blown up the Perua bridge situated on that road, by blasting mine.

107. The Razakars became maddened for blowing up the bridge by the freedom-fighters, and as such, on 12 November 1971 a group of 70/80 Razakars accompanied by Razakars accused Gazi Md. Abdul Mannan, ATM Nasir, Shamsuddin Ahmed, Md. Azharul Islam and Md. Hafizuddin attacked the village Ayla from both directions with indiscriminate gun firing. With this he went into hid inside a bush, 200 yards far from the attackers. As the Razakars moved towards villages Bidyanagar and Fatergope, leaving village Ayela he found bullet hit dead body of Abdul Mazid in front of his [victim Abdul Mazid] house and saw his two sons crying there and they told him [P.W.03] that dead body of Abdul Jabbar was lying on the other side of the road as Razakars also shot him dead. He further stated that he then saw the dead body of Abdul Jabbar and then on his way to coming back home his sister's son Shahar Ali told him that Razakars had killed his[P.W.03]

cousin Habib Ullah at Fatergope Beel [wet land] area. With this he went there and found Habib Ullah's bullet hit dead body. He [P.W.03] also saw the dead body of Aftabuddin of village Sudhirgram, on his way from Fatergope Beel. Then on moving a bit forward he [P.W.03] saw the bullet hit dead body of Sirajuddin. Thereafter on moving a bit forward he [P.W.03] found the dead body of Abdul Berek, the father of freedom-fighter Habibur Rahman Pashu, nearby a banana bush. Then on the way to his home he saw the bullet hit dead bodies of Chandu Sheikh and his elder son Malek Sheikh behind their house near a canal. He [P.W.03] also found there bullet injured Hasu who told that accused Gazi Md. Abdul Mannan, ATM Nasir, Shamsuddin Ahmed, Md. Azharul Islam, Hafizuddin and others brought them there on forcible capture and shot them with gun. He [P.W.3] returned his home and taking his uncle and two cousins with him brought the dead body of his cousin Habib Ullah to home from Fatergope Beel and buried it.

108. On cross-examination, P.W.03 stated in reply to question put to him by the defence that accused ATM Nasir used to stay on lodging at the house of Mannan Mohajan in front of their [P.W.03] house and he joined the Bangladesh army as an officer. They sued accused ATM Nasir for the charge of killing his uncle Mia Hossain. P.W.03 denied the suggestion that in 1971 accused ATM Nasir was

a student. He also stated that the Perua bridge was about one mile away from their house. P.W.03 also denied the suggestion put to him by the defence that the event of killings he narrated was carried out by the Pakistani army and that the accused persons did not belong to Razakar Bahini. Finally P.W.03 denied the suggestion that what he narrated in respect of the events implicating the accused persons was untrue, imaginary and concocted.

109. P.W.04 Md. Akkas [60], a resident of village Bidyanagar, one of crime sites, is a farmer. In 1971, he was about 15/16 years old. He stated that on 12 November 1971 a group of 20/50 Razakars including the accused ATM Nasir, Shamsuddin, Gazi Md. Abdul Mannan had killed 7/8 civilians including Chandu and Berek of village Bidyanagar. In cross-examination, P.W.04 denied that he did neither see nor hear the events he narrated and that the version he made was untrue and tutored.

110. P.W.05 Md. Golap Miah [58], a resident of village Ayla, was a boy of 13/14 years in 1971 when he was a student of class V. He stated that there existed a Razakar Bahini in Karimganj Thana locality formed of 70/80 Razakars under the leadership of accused Gazi Md. Abdul Mannan. Accused Shamsuddin Ahmed, ATM Nasir, Md. Hafizuddin, Md. Azharul Islam and others belonged to the said Razakar Bahini. During the first part of November 1971, the freedom-fighters blew up the Perua bridge on the road to

chamra bandar through their locality from Karimganj. With this the local Razakars became distracted to the freedom-fighters and the civilians of their localities. And thus on 12 November 1971 at about 12:00 P.M. a group of 70/80 Razakars led by accused Gazi Md. Abdul Mannan and accompanied by accused Shamsuddin Ahmed, ATM Nasir, Md. Hafizuddin and Md. Azaharul Islam had attacked the villages Ayla, Bidyanagar, Fatergope, Kiraton Beel and tortured supporters of liberation and killed 8/10 civilians, of them Abdul Jabbar, Abdul Mazid and Habib Ullah were from village Ayla; Abdul Barek, Chandu Sheikh, Malu Sheikh and Aftabuddin were from village Bidyanagar. One Hasu Mia of village Bidyanagar survived despite receiving bullet hit wound on leg. They, afterwards, buried the dead body of his cousin Habib Ullah.

111. In cross-examination, P.W.05 stated that he knew Mannan Mohajan who was their neighbour and accused ATM Nasir used to stay at his house on lodging, but he could not say whether he used to stay there on lodging for continuing study. P.W.05 also stated that the Pakistani army never came to their village. He denied the suggestions that the Pakistani army had set up their camp in Karimganj Thana locality and it was the Pakistani army who had killed his father [Mia Hossain] and others and that what he narrated in respect of the event of killing implicating the accused persons

was untrue and tutored and that the accused persons did not belong to Razakar Bahini.

112. P.W.06 Md. Shajahan [57] is a resident of village Ayla. He is the son of Abdul Mazid, one of the victims. In 1971, he was a student of class IV. He stated that during the war of liberation in 1971, he knew that a Razakar Bahini was formed in Karimganj Thana locality under the leadership of accused Gazi Md. Abdul Mannan. The Razakar Bahini was formed of 70/80 Razakars including the accused ATM Nasir, Shamsuddin Ahmed, Md. Azharul Islam, and Md. Hafizuddin. P.W.06 further stated that in 1971 there had been a road from Karimganj Thana Sadar to chamra bandar, adjacent to their village. The freedom-fighters had blown up the Perua bridge on that road by blasting mine to resist the movement of Razakars through it.

113. P.W. 06 further testified that on 12 November 1971, in the afternoon, a group of 70/80 Razakars accompanied by Razakars accused Gazi Md. Abdul Mannan, ATM Nasir, Shamsuddin Ahmed, Md. Azharul Islam and Hafizuddin had attacked the villages Ayla, Bidyanagar, Fatergope and Kiraton Beelpara. On the face of the attack many of villagers fled away but however he [P.W.06] and his father Abdul Mazid had been at their house, and then accused ATM Nasir and Shamsuddin Ahmed dragged out his father, tying him up, to the seed-bed towards the east side of the

pond when he [P.W.06] remaining in hiding on the south side of the said pond saw that incident and also saw accused ATM Nasir gunning down his father to death at the seed-bed [the P.W.06 at this stage of his deposition started shedding tears]. It was about 03:00 P.M. when his father was shot dead. On the following day they buried his father's dead body at their house.

114. P.W.06 also stated that the Razakars in conjunction with the attack they launched on 12 November 1971 had also killed Abdul Jabbar and Habib Ullah of their village Ayla and Abdul Berek, Chandu Sheikh, Malu Sheikh, Seraj and Aftabuddin of village Bidyanagar. He could not say the names of other victims.

115. In cross-examination, P.W.06 stated that their village was about 7/8 kilometre far from chamra bandar. He knew accused Shamsuddin and his house was about one kilometre away from their [P.W.06] house. He did not know in which school accused Shamsuddin studied in 1971. Accused ATM Nasir used to stay on lodging at the house of Mannan Mohajan of village Bidyanagar. He did not know the profession of accused Gazi Abdul Mannan in 1971 or whether he joined the Bangladesh army, after independence, he however, heard that accused ATM Nasir joined the Bangladesh army. He could not say whether the Pakistani army came to Karimganj Thana locality in 1971. P.W.06 denied the suggestion put to him by the defence that the accused persons did

not belong to Razakar Bahini and what he narrated about the event implicating the accused persons was untrue, tutored and baseless.

116. P.W.07 Mojibur Rahman Mongol [55] is the son of Abdul Barek, one of victims of village Bidyanagar. In 1971, he was about 10/11 years old and a student of class IV, he stated. P.W.07 stated that during the war of liberation in 1971, a Razakar Bahini was formed of 70/80 Razakars including accused Shamsuddin Ahmed, ATM Nasir, Hafizuddin and Md. Azharul Islam under the leadership of accused Gazi Md. Abdul Mannan in Karimganj Thana locality. His [P.W.07] elder brother Habibur Rahman Pashu was a freedom-fighter. In 1971 there had been a road in front of their village from Karimganj to chamra bandar. The freedom fighters, in the first part of November, 1971 had blown up the Perua bridge on this road by blasting mine.

117. In respect of the attack as narrated in the charge framed, P.W.07 stated that on 12 November 1971 at about 12.00 / 01:00 P.M. a group of 70/80 Razakars led by Razakar Commander accused Gazi Abdul Mannan launched simultaneous attack at villages Bidyanagar, Ayla, Fatergope and Kiraton Beelpara. In conjunction with the attack, accused ATM Nasir, Shamsuddin Ahmed, Hafizuddin and Md. Azharul Islam and their some accomplices entered their [P.W.07] house and on sensing it his father ran off the house. Then the Razakars asked his mother about

whereabouts of his [P.W.07] elder brother freedom-fighter Habibur Rahman Pashu. His mother replied that she did not know his whereabouts and with this accused Shamsuddin Ahmed threatened to set the house on fire, and then being feared he [P.W.07] attempted to escape but accused ATM Nasir and Shamsuddin Ahmed apprehended him and kept tied up with a betel nut tree in front of their house where from he could see his father to come out from a bush of banana trees and requested accused ATM Nasir and Shamsuddin Ahmed to set him [P.W.07] free. But accused ATM Nasir hit his father by a rifle and thus he fell down. Then they asked his father to handing over his freedom fighter son Pashu to them. His father when got up from the ground accused ATM Nasir shot him to death by a rifle in his hand on the spot [at this stage this witness started weeping].

118. P.W.07 went on to state that subsequent to the above phase of attack he saw that a group of 20/25 Razakars led by accused Gazi Abdul Mannan had left the place after handing over the detained villagers , on forcible capture, Chandu Sheikh, Malu Sheikh, Aftabuddin, Serajuddin and Hasu to accused ATM Nasir and Shamsuddin Ahmed who along with accused Md. Azharul Islam, Md. Hafizuddin and their accomplice other Razakars, then took away those detainees at the place behind the house of Chandu Sheikh, and few minutes later he heard firing of gun shots and then

the said accused persons and Razakars moved towards the village leaving the site. Then his [P.W.07] elder brother Adam Ali [P.W.02] getting him unfastened started running towards southern part of the village along with him. After the dusk, on the same day, they returned home and found their father's dead body in front of their house. They also found dead bodies of Chandu Sheikh, Malu Sheikh, Aftabuddin and Serajuddin at a place behind the house of Chandu Sheikh and they discovered survived Hasu receiving bullet wound on leg and then Hasu told them and the locals present there that accused ATM Nasir and Shamsuddin Ahmed had gunned them down to death and caused to him [P.W. 07] bullet injury on his leg. P.W.07 also stated that on the same day [12 November 1971] the accused persons and their accomplice Razakars shot Abdul Jabbar, Habib Ullah and Abdul Mazid of their neighbouring village Ayla to death. On the following day they buried their father's dead body and dead bodies of other victims were also buried by their relatives.

119. In cross-examination, in reply to question put to him by the defence, P.W.07 stated that Pakistani army did not come to Karimganj Thana locality, that accused Nasir's house was at village Dulipara[now Mokhtarpara] and his father was Razzak Munshi who was in the Peace Committee, that Razakars were not in uniform when they launched attack the villages , that accused Gazi Abdul Mannan's house was at village Charpara, that he could

not say whether the accused ATM Nasir and Shamsuddin Ahmed were students in 1971. P.W.07 also stated in reply to question put to him by the defence that he was kept tied up with a betel nut tree when he heard the firing of gun shots from the end of Chandu Sheik's house and he could see the house of Chandu Sheikh there from. Razakars had left their village at about 3.00/4.00 in the afternoon after carrying out the killing at their house. P.W.07 denied the suggestion that what he stated in respect of the event of killing implicating the accused persons was untrue, concocted and baseless and that the accused persons did not belong to the Razakar Bahini and the accused persons did not attack their house and were not involved with the killing of his father.

120. P.W.08 Md. Abdus Salam [66] is from village Ayla. He is the son of Abdul Jabbar, one of the victims. He was 22/23 years old in 1971. He stated that Pakistani army came to Karimganj Thana Sadar at the end of April 1971 when it formed Peace Committee under the leadership of former Union Parishad Chairman Abdur Razzak, and a Razakar Bahini of 70/80 Razakars including accused Shamsuddin Ahmed, Md. Hafizuddin, ATM Nasir and Md. Azharul Islam was also formed making accused Gazi Md. Abdul Mannan its commander.

121. P.W.08 also stated that there had been a road to chamra bandar from Karimganj Thana Sadar. In the first part of November

1971, the freedom fighters had blown up the Perua bridge situated on that road and with this, activities of Razakars became amplified. P.W.08 stated that he remained in hiding in fear of Razakars before he returned home at village Ayla on 12 November 1971 at about 08:00/09:00 A.M. About one and half hour later his father Md. Abdul Jabbar also came back home. After a short while his father went out of home but he continued staying in their home. At about 12:00 P.M. he along with one Abdul Gani went to betel-nut garden for collecting betel nut when a woman coming to them informed that Razakars were coming towards their house, and then she took them to her house and kept them in hid. About one and half an hour later they heard a firing of gun shot. After the Razakars had left their village before the dusk he [P.W.08] came back to his house and while he had talk with his mother and uncle Haji Abdul Khalek at the courtyard his another uncle Abdul Barek and sister's son Giasuddin came there and informed them that Razakar accused ATM Nasir accompanied by Razakars accused Shamsuddin Ahmed and Abdul Hakim had killed his [P.W.08] father Abdul Jabbar by gun shot when they were also with him [Abdul Jabbar]. Then they rushed to the paddy field beside the Beel adjacent to their village where they found the bullet hit dead body of his father Abdul Jabbar and brought it to their house. Many people assembled at their house for seeing the dead body when they came to know from

them that on the same day Razakars had killed Abdul Mazid and Habib Ullah of village Ayla and Abdul Barek, Sheikh Chandu, Sheikh Malek, Aftabuddin and Serajuddin of village Bidyanagar by firing gun shots. Then he[P.W.08] going to village Bidyanagar found bullet hit dead bodies of those villagers and on returning to home therefrom he saw bullet injured Hasu, brother of Sheikh Chandu, who told that accused ATM Nasir and Shamsuddin Ahmed gunned those people down to death and he [Hasu] sustained bullet hit on leg. On the following day they buried his father's dead body.

122. In cross-examination, P.W.08 affirmed that probably on 19 April 1971 Pakistani army arrived at Kishorganj Sub-Division Sadar and Peace Committee was formed under the chairmanship of Moulana Syed Mosleh Uddin. P.W.08 denied that Abdur Razzak was the commander of Karimganj Razakar Bahini. He could not say whether accused Gazi Abdul Mannan retired in 1990 from Bangladesh army and whether accused ATM Nasir joined the Bangladesh army as an officer. In reply to question put to him by the defence P.W.08 stated that the Pakistani army had set up its camp in Kishoreganj. He denied the suggestion that the Pakistani army used to come to the villages including Ayla and Bidyanagar under Karimganj Police Station from Kishoreganj Sub-Division headquarter. Finally, P.W.08 denied that what he narrated in

examination-in-chief in respect of the event of attack that resulted in killings implicating the accused persons was untrue, concocted and baseless and that the accused persons did not belong to Razakar Bahini and they were not involved with the commission of alleged crimes.

123. P.W.09 Md. Abdul Goni [52] is a resident of village Bidyanagar, one of the crime sites. He was 7/8 years old in 1971 when he was a student of class II. He is the son of Abdul Malek Sheikh, one of the victims.

124. In narrating the event of attack that resulted in killing of his father, grand-father and neighbours, P.W.09 stated that on 12 November 1971 in the afternoon a group of 70/80 Razakars led by Razakar Commander accused Gazi Md. Abdul Mannan and accompanied by Razakars accused Shamsuddin Ahmed, Md. Hafizuddin and ATM Nasir besieged their village Bidyanagar and neighbouring villages Ayla, Fatergope and Kiraton. Accused ATM Nasir, Shamsuddin Ahmed and Azharul Islam and their cohort Razakars attacked their house and he[P.W.09] informed it to his father and went into hid inside a bush behind their house but his father was staying in front of their house. After a short while he [P.W.09] heard firing of gun shot. He [P.W. 09] then saw accused ATM Nasir and Shamsuddin Ahmed dragging out his father [Abdul Malek Sheikh] and grand-father Chandu Sheikh towards behind

their house and then he saw accused ATM Nasir gunning his father down to death while accused Shamsuddin Ahmed shot his grandfather Chandu Sheikh to death. P.W.09 further stated that one and half hour after this event he came out of the hiding place and found dead bodies of his father and grand-father lying at a place behind their house and also found bullet hit dead bodies of Sheikh Siraj and Sheikh Aftabuddin at a place 20/40 cubits far therefrom. Next, he [P.W.09] moving to the house of Sheikh Abdul Barek saw his dead body lying there. He then saw there bullet injured Hasu Mia who survived despite receiving bullet hit on leg. After the Razakars had left the site, they brought the dead bodies of his father and grand-father and buried them on the following morning.

125. In cross-examination, P.W.09 stated that accused ATM Nasir had been at the house of Mannan Mohajan on lodging before the war of liberation ensued in 1971 as he studied in school. He however could not say whether accused ATM Nasir joined the Bangladesh army. Village home of accused Shamsuddin Ahmed was at Dulipara. Pakistani army had never come to their village. P.W.09 denied the defence suggestion that he could not see who had killed his father and grand-father as he was tender aged boy at that time. He also denied that what he narrated about the incident and killings implicating the accused persons were untrue, concocted, baseless and tutored.

Finding with Reasoning on Evaluation of Evidence

126. All the five accused persons have been indicted on allegation of carrying out indiscriminate atrocious acts around the locality of villages, Ayla, Bidyanagar and neighbouring localities under Police Station Karimganj of the then Kishoreganj Sub-Division, being accompanied by their cohort Razakars. The event of alleged organised attack occurred in day time on 12 November 1971.

127. The learned prosecutor Mr. Sultan Mahmud submitted that 08[eight] civilians were killed which resulted from an organised attack launched directing villages Ayla, Bidyanagar and surrounding localities and the attack continued for couple of hours starting from 01:00 P.M. on 12 November 1971. The attack was carried out by a group of armed Razakars accompanied by all the five accused persons belonging to local Razakar Bahini. The accused persons knowing the consequence of their act forming part of attack accompanied the group to the crime sites and 'participated' and 'facilitated' to the commission of brutal killing of eight civilians.

128. It has been also argued that excepting P.W.01 the other eight prosecution witnesses including the direct witnesses testified the facts materially relevant to the attack that resulted in commission of the crime and complicity and participation of all the five accused therewith . Defence could not dislodge the event of attack that

resulted in brutal killing of eight civilians. It simply denied accused persons' involvement with the event claiming that they were not Razakars. Defence could not bring anything by cross-examining the P.W.s that may term them to be unreliable.

129. Conversely, Mr. M. Masud Rana, the learned counsel defending accused Shamsuddin Ahmed argued that out of nine witnesses examined in support of this charge four P.Ws. i.e. P.W.03, P.W.06, P.W.07 and P.W.09 were minor in 1971 and two P.Ws. i.e. P.W.01 and P.W.08 are hearsay witnesses. It is impracticable to recall the precision of the alleged attack that happened more than four decades ago particularly for the persons who were tender aged at the relevant time. None of the witnesses examined could tell the names of other Razakars allegedly accompanied the accused persons at the time of launching attack. It indicates that the witnesses have testified being tutored and they are not trustworthy. If really the accused Shamsuddin Ahmed was involved in committing the alleged offence of killing the relatives of victims would have opted to take revenge against the accused. Hearsay evidence as provided is not admissible. Finally, it has been submitted that the accused Shamsuddin Ahmed was a boy of 12 years old in 1971 and did not belong to Razakar Bahini formed locally.

130. Mr. Abdus Sukur Khan, the learned State defence counsel defending the rest four absconded accused persons submitted that these accused persons did not belong to Razakar Bahini formed locally, that the witnesses examined have made inconsistent statement as regards the act allegedly committed by the accused persons, in course of the event, that the witnesses are not reliable and they have testified being tutored and the event happened in some other manner and by the group formed of either other Razakars or Pakistani army.

131. Before we make deliberation on the evidence adduced, through evaluation, we are constrained to pen our view that the learned defence counsel for accused Shamsuddin Ahmed has made a submission not warranted by law. Absence of initiation of any 'revenge' by the relatives of victims against the accused is synonymous to taking law in own hand which is absolutely deprecated and it cannot be an argument that the accused now cannot be prosecuted merely for the reason of lapse of long passage of time and absence of taking any revengeful measure.

132. In respect of submission advanced by Mr. M. Masud Rana, the learned defence counsel in respect of delay in prosecuting the accused Shamsuddin Ahmed, the Tribunal notes that delay is not a clog in prosecuting an individual. We reiterate that crimes against humanity and genocide, the gravest crime never get old and that the

perpetrators who are treated as the enemies of mankind will face justice. We should not forget it that the millions of victims who deserve that their tormenters are held accountable; the passage of time does not diminish the guilt. It is to be noted too that from the point of morality and sound legal dogma, time bar should not apply to the prosecution of human rights crimes. Neither the Genocide Conventions of 1948, nor the Geneva Conventions of 1949 contain any provision on statutory limitation to war crimes and crimes against humanity. However, there can be no recognised theory to insist that such a 'system crime' can only be pursued within a given number of years. Therefore, delayed prosecution does not rest as a clog in prosecuting and trying the accused and creates no mystification about the atrocities committed in 1971.

133. Next, the submission that in 1971 accused Shamsuddin Ahmed was not a member of locally formed Razakar Bahini does not stand on leg as we have already recorded our reasoned finding in this regard in our preceding deliberation. Defence contention that in 1971 accused Shamsuddin Ahmed was 12 years old boy is not found to have been proved. Rather from the trend of cross-examination of P.W.04 it appears that contradictory suggestion has been put to prosecution witnesses in this regard.

134. Prosecution contends that the accused Shamsuddin Ahmed was born in 1954 and he passed SSC examination in 1971, and

thus, he was 17 years old in 1971. On the contrary, defence by putting inconsistent and unsubstantiated defence case tried to show that the year of birth of the accused is 1958, he was a student of class V in 1971 and he passed SSC examination in 1975. In absence of any credible evidence to substantiate the defence claims we are convinced to rely upon what has been contended by the prosecution and the documents submitted in support thereof.

135. Once the defence suggests that he started teaching profession 2-3 years after independence i.e in 1973-1974 and next it suggests too that he started teaching profession in 1985. At the same time it has also been suggested by the defence that in 1971 accused Shamsuddin Ahmed studied in class V. Which one is plausible? All these appear to be futile effort simply intending to negate prosecution's contention that the accused passed SSC examination in 1971 and according to which his year of birth is 1954, we lawfully infer.

136. Submission extended as regards 'hearsay testimony' as has been made by the learned defence counsel Mr. M. Masud Rana we disagree with him. In a case involving offence of crimes against humanity 'hearsay evidence' is not inadmissible *per se*. But it is to be corroborated by 'other evidence'. That is to say, hearsay evidence is to be considered together with the circumstances and relevant material facts depicted. Hearsay evidence is admissible and

the court can act on it in arriving at decision on fact in issue, provided it carries reasonable probative value [Rule 56(2) of the ROP]. This view finds support from the principle enunciated in the case of *Muvunyi* which is as below:

“.....hearsay evidence is not per se inadmissible before the Trial Chamber. However, in certain circumstances, there may be good reason for the Trial Chamber to consider whether hearsay evidence is supported by other credible and reliable evidence adduced by the Prosecution in order to support a finding of fact beyond reasonable doubt.”

[Muvunyi, (ICTR Trial Chamber), September 12, 2006, para. 12]

137. The attack involved some phases. First, at about 01:00 P.M. / 01.30 P.M. by launching attack at village Bidyanagar the group of Razakars accompanied by the accused persons had killed Abdul Barek and his neighbours Sheikh Chandu Mia, Sheikh Malek alias Malu, their domestic servant Aftabuddin and Serajuddin, and one Sheikh Hasu however survived despite receiving bullet injury.

138. Next, at about 02:00 / 02:30 P.M on the same day and in conjunction with the same transaction of the attack launched, the accused persons accompanying the group of armed Razakars had killed Md. Habib Ullah, a civilian by gun shot on apprehending him from a place known as *Fatergope Beel*.

139. At about 03:00 P.M. on the same day the same group of attackers also gunned down Abdul Mazid to death by apprehending him from a seed-bed adjacent to village *Bidyanagar*.

140. The same group of Razakars, in conjunction with the attack, at about 04:00 P.M, on the same day gunned down Md. Abdul Jabbar, a civilian to death by apprehending him from Kiraton Beel of village *Ayla*.

141. The accused persons and their cohorts forming the group of attackers had also carried out the act of plundering houses and properties of civilians and caused torture to civilians of villages *Ayla* and *Bidyanagar*, in conjunction with the total attack, the charge framed alleges.

142. Thus, the indictment alleges that the accused persons belonging to local Razakar Bahini being accompanied by their cohort Razakars had launched concurrent attack at villages *Ayla*, *Bidyanagar* and neighbouring localities directing the civilian population and thereby caused death of numerous protected civilians and had also carried out destructive activities, in conjunction with the same attack. Indisputably, the attack was launched in the context of war of liberation by the individuals belonging to auxiliary force formed to collaborate with the Pakistani occupation army to further policy and plan.

143. Prosecution adduced and examined as many as 09 witnesses intending to substantiate this charge. Of them some are near relatives of victims who have testified facts relevant to the criminal acts constituting the offences alleged. Some have testified the

backdrop of launching such maddened attack directing the villages Ayla, Bidyanagar and localities surrounding to those.

144. P.W.01 Md. Mehdi Ul Alam is a freedom fighter. He along with some of his friends went to India to join the war of liberation and on receiving training they returned back to the locality under Kalmakanda Police Station and participated freedom fight in the localities under Kalmakanda and Barahatta Police Stations. Defence does not appear to have been able to shake this fact.

145. P.W.01 Md. Mehdi Ul Alam further stated that some groups of freedom fighters came to the locality under Karimganj Police Station and then got stationed around the *haor* localities under Police Stations Itna, Mithamoin, Bajitpur and Oshtogram treating them to be safe. They[the freedom fighters] anticipated that the Pakistani army would have attacked them coming through river from 'chamra bandar' and thus they[freedom fighters] blew out the bridge at *Kiraton Beelpara* situated on the road from Kishoreganj to 'chamra bandar' through Karimganj, by detonating mine.

146. P.W.02 Md. Adam Ali is the son of victim Abdul Barek. He also stated that the freedom fighters blew up Perua bridge situated at their locality to resist movement of Razakars to *haor [wet land] area* through that road.

147. P.W.03 Md. Golam Mostofa, a resident of village Ayla testified that there had been a road to *chamra bandar* from

Kishoreganj and to resist the movement of Razakars and Pakistani army through this road, the freedom fighters had blown up the Perua bridge situated on that road, by blasting mine. P.W.06 Md. Shajahan, a resident of village Ayla also corroborates the above version. P.W.07 Mojibur Rahman Mongol, the son of Abdul Berek, one of the victims of village Bidyanagar and P.W.08 Md. Abdus Salam, son of Abdul Jabbar, one of the victims of village Ayla also testified similar version as they stated that in 1971 there had been a road in front of their village going from Karimganj to chamra bandar. The freedom fighters, in the first part of November, 1971, had blown up the Perua bridge on this road by blasting mine.

148. Thus, the fact of blowing up the Perua bridge situated on the Kishoreganj-Chamra Bandar road of the crime localities in the first part of November, 1971 by detonating mine by the freedom fighters stationed around the *haor* localities under Police Stations Itna, Mithamoin, Bajitpur and Oshtogram stands proved from the evidence of above witnesses. Besides, this fact remained unimpeached in their cross-examination. Testimony of P,W.01, a freedom fighter impels the inference that such action of blowing up the bridge by detonating mine was to resist movement of the Pakistani army from attacking them coming through river from 'chamra bandar' as they[freedom fighters] got stationed around the

haor localities under Police Stations Itna, Mithamoin, Bajitpur and Oshtogram.

149. What happened next? It is a fact of common knowledge that policy of the Pakistani occupation army was to annihilate the pro-liberation Bengali civilians, freedom fighters and the civilians sided with the war of liberation and in doing so it termed the freedom fighters as ‘miscreants’. It may be presumed that the above action on part of the freedom fighters particularly almost at the fag end of the war of liberation made the local Razakars aware as to presence of freedom fighters around the locality and sensing it they felt antagonistically enthused in launching attack directing civilians of the villages Ayla, Bidyanagar and the locality around those villages, it may be validly inferred.

150. P.W.03 Md. Golam Mostofa, a resident of village Ayla testified that the Razakars became maddened as the bridge was blown up by the freedom fighters and on 12 November 1971 a group of 70/80 Razakars accompanied by accused Gazi Md. Abdul Mannan, ATM Nasir, Shamsuddin Ahmed, Md. Azharul Islam and Md. Hafizuddin attacked the village Ayla from both directions with indiscriminate gun firing.

151. P.W.02 Md. Adam Ali heard from the locals at Karimganj bazaar that Razakars to counter the action of blowing up the Perua bridge would have attacked the freedom fighters and Awami

League supporters of their locality. P.W.05 Md. Golap Miah, a resident of village Ayla also stated that the local Razakars became distracted to the freedom fighters and the civilians of their localities with the action of blowing up the Perua bridge. P.W.08 Md. Abdus Salam who is from village Ayla testified that in the first part of November 1971, the freedom fighters had blown up the Perua bridge situated on the road and with this activities of Razakars became amplified.

152. Blowing up the Perua bridge was an action of combatant freedom fighters. The counter part siding with the Pakistani occupation army would have attacked the combatant freedom fighters. The locals of the crime sites around the Perua bridge apprehended that such action of freedom fighters would have maddened the local Razakars in attacking the pro-liberation civilians who had no direct participation in hostility, as stated by P.W.02, P.W.03, P.W.05 and P.W.08. It remained undisputed that during the first part of November, 1971 the Perua bridge was blown up by the freedom fighters by detonating mine. And from the unshaken testimony of P.W.02 and other prosecution witnesses it stands proved that on 12 November 1971 a group of 70/80 Razakars attacked the village Ayla from both directions with indiscriminate gun firing.

153. That is to say, within few days of blowing up the Perua bridge the local Razakars had launched an organised attack directing the civilians of villages Ayla, Bidyanagar and the localities around those and thus it may unmistakably inferred that the action of blowing up the Perua bridge by the freedom fighters stationed at *haor* area was the reason of attacking the non-combatant protected pro-liberation civilians of crime villages and the group of attackers formed of Razakars did it in the name of annihilating freedom fighters whom they treated as ‘miscreants’, to further policy and plan of Pakistani occupation army.

154. Now let us see what happened in course of the concurrent attack launched on 12 November 1971 and whether the accused persons had ‘concern’, ‘participation’ and ‘complicity’ in accomplishing the criminal acts constituting the offences of murder, abduction, torture and ‘other inhuman acts’ as enumerated in the Act of 1973.

155. It has been alleged that first, at about 01:00 P.M. by launching attack at village *Bidyanagar* the group of Razakars accompanied by all the five accused persons had killed Abdul Barek and his neighbours Sheikh Chandu Mia, Sheikh Malek alias Malu, their domestic servant Aftabuddin, Serajuddin and one Sheikh Hasu however survived despite receiving bullet injury.

156. P.W.02 Md. Adam Ali is the son of victim Abdul Barek. He is a direct witness to the act of causing his father's death by bullet shot. In 1971 he used to work as a tailor at Karimganj bazaar. P.W.02 stated that on 12 November 1971 while he had been at Karimganj bazaar he learnt that Razakars were on move towards villages Ayla, Bidyanagar, Fatergope, Beelpara and then with this at about 12:00/12:30 P.M. he came back to his home [from bazaar] when he saw the Razakars led by Razakar accused Gazi Md. Abdul Mannan keeping northern and southern end of their village Bidyanagar and neighbouring village Ayla besieged and about 30/35 Razakars had been at each end.

157. The above version remained unshaken and it proves the fact of launching attack at villages Ayla and Bidyanagar by Razakars led by Razakar accused Gazi Md. Abdul Mannan on the date and at the time narrated in the charge framed. It gets corroboration from the testimony of P.W.03 as he stated that the Razakars became maddened for blowing up the bridge by the freedom fighters and on 12 November 1971 a group of 70/80 Razakars accompanied by accused Gazi Md. Abdul Mannan, ATM Nasir, Shamsuddin Ahmed, Md. Azharul Islam and Md. Hafizuddin attacked the village Ayla from both directions with indiscriminate gun firing.

158. Testimony of P.W.02 further demonstrates that Razakars accused ATM Nasir, Shamsuddin Ahmed, Md. Hafizuddin and Md.

Azharul Islam were also with the group. Being feared, on seeing them, he [P.W.02] went into hid inside a banana bush near the pond where from he saw accused ATM Nasir and Shamsuddin tying up his younger brother Mojibur Rahman Mongol with a betel nut tree on capture. At that time his [P.W.02] father who was also in hid came out and requested accused ATM Nasir to release his son Mojibur Rahman Mongol. But accused ATM Nasir responded by saying—‘your son Habibur Rahman Pashu joined the war of liberation, you get him brought’. By saying this accused ATM Nasir hit on his father’s back by rifle and thus his father fell down. This incident happened at the house of Hasu Mia adjacent to their house. Accused ATM Nasir then gunned down his father [Abdul Barek] to death when he got up from the ground.

159. The above piece of ocular testimony which remained unimpeached in cross-examination indisputably proves that accused ATM Nasir, Shamsuddin Ahmed, Md. Hafizuddin and Md. Azharul Islam were with the group led by accused Gazi Md. Abdul Mannan and P.W.02 saw accused ATM Nasir gunning down his father Abdul Barek to death, remaining in hiding inside a bush. P.W.02 had thus adequate opportunities of seeing and observing the accused persons and their activities. There has been no earthly reason of disbelieving his ocular testimony.

160. P.W.02 stated in reply to question put to him that his brother Habibur Rahman Pashu joined the war of liberation almost immediately after the war started. Freedom fighters Helal, Kutubuddin and Azimuddin of their locality were also with the freedom fighters who took shelter at their village on 01 November 1971. Presumably, this was one of reasons of extreme antagonistic utterance of accused ATM Nasir, before gunning down Abdul Berek to death, that — ‘ your son Habibur Rahman Pashu joined the war of liberation, you get him brought’ when he [Abdul Berek] appealed for release of his detained son Mojibur Rahman Mongol.

161. The act of killing Abdul Berek by launching attack at his house as stated by P.W.02 Md. Adam Ali gets corroboration from the evidence of P.W.07 Mojibur Rahman Mongol, another son of the victim. It is found from the evidence of P.W.02 that at the time of the attack he [P.W.07] was kept detained and tied up with a betel nut tree of their house and thus naturally he had fair occasion to see the activities carried out by the accused persons and their accomplices including the act of killing his father Abdul Berek.

162. Evidence of P.W.07 demonstrates that at about 12.00 / 01:00 P.M., a group of 70/80 Razakars led by Razakar Commander accused Gazi Md. Abdul Mannan launched simultaneous attack at villages Bidyanagar, Ayla, Fatergope and Kiraton Beelpara and in conjunction with the attack, accused ATM Nasir, Shamsuddin

Ahmed, Md. Hafizuddin and Md. Azharul Islam and their some other accomplices entered their [P.W.07] house and on sensing it his father[Abdul Barek] ran off the house. Then the Razakars asked his mother about whereabouts of his [P.W.07] freedom fighter brother. He[P.W.07] was apprehended by accused ATM Nasir when he[P.W.07] attempted to escape and was kept tied up with a betel nut tree in front of their house where from he could see his father to come out from a bush of banana trees and requested accused ATM Nasir and Shamsuddin Ahmed to set him [P.W.07] free. But accused ATM Nasir hit on his father's back by a rifle and thus he fell down. They asked his father to handing his freedom fighter son to them. His father when got up from the ground accused ATM Nasir shot him to death by a rifle in his hand.

163. The above version of P.W.07 depicts the conduct of accused Shamsuddin Ahmed and ATM Nasir before his father Abdul Barek was gunned down to death. Narrative made by P.W.07 consistently corroborates to what has been described by P.W.02, another son of victim Abdul Barek.

164. Habibur Rahman Pashu, the elder son of victim Abdul Barek was a freedom fighter and he joined the war of liberation with P.W.01. It remains undisputed. Narrative made by P.W.02 and P.W.07, the two sons of victim Abdul Barek proves that the group of Razakars accompanied by the accused persons was extremely

antagonistic to the freedom fighters and pro-liberation civilians and such culpable mindset enthused the accused persons to be part of the criminal enterprise sharing intent to further common purpose and all of them were thus equally liable for the act of killing Abdul Barek although the testimony of P.W.02 and P.W.07 depicts that accused ATM Nasir physically pretreated the act of killing him by gun shot.

165. After independence, P.W.01 Md. Mehdi Ul Alam and his co-freedom fighters came back to their respective locality and then P.W.01 along with co-freedom fighter Habibur Rahman Pashu went to village Bidyanagar where he [P.W.01] learnt the event from P.W.07 Mojibur Rahman Mongol and P.W.02 Md. Adam Ali [the sons of victim Abdul Barek]. The hearsay evidence of P.W.01 carries probative value as he heard the event from direct witnesses, the sons of victim Abdul Barek.

166. Defence suggested P.W.01 that the event of the attack that resulted in killing of civilians as stated by him [P.W.01] was carried out by the Pakistani army under the guidance of Razakar Commander Abdur Razzak. P.W.01 denied it. Besides, this defence case does not appear to have been credible on any score as no indication whatsoever could be brought by cross-examining this witness in this regard.

167. P.W.02 Md. Adam Ali, the son of one victim Abdul Barek also saw accused Gazi Md. Abdul Mannan, Md. Hafizuddin, Md. Azharul Islam and 20/25 other Razakars taking Sheikh Chandu Mia, Sheikh Malu Mia, Aftabuddin, Seraj and Hasu Mia to accused ATM Nasir on forcible capture and they keeping those detained persons under the care of accused ATM Nasir and Shamsuddin Ahmed moved towards north and then accused Shamsuddin Ahmed and ATM Nasir brought the said detained persons [Sheikh Chandu Mia, Sheikh Malu Mia, Aftabuddin, Seraj and Hasu Mia] behind the house of Sheikh Chandu Mia.

168. P.W.02 thus described the roles played by the accused persons in taking out Sheikh Chandu Mia, Sheikh Malu Mia, Aftabuddin, Seraj and Hasu Mia on forcible capture and bringing them at a place behind the house of Sheikh Chandu Mia. There is no indication even that may cast doubt on his testimony. P.W.02 saw all these activities remaining in hiding inside a bush. Defence could not dislodge it and even it failed to bring anything by cross-examining the P.W.02 that it was not practicable to see all those acts remaining inside the bush.

169. After taking those five detained persons behind the house of Sheikh Chandu Mia P.W.02 heard 5/6 gun shots and after the accused Shamsuddin Ahmed and ATM Nasir had left the site he coming out of the hiding place unfastened his brother [P.W.07

Mojibur Rahman Mongol] who was kept tied up with the tree and along with him fled to southern end and the dead body of their father was lying at the crime site. They did not come back home during day time on that day.

170. P.W.02 does not claim to have witnessed the act of killing the detained persons. He however saw the accused Shamsuddin Ahmed and ATM Nasir taking them behind the house of Sheikh Chandu Mia and afterwards he [P.W.02] heard 5/6 gun firing. This crucial fact which remained unshaken itself is sufficient to conclude that the accused ATM Nasir and Shamsuddin Ahmed physically perpetrated the killing of four of those five detained persons and at the same time the three other accused persons accompanying the group also incurred equal liability as they were at the crime site and by their conduct and act assisted and encouraged the group sharing its intent.

171. The dead bodies of four victims [Sheikh Chandu Mia, Sheikh Malu Mia, Aftabuddin and Seraj] excepting survived detained Hasu Mia were found lying at a place behind the house of Sheikh Chandu Mia, it is found proved from evidence of other prosecution witnesses including P.W.02 and P.W.07 who later on visiting the said place found those dead bodies lying there having bullet injuries. Detained Hasu Mia somehow survived despite receiving bullet injury and he told others including P.W.02 that accused

ATM Nasir and Shamsuddin Ahmed shot to them [detained persons] when he[Hasu] received bullet hit injury and other detainees succumbed to bullet injury.

172. On the same day, after the dusk, P.W.02 Md. Adam Ali and his brother P.W.07 Mojibur Rahman Mongol came back to home and found dead bodies of the detained persons behind the house of Sheikh Chandu Mia. They also found there injured Sheikh Hasu lying receiving bullet hit wound on leg and Sheikh Hasu [survived victim] told them that accused ATM Nasir and Shamsuddin Ahmed shot to them [detained persons] when he[Hasu] received bullet hit injury and other detainees succumbed to bullet injury.

173. Defence could not impeach the version of seeing the act of launching attack, act of forcible capture of victims and gunning them down to death at the place and the role and conduct of the accused persons in accomplishing the perpetration of the crime as stated by P.W.02 and P.W.07, the direct witnesses and the sons of Abdul Barek, one of the victims. We do not find any earthly reason to disbelieve them. Rather, on totality of evidence presented on crucial relevant facts and circumstances emerged it stands proved that accused ATM Nasir and Shamsuddin Ahmed shot to the detained persons when four succumbed to bullet injury and one Sheikh Hasu however survived. Defence simply suggested P.W.02 that the Pakistani army coming from Kishoreganj Sadar facilitated

the commission of the event he narrated and the account he [P.W.02] made in respect of the event implicating the accused persons was untrue, baseless and false. P.W.02 denied it.

174. P.W.03 Md. Golam Mostofa, a resident of village Ayla found dead body of victim Abdul Barek, the father of freedom fighter Habibur Rahman Pashu nearby a banana bush. He, after the group of attackers had left the sites, on the way to his home he also saw the bullet hit dead bodies of Sheikh Chandu Mia and his elder son Sheikh Malek alias Malu lying at a place behind their house near a canal. He [P.W.03] also found there bullet injured Sheikh Hasu who told that accused Gazi Md. Abdul Mannan, ATM Nasir, Shamsuddin Ahmed, Md. Azharul Islam, Md. Hafizuddin and others brought them there on forcible capture and shot them with gun.

175. Defence could not impeach the above version in any manner. It simply suggested the P.W.03 that the event of killings he narrated was carried out by the Pakistani army and that the accused persons did not belong to Razakar Bahini. With this the event of attack that resulted in killing numerous civilians has been re-affirmed. However, the above version of P.W.03 provides consistent corroboration to the fact of deliberate killing of Abdul Barek as witnessed by P.W.02 and P.W.07 and the act of killing four

detained villagers that occurred almost instantly after gunning down Abdul Barek to death.

176. P.W.05 Md. Golap Miah is a relative of victim Md. Habib Ullah of village Ayla. He [P.W.05] corroborated that on 12 November 1971 at about 12:00 P.M. a group of 70/80 Razakars led by accused Gazi Md. Abdul Mannan and accompanied by accused Shamsuddin Ahmed, ATM Nasir, Md. Hafizuddin and Md. Azaharul Islam had attacked the villages Ayla, Bidyanagar, Fatergope, Kiraton Beel and killed 8/10 civilians, of them Abdul Jabbar, Abdul Mazid and Habib Ullah were from village Ayla; Abdul Barek, Sheikh Chandu, Sheikh Malek alias Malu and Aftabuddin were from village Bidyanagar. One Hasu Mia of village Bidyanagar survived despite receiving bullet hit wound on leg. They, afterwards, buried the dead body of his cousin Md. Habib Ullah.

177. It is not clear whether P.W.05 saw or heard the event. However, since after the event they buried the dead body of his cousin Md. Habib Ullah of village Ayla and he saw Sheikh Hasu of village Bidyanagar survived despite receiving bullet wound it may be presumed that he might have heard the event from the locals including survived victim Sheikh Hasu who had occasion to see or hear it and thus his version relating to presence of the accused

persons with the group in launching attack cannot be excluded straight way.

178. P.W.06 Md. Shajahan is a resident of village Ayla and the son of Abdul Mazid, one of the victims. He is a direct witness to the facts relevant to the commission of the principal crime. His testimony demonstrates that on the face of the attack by a group of 70/80 Razakars accompanied by Gazi Md. Abdul Mannan, ATM Nasir, Shamsuddin Ahmed, Md. Azharul Islam and Md. Hafizuddin directing the villages Ayla, Bidyanagar, Fatergope and Kiraton Beelpara many of villagers fled away but however he[P.W.06] and his father Abdul Mazid had been at their house and then accused ATM Nasir and Shamsuddin Ahmed dragged out his father, tying him up, to the seed-bed towards the east side of the pond when he [P.W.06] remaining in hiding on the south side of the said pond saw that incident and also saw accused ATM Nasir gunning down his father to death [the P.W.06 at this stage of his deposition started shedding tears]. It was about 03:00 P.M. when his father was shot dead and on the following day they buried his father's dead body at their house, P.W.06 stated.

179. The above piece of version of P.W.06 depicts that he had occasion to see the act of forcibly taking away his father Abdul Mazid by accused ATM Nasir and Shamsuddin Ahmed on the south side of the said pond where accused ATM Nasir gunned him

down to death. Defence could not impeach this crucial version made by P.W.06 with shedding tears, in any manner.

180. The act of killing as narrated by P.W.06 was extremely barbaric indeed. The defenceless son [P.W.06] simply had to remain as a silent spectator when his father was dragged out and taken to the bank of pond where he was shot to death. It is hard to believe that the perpetrators, the accused persons, were human beings. Their beastly act full of brutality shakes the humanity.

181. How P.W.06 knew the accused ATM Nasir and Shamsuddin Ahmed? In cross-examination, in reply to question put to him P.W.06 stated that he knew accused Shamsuddin as his house was about one kilometre away from their [P.W.06] house and accused ATM Nasir used to stay on lodging at the house of Mannan Mohajan of village Bidyanagar. Thus and since the accused persons were the potential Razakars of locally formed Razakar Bahini it was not at all impracticable to recognise them accompanying the group at the crime site.

182. P.W.03 Md. Golam Mostofa of village Ayla in 12 November 1971 sensed the attack by a group of 70/80 Razakars accompanied by accused Gazi Md. Abdul Mannan, ATM Nasir, Shamsuddin Ahmed, Md. Azharul Islam and Md. Hafizuddin at village Ayla from both directions with indiscriminate gun firing and went into hid inside a bush 200 yards far from the attackers.

183. As the Razakars moved towards villages Bidyanagar and Fatergope, leaving village Ayla he found bullet hit dead body of Abdul Mazid in front of his house and saw his [victim Abdul Mazid] two sons crying there and they told him [P.W. 03] that dead body of Abdul Jabbar was lying on the other side of the road as Razakars also shot him dead, P.W.03 testified and it remained totally unshaken in cross-examination. We do not find any reason to exclude his version which inspires credence. He [P.W.03] then saw the dead body of Abdul Jabbar and then on his way to coming back home his sister's son Shahar Ali told him that Razakars had killed his[P.W.03] cousin Habibullah at Fatergope Beel[wet land] area. With this he went there and found Habibullah's bullet hit dead body. He [P.W.03] also saw the dead body of Aftabuddin of village Sudhirgram, on his way from Fatergope Beel.

184. It may indisputably be concluded that seeing dead bodies of above civilians lying at places instantly after the group of Razakars had left the site as stated by P.W.03 lends corroboration to the fact that it was the same group of Razakars accompanied by the accused persons who in conjunction with the attack had committed deliberate killing of those civilians.

185. P.W.08 Md. Abdus Salam is from village Ayla. He is the son of Abdul Jabbar, one of the victims. He was 22/23 years old in 1971. On the date of event at about 12:00 P.M. on being informed

of movement of Razakars towards their house he went into hid and half an hour later he heard a firing of gun shot. After the Razakars had left their village before the dusk he [P.W.08] came back to his house and heard from inmates and others that Razakar accused ATM Nasir accompanied by Razakars accused Shamsuddin Ahmed and Abdul Hakim had killed his [P.W.08] father Abdul Jabbar by gun shot and found his bullet hit dead body at the paddy field nearby the Beel adjacent to their village. Many people assembled at their [P.W.08] house for seeing the dead body informed them too that on the same day[12 November 1971] Razakars had killed Abdul Mazid and Habib Ullah of village Ayla and Abdul Barek, Sheikh Chandu, Sheikh Malek, Aftabuddin and Serajuddin of village Bidyanagar by firing gun shots.

186. Killing Abdul Jabbar was the upshot of the same attack and by the same group of Razakars. In absence of anything contrary, finding bullet hit dead body of Abdul Jabbar on the same day at the paddy field nearby the Beel adjacent to their village indisputably impels the conclusion that none but the accused persons accompanying the group of Razakars had committed this killing as well.

187. P.W.08 also stated that then he[P.W.08] coming to village Bidyanagar found bullet hit dead bodies of those villagers and also saw bullet injured Sheikh Hasu who told that accused ATM Nasir

and Shamsuddin Ahmed gunned those people down to death and he sustained bullet hit on leg. On the following day they buried his father's dead body.

188. The above version gets corroboration from the narration made by the prosecution witnesses including P.W.02 and P.W.07 who found the dead bodies of Abdul Mazid, Md. Abdul Jabbar, Md. Habib Ullah and Aftabuddin, after the group of Razakars had left the sites. Defence could not shake the fact of finding dead bodies of the victims at the places where they were shot dead in any manner.

189. It transpires that at the time of launching attack P.W.08 went into hid and thus he had no occasion to see the perpetration of the act of killing his father Abdul Jabbar. However, after the group of Razakars had left the site he came out of the hiding place and then found dead bodies of his father and some other villagers as stated by him. Naturally, it may be concluded that the group of Razakars accompanied by the accused persons committed those killings, in conjunction with the concurrent attack. P.W.08 also heard from bullet injured Sheikh Hasu that accused ATM Nasir and Shamsuddin Ahmed gunned down the detained people to death. It provides corroboration to P.W.02 and P.W.07. Defence could not impeach the above testimony in any manner. It simply suggested

that the accused persons were not involved with the event. But P.W.08 denied it.

190. P.W.09 Md. Abdul Goni, son of Sheikh Malek alias Malu, one of the victims described how he could see the act of attack and killing his father. According to him accused ATM Nasir, Shamsuddin Ahmed and Azharul Islam and their cohort Razakars attacked their house and he [P.W.09] informing it to his father went into hid inside a bush behind their house but his father was staying in front of their house. After a short while he [P.W.09] heard firing of gun shot. He [P.W. 09] then saw accused ATM Nasir and Shamsuddin Ahmed dragging out his father Sheikh Malek alias Malu and grand-father Sheikh Chandu Mia towards behind their house and then he saw accused ATM Nasir gunning his father down to death while accused Shamsuddin Ahmed shot his grandfather Sheikh Chandu Mia to death.

191. Thus, the above version proves it that accused ATM Nasir and Shamsuddin Ahmed dragging out his father Sheikh Malek alias Malu and grand-father Sheikh Chandu Mia towards behind their house and physically participated in causing their death by gun shot. Defence could not impeach the above ocular version relating to act of killing father and grand-father of P.W.09.

192. One and half hour after the above phase of the event he [P.W.09] came out of the hiding place and found dead bodies of his

father and grand-father lying at a place behind their house and also found bullet hit dead bodies of Sirajuddin and Aftabuddin at a place 20/40 cubits far therefrom. Next, he [P.W.09] coming to the house of Abdul Barek saw his dead body lying therein. He then saw there bullet injured Sheikh Hasu who survived despite receiving bullet hit on leg. After the Razakars had left the site, they brought the dead bodies of his father and grand-father and buried them on the following morning.

193. The above testimony of P.W.09, a natural and direct witness, proves the act of killing the detained persons brought behind the house of Sheikh Chandu Mia as stated by P.W.02 and P.W.07. Hearing gun firing and finding dead body of Abdul Barek at his house's courtyard also proves that the group of Razakars accompanied by accused persons attacking the house of Abdul Barek first killed him by gun shot and then other detained persons were brought to a place behind the house of Sheikh Chandu Mia where four of five were shot to death, as stated by P.W.02 and P.W.07, the direct witnesses. Next, seeing there bullet injured Sheikh Hasu who survived despite receiving bullet hit on leg also proves the fact of taking the detained persons there including Sheikh Hasu. Taking the dead bodies of his [P.W.09] father and grand-father, after the Razakars had left the site and their burial on the following morning as stated by P.W.09 indisputably proves the

act of planned concurrent attack that resulted in brutal and deliberate killing of civilians. Defence could not dislodge it in any manner.

194. In cross-examination, P.W.09 stated that accused ATM Nasir had been at the house of Mannan Mohajan on lodging prior to the war of liberation and village home of accused Shamsuddin Ahmed was at Dulipara. It prompts us to infer that P.W.09 had sufficient reason of knowing those accused persons since prior to the event. Defence could not controvert what has been narrated by P.W.09 in respect of the attack, killing and role of the accused persons in carrying out the criminal activities in accomplishing the act of killing.

195. Defence suggested P.W.09 that he could not see who had killed his father and grand-father as he was tender aged boy at that time. P.W.09 denied it. P.W.09 categorically stated that remaining in hiding he saw accused ATM Nasir and Shamsuddin Ahmed dragging out his father Sheikh Malek alias Malu and grand-father Sheikh Chandu Mia towards behind their house and then he saw accused ATM Nasir gunning his father down to death while accused Shamsuddin Ahmed shot his grandfather Sheikh Chandu Mia to death.

196. Nothing contrary has been revealed in cross-examination of P.W.09 which may lend indication that P.W.09 is an incompetent

witness and his testimony is not reliable as in 1971 he was a boy of tender age. We do not find any rational reason to exclude his version on material particular. Besides, already we have observed on the basis of statement made in cross-examination that P.W.09 had reason of knowing the accused ATM Nasir and Shamsuddin Ahmed. It is true that in 1971 P.W.09 was 7/8 years old. But the mere tender age of the witness at the time of the event does not *ipso facto* disqualify him to narrate what he observed or experienced particularly when it inspires credence. In this regard relying on the observation made by the **ICTR Appeals Chamber** in the case of **Gacumbitsi** it has been observed by the Appellate Division of the Supreme Court of Bangladesh in the case of **Ali Ahsan Muhammad Mujahid [Appeal Judgment]** that–

"In Gacumbitsi v. Prosecutor, Case No. ICTR-2001-64-A Appeal Chamber found, "it was reasonable for the Trial Chamber to accept witness TAX's testimony despite her young age at the time of the events (11 years old). The young age of the witness at the time of the events is not itself a sufficient reason to discount his testimony." There is no rule requiring the Court to reject per se the testimony of a witness who was child at the [time of] events in question. The probative value to be attached to testimony is determined to its credibility and reliability."

[Ali Ahsan Muhammad Mujahid v. Chief Prosecutor, Criminal Appeal No. 103 of 2013, Judgment 16.6.2015, Pages- 166-167]

197. P.W.04 Md. Akkas is a resident of village Bidyanagar, one of crime sites. In 1971 he was 15/16 years old. He stated that on 12 November 1971 a group of 20/50 Razakars including the accused ATM Nasir, Shamsuddin Ahmed and Gazi Md. Abdul Mannan had killed 7/8 civilians including Chandu and Berek of village Bidyanagar. It is not understandable whether he heard or saw the event of attack. Presumably as a local he might have heard the attack that resulted in killing many civilians. However, if his testimony is kept aside from consideration it does not affect the truthfulness of the event as it has already been well proved by competent and direct witnesses.

198. Defence, in order to negate the prosecution case, simply suggested to the prosecution witnesses that not the Razakars but the Pakistani army had carried out the attack and killing of villagers under the leadership of Razakar Commander Abdur Razzak. But it does not appear to be convincing at all. It is found that said Abdur Razzak was the head of Karimganj Peace Committee and there has been no evidence or indication whatsoever that the attack was launched by the Pakistani army and not the group of local Razakars. Mere putting suggestion as defence case does not render it to be true if it is not backed by any reasonable evidence or admitted by the witnesses.

199. Defence could not impeach the credibility of the prosecution witnesses and the testimony they made in relation to material facts, by cross-examining the P.Ws. In respect of object of cross-examination the Appellate Division of the Supreme Court of Bangladesh in its judgment in the case of **Allama Delwar Hossain Sayedee** observed as below:

"It is to be remembered that the object of cross examination is to bring out desirable facts of the case modifying the examination-in-chief and to impeach the credit of the witness. The other object of cross examination is to bring out facts which go to diminish or impeach the trustworthiness of the witness."

[Allama Delwar Hossain Sayedee, Criminal Appeal Nos. 39-40 of 2013, Judgment: 17 September 2014, Pages- 138-139]

200. Defence simply denies the involvement of accused persons with the event. But mere denial is not at all sufficient to exclude what has been testified by traumatized witnesses particularly the near relatives of the victims. The event of designed attack once again proves that freedom-fighters and pro-liberation people of the locality were the targets of the accused persons and their cohort Razakars and they had carried out the dreadful atrocious activities directing the protected civilians of villages Ayla, Bidyanagar, Fatergope and Kiraton to further the policy and plan of the Pakistani occupation army.

201. Defence does not dispute the event of killing of several villagers by launching concurrent attack on 12 November 1971 at villages Ayla, Bidyanagar, Fatergope and Kiraton under Karimganj Police Station of the then Kishoreganj Sub-Division. The unshaken and consistent evidence of the P.Ws. demonstrates that the freedom-fighters made their location around the *haor*[wet land] area under Itna, Mithamoin, Bajitpur and Oshtogram Police Stations and to keep it safe they in the first part of November by detonating mine had blown up Perua bridge on the road from Kishoreganj to *chamra bandar*, to resist movement of Razakars and Pakistani army. Presumably this was the reason of launching attack at the villages near the Perua bridge.

202. It also transpires that after the Pakistani army arrived in Kishoreganj on 20 April 1971 they worked forming Sub-Division Peace Committee and also Karimganj Thana Peace Committee. Either of 07 charges framed does not allege that the Pakistani army was also part of the group in carrying out any of the alleged criminal acts narrated therein.

203. Forming Razakar Bahini of 70/80 Razakars in Karimganj Thana stands proved. Defence claims, by putting suggestion to P.Ws. that it was the group formed of Pakistani army men who committed the alleged crimes as narrated in this charge, not the accused persons. But there has been no indication even to make this

defence assertion believable. Besides, no evidence whatsoever has been provided on behalf of the accused Shamsuddin Ahmed, facing trial remaining present, to substantiate such affirmative claim. Therefore, we may arrive, on appraisal of the evidence presented, at unerring conclusion that the concerted attack was launched directing civilians of villages by the group of Razakars of Karimganj Razakar Bahini.

204. On integrated evaluation of evidence as made above we have found it proved that P.W.02 Md. Adam Ali, the son of victim Abdul Barek, saw the group of Razakars led by Razakar accused Gazi Md. Abdul Mannan and accompanied by accused ATM Nasir, Shamsuddin Ahmed, Md. Hafizuddin and Md. Azharul Islam besieging their village Bidyanagar and neighbouring village Ayla. This version has been consistently corroborated by P.W.03, P.W.05, P.W.06 and P.W.07 and thus it stands proved that all the five accused persons were with the group of attackers formed of Razakars.

205. P.W.02 also saw the accused Gazi Md. Abdul Mannan, Md. Hafizuddin, Md. Azharul Islam and 20/25 other Razakars bringing Sheikh Chandu Mia, Sheikh Malek alias Malu, Aftabuddin, Serajuddin and Sheikh Hasu to accused ATM Nasir on forcible capture and keeping those detained persons under the care of accused ATM Nasir and Shamsuddin they moved towards north

and then accused Shamsuddin Ahmed and ATM Nasir brought the said detained persons behind the house of Sheikh Chandu Mia where four of them were shot dead.

206. The above crucial version of P.W.02, a direct witness and son of Abdul Barek, one of the victims provides unerring conclusion that all the five accused persons actively participated to the attack and substantially contributed and assisted in accomplishing the act of killing the detained villagers. It gets corroboration from the testimony of P.W.07 Mojibur Rahman Mongol, another son of victim Abdul Barek as he[P.W.07] stated that accused ATM Nasir, Shamsuddin Ahmed, Md. Hafizuddin, Md. Azharul Islam and some of their accomplices entered their [P.W.07] house .

207. P.W.09 Md. Abdul Goni, son of Sheikh Malek alias Malu, one of the victims saw accused ATM Nasir and Shamsuddin Ahmed dragging out his father [Sheikh Malek alias Malu] and grand-father Sheikh Chandu Mia towards behind their house and then he saw accused ATM Nasir gunning his father down to death while accused Shamsuddin Ahmed shot his grandfather to death.

208. The above demonstrates that accused ATM Nasir and Shamsuddin Ahmed physically participated in perpetrating the act of killing Sheikh Malek alias Malu and Sheikh Chandu Mia and accused Azharul Islam was with them. One detainee Sheikh Hasu

who survived despite receiving bullet wound told to P.Ws. that the accused Shamsuddin Ahmed and ATM Nasir had gunned down the four detained persons to death. It also stands proved that almost instantly after the group had left the sites the prosecution witnesses and the locals found dead bodies of the victims at the places where they were shot dead. In a horrific situation prevailing pursuant to aggressive and organised attack it was impracticable for the panicked civilians to observe conduct and act of all the accused persons and their cohorts at all phases of the attack with accuracy.

209. The facts and circumstances as emerged force us to conclude that all the killings were committed in conjunction with the concurrent attack by the group of Razakars which was accompanied by the accused persons and thus all the five accused persons sharing intent of the criminal enterprise were participants in committing the dreadful killing of those two villagers.

210. Accused Gazi Md. Abdul Mannan, Md. Hafizuddin and Md. Azharul Islam were with the group. It stands proved. But the evidence adduced does not categorically speak of their 'physical participation' in accomplishing the act of killing the villagers. It has been depicted that accused ATM Nasir and Shamsuddin Ahmed physically participated in gunning down the six villagers to death. But even in absence of any direct evidence as to the actual perpetrators in respect of killing other villagers it may be safely

concluded that the accused persons accompanying the group of Razakars were equally responsible for all the killings.

211. We have already found it proved beyond reasonable doubt that all the five accused persons accompanied the group of Razakars to the crime sites. Some of the prosecution witnesses who had occasion to observe the attack testified how the accused ATM Nasir and Shamsuddin Ahmed physically participated in accomplishing the killings, the principal offence. They however could not say how the other accused persons had acted excepting their act of accompanying the group.

212. First, act of accompanying the group at the crime site is sufficient to infer that they also consciously and sharing intent of the enterprise participated to the commission of the crime by their presence which provided assistance, encouragement to the principals. Next, the attack was concurrent and horrific and the killings happened at different places and at different times although on the same day, and as such, the witnesses might not have opportunity of seeing or observing the actual act and conduct of all the accused persons in perpetrating all the killings. Thus, merely for the reason that some of witnesses examined could not testify how the accused persons acted in conjunction with the attack in accomplishing the principal offence of killing the villagers they cannot be termed as unreliable. In this regard, we recall the

observation made by the Appellate Division of the Supreme Court of Bangladesh **in the case of Motiur Rahman Nizami** that—

"It should be pointed out here that these 3 witnesses-the P. W. 9, P. W. 11 and P. W. 18 saw the occurrence of 14.05.1971 in 3 villages from different places and not from the same place and as such it was not unnatural at all that all these 3 witnesses might not see all the perpetrators of those atrocities. So, we find no reason to disbelieve these two witnesses."

[Motiur Rahman Nizami vs. The Government of Bangladesh, Criminal Appeal No.143 of 2014 , Judgment on: 06.1.2016, Page 53]

213. The Tribunal notes that even due to lapse of long passage of time a witness may be capable in narrating the ‘core essence’ of the event he witnessed and it happens because of the nature of the event. The witnesses may not be able to memorize the conduct and act of all the accused persons, in conjunction with the attack launched. But they however testified the presence of the accused Gazi Md. Abdul Mannan, Md. Hafizuddin and Md. Azharul Islam with the group. On the face of sudden and massive attack the direct witnesses to the facts relevant to the commission of the crime might not have opportunities of observing all the activities of all the accused persons. In making account of the ‘essence’ and ‘fundamental elements’ of the event by the witness, the trauma he or she sustained may be found to have been sandwiched with the memory that may result incapability in portraying ‘detail precision’.

But it never affects the ‘fundamental feature’ of his or her testimony.

214. It should not be forgotten too that the criminal jurisprudence does not require the prosecution to prove the impracticable. All that it requires is to establishment of such a degree of probability that a man of prudence may, on its basis, believe the existence of a fact in issue. Thus, often legal proof is nothing more than a prudent man’s estimation as to the probabilities of the case.

215. On careful appraisal of facts and circumstances related to the principal fact constituting the offence, as unveiled, we conclude that failure to make detail precision, as a result of lapse of long passage of time and due to dreadfulness of the attack, does not necessarily impugn witness's evidence given in relation to the ‘central facts’ involving the principal crime. Long more than four decades after the crimes committed a witness is not always reasonably expected to memorize detail and accurate precision.

The ICTR Trial Chamber in the case of *Nyiramasuhuko* has considered this issue by observing that –

“Many witnesses lived through particularly traumatic events and the Chamber recognises that the emotional and psychological reactions that may be provoked by reliving those events may have impaired the ability of some witnesses to clearly and coherently articulate their stories. Moreover, where a significant period of time has elapsed between the acts charged in the indictments and the trial, it is not always

reasonable to expect the witness to recall every detail with precision.”

[ICTR, *The Prosecutor v. Pauline Nyiramasuhuko et al.*, ICTR-98-42-T, Judgement, 24 June 2011, Para- 179]

216. No witness referred the direct commission of killing of civilian[s] by the accused Gazi Md. Abdul Mannan, Md. Hafizuddin and Md. Azharul Islam, nonetheless their direct participation to the planned action has been proved and in this way criminal responsibility of these three accused as well stands affirmed.

217. System crime or group crime committed in war time situation in fact is the upshot of series of acts and activities and an individual may not have participation to all phases of the event. It was not practicable, due to horrific situation prevailing in 1971, to witness or experience all the phases of a particular event. It is to be noted that murder as a crime against humanity under section 3(2)(a) of the Act of 1973 does not require the prosecution to establish that the accused personally committed the killing. Personal commission is only one of the modes of responsibility.

218. Accused Gazi Md. Abdul Mannan, Md. Hafizuddin and Md. Azharul Islam not only actively assisted the criminal gang in carrying out the systematic and horrific attack directing civilians of the villages that eventually resulted in killing of many 'protected

persons' but they were part of the 'common plan and design'----the facts and circumstances unveiled before us unequivocally prove it.

219. 'Participation' refers to act of inducing, aiding, abetting, or otherwise assisting the commission of a crime or the facilitation thereof. Accused Gazi Md. Abdul Mannan, Md. Hafizuddin and Md. Azharul Islam, evidence shows, in fact participated to the commission of crimes as part of the enterprise by act of assistance and accompanying the group of attackers to the crime sites, sharing intent to perpetrate the crimes..

220. Presence of the accused persons in the crime-site, combined with their membership in local Razakar Bahini and their knowledge of the criminal enterprise are considered sufficient to find them guilty for the crimes committed by the enterprise. Accused may be said to have aided and abetted in accomplishing the principal offence if it is found that he accompanied the group at the crime site 'knowing the intent' of the perpetrators belonging to the group. On the other hand, he may be said to have had 'participation' if he is found to have had accompanied the group 'sharing intent' in perpetrating the principal offence. Both the phrases 'knowing the intent' and 'sharing intent' can be well inferred from circumstances and relevant facts as the same are not tangible act. Act of accompanying the group 'sharing intent' in perpetrating the principal offence makes an accused part of the criminal enterprise.

221. It is now well settled that liability can be established by showing that the accused had intent to participate in the crime and that his act contributed to its commission. Such contribution does not necessarily require participation in the physical commission of the crime, but that liability accrues where the accused is shown to have been intentionally present, sharing intent, at the site or sites where unlawful acts were being committed. It is sufficient to trigger his individual criminal responsibility as ‘participant’ under the theory of **JCE-I [Basic Form]**.

222. It is evinced that the attack was planned and designed mission directing the civilian population to which all the accused persons were ‘part’ and they actively facilitated the group in perpetrating the act of killing several villagers knowing the upshot of their act and conduct, and thus, they are equally liable even for the physical act of accused ATM Nasir and Shamsuddin Ahmed in effecting the killing of some villagers. The doctrine of **JCE**, basic form, permits for holding all the accused including the accused Gazi Md. Abdul Mannan, Md. Hafizuddin and Md. Azharul Islam responsible as above.

223. The doctrine of **Joint Criminal Enterprise [JCE]** which corresponds to section 4(1) of the Act of 1973 which 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".

224. It is to be noted further that a co-perpetrator in a joint criminal enterprise need not physically commit all the parts of the *actus reus* of the crime committed. Nor an accused, a participant in a joint criminal enterprise is required to be shown physically present when and where the principal crime was committed. Additionally, this view finds support from the principle enunciated by the **ICTY Appeals Chamber in the case of *Krnojelac*** which is as below:

"The Appeals Chamber notes that, in accordance with its decision in the Tadic Appeals Judgement, once a participant in a joint criminal enterprise shares the intent of that enterprise, his participation may take the form of assistance or contribution with a view to carrying out the common plan or purpose. The party concerned need not physically and personally commit the crime or crimes set out in the joint criminal enterprise."

[Krnojelac, (Appeals Chamber), Judgment: September 17, 2003, Para. 81]

225. Besides, the Tribunal reiterates that it is immaterial to show accused persons' role and conduct also at the phase of killing the abducted villagers. In this regard the proposition evolved in the **ICTY** may be cited as relevant and it is as below:

" If the agreed crime is committed by one or other of the participants in a joint criminal enterprise such as has already been discussed,

all of the participants in that enterprise are equally guilty of the crime regardless of the part played by each in its commission."

[Prosecutor vs. Vasiljevic, Case No. IT-98-32-T (Trial Chamber), Judgment: November 29, 2002, Para- 67]

226. Liability under the doctrine of **JCE[basic form]** need not involve the physical commission of a specific crime by all the members of **JCE** but may take the form of assistance in, or contribution to, the execution of the common purpose. Thus, 'once a participant in a joint criminal enterprise shares the intent of that enterprise, his participation may take the form of assistance or contribution with a view to carry out the common plan or purpose.

227. What we see in the case in hand? We are forced to infer from the circumstances unveiled that all the five accused persons belonging to local Razakar Bahini deliberately participated in launching the attack directing civilian population of villages and their act and conduct impel the indisputable conclusion that their 'common intent' was to cause harm and grave wrong to civilians and eventually their culpable acts caused death of several villagers who were 'protected persons'. And thus we may lawfully infer that the accused persons consciously 'shared' the intent of the group of Razakars in launching the attack knowing the consequence of their conduct and act. Accused persons were thus 'participants' to the commission of the principal crime and they did not act as mere 'aider' or 'abettor'.

228. The concept of **JCE** incorporates three elements: (i) plurality of persons (ii) the existence of a common plan, design or purpose and (iii) participation of the accused in the common design. Therefore, in the case in hand, we are to see whether (i) the accused took '*consenting part*' in the commission of the crime(ii) the accused was '*connected*' with plans or enterprise(iii) the accused '*belonged to*' the perpetrator organisation or group.

229. Designing plan to implement and carry out criminal activities cannot be a tangible act. So it is quite immaterial to ask for proof to establish as to where, when who and how the plan was designed. Of course the attack was planned and designed and the action of blowing up the Perua bridge by detonating mine by the freedom fighters stationed at *haor* area imbued the local Razakars in designing such culpable plan of launching attack, we conclude it validly. It is fairly assumed that without a common and premeditated plan such organized pattern of collective attack in accomplishing the act of large scale killing could not have been initiated and executed.

230. The Tribunal notes that **JCE** is a form of co-perpetration that establishes personal criminal liability. In fact section 4(1) of the Act of 1973 refers to **JCE** liability, although it has not been categorized in our Statute. But the expression '*committed*' occurred in section 4(1) of the Act includes participation in **JCE**. Section 4(1) tends to

cover the necessary elements of **JCE**, especially **JCE** category 1 and 3.

231. In line with the recognized principles almost common to all legal systems, a person who takes ‘consenting part’ in the commission of the crime or who is found to be ‘connected with plans or enterprise’ involved in the commission of crime [as enumerated in section 3(2) of the Act] or who is found to ‘belong an organisation or group’ engaged in the activities of committing crime, is guilty together with the ‘principals’

232. We have got it well proved that all the five accused persons participated in implementation of the strategic plan mainly by virtue of their membership in Razakar force. Their intentional act and conduct provided a substantial contribution towards creating a climate of horror amongst the civilians of the localities under attack that eventually resulted in death of several civilians by gun shot.

233. In view of above all the five accused persons are found to have had ‘concern’ of the upshot of the attack by the group of Razakars they accompanied at the crime sites. Tribunal notes that he who provided assistance, substantial contribution and encouragement to the commission of the crime of killing in the knowledge that the crime was going to be committed can be lawfully held to have had ‘concern in the killing’. Therefore, they

incur liability under section 4(1) of the Act of 1973 and under the theory of **JCE** as well.

234. The charge framed alleges that the accused persons and their accomplices had carried out the act of plundering houses and properties of civilians and caused torture to civilians of villages Ayla and Bidyanagar, in conjunction with the total attack. But prosecution could not adduce any evidence to substantiate these facts. The witnesses examined did not refer any such activity in their testimony. However, non description of any such criminal activity does not diminish the event of attack that resulted in death of several defenceless villagers by deliberate gun shot.

235. The accused persons have been charged also for the offence of other inhuman act, torture and abduction. It is proved that at the first phase of the event of attack five villagers were picked up on forcible capture and were taken to the site behind the house of Sheikh Chandu Mia where four of them were shot to death. That is to say, the killing of those four was the upshot of their forcible capture and the act of killing happened instantly after they were so captured and they were not taken away elsewhere far from the houses of the victims. The offence of killing those four villagers obviously exceeded the act of torture or abduction. Therefore, and since the accused persons have been found liable for the killing of

those four villagers we do not find it indispensable to hold them liable also for the offence of 'torture' and 'abduction' .

236. It has been proved from the narration of the direct witnesses P.W.02 and P.W.07, the two sons of victim Abdul Barek that the accused persons on having apprehended Mojibur Rahman Mongol [P.W.07] kept him tied up with a betel nut tree before they killed his father on capture. P.W.07 had to experience the brutal death of his father. It also reveals that five villagers first brought on forcible capture to the place where P.W.07 was kept tied up with a tree and then were taken away to the place behind the house of Sheikh Chandu Mia where the accused ATM Nasir and Shamsuddin Ahmed shot to them and four of five detainees succumbed to injuries excepting detainee Sheikh Hasu. The killing of four of five detainees happened at a place nearer to the betel nut tree where he [P.W.07] was kept tied up. Thus and the act of bringing five villagers near to him [P.W.07] on capture, before they were killed, perceptibly traumatized him [P.W.07].

237. Tribunal notes that an intentional act causing serious mental or physical suffering constitutes a serious attack on human dignity. Beating and causing mistreatment amounted to infliction of severe physical pain and it included other inhuman act. Thus, severe mental harm was caused to P.W.07 Mojibur Rahman Mongol and also to the detainees, before they were killed. Survived victim

Sheikh Hasu too inevitably sustained grave mental and physical harm. Utterance the accused ATM Nasir made to victim Abdul Barek was a threat indeed that inflicted serious mental pain to him. All these cumulatively impel to conclude that detaining P.W.07 Mojibur Rahman Mongol and conduct done to him constituted the offence of 'other inhuman act' as crime against humanity indeed.

238. In view of deliberation made on evaluation of evidence presented and settled jurisprudence we are convinced to conclude that the prosecution has been able to prove beyond reasonable doubt the event of horrific concurrent attack directing pro-liberation civilians of villages Ayla, Bidyanagar and localities around those that resulted in killing of several defenceless civilians. It also stands proved beyond reasonable doubt that a group of armed Razakars belonging to local Razakar Bahini accompanied by accused Gazi Md. Abdul Mannan [absconded], Nasiruddin Ahmed alias Md. Nasir alias Captain ATM Nasir[absconded], Shamsuddin Ahmed, Md. Hafizuddin[absconded] and Md. Azharul Islam[absconded] consciously and being part of the criminal enterprise accomplished it by sharing common intent of committing the crimes. It has also been proved beyond reasonable doubt that in conjunction with the attack all the five accused persons by their criminal acts committed the offence of 'other inhumane act'. All the five accused persons by their acts, conducts and act of common 'understanding'

participated, facilitated, abetted, contributed and had also complicity to the commission of such crimes. Therefore, the accused (1) Shamsuddin Ahmed, (2) Gazi Md. Abdul Mannan[absconded], (3) Nasiruddin Ahmed alias Md. Nasir alias Captain ATM Nasir [absconded], (4) Md. Hafizuddin [absconded], and (5) Md. Azharul Islam [absconded] who were part of 'collective criminality' incur liability under section 4(1) of the Act of 1973 and are held responsible accordingly for the offences of 'murder' and 'other inhumane act' as crimes against humanity as enumerated in section 3(2)(a)(g)(h) of the Act of 1973 which are punishable under section 20(2) of the Act.

Adjudication of Charge No. 02

[Killing of defenceless civilian Md. Miah Hossain of village Ayla]

239. Summary Charge: That On 13 November 1971 at about 02:00 P.M., a group of 10/15 Razakars led by accused Nasiruddin Ahmed alias Md. Nasir alias Captain ATM Nasir [absconded] by launching attack at village Ayla under Karimganj Police Station of the then Kishoreganj Sub-Division gunned down one farmer Md. Miah Hossain to death when he, being frightened, was about to flee running towards the village Bidyanagar, sensing the attack at a place nearer to the house of Mannan Mohajan and at the front side of village Bidyanagar.

240. Thereby, accused Nasiruddin Ahmed alias Md. Nasir alias Captain ATM Nasir [absconded] has been charged for facilitating, abetting and substantially contributing and also for 'complicity' to the commission of offence of 'murder' as crime against humanity as part of systematic attack directing unarmed civilians as specified in section 3(2) (a)(g)(h) of the Act of 1973 which are punishable under section 20(2) of the Act for which the accused has incurred liability under section 4(1) of the Act.

Evidence of Witnesses Presented

241. In all 08 witnesses [P.Ws. 01, 02, 03, 04, 05, 06, 07 and 08] including the son of victim Md. Miah Hossain came on dock to testify the event narrated in this charge. Some of the witnesses examined are from neighbouring villages who narrated their experience in respect of the event happened on the preceding day as well. Before we enter the task of evaluation of their evidence lets us first see what they have testified on oath before the Tribunal.

242. P.W. 01 Md. Mehdi Ul Alam [60] is a freedom-fighter. In 1971 he was about 16 years old and a student of class X. He stated that on listening the 07 March's historic speech of Bangabandhu Sheikh Mujibur Rahman he became inspired and started taking preparation to join the war of liberation. He went on to state that on 19 April 1971 the Pakistani occupation army arrived at Kishoreganj town and had set up its camp there. On 20 April 1971, the Pakistani

army came to Karimganj Thana headquarter and formed Thana Peace Committee making local Muslim League President Abdur Razzak its head. Similarly, the Pakistani army formed Kishoreganj Sub-Division Peace Committee under the leadership of Moulana Mosleh Uddin, the Vice President of Kishoreganj Sub-Division PDP. Thereafter, the Pakistani army formed Karimganj Thana Razakar Bahini and made accused Gazi Md. Abdul Mannan its commander.

243. In respect of accused persons' identity, P.W.01 stated that accused ATM Nasir , elder than him, was a Razakar and used to continue his study staying at the house of Mannan Mohajan of village Ayla under Karimganj Police Station. Accused Shamsuddin Ahmed had been in lodging at village Atkapara Gujadia under Karimganj Police Station to continue his study. Accused ATM Nasir, Shamsuddin, Hafizuddin and Azharul Islam joined the local Razakar Bahini together with accused Gazi Abdul Mannan. Afterwards, he along with some of his friends went to India to join the war of liberation and on receiving training they returned back to the locality under Kalmakanda Police Station and participated freedom fight in the localities under Kalmakanda and Barahatta Police Stations.

244. P.W.01 further stated that some groups of freedom fighters came to the locality under Karimganj Police Station and got

stationed around the *haor* localities under Police Stations Itna, Mithamoin, Bajitpur and Oshtogram treating them to be safe. Having apprehended that then Pakistani army would have attacked them coming through river from 'chamra bandar', they [freedom fighters] blew out the bridge at Kiraton Beelpara situated on the road from Kishoreganj to chamra bandar through Karimganj, by blasting mine.

245. P.W. 01 further stated that on 13 November 1971 a group of 10/12 Razakars under the leadership of accused ATM Nasir along with accused Shamsuddin, Hafizuddin and Azharul Islam attacked village Ayla. At that time accused ATM Nasir gunned down Miah Hossain of village Ayla to death. They came to know about the said incidents from their sources. After the liberation of the country he also came to know about the incident of killing of victim Miah Hossain from his [victim Miah Hossain] son Golap and nephew Mostofa.

246. In cross-examination, P.W. 01 stated that he is a retired teacher and at present he is the commander of Karimganj Thana Muktijodhdha Sangsad. He heard that accused ATM Nasir joined the Bangladesh army as an officer, but he did not know whether that accused person was promoted to the post of Captain. He also heard that there were more than one hundred Razakars in the locality of Karimganj Police Station. P.W. 01 denied the suggestion

that the account he [P.W. 01] made in respect of the event of killing of Md. Miah Hossain implicating the accused persons was untrue and baseless.

247. P.W. 02 Md. Adam Ali [61] is the son of victim Abdul Berek who was shot dead in conjunction with the attack launched on 12 November 1971. In 1971 he used to work as a tailor at Karimganj bazaar. He stated that during the war of liberation in 1971, his brother Habibur Rahman Pashu and many others of their locality went to India intending to join the war of liberation. On 01 November 1971 many freedom-fighters took shelter around their locality. There had been a road towards chamra bandar from Kishoreganj and the Razakars used to move towards *haor* [wet land] area through this road. The freedom-fighters had blown out Perua bridge at their locality to resist movement of Razakars to *haor* area through that road. Afterwards, with this, he heard from the locals at Karimganj bazaar that Razakars would have attacked the freedom fighters and Awami League supporters of their locality.

248. In addition to describing the event of attack on 12 November 1971 around their villages P.W.02 stated that on the following day[13 November 1971] at about 12.00/12.30 P.M. he went to the house of Mohajan at village Bidyanagar and saw there 6/7 Razakars including accused ATM Nasir, Shamsuddin Ahmed, Md.

Hafizuddin and Md. Azharul Islam and then he saw accused ATM Nasir chasing one man and with this he entered inside his Mohajan's house. After a short while he heard firing of gun shot. They found bullet hit dead body of Miah Hossain lying on southern bank of the pond in front of Mohajan's house, after the Razakars had left the site.

249. In cross-examination, P.W.02 stated that he heard that accused ATM Nasir joined the Bangladesh army after independence, but he did not know whether accused ATM Nasir was known as Captain Nasir in 1971. P.W.02 denied the suggestion that the Pakistani army coming from Kishoreganj Sadar facilitated the commission of the event he narrated. Defence suggested that the account he [P.W.02] made in respect of the event implicating the accused persons was untrue, baseless and false. But P.W.02 denied it. P.W. 02 also denied the suggestions that the accused persons were not Razakars and that they were not involved with the commission of crimes against humanity.

250. P.W. 03 Md. Golam Mostofa [58] is a resident of village Ayla, one of the crime sites. In 1971 he was 13/14 years old, he stated. He made an account in respect of formation of Peace Committee in Kishoreganj Sub-Division and Karimganj Thana. He stated too that Abdur Razzak, the Chairman of Karimganj Peace Committee formed local Razakar Bahini consisting of 70/80 people

under the leadership of accused Razakar Gazi Md. Abdul Mannan. Amongst those Razakars he knew accused ATM Nasir, Shamsuddin Ahmed, Md. Azharul Islam, Md. Hafizuddin and many others. The locally formed Razakar Bahini had carried out atrocious activities including killing, looting, arson, rape around the localities of Karimganj Thana.

251. P.W.03 further stated that during the first part of November 1971, the freedom-fighters had selected the localities of villages Ayla, Bidyanagar, Fatergope and Kiraton Beelpara under Karimganj Police Station as their sanctuary. There had been a road to *chamra bandar* from Kishoreganj and to resist the movement of Razakars and Pakistani army through this road, the freedom-fighters had blown up the Perua bridge situated on that road, by blasting mine.

252. In respect of the event of attack that resulted in killing of Md. Miah Hossain P.W.03 stated that on 13 November 1971 at about 12:00 P.M. when he decided to go away to village Barughuria about three kilometre far from their house, one of their neighbours Yunus Ali [now dead] informed them that ‘Razakars have come to our village, try to go into hid’. At that time his [P.W.03] uncle Miah Hossain was working at the field in front of their house. Then his [P.W.03] father asked him [Miah Hossain] to flee away. When he [P.W.03] came to the road for moving towards village Bidyanagar,

he saw accused ATM Nasir and his 10/12 accomplice Razakars chasing his uncle Miah Hossain. He then heard firing of gun shot when he was in the middle of the Beel [wet land]. After the Razakars had left the place he came back and found his uncle Miah Hossain's bullet hit dead body near the pond. Villagers came and saw his dead body and afterwards they buried it at their house.

253. On cross-examination, P.W.03 stated in reply to question put to him by the defence that accused ATM Nasir used to stay on lodging at the house of Mannan Mohajan in front of their [P.W.03] house and he [accused ATM Nasir] joined the Bangladesh army as an officer. They sued accused ATM Nasir for the charge of killing his uncle Miah Hossain. P.W.03 denied the suggestion that in 1971 accused ATM Nasir was a student. He also stated that the Perua bridge was about one mile far from their house. P.W.03 also denied the suggestions put to him by the defence that the event of killing he narrated was carried out by the Pakistani army and that the accused did not belong to Razakar Bahini. Finally P.W.03 denied the suggestion that what he narrated in respect of the events implicating the accused persons was untrue, imaginary and concocted.

254. P.W. 04 Md Akkas [60], a resident of village Bidyanagar under Karimganj Police Station of the then Kishoreganj Sub-Division, was 15/16 years old in 1971. He stated that on 13

November 1971 at about 01:00 P.M. while he had been working in the field beside the bank of Beel he saw accused ATM Nasir and Shamsuddin Ahmed chasing Miah Hossain towards the Beel and on the bank of Beel accused ATM Nasir shot him [Miah Hossain] to death and then they had left the site. Later on, they buried the dead body of Miah Hossain bringing to home. He [P.W. 04] knew accused ATM Nasir and Shamsuddin Ahmed since earlier as accused ATM Nasir had been staying at the house of Mannan Mohajan on lodging where accused Shamsuddin Ahmed used to come and meet accused ATM Nasir.

255. On cross-examination, P.W.04 stated that he did not see or hear the Pakistani army coming to Karimganj Police Station or to their village, and that accused ATM Nasir joined the Razakar Bahini in 1971. P.W.04 denied the suggestions put to him by the defence that the accused ATM Nasir did not chase the victim Miah Hossain towards the Beel as he stated and that he did not see the alleged event and what he stated was tutored and untrue.

256. P.W.05 Md. Golap Miah [58], a resident of village Ayla, was a boy of 13/14 years in 1971 when he was a student of class V. He is the son of victim Md. Miah Hossain. He stated that there existed a Razakar Bahini in Karimganj Thana locality formed of 70/80 Razakars under the leadership of accused Gazi Md. Abdul Mannan. Accused Shamsuddin Ahmed, ATM Nasir, Md.

Hafizuddin, Md. Azharul Islam and many others belonged to the said Razakar Bahini. During the first part of November 1971, the freedom- fighters blew up the Perua bridge on the road to chamra bandar through their locality from Karimganj. With this, the local Razakars became distracted to the freedom fighters and the civilians of their localities.

257. In addition to narrating the event of attack that resulted in killing of several villagers occurred on the preceding day [12 November 1971], P.W.05 stated that on 13 November 1971 in the afternoon a group of 8/10 Razakars led by accused ATM Nasir and accompanied by Razakars accused Shamsuddin Ahmed, Md. Hafizuddin and Md. Azharul Islam again attacked their village Ayla when he had been at their home and his father was at work in the field in front of their house. On being informed about the attack his [P.W.05] cousin Golam Mostofa asked him and his father to quit the village and with this he [P.W. 05] and his father started running towards southern part of the village through paddy field. But the Razakars started chasing them, and at a stage his father fell down in the Beel [wet land] on the bank of pond in front of the house of Mannan Mohajan and he [P.W. 05] managed to go into hid inside the field nearer to the Beel where from he saw accused ATM Nasir gunning his father down to death. He [P.W.05] came out of the hiding place after the Razakars had left the site and

discovered the dead body of his father. Later on, Akkas [P.W.04] who had been working near the field and his [P.W.05] cousin Golam Mostofa [P.W.03] also came to the site and then they brought the dead body of his father at home and buried it.

258. In cross-examination, P.W.05 stated that he knew Mannan Mohajan who was their neighbour and accused ATM Nasir used to stay at his house on lodging, but he could not say whether he used to stay there on lodging for continuing study. P.W.05 also stated that the Pakistani army never came to their village Ayla. The Razakars could not see him [P.W.05] when they were chasing his father. He sued the accused persons over the killing of his father in 2010. He denied the suggestions that the Pakistani army had set up their camp in Karimganj Thana locality and that the accused persons did not belong to Razakar Bahini and they were not involved with the killing of his father and it was the army who had killed his father [Miah Hossain]. He also denied the suggestion that what he narrated in respect of the event of killing implicating the accused persons was untrue and tutored.

259. P.W. 06 Md. Shajahan [57] is a resident of village Ayla. He is the son of Abdul Mazid, one of the victims of the event of killing villagers that took place on 12 November 1971. In 1971, he was a student of class IV. He stated that during the war of liberation in 1971 he knew that a Razakar Bahini was formed in Karimganj

Thana locality under the leadership of Gazi Md. Abdul Mannan. The Razakar Bahini was formed of 70/80 Razakars including accused ATM Nasir, Shamsuddin Ahmed, Md. Azharul Islam and Md. Hafizuddin. P.W.06 further stated that in 1971 there had been a road from Karimganj Thana Sadar to chamra bandar, adjacent to their village. The freedom-fighters had blown up the Perua bridge on that road by blasting mine to resist the movement of Razakars through it.

260. After narrating the event of attack that resulted in brutal killing of villagers happened on the preceding day [12 November 1971], P.W.06 also stated that on 13 November 1971 accused ATM Nasir and his cohort Razakars had gunned down Miah Hossain, the father of Golap Miah of their village to death.

261. On cross-examination, P.W.06 denied the suggestions put to him by the defence that the accused persons did not belong to Razakar Bahini and that what he stated in respect of killing Miah Hossain on 13 November 1971 implicating accused ATM Nasir was untrue, concocted and tutored.

262. P.W. 07 Mojibur Rahman Mongol [55] is the son of Abdul Barek, one of the victims of the event of killing civilians of village Bidyanagar that occurred on 12 November 1971. In 1971, he was about 10/11 years old and a student of class IV, he stated. P.W.07 stated that during the war of liberation in 1971 a Razakar Bahini

was formed of 70/80 Razakars including accused Shamsuddin Ahmed, ATM Nasir, Hafizuddin and Md. Azharul Islam under the leadership of accused Gazi Abdul Mannan in Karimganj Thana locality. His [P.W.07] elder brother Habibur Rahman Pashu was a freedom fighter. In 1971 there had been a road in front of their village from Karimganj to chamra bandar. The freedom-fighters, in the first part of November, 1971 had blown up the Perua bridge on this road by blasting mine.

263. In addition to narrating the attack and criminal acts of the group of Razakars directing the villagers happened on the preceding day [12 November 1971] to which he claims to be a direct witness P.W.07 stated that on 13 November 1971 they came to know from Akkas [P.W.04] and Golap [P.W.05] that accused ATM Nasir, Shamsuddin Ahmed, Azharul Islam and their accomplice Razakars shot Miah Hossain of village Ayla to death. On that day at about 04:00 P.M. he went to the house of Miah Hossain where he saw his dead body.

264. In cross-examination, P.W.07 stated that the Pakistani army did not come to Karimganj Thana locality. Razzak Munshi was the father of accused ATM Nasir and he was from village Dulipara [now Modhdhopara]. He could not say whether accused ATM Nasir served in Bangladesh army. P.W.07 denied the defence suggestions that he did not hear the event of killing Miah Hossain

from Akkas and Golap, and that the accused persons did not belong to Razakar Bahini and were not involved with the any event alleged.

265. P.W. 08 Md. Abdus Salam [66] is from village Ayla. He is the son of Abdul Jabbar, one of the victims of the event of killing happened on 12 November 1971. He was 22/23 years old in 1971. He stated that Pakistani army came to Karimganj Thana Sadar at the end of April 1971 when it formed Peace Committee under the leadership of former Union Parishad Chairman Abdur Razzak, and a Razakar Bahini of 70/80 Razakars including accused Shamsuddin Ahmed, Md. Hafizuddin, ATM Nasir and Md. Azharul Islam was also formed making accused Gazi Md. Abdul Mannan its commander.

266. P.W.08 also stated that there had been a road to chamra bandar from Karimganj Thana Sadar. In the first part of November 1971, the freedom fighters had blown up the Perua bridge situated on that road and with this, activities of Razakars became amplified.

267. P.W.08 further stated that they buried his father's [Abdul Jabbar, a victim of the attack happened on the preceding day i.e. 12 November 1971] dead body in the morning of 13 November 1971, and on that day when they went to the mosque to say *Johar* prayer they saw 10/15 Razakars accompanied by accused ATM Nasir and Shamsuddin Ahmed moving towards south beside the mosque.

They heard firing of gun shot when they were saying *Johar* prayer and then coming out of the mosque they heard from locals that Razakars had killed Miah Hossain, and with this they rushed to the place near the pond in front of Mannan Mohajan where they discovered bullet hit dead body of Miah Hossain. They also found Miah Hossain's son Golap [P.W.05], Miah Hossain's wife, Mostofa, Akkas [P.W.04] and many others present there. Then Akkas [P.W.04] told him that accused ATM Nasir being accompanied by accused Shamsuddin Ahmed shot Miah Hossain to death.

268. In cross-examination, P.W.08 affirmed the fact of stationing of the Pakistani army in Kishoreganj Sub-Division Sadar and formation of Peace Committee under the chairmanship of Moulana Syed Mosleh Uddin. He also stated that Karimganj Peace Committee was formed under the leadership of Abdur Razzak. P.W.08 denied defence suggestion that said Abdur Razzak was the commander of Karimganj Razakar Bahini. He could not say whether accused ATM Nasir joined the Bangladesh army. In reply to question put to him by the defence P.W.08 stated that the Pakistani army had set up its camp in Kishoreganj. He denied the defence suggestion that the Pakistani army used to come to the villages including Ayla and Bidyanagar under Karimganj Police Station from Kishoreganj Sub-Division headquarter. Finally, P.W.08 denied the suggestions put to him by the defence that he did

not hear the event of killing Miah Hossain as alleged and what he stated in respect of killing Miah Hossain implicating the accused ATM Nasir and Shamsuddin Ahmed was untrue, concocted and baseless and that the accused persons did not belong to Razakar Bahini and they were not involved with the commission of alleged killing.

Finding with Reasoning on Evaluation of Evidence

269. It has been argued on part of the prosecution that from the evidence of prosecution witnesses examined in support of this charge it has become proved beyond reasonable doubt that accused Nasiruddin Ahmed alias Md. Nasir alias Captain ATM Nasir, a potential member of local Razakar Bahini, and his cohorts actively and consciously participated in launching attack and he himself culpably acted in causing death of victim Md. Miah Hossain by gun shot. P.Ws. examined including the son of the victim consistently testified the facts crucially relevant to the attack that resulted in killing of Md. Miah Hossain, a defenceless civilian. Defence could not refute the event testified and accused ATM Nasir's participation and complicity therewith, in any manner.

270. Mr. Abdus Sukur Khan, the learned State defence counsel defending the four absconded accused persons including accused ATM Nasir argued that prosecution has failed to prove complicity and participation of this accused with the commission of alleged

offence of Killing Md. Miah Hossain. Testimony of witnesses examined is not consistent and many of witnesses were minor at the relevant time, and as such, naturally they had no occasion of being acquainted with the identity of accused Nasiruddin Ahmed alias Md. Nasir alias Captain ATM Nasir. The crimes alleged might have been accomplished by the group of Razakars or Pakistani army men with whom this accused had no nexus.

271. The charge under adjudication involves an attack launched by a group of 10/15 Razakars led by accused Nasiruddin Ahmed alias Md. Nasir alias Captain ATM Nasir [absconded] at village Ayla under Karimganj Police Station of the then Kishoreganj Sub-Division when Md. Miah Hossain, a civilian of the said village was gunned down to death as he being frightened attempted to flee sensing the attack. The event of killing occurred at a place nearer to the house of Mannan Mohajan and at the front side of village Bidyanagar, the charge alleges.

272. In order to prove the arraignment brought against accused Nasiruddin Ahmed alias Md. Nasir alias Captain ATM Nasir prosecution adduced in all 08 witnesses including the son of the victim Miah Hossain who have been examined as P.W.01, P.W.02, P.W.03, P.W.04, P.W.05, P.W.06, P.W.07 and P.W.08. They testified the event narrated in this charge. Some of the witnesses examined are from neighbouring villages who narrated their

experience in respect of the event of attack happened on the preceding day as well.

273. The charge solely rests upon ocular evidence. The event of alleged killing occurred in day time i.e. at about 02.00 P.M. Prosecution requires proving the attack that resulted in killing a civilian of village Ayla and liability of the accused ATM Nasir in accomplishing the criminal acts. Accused ATM Nasir along with his accomplice Razakars allegedly on chasing victim Md. Miah Hossain shot him to death. The charge framed does not indict any other accused persons with the group in perpetrating the offence of murder.

274. We are to determine, on the basis of evaluation of evidence adduced and relevant facts unveiled that –

(i) A group of 10/15 armed Razakars led by accused Nasiruddin Ahmed had attacked village Ayla intending to cause wrong doing directing civilian population.

(ii) The group of attackers had chased the victim Md. Miah Hossain when he was on run to save him.

(iii) Accused Nasiruddin Ahmed physically perpetrated the act of causing death of victim Md. Miah Hossain by gunning him down.

(iv) The attack was systematic and to further the policy of the Pakistani occupation army.

275. According to P.W.05 Md. Golap Miah, the son of victim Md. Miah Hossain, he and his father started running towards southern part of the village through paddy field. But the Razakars started

chasing them, and at a stage his father fell down in the Beel [wet land] on the bank of pond in front of the house of Mannan Mohajan and he [P.W. 05] managed to go into hid inside the field nearer to the Beel where from he saw accused Nasiruddin Ahmed gunning his father down to death. Seeing the act of killing Md. Miah Hossain as stated by his son P.W.05 could not be impeached by the defence in any manner. Defence does not dispute the killing. It simply denies accused Nasiruddin Ahmed's complicity with the event of killing. Testimony of P.W.05 depicts that accused Nasiruddin Ahmed physically participated in causing death of victim Md. Miah Hossain by gunning him down. Preceding to seeing the act of killing his father as stated above, P.W.05 was informed about the attack by a group of Razakars led by accused Nasiruddin Ahmed and also accompanied by accused Shamsuddin Ahmed, Md. Hafizuddin and Md. Azharul Islam directing their village, P.W.05 stated.

276. Accompanying the group by accused Shamsuddin Ahmed, Md. Hafizuddin and Md. Azharul Islam as stated by P.W.05 is beyond the charge framed. Only accused Nasiruddin Ahmed has been indicted for the offence narrated in this charge [charge no.02]. Since P.W.05 himself did not see the group moving intending to launch attack he was not supposed to see actually who were with the group. Accordingly, his testimony in this regard implicating

accused Shamsuddin Ahmed, Md. Hafizuddin and Md. Azharul Islam being exaggeration deserves exclusion. Testimony of P.W. 05 in relation to complicity of accused Nasiruddin Ahmed in committing the offence is to be weighed together with other evidence and facts relevant to the event emerged.

277. P.W.03 Md. Golam Mostofa is another direct witness who saw the fact of chasing his uncle victim Md. Miah Hossain by a group of 10/12 Razakars accompanied by accused Nasiruddin Ahmed when he[P.W.03] came to the road for moving towards village Bidyanagar . He then heard firing of gun shot when he was in the middle of the Beel [wet land]. After the Razakars had left the place he came back and found his uncle Md. Miah Hossain's bullet hit dead body near the pond. Villagers came and saw his dead body and afterwards they buried it at their house.

278. The above direct testimony of P.W.03 depicts that accused Nasiruddin Ahmed was with the group of Razakars and Md. Miah Hossain died due to gun shot near a pond. It provides consistent corroboration to P.W.05, the son of the victim Md. Miah Hossain who saw accused Nasiruddin Ahmed and his accomplices chasing his father. Defence does not appear to have made any effective effort to refute this version by cross-examining the P.W.03. It simply denies accused Nasiruddin Ahmed's concern and

involvement with the attack that resulted in killing of Md. Miah Hossain.

279. P.W.08 Md. Abdus Salam is from village Ayla. He stated that on 13 November 1971 when they were on the way to the mosque to say *Johar* prayer they saw accused ATM Nasir, Shamsuddin Ahmed and their 10/15 cohorts moving towards south beside the mosque. P.W.08 also stated that they heard firing of gun shot when they were saying *Johar* prayer and then coming out of the mosque they heard from locals that Razakars had killed Md. Miah Hossain, and with this they rushed to the place near the pond in front of the house of Mannan Mohajan where they discovered bullet hit dead body of Md. Miah Hossain.

280. The above version remained unshaken. It adds further corroboration to the fact that the group of attackers was accompanied by accused Nasiruddin Ahmed alias Md. Nasir alias Captain ATM Nasir and the victim Md. Miah Hossain was shot to death at a place near the pond. However, seeing the accused Shamsuddin Ahmed with the group seems to be exaggeration as it is beyond the charge framed and merely for this reason the testimony of P.W.08 so far as it relates to complicity of accused Nasiruddin Ahmed cannot be allowed to go on air in its entirety.

281. P.W.02 Md. Adam Ali on 13 November 1971 came to the house of Mohajan at village Bidyanagar when at about 12/12:30

P.M. he saw there 6/7 Razakars including accused ATM Nasir, Shamsuddin Ahmed, Md. Hafizuddin and Md. Azharul Islam and then he saw accused ATM Nasir chasing one man and with this he entered inside his Mohajan's house, and after a short while he heard firing of gun shot. They found bullet hit dead body of Miah Hossain lying on southern bank of the pond in front of Mohajan's house, after the Razakars had left the site.

282. The above version depicts unmistakably that accused Nasiruddin Ahmed along with his accomplice Razakars shot Md. Miah Hossain to death on chasing and his dead body was found lying on southern bank of the pond in front of Mannan Mohajan's house. It lends assurance to what has been testified by the P.W.05, the son of victim, P.W.03 and P.W.08 in respect of the act of chasing Md. Miah Hossain by accused Nasiruddin Ahmed and his accomplices and at one stage the victim was shot to death. Version of P.W.02 implicating accused Shamsuddin Ahmed, Md. Hafizuddin and Md. Azharul Islam as accomplices of the accused Nasiruddin Ahmed at the time of committing the act of killing deserves to be excluded from consideration as it being beyond the charge framed seems to be exaggeration.

283. The above piece of evidence of P.W.02 lends corroboration to the fact as emerged from the evidence of P.W.03 and P.W.05 that accused Nasiruddin Ahmed was with the group of Razakars

and Md. Miah Hossain was shot to death by the group. Naturally, he [P.W.02] could not see who physically perpetrated the act of gunning down Md. Miah Hossain to death. But his testimony proves the attack by a group of Razakars accompanied by accused Nasiruddin Ahmed alias Md. Nasir alias Captain ATM Nasir and soon after the attack was launched victim Md. Miah Hossain was shot to death.

284. P.W.07 Mojibur Rahman Mongol, a hearsay witness, stated that on 13 November 1971 they came to know from Akkas [P.W.04] and Golap [P.W.05] that accused ATM Nasir, Shamsuddin Ahmed, Azharul Islam and their accomplice Razakars shot Md. Miah Hossain of village Ayla to death. P.W.07 does not claim to have witnessed any phase of the event. He however saw the dead body of victim Md. Miah Hossain as he went to Md. Miah Hossain's house afterward. This version proves the death of Md. Miah Hossain occurred at the place and time as narrated in the charge framed.

285. P.W.06 Md. Shajahan stated that on 13 November 1971 accused ATM Nasir and his cohort Razakars had gunned down Md. Miah Hossain, the father of Golap Miah of their village to death. It is not clear whether he saw or heard the event. At best as a local he had occasion to know later on as to death of Md. Miah Hossain. But his testimony does not deserve consideration to prove the act of

causing death of Md. Miah Hossain by gun shot by the accused ATM Nasir.

286. P.W.04 Md Akkas, a resident of village Bidyanagar under Karimganj Police Station of the then Kishoreganj Sub-Division was 15/16 years old in 1971. He stated that on 13 November 1971 at about 01:00 P.M. while he had been working in the field beside the bank of Beel he saw accused ATM Nasir and Shamsuddin Ahmed chasing Md. Miah Hossain towards the Beel and on the bank of Beel accused ATM Nasir shot him to death and then had left the site.

287. The above version of P.W.04 so far as it relates to the act of gunning down Md. Miah Hossain by accused ATM Nasir lends corroboration to what has been stated by P.W.05, the son of the victim, and it remained uncontroverted. Accused Shamsuddin Ahmed has not been indicted for the offence narrated in this charge. Therefore, testimony of P.W.04 implicating accused Shamsuddin Ahmed with the event seems to be a glaring exaggeration. However, it by itself does not render his testimony unbelievable in its entirety.

288. P.W.01 Md. Mehdi Ul Alam stated that on 13 November 1971, a group of 10/12 Razakars under the leadership of accused ATM Nasir along with accused Shamsuddin, Hafizuddin and Azharul Islam attacked village Ayla. At that time accused ATM

Nasir gunned down Md. Miah Hossain of village Ayla to death. They came to know about the said incident from their sources. After the liberation of the country he also came to know about the incident of killing of victim Md. Miah Hossain from his [victim] son Golap [P.W.05] and nephew Mostofa [P.W.03].

289. P.W.01 is a hearsay witness. His testimony lends corroboration to what has been testified in this regard by the direct witnesses. The version of P.W. 01 implicating accused Shamsuddin Ahmed, Md. Hafizuddin and Md. Azharul Islam as accomplices of accused Nasiruddin Ahmed at the time of committing of killing deserves to be excluded from consideration as it being beyond the charge framed seems to be exaggeration.

290. Tribunal notes that it would be appropriate and jurisprudentially logical if, in the process of appraisal of evidence, we separate the grains of acceptable truth from the chaff of exaggerations. Merely for the reason that accused Shamsuddin Ahmed, Md. Azharul Islam and Md. Hafizuddin belonged to locally formed Razakar Bahini it cannot be accepted to be true that they also accompanied the group of Razakars, as testified by some of witnesses, in carrying out the attack that resulted in killing Md. Miah Hossain, a villager. None of these three persons, accused of some other offences narrated in other charges framed, has been

indicated for the offence of murder in question [as listed in charge no.02].

291. Tribunal also notes that exaggerations *per se* do not render the evidence brittle. Testimony implicating other two-three persons, accused of other offences narrated in other charges framed, with the commission of offence alleged cannot be dubbed as improvements or exaggerations as it is not aimed to strengthen the arraignment brought against accused ATM Nasir. Testimony implicating two-three other persons with the event of attack is not related with the event of attack narrated in charge framed [charge no.02] in any manner. Naturally, it deserves exclusion from consideration and as a result any such exaggeration does not diminish the credibility of witnesses.

292. Next, the witnesses, due to lapse of long passage of time might have failed to recollect with exactitude as to which Razakars were with the group. But it however has been unveiled that accused Nasiruddin Ahmed alias Md. Nasir alias Captain ATM Nasir who has been charged with for the offence of gunning the victim Md. Miah Hossain down to death . This naturally retained in the memory of direct witnesses as a 'core fact' and evidence led in this regard cannot be discarded merely for the exaggeration appeared in the testimony of the witnesses in narrating the event. Memory over time naturally degenerates and hence it would be wrong and unjust

to treat the exaggeration occurred due to forgetfulness as being synonymous with giving false testimony.

293. Why a group of Razakars had caused death of a defenceless civilian Md. Miah Hossain of village Ayla? This crucial question needs to be resolved to determine whether the act of killing was resulted from systematic attack directing civilian population. Already we have got it proved, in adjudicating charge no. 01 involving organised attack on 12 November 1971 directing the villages Ayla and Bidyanagar and neighbouring localities under Police Station Karimganj of the then Kishoreganj Sub-Division that a group of Razakars accompanied by all the five accused persons had carried out destructive activities including killing of numerous civilians and they did it in execution of designed plan as few days back the freedom fighters stationed nearby localities had blown out Perua bridge at their locality by blasting mine intending to resist movement of Razakars to *haor[wet land]* area through that road. With this the locals of the villages Ayla, Bidyanagar and neighbouring villages anticipated that Razakars would have attacked the freedom fighters and Awami League supporters of their locality. And eventually it happened as the local Razakars along with the accused persons became extremely violent in launching attack on 12 November 1971 which has already been proved and all the five accused persons have been found to have

incurred criminal liability for the attack that resulted in killing of numerous civilians[as listed in charge no.01]. Presumably, the criminal acts of Razakars led by accused Nasiruddin Ahmed done on the following day i.e on 13 November 1971 [as narrated in charge no.02] were inevitably chained to the purpose of the attack happened systematically on the preceding day that resulted in killing numerous civilians.

294. In view of above, we may lawfully infer that the group of Razakars led by accused Nasiruddin Ahmed alias Md. Nasir alias Captain ATM Nasir in continuance of the criminal acts committed on the previous day [as narrated in charge no.01] was on move again around villages Ayla and Bidyanagar when on seeing the victim Md. Miah Hossain, a protected person, fleeing became aggressively hostile for a second time and thus on chasing gunned down him to death.

295. The evidence of witnesses examined has a ring of truth and is cogent, credible and trustworthy and thus it can safely be relied upon. On perusal of the evidence on record it is found that most of the incriminating statements of witnesses have not been challenged by the defence. The nefarious acts of accused Nasiruddin Ahmed were deliberately intended to cause death of an unarmed civilian, the victim Md. Miah Hossain, the evidence presented demonstrates

it and in accomplishing the belligerent wrong doing accused Nasiruddin Ahmed led the group exceeding all norms of humanity.

296. Defence alleges that the prosecution witnesses are lying and have testified being tutored, by putting mere suggestions. But the defence failed to lay the foundation for that challenge and put the challenge to the witnesses in question during cross-examination. There has been no earthly reason to denounce the testimony of witnesses.

297. The majority of the witnesses who appeared before the Tribunal are eye-witnesses and they testified the event they had seen or heard in relation to the attack and acts alleged in the charge framed. It is true that there appeared exaggeration as some of the witnesses have implicated some other persons, in addition to the accused Nasiruddin Ahmed alias Md. Nasir alias Captain ATM Nasir with the event. But this alone is not a ground for believing that the witnesses made false testimony on solemn declaration.

298. Conduct and act of accused Nasiruddin Ahmed inevitably formed part of systematic attack although it resulted in death of one unarmed civilian. But the criminal acts of the accused constituted the offence of murder as crime against humanity, as such, criminal acts forming part of attack were intended to intimidate the rights of protected persons. Not the number of victims but act and conduct of accused forming part of attack and pattern thereof and context are

to be considered in arriving at decision whether the offence was a ‘group crime’ or an isolated one. It is to be noted that the **ICTY Trial Chamber** has observed in the case of *Halilovic* that—

“there is no reason why a single, isolated act, could not constitute a violation of the law and customs of war, when the required nexus has been established.”

[Prosecutor v. Sefer Halilovic, Case No. IT-01-48-T, Judgment: 16 November 2005, Para-724]

299. Already it has been found proved from inspiring testimony of competent and reliable witnesses that accused Nasiruddin Ahmed alias Md. Nasir alias Captain ATM Nasir led the group of Razakars and on chasing victim Md. Miah Hossain, a civilian of village Ayla the said accused himself shot him to death when he was on run to escape, sensing the attack. The event happened in day time. The manner the accused participated in accomplishing the principal crime impeccably replicates grave culpable act and conduct which qualifies the offence committed as a crime against humanity.

300. It is now well settled that even a single act if had link or nexus with the armed conflict may constitute a violation of the law and customs of war. The accused being a member of auxiliary force of Pakistani occupation army is found to have had complicity by his alleged act and conduct which had nexus with the policy and plan of the occupation armed force in the territory of Bangladesh. And therefore, the accused Nasiruddin Ahmed alias Md. Nasir alias

Captain ATM Nasir cannot be immune from responsibility of committing the offence of murder as crime against humanity.

301. History says that the Pakistani occupation army and their local collaborators had carried out their brutal criminal activities directing the Bengali civilian population in their own territory in 1971. In the case in hand it transpires that the events involving attack directing civilian population of localities under Karimganj Police Station of the then Kishoreganj Sub-Division were carried out by the members of locally formed Razakar Bahini, to further the policy of Pakistani occupation army. The atrocious acts committed by the accused persons directing civilian population were not at all compatible to the notion of 'protection of civilians' in own territory during armed conflict or intra-state war or conflict, as contained in the Geneva Convention or International Humanitarian Law or Laws of War.

302. It may be presumed indisputably that the locally formed Razakar Bahini to which the accused persons belonged was under control of Pakistani occupation army and they had acted simply as the 'aggressors' and thereby the accused Nasiruddin Ahmed belonging to local Razakar Bahini had committed forbidden act of aggression directing civilian population as he is found to have had shot the victim Md. Miah Hossain to death, by launching a systematic and deliberate attack being accompanied by his cohorts.

303. It is natural that in such a fact-situation every person would feel the apprehension of danger to his life and may run away. However, some of witnesses remaining in hiding could saw the attack and movement of the group and the act of gunning down the victim. Md. Miah Hossain, the victim was on run to save himself, sensing the attack. But on being chased by the group led by accused Nasiruddin Ahmed he had to embrace death by gun shot. It has been well settled in the case of *Kvocka* that the common elements of the offence of murder as crime against humanity are the following:

- " 1. *the death of a victim taking no active part in the hostilities;*
2. *that the death was the result of an act or omission of the accused or of one or more persons for whom the accused is criminally responsible;*
3. *the intent of the accused or of the person or persons for whom he is criminally responsible*
 - a) *to kill the victim; or*
 - b) *to wilfully cause serious bodily harm which the perpetrator should reasonably have known might lead to death"*

**[Prosecutor v. Miroslav Kvocka and others,
Case No. IT-98-30/1-A, Judgment: 28
February 2005, Para-261]**

304. The conduct of the accused Nasiruddin Ahmed as emerged from the evidence discussed above substantially caused the death of the victim Md. Miah Hossain who was a "protected person" and the accused, by his culpable conduct, intended to kill the victim and

eventually his act forming part of attack by the group of Razakars he accompanied “directly” caused the death of the victim.

305. In view of above deliberation it has been found proved beyond reasonable doubt that the victim Md. Miah Hossain died due to gun shot. His death was resulted from the deliberate act of gunning down. In conjunction with the attack by the group of Razakars accused Nasiruddin Ahmed himself shot the victim to death and accused’s culpable conduct, as emerged, demonstrates that the attack was launched intending to cause death of Md. Miah Hossain. Despite being aware that the victim was taking no active part in the hostilities the accused Nasiruddin Ahmed and his armed accomplice Razakars had attacked Md. Miah Hossain and stopped his attempt to escape by gunning him down to death and thereby the accused ‘physically participated’ to the accomplishment of the offence of killing. They did it intentionally and deliberately. Accused Nasiruddin Ahmed thus acted as ‘physical perpetrator’ in committing the offence of murder of a person protected under the Geneva Convention. Accused Nasiruddin Ahmed by his act and conduct, as emerged, played the role of ‘physical perpetrator’ and not of an ‘aider’ or ‘abettor’ although he was being accompanied by his cohort Razakars at the relevant time. The accused Nasiruddin Ahmed was thus the ‘principal offender’ who incurred individual liability’ for the offence of which he is charged with. Therefore,

accused Nasiruddin Ahmed alias Md. Nasir alias Captain ATM Nasir [absconded] is found criminally liable under section 4(1) of the Act of 1973 for 'participating' and also for 'complicity' to the commission of killing of one unarmed civilian forming part of attack against the civilian population constituting the offence of 'murder' as crime against humanity as specified in section 3(2) (a)(h) of the Act of 1973 which is punishable under section 20(2) of the Act.

Adjudication of Charge No. 03

[Abduction and killing of Md. Abdul Gafur of village Kolatoli at around 10:00 P.M. on 26 September 1971]

306. Summary Charge: That on 26 September 1971 at about after 10:00 P.M. a group formed of 8/10 armed Razakars including accused (1) Shamsuddin Ahmed (2) Gazi Md. Abdul Mannan[absconded] (3) Nasiruddin Ahmed alias Md. Nasir alias Captain ATM Nasir [absconded] (4) Md. Hafizuddin [absconded] and (5) Md. Azharul Islam[absconded] by launching attack abducted Md. Abdul Gafur from his house at village *Kolatoli* under Police Station Karimganj of the then Kishoreganj Sub-Division and took him to *Khudir Jangal* bridge on forcible capture and gunned him down to death there.

307. Thereby, accused (1) Shamsuddin Ahmed (2) Gazi Md. Abdul Mannan (3) Nasiruddin Ahmed alias Md. Nasir alias Captain ATM Nasir (4) Md. Hafizuddin and (5) Md. Azharul Islam have

been charged for participating, facilitating, abetting and substantially contributing and also for 'complicity' to the commission of offences of 'abduction' and 'murder' as crimes against humanity as part of systematic attack directing unarmed civilians as specified in section 3(2) (a)(g) (h) of the Act of 1973 which are punishable under section 20(2) of the Act for which the accused persons have incurred liability under section 4(1) of the Act.

Evidence of Witnesses Presented

308. To substantiate the charge involving the event of killing Md. Abdul Gafur of village Kolatoli taking to Khudir Jangal bridge [Lyi Rsmj eR] on forcible capture from his house prosecution adduced three witnesses who have been examined as P.W.12, P.W.16 and P.W.17. Of them P.W.12 is the wife of victim Md. Abdul Gafur and P.W.16 and P.W.17 are victim's cousin brother and brother respectively. All of them claim to have seen the act of taking away Md. Abdul Gafur on forcible capture. Now let us see what they have testified on oath before the Tribunal.

309. P.W. 12 Akhter Hafiza Khatun [65], wife of victim Md. Abdul Gafur, stated that her husband Md. Abdul Gafur was an Awami League supporter who used to help freedom fighters. In respect of the tragic event of her husband's killing, P.W.12 testified that around 10:00 P.M. on 26 September 1971, she, her husband

and their children woke up in their Kolatoli residence to the sound of people who ordered opening the door. When they did not comply, accused Nasiruddin, Shamsuddin, Md. Hafizuddin and Md. Azharul Islam, whom she knew beforehand, broke in and grabbed her husband Md. Abdul Gafur out and with this she [P.W.12] came out following them and found 5/6 more armed persons standing, P.W.12 added. While they were dragging out Md. Abdul Gafur, she grabbed at their feet requesting to release her husband and then accused Hafizuddin kicked her aside. Then she [P.W.12] secretly followed them to Khudir Jangal bridge [Liyi Rsmj e/R] and remaining in hiding inside a bush near the bridge heard her husband Md. Abdul Gafur requesting accused Hafizuddin to spare him. But accused Hafizuddin turned down his request, saying 'you are helping freedom-fighters' and then shot him from behind before kicking him down under the bridge. P.W.12 stated, adding that she and her husband's cousin brother Manu [P.W.16] and brother Malek [P.W. 17] and others recovered and buried the dead body of her husband on the next day.

310. On cross-examination on behalf of the accused Shamsuddin Ahmed, P.W.12 stated that the Khudir Jangal bridge was about less than half kilometre far from their house and she remained in hiding inside a bush about 20/40 cubits far from the bridge where her husband was gunned down to death. P.W.12 expressed ignorance

about the identity of 5/6 cohorts of the four accused persons and whether accused Shamsuddin Ahmed had been living in village Modhdhopara in 1971. P.W.12 also stated that accused ATM Nasir and Nizamuddin were the brothers of accused Shamsuddin Ahmed. P.W.12 denied defence suggestions that accused Shamsuddin Ahmed was a boy of 12 years in 1971 and he did not belong to Razakar Bahini and was not involved with the alleged event.

311. On cross-examination by the learned State defence counsel defending three absconding accused ATM Nasir, Md. Hafizuddin and Md. Azharul Islam, P.W.12 stated that Pakistani army did not come to their locality. Her husband's brothers Malek and Manu came forward to their house on hearing hue and cry when her husband was being taken away. Accused Nasiruddin was a Razakar. P.W.12 denied defence suggestion that what she stated in respect of the event implicating these three accused persons was untrue, tutored and concocted.

312. P.W.16 Md. Manu Miah [73] is a cousin brother of victim Md. Abdul Gafur who is a resident of village Kolatoli under Karimganj Police Station of the then Kishoreganj Sub-Division. He stated that around 10:00 P.M. on 26 September 1971 on hearing cry of Gafur's wife he came out and staying at the cow-shed he saw the entire house lightened with torch-light and found there accused ATM Nasir, Shamsuddin Ahmed, Md. Hafizuddin, Md. Azharul

Islam and some others who breaking door dragged out his cousin brother Gafur of dwelling shed. Gafur's wife [P.W.12] requested accused Md. Hafizuddin to release him but Hafizuddin kicked her aside. He [P.W.16] could see all these from the cow shed which was 8/10 cubits far therefrom. Those accused persons and their cohort Razakars took away Md. Abdul Gafur when his wife started following them.

313. P.W.16 went on to state that about half an hour later he came out of the cow-shed and searched for Gafur in front of their house, and after a short while he heard firing of gun shot and then he came back home, and half an hour later Gafur's wailing wife [P.W.12] also returned home and told them that accused Hafizuddin gunned down Gafur to death at the Khudir Jangal bridge [*Liyi Rsmj eR*]. On the following morning they recovered and buried the dead body of Md. Abdul Gafur.

314. On cross-examination done on behalf of accused Shamsuddin Ahmed P.W.16 stated that in 1971 his dwelling shed was on the west side to that of Gafur, that accused Shamsuddin Ahmed's village home was at Dulipara which was about half kilometre away from their house. P.W.16 however expressed his ignorance about the age of accused Shamsuddin Ahmed in 1971. P.W.16 denied the defence suggestions that accused Shamsuddin Ahmed had no affiliation with Razakar Bahini or he did not belong

to it and that accused Shamsuddin Ahmed was not present at the time of the event he stated and that what he stated was tutored and untrue.

315. P.W.17 Md. Abdul Malek [61], a resident of village Kolatoli under Karimganj Police Station of the then Kishoreganj Sub-Division, is a brother of victim Md. Abdul Gafur. In 1971, he was 17 years old and studied in class IX in Karimganj High School. In 1971, Shamsuddin Ahmed [accused] studied in class X in the said school and Hafiz [accused] also studied there. P.W.17 stated that his brother Md. Abdul Gafur used to provide assistance to the freedom fighters during the war of liberation in 1971.

316. In narrating the event of forcible capture of Md. Abdul Gafur followed by his brutal killing P.W.17 stated that around 10:00 P.M. on 26 September 1971 he was engaged with his study when he heard some people murmuring in front of Md. Abdul Gafur's dwelling shed, and with this he came out and discovered some armed Razakars with torch lights in hand. They seeing him threatened to shoot him and asked not to proceed. Then he went into hid behind his shed wherefrom he could see the Razakars dragging his brother Md. Abdul Gafur out tying down his hands. Amongst those Razakars he could recognise accused ATM Nasir, Shamsuddin Ahmed, Hafizuddin and Md. Azharul Islam. Accused Hafizuddin dragged his brother Gafur out, he saw, adding that he

also saw accused Hafizuddin kicking Gafur's wife Hafiza Khatun [P.W. 12] aside as she wanted to follow them, P.W.17 added. Gafur's wife Hafiza Khatun and he, coming out of hiding place started following them and after a short while he heard firing of gun shot and then he came back home and on his way back home he found his cousin brother Manu [P.W.16] standing beside the road and they became fearful for Md. Abdul Gafur and started crying. After a short while his brother's wife Hafiza Khatun [P.W.12] came back home and informed them that accused Md. Hafizuddin gunned down his brother Md. Abdul Gafur to death at Khudir Jangal bridge [Lyi Rsmj eR] and kicked his dead body down under the bridge. On the following morning they, going to the crime site, recovered the dead body and buried it.

317. As regards knowing the accused persons, P.W.17 stated that he knew accused Shamsuddin beforehand as he studied in Karimganj High School and he knew the three other accused persons as he used to see them moving around the locality and bazaar.

318. On cross-examination done on behalf of accused Shamsuddin Ahmed P.W.17 stated that accused Shamsuddin Ahmed's house was at village Dulipara, about half kilometre far from that of his own. P.W.17 expressed ignorance as to whether accused Shamsuddin Ahmed passed SSC examination in 1975.

P.W.17 denied the defence suggestions that accused Shamsuddin Ahmed was 12 years old in 1971, that he[accused] never studied in Karimganj High School, that accused Shamsuddin Ahmed was not involved with the event he narrated, that accused Shamsuddin Ahmed did not belong to Razakar Bahini and he had no affiliation with it and that what he stated was untrue and tutored by the rival party of accused.

319. In cross-examination by the learned State defence counsel defending three absconding accused ATM Nasir, Md. Hafizuddin and Md. Azharul Islam P.W.17 denied the suggestions that he did not know the accused ATM Nasir, that these three accused persons did not belong to local Razakar Bahini, that they were not involved with the commission of the event he narrated, that the accused Md. Hafizuddin did not kill his brother Abdul Gafur taking him to Khudir Jangal bridge [Lij RSMj eR] on forcible capture and that what he stated about the event implicating the accused persons therewith was untrue and tutored.

Finding with Reasoning on Evaluation of Evidence

320. The charge framed alleges the commission of murder of a civilian Md. Abdul Gafur of village *Kolatoli* under Police Station Karimganj of the then Kishoreganj Sub-Division who was picked up forcibly from his house by a group of 8/10 armed Razakars accompanied by the five accused persons. The event of abduction

happened on 26 September 1971 at about after 10:00 P.M. and the detainee was taken to *Khudir Jangal* bridge where he was gunned down to death, the charge framed alleges. All the five accused persons have been indicted for participating, facilitating, abetting and substantially contributing and also for 'complicity' to the commission of offences of 'abduction' and 'murder' as crimes against humanity.

321. Prosecution in order to prove the event and accusation brought against the accused persons adduced three witnesses who have been examined as P.W.12, P.W.16 and P.W.17. Of these three witnesses P.W.12 is the wife of victim Md. Abdul Gafur and P.W.16 and P.W.17 are victim's cousin brother and brother respectively. All of them claim to have witnessed the act of taking away Md. Abdul Gafur on forcible capture. That is to say, this charge rests upon ocular evidence. Thus, we need to weigh credibility of the witnesses and the value of their testimony they made in the Tribunal as well on rational manner.

322. It has been advanced by the learned prosecutor Mr. Sultan Mahmud, in course of summing up, that three witnesses including the wife of victim Md. Abdul Gafur, a pro-liberation civilian, consistently testified how Md. Abdul Gafur was taken away on forcible capture from his house, defying his wife's appeal to spare him and killing the victim that happened instantly after his capture.

The group of attackers was accompanied by all the five accused persons whom the witnesses could recognise. Testimony of prosecution witnesses remained on material particular uncontroverted in their cross-examination and no reason existed to disbelieve them. Act and conduct of the accused persons accompanying the group formed part of attack and they consciously did not withdraw them from the group till the act of killing was accomplished.

323. Mr. M. Masud Rana, the learned counsel for the accused Shamsuddin Ahmed, submitted that out of three witnesses examined in support of this charge only one witness [P.W.12], the wife of victim Md. Abdul Gafur claims to have witnessed the killing with which she has implicated five accused persons including this accused and two other witnesses [P.W. 16 and P.W. 17] do not claim to have seen the act of killing. The learned counsel attacking truthfulness of what has been testified by the wife of victim Md. Abdul Gafur argued that it was impracticable to see actually who gunned down Md. Abdul Gafur to death, remaining inside a bush particularly when it happened in dark of night. The witnesses examined do not claim that their neighbours came to resist the attack that resulted in Md. Abdul Gafur's abduction. On query, the learned defence counsel however admits that all the three witnesses had opportunity of seeing the act of taking away the

victim Md. Abdul Gafur from his house on forcible capture and killing him was the upshot of such abduction. Finally, the learned defence counsel reiterated the argument he made in respect of the charge no.01 that delayed prosecution creates doubt as to truthfulness of arraignment brought against the accused and he was 12 years old in 1971.

324. Mr. Abdus Sukur Khan, the learned State defence counsel for the rest four absconded accused persons endorsing the argument advanced on behalf of accused Shamsuddin Ahmed submitted that none of these four accused belonged to local Razakar Bahini and three witnesses have testified falsely implicating the four absconded accused persons, being tutored.

325. The charge does not describe who actually perpetrated the principal crime of murder. It speaks of involvement of five accused persons with the act of abduction of the victim Md. Abdul Gafur. Based on evidence presented we are to resolve the nexus of the act or conduct of the accused persons with the commission of the principal crime. Prosecution requires proving that death of victim Md. Abdul Gafur was the upshot of his abduction in accomplishing which the accused persons had complicity or participation, by conduct or act. Now let us see how far the prosecution has been able to prove the-

(i) fact of forcible capture of victim Md. Abdul Gafur from his house,

(ii) a group of 8/10 armed Razakars accompanied by the five accused persons had forcibly picked up Md. Abdul Gafur, and

(iii) the group of attackers took away the captured victim to *Khudir Jangal* bridge and the victim was gunned down to death there.

326. P.W.12 Akhter Hafiza Khatun is the wife of victim Md. Abdul Gafur. She narrated how her husband was taken away on forcible capture from their house. Before narrating it P.W.12 stated that her husband Md. Abdul Gafur was an Awami League supporter who used to help freedom fighters. This version remained undisputed. Besides, it gets corroboration from the testimony of P.W.17 Abdul Malek, the brother of victim Md. Abdul Gafur as he also stated that his brother Md. Abdul Gafur used to provide assistance to the freedom-fighters during the war of liberation in 1971. Thus, the locally formed Razakar Bahini, an auxiliary force to act under and collaborate with the Pakistani occupation army, presumably targeted the victim Md. Abdul Gafur as he actively sided with the war of liberation.

327. In respect of the tragic event of her husband's killing, P.W.12 Akhter Hafiza Khatun testified that around 10:00 P.M. on September 26, she, her husband Md. Abdul Gafur and their children woke up in their *Kolatoli* residence to the sound of people who ordered opening the door. When they did not comply, accused Nasiruddin Ahmed, his brother Shamsuddin Ahmed, Md. Hafiz

Uddin and Md. Azharul Islam, whom she knew beforehand, broke in and grabbed her husband Md. Abdul Gafur out and with this she [P.W.12] also came out and found 5/6 more armed persons standing. While they were dragging out Md. Abdul Gafur, she [P.W.12] grabbed at their feet requesting for release her husband Md. Abdul Gafur when accused Hafizuddin kicked her aside.

328. The above depicts how the act of forcible capture of Md. Abdul Gafur happened and who committed the act by launching attack. Defence could not refute it in any manner. Rather the fact of taking away Md. Abdul Gafur on forcible capture has been re-affirmed as P.W.12 in reply to defence question put to her stated that her husband's brothers Malek [P.W.17] and Manu [P.W.16] came forward to their house on hearing hue and cry when her husband was being taken away. Defence simply denied the material facts, as unveiled, relevant to the principal event and it could not dislodge it in any manner. Presence of the accused persons with the group of armed Razakars in abducting the victim from his house remained unshaken, in cross-examination.

329. What happened next? Where the captured victim was taken away and the helpless wife of the victim did? Testimony of P.W.12, the wife of the victim, demonstrates that she started following the group secretly and found them arriving at Khudir Jangal bridge [Lj i Rslj eR] and she [P.W.12] remaining in hiding

inside a bush near the bridge heard her husband Md. Abdul Gafur requesting accused Md. Hafizuddin to spare him. But Md. Hafizuddin turned down his request, saying 'you are helping freedom fighters' and then shot him [Md. Abdul Gafur] from behind before kicking him down under the bridge. Defence does not dispute that the dead body of Md. Abdul Gafur was recovered under the Khudir Jangal bridge. The place where from the dead body of Md. Abdul Gafur was recovered on the following day as stated by the witnesses lends assurance that Khudir Jangal bridge was the killing site where Md. Abdul Gafur was taken on forcible capture and then gunned down to death.

330. It appears unambiguously from above testimony of P.W.12 that the captured victim was straight way taken away to Khudir Jangal bridge by the group which materialized his abduction, intending to execute his death. There has been no reason whatsoever to exclude the testimony of P.W.12. Defence could not shake the above crucial version involving the act of killing the victim at the Khudir Jangal bridge, the killing site. Her direct testimony does not suffer from any infirmity or improbability, and as such, it carries value and credence.

331. The above evidence proves that the act of abduction ended as the same group of armed Razakars took the victim away to Khudir Jangal bridge, the killing site where he was gunned down to death.

We have got it affirmed in cross-examination that P.W.12, the wife of victim Md. Abdul Gafur, remained in hiding inside a bush about 20/40 cubits far from the Khudir Jangal bridge where her husband was gunned down to death and the bridge was about half kilometre far from their house.

332. It remained unimpeached that P.W.12, remaining in hiding inside a bush near the bridge, heard the accused Md. Hafizuddin saying her husband 'you are helping freedom-fighters' before he was gunned down to death and kicked him down under the bridge. Such saying together with the act of gunning down the captured victim patently depicts the reason of targeting him and it also reflected the extreme antagonistic mindset of the accused persons belonging to Razakar Bahini.

333. P.W.16 Md. Manu Mia is a cousin brother of victim Md. Abdul Gafur. He used to reside in their house west side to that of Md. Abdul Gafur. He [P.W.16], at the relevant time, on hearing cry of Md. Abdul Gafur's wife came out and staying at the cow-shed saw the entire house lightened and found there accused ATM Nasir, Shamsuddin Ahmed, Hafizuddin and Azharul Islam and they and their cohorts dragging out Md. Abdul Gafur of dwelling shed when Gafur's wife [P.W.12] requested accused Md. Hafizuddin to release him but the accused kicked her aside.

334. Defence failed to bring anything by cross-examining P.W.16 that he had no reason of recognizing the accused persons. It simply suggested P.W.16 that the accused persons were not with the group of Razakars and were not part of any of criminal acts alleged. In absence of any thing contrary we may deduce that since the accused persons belonged to locally formed Razakar Bahini and were residents of neighbouring villages under Karimganj Police Station it was practicable for P.W.16 of being familiar with them. And as such, his testimony so far as it relates to identification of four accused persons, at the time of the attack, inspires credence and carries value.

335. P.W.17 Md. Abdul Malek stated that he knew the accused Shamsuddin Ahmed beforehand as he studied in Karimganj High School and he also knew the three other accused persons as he used to see them moving around the locality and bazaar.

336. P.W.17, another direct witness who happens to be the brother of victim Md. Abdul Gafur, also testified that around 10:00 P.M. on 26 September 1971 when he was engaged with his study he heard some people murmuring in front of Md. Abdul Gafur's dwelling shed and with this he came out and discovered some armed Razakars with torch lights in hand. They seeing him threatened to shot him and asked not to proceed. And under such threat he [P.W.17] went into hid behind his shed wherefrom he could see the

Razakars dragging his brother Md. Abdul Gafur out tying down his hands. Amongst those Razakars he could recognise accused ATM Nasir, Shamsuddin Ahmed, Hafizuddin and Md. Azharul Islam. Accused Hafizuddin dragged his brother Md. Abdul Gafur out. He also saw accused Hafizuddin kicking Gafur's wife Hafiza Khatun [P.W.12] aside as she wanted to follow them.

337. P.W.17 knew the accused Shamsuddin Ahmed beforehand as he studied in Karimganj High School and he knew the three other accused persons as he used to see them moving around the locality and bazaar. Defence could not refute it in any manner. Besides, the reason of knowing the accused persons beforehand as stated by P.W.17 is quite believable, and thus, his evidence so far as it relates to seeing the four accused persons with the armed group of Razakars in forcibly taking away his brother victim Md. Abdul Gafur inspires credence and it consistently corroborates to what has been stated by P.W.16 in this regard.

338. The above piece of evidence of P.W.16 and P.W.17, the direct witnesses to the criminal acts constituting the offence of abduction, provides corroboration to what has been testified by P.W.12, the wife of victim Md. Abdul Gafur. Defence could not refute their testimony on material particular. Mere denial on part of the defence that the accused persons did not accompany the group

and were not involved with any such criminal activity is not enough to exclude the testimony of these direct witnesses.

339. It is evinced from the consistently corroborative testimony of P.W.16 and P.W.17 that half an hour after the act of taking away Md. Abdul Gafur on forcible capture Gafur's wailing wife [P.W.12] returned home and told them that accused Hafizuddin gunned down Md. Abdul Gafur to death at the Khudir Jangal bridge [Lyi Rsmj eR]. Already we have got it from evidence of P.W.12, the wife of Md. Abdul Gafur that she secretly followed the group taking away her husband and remaining in hiding inside a bush near the Khudir Jangal bridge, the killing site, saw the accused Hafizuddin Ahmed gunning down her husband Md. Abdul Gafur to death and then she[P.W.12] returned back home and told it to P.W.16 and P.W.17. Therefore, hearsay testimony of P.W.16 and P.W. 17 in respect of the event of killing detained Md. Abdul Gafur carries probative value as the same appears to have been corroborated by P.W.12, a direct witness to the said event.

340 It remained undisputed that on the following morning dead body of Md. Abdul Gafur was recovered under the Khudir Jangal bridge, as stated by all the three witnesses. It also provides further assurance that victim Md. Abdul Gafur was killed at the Khudir Jangal bridge by the group of Razakars accompanied by the four accused persons taking the victim there on abduction.

341. In war time situation and at night it was indeed usually impracticable for the neighbours to come forward to resist the criminal acts of a group of 8/10 armed Razakars. Although victim's two brothers residing adjacent to victim's house came out on hearing cry, as found from evidence. But the horror did not allow them to move forward with any counter incentive against the criminal conduct of the accused persons and their cohorts.

342. However, it is manifested that P.W.12 Akhter Hafiza Khatun, the wife of the victim, having no kindness on part of the accused persons despite her vulnerable approach to spare her dear husband started following the group secretly while they were on move along with detained Md. Abdul Gafur. Seemingly the hallowed bondage with her husband [victim] made P.W.12, a rural woman, extremely worried which prompted her to follow the group of perpetrators who eventually got halted at Khudir Jangal bridge the killing site. There, remaining in hiding inside a bush P.W.12 heard her husband begging to spare him turning down which accused Hafizuddin gunned down him to death. P.W.12 had occasion to see such brutality that resulted in her dear life partner Md. Abdul Gafur's death. It happened within her eyes but nevertheless she had to experience such horrific trauma as a mere unvoiced spectator. No doubt such appalling experience imprinting an enduring and

formidable trauma still reprimands P.W.12, the wife of the victim Md. Abdul Gafur, we presume.

343. Collective appraisal of evidence of all the three witnesses demonstrates it patently that four accused persons namely (1) Shamsuddin Ahmed, (2) Nasiruddin Ahmed alias Md. Nasir alias Captain ATM Nasir [absconded], (3) Md. Hafizuddin [absconded], and (4) Md. Azharul Islam [absconded] were with the group of armed Razakars and actively and culpably participated in abducting the victim Md. Abdul Gafur from his dwelling shed by breaking its door and took the victim away kicking aside Gafur's wife. The defence does not deny the commission of the offence alleged, but asserts that the prosecution has not been able to prove that the accused persons were the persons who facilitated and participated to the commission of the offence or were involved with its perpetration in any manner.

344. The attack directing the victim Md. Abdul Gafur was designed one. The way the victim Md. Abdul Gafur was abducted and the reason of targeting him prompts us to presume it unerringly. It was aimed to narrow down the local influence of pro-liberation Bengali civilians who provided assistance to freedom-fighters of the crime locality. **Husain Haqqani** made it clear in the narratives made in his book titled '**Pakistan: between Mosque and Military**'. It reads as below:

" The army decided to raise a Razakar (volunteer) force of one hundred thousand from the civilian non- Bengalis settled in East Pakistan and the pro-Pakistan Islamist group.The Razakaars were mostly employed in areas where army elements were around to control and utilize themThis force was useful where available, particularly in the areas where the rightist parties were in strength and had sufficient local influence"

[Pakistan: between Mosque and Military, written by Hussain Haqqani, Page 79]

345. Accused persons indicted for the offences narrated in charge no.03 were the members of 'auxiliary force' which was under command of the armed force, and as such, they had consciously carried out the attack knowing well about such policy. We are persuaded to reiterate that objective of creating the Razakar Bahini was not to guard lives and properties of civilians. Rather, it had acted in furtherance of policy and plan of Pakistani occupation army and in so doing it had committed atrocities in a systematic manner against the unarmed Bengali civilians through out the territory of Bangladesh in 1971.

346. It is now jurisprudentially settled that the offence of murder as a crime against humanity does not require the prosecution to prove that the accused personally committed the killing. Personal commission is only one of the modes of responsibility. It is to be noted that the alleged crimes as enumerated in section 3(2)(a) of the Act of 1973 were committed in furtherance of attack directed against the civilian population. It is not the 'act' but the 'attack' is to be systematic in nature and even a single act of accused person

forms part of the ‘attack’. It has been observed by the **ICTY Appeals Chamber in the case of *Deronjic*** that—

".....The acts of the accused need only be a part of the attack and, all other conditions being met, a single or limited number of acts on his or her part would qualify as a crime against humanity, unless those acts may be said to be isolated or random."

[Prosecutor v. Miroslav Deronjic, Case No. IT-02-61-A, Judgment-20 July 2005, Para-109]

347. The criminal acts carried out jointly by the accused persons and their cohort Razakars were manifestly part of ‘group plan’. Even if the accused persons are not found to have had direct participation to the killing by gunning down the detained civilian to death they shall also be held responsible for their culpable acts and presence with the perpetrator[s] forming part of the attack in accomplishing the act of causing death of detained victim Md. Abdul Gafur as it closing consequence of his abduction. In that case we are convinced to conclude that presence of accused persons with the group of attackers also at the killing site was not at all innocent as they belonged to local Razakar Bahini the object of forming which was to further policy and plan of annihilating the pro-liberation Bengali civilians. It is now jurisprudentially settled that **‘participation’** includes both direct participation and indirect participation. It has been observed by the **ICTY Appeals Chamber in the case of *Kvocka and others*** that-

".....the Prosecution need not demonstrate that the accused’s participation in the joint criminal enterprise is a sine qua non, without which the

crimes could or would not have been committed. Furthermore, it is, in general, not necessary to prove the substantial or significant nature of the contribution of an accused to the joint criminal enterprise to establish his responsibility as a co-perpetrator: it is sufficient for the accused to have committed an act or an omission which contributes to the common criminal purpose.”

[Prosecutor v. Miroslav Kvočka & others, Case No. IT-98-30/1-A , Judgment : 28 February 2005, Para - 421]

348. We have found it proved beyond reasonable doubt that the four accused persons namely (1) Shamsuddin Ahmed, (2) Nasiruddin Ahmed alias Md. Nasir alias Captain ATM Nasir [absconded], (3) Md. Hafizuddin [absconded], and (4) Md. Azharul Islam [absconded] culpably accompanied the group and participated in taking away the victim Md. Abdul Gafur on forcible capture and also they remained present even at the killing site where one of their cohorts accused Md. Hafizuddin shot the victim to death. This is conscious ‘concern’ of accused (1) Shamsuddin Ahmed, (2) Nasiruddin Ahmed alias Md. Nasir alias Captain ATM Nasir [absconded], and (3) Md. Azharul Islam [absconded] with the ‘commission’ of the offence of murder alleged. For the event of killing occurred at a bridge which was about half kilometre far from victim's house soon after the victim was forcibly captured and thus the accused persons participating in accomplishing the act of victim's abduction did not withdraw themselves from the group even in perpetrating the principal crime, the murder of the detained victim, we emphatically infer.

349. According to P.W.12 Akhter Hafiza Khatun accused Md. Hafizuddin gunned down her husband Md. Abdul Gafur to death. But for the reasons based on jurisprudential proposition as discussed above all the four accused persons must be held liable as the death of victim resulted from the act of his forcible capture in accomplishing which they knowingly and consciously participated, by act of facilitation and culpable assistance.

350. The Tribunal notes it impeccably that even a single or limited number of acts on the accused's part would qualify as a crime against humanity, unless those acts may be said to be isolated or random. The accused can be held criminally responsible for the crime alleged if he is found that he , by his acts or conducts, was 'concerned with the killing'.

351. It is immaterial to argue that the accused (1) Shamsuddin Ahmed, (2) Nasiruddin Ahmed alias Md. Nasir alias Captain ATM Nasir [absconded], and (3) Md. Azharul Islam [absconded] were not the actual perpetrators or they themselves did not physically participate to the commission of the criminal acts in execution of killing of the victim. It is to be noted that the alleged crimes as enumerated in section 3(2)(a) of the Act of 1973 were committed in furtherance of attack directed against the civilian population. It is not the 'act' but the 'attack' is to be systematic in nature and even a single act of an accused forms part of the 'attack'. Thus, we are to

see how the accused acted or conducted forming part of 'attack' that resulted in commission of the principal criminal acts directing the non combatant civilians. 'Committing' connotes an act of 'participation', physically or otherwise directly or indirectly, in the material elements of the crime charged through positive acts, whether individually or jointly with others. It has been observed by **the ICTY Trial Chamber in the case of *Stakic***, that-

"Commission", as a mode of liability, is broadly accepted, and joint criminal enterprise provides one definition of "commission". The Appeals Chamber in Celebici characterised "commission" as "primary liability". Furthermore, as stated in the Kunerac Trial Judgement, a crime can be committed individually or jointly with others, that is, there can be several perpetrators in relation to the same crime where the conduct of each one of them fulfils the requisite elements of the definition of the substantive offence."

[Prosecutor v. Milomir Stakic, Case No. IT-97-24-T, Judgment-31 July 2003, Para-528]

352. A reasonable trier of fact could conclude that the victim Md. Abdul Gafur died as a result of deliberate act of all the accused persons to further common intent and object. Now the well established jurisprudence does not only cover the physical perpetration of the crime by the offender himself, but also encompasses participation in a common purpose or design. In the case in hand, the four accused persons and their accomplices forming a group had acted to further a common purpose and it was to execute victim's killing as he actively sided with the freedom fighters.

353. Five accused persons namely accused (1) Shamsuddin Ahmed, (2) Nasiruddin Ahmed alias Md. Nasir alias Captain ATM Nasir [absconded], (3) Md. Azharul Islam [absconded], (4) Md. Hafizuddin [absconded], and (5) Gazi Md. Abdul Mannan [absconded] have been indicted for the offence of killing Md. Abdul Gafur on abduction. There has been no evidence or indication whatsoever to show that accused Gazi Md. Abdul Mannan was also with the group of Razakars at the relevant time and at the crime site. None of three witnesses examined in support of this charge has testified anything implicating accused Gazi Md. Abdul Mannan. Accordingly, the learned State defence counsel defending accused Gazi Md. Abdul Mannan declined to cross-examine these three witnesses.

354. The case rests upon oral evidence presented on the event alleged and facts relevant to it. Mere framing charge does not render an accused guilty. Prosecution needs to provide lawful evidence to prove the indictment. Testimony of three direct witnesses cannot be rendered untruthful simply for the reason that none of them has implicated the accused Gazi Md. Abdul Mannan, one of five accused persons who have been charged for the offence in question. However, it does not render the truthfulness of the event of attack and participation of other four accused persons therewith, particularly when it stands proved beyond reasonable

doubt that the four accused persons namely, (1) Shamsuddin Ahmed, (2) Nasiruddin Ahmed alias Md. Nasir alias Captain ATM Nasir [absconded], (3) Md. Azharul Islam [absconded], and (4) Md. Hafizuddin [absconded] participated actively in abducting the victim and also by their culpable act, conduct and presence facilitated and substantially contributed to the commission of the act of killing the victim by gun shot at a solitary place.

355. On integrated evaluation of the evidence of direct witnesses to the entire event consisted of two phases. First one involved forcible taking away the victim from his house and it got ended with the killing of victim, the second phase. P.W.12 the wife of victim, saw both the phases of the event of killing the matter we get manifested are:

- (i) Four accused persons out of five were with the group of armed Razakars and actively participated in accomplishing the act of abduction of victim.
- (ii) The group took away the detained victim at Khudir Jangal bridge, the killing site which was around half kilometre far from victim's house and then accused Md. Hafizuddin gunned him down to death.
- (iii) Victim's wife P.W.12 saw the act of killing remaining in hiding inside a nearer bush.
- (iv) None of above four accused persons made them distanced from the group even after accomplishing the act of abduction.
- (v) All those four accused remained present with the group even at the killing site.

356. It thus stands proved that killing the victim Md. Abdul Gafur was the upshot of his abduction. In view of above, participation of those four accused persons by their act and culpable conduct at the phase of abduction and their presence even at the killing site where

almost soon after taking the victim there accused Md. Hafizuddin shot him to death suggest an impeccable conclusion that they may lawfully be viewed as participating in the act of killing the second phase of the event as well. This view gets support from the proposition enunciated **in the case of *Tadic* wherein the ICTY Trial Chamber observed that –**

".....when an accused is present and participates in the beating of one person and remains with the group when it moves on to beat another person, his presence would have an encouraging effect, even if he does not physically take part in this second beating, and he should be viewed as participating in this second beating as well. This is assuming that the accused has not actively withdrawn from the group or spoken out against the conduct of the group."

[*Prosecutor v. Tadic, Case No. IT-94-I-T, Judgment: 7 May 1997, Para-690*]

357. The factual matrix proved by the prosecution unerringly points towards the four accused persons as the active participants forming the group of attackers, i.e. there is no escape from the conclusion that the crime was committed on participation, substantial contribution and assistance of the accused (1) Shamsuddin Ahmed, (2) Nasiruddin Ahmed alias Md. Nasir alias Captain ATM Nasir [absconded], (3) Md. Hafizuddin [absconded], and (4) Md. Azharul Islam [absconded]. The entire event as depicted from the chronology of chained criminal acts was the outcome of a planned attack orchestration of which was the annihilation of victim Md. Abdul Gafur as he used to provide supports and assistance to the freedom fighters. The entire event of

attack ended in murder of abducted victim Md. Abdul Gafur was carried out by a 'criminal enterprise' formed of Razakars to which the four accused persons had active part as they are found to have had acted and accompanied the group at the killing site in unison of agreement to execute 'common plan'.

358. The liability mode contained in section 4(1) of the Act of 1973 refers to 'common plan of collective criminality' which corresponds to '**JCE**' [Joint Criminal Enterprise]. This mode of liability need not involve the physical commission of a specific crime by all the members of **JCE** but may take the form of assistance in, or contribution to, the execution of the common purpose. Thus, presence of accused persons also at the place where the detained victim was shot to death offered their tacit approval, moral support and encouragement to their accomplice Razakars including the accused Md. Hafizuddin in accomplishing the criminal act of causing death of the victim by gunning down.

359. In view of above deliberation based on evidence presented, in light of jurisprudential proposition evolved in adhoc Tribunals, we are convinced to conclude that prosecution has been able to prove beyond reasonable doubt that a group of 8/10 armed Razakars accompanied by accused (1) Shamsuddin Ahmed, (2) Nasiruddin Ahmed alias Md. Nasir alias Captain ATM Nasir [absconded], (3) Md. Hafizuddin [absconded] , and (4) Md.

Azharul Islam [absconded] by launching a designed attack forcibly picked up Md. Abdul Gafur and straightway took him away at Khudir Jangal bridge where he was shot to death. It stands proved too that all these four accused persons knowingly participated in accomplishing the phase of abduction and were also participated, abetted and substantially contributed to the cause of death of detained victim Md. Abdul Gafur, soon after his abduction. Therefore, accused (1) Shamsuddin Ahmed, (2) Nasiruddin Ahmed alias Md. Nasir alias ATM Nasir [absconded], (3) Md. Hafizuddin [absconded], and (4) Md. Azharul Islam [absconded] are found criminally liable under section 4(1) of the Act of 1973 for participating, facilitating, abetting, contributing and complicity to the actual commission of killing of one unarmed civilian Md. Abdul Gafur forming part of attack against the civilian population constituting the offences of 'abduction' and 'murder' as crimes against humanity as specified in section 3(2) (a) (g)(h) of the Act of 1973 which are punishable under section 20(2) of the Act. However, prosecution has failed to prove the accusation brought against accused Gazi Md. Abdul Mannan, and thus, he is found not guilty for the offences narrated in this charge.

Charge No. 04**[Killing of Md. Fazlur Rahman of village Atkapara under Karimganj Police Station]**

360. Summary Charge: That on 23 August 1971, on instruction of accused (1) Gazi Md. Abdul Mannan [absconded], the local Razakar Commander, a group of Razakars formed of accused (2) Shamsuddin Ahmed (3) Nasiruddin Ahmed alias Md. Nasir alias Captain ATM Nasir [absconded] (4) Md. Hafizuddin [absconded] and (5) Md. Azharul Islam [absconded] went to Karimganj bazaar ghat and lied in wait for Md. Fazlur Rahman, a supporter of war of liberation, an inhabitant of village *Atkapara* under Karimganj Police Station of the then Kishoreganj Sub-Division on information about his [Md. Fazlur Rahman] coming to bazaar. When Md. Fazlur Rahman came out of bazaar at about 12:00 P.M., the accused persons apprehended him and forcibly took him away to Karimganj Dakbungalow torture cell where he was subjected to brutal torture. On the next day he was taken to Kishoreganj Dakbungalow torture cell wherein he was again subjected to torture. Afterwards he [captured Md. Fazlur Rahman] was taken to an unknown place and was killed. His dead body could not be traced even.

361. Thereby, accused (1) Shamsuddin Ahmed (2) Gazi Md. Abdul Mannan (3) Nasiruddin Ahmed alias Md. Nasir alias Captain ATM Nasir (4) Md. Hafizuddin and (5) Md. Azharul Islam have been charged for participating, facilitating, abetting and substantially contributing and also for ‘complicity’ to the

commission of offences of 'abduction', 'torture' and 'murder' as crimes against humanity as part of systematic attack directing unarmed civilians as specified in section 3(2) (a)(g) (h) of the Act of 1973 which are punishable under section 20(2) of the Act for which the accused persons have incurred liability under section 4(1) of the Act.

Evidence of Witnesses Presented

362. Prosecution, in order to prove this charge involving the event of killing Md. Fazlur Rahman on forcible capture examined three witnesses i.e. P.W.11, P.W.15 and P.W.21. First two are the brothers of the victim Md. Fazlur Rahman and of them P.W.15 allegedly accompanied the victim till the act of forcible capture happened. P.W.21 was a resident of village Atkapara who allegedly saw taking away the victim from gudara ghat.

363. P.W.11 Md. Mahtab Uddin [62] is a resident of village Atkapara under Karimganj Police Station of the then Kishoreganj Sub-Division. In 1971, he was a SSC examinee. He happens to be a younger brother of victim Md. Fazlur Rahman who in 1970 was a teacher of Gunadhar High School under Karimganj Police Station and in 1970 he qualified in CSP examination. P.W.11 stated that in 1971 during the war of liberation his elder brother Md. Fazlur Rahman came to their home and started organizing freedom fighters and was scheduled to go to India on 24 August 1971 along

with some others intending to join the war of liberation. But, at about 11:00/11:30 A.M. on 23 August 1971 accused Md. Azharul Islam, ATM Nasir, Shamsuddin Ahmed, Gazi Md. Abdul Mannan and Md. Hafizuddin and their cohort Razakars detained Md. Fazlur Rahman and his another younger brother Md. Bazlur Rahman at a place near *gudara ghat*, when they were returning from Karimganj bazaar, P.W.11 stated. The accused persons and the Razakars after carrying out body search took Md. Fazlur Rahman to a Razakar camp set up at Karimganj Dakbungalow and Md. Bazlur Rahman [brother of victim Md. Fazlur Rahman] informed them of this after returning home, P.W.11 added. Learning about the incident, he [P.W.11] and his father went to Karimganj Dakbungalow and found the accused persons there. They also saw tortured Md. Fazlur Rahman detained there who told that he was captured by the accused persons on identification by accused Md. Azharul Islam and he [victim] told them to quit the rest house. Then they went to Rahim Moulavi, a member of local Peace Committee [an anti-liberation organisation] and the father of accused Md. Azharul Islam, who told that his[P.W.11] brother could be spared in exchange of an amount of money.

364. P.W.11 went on to state that on the following day[24 August 1971] they collected taka[rupee] thirty thousand by selling property and again went to Rahim Moulavi with this and Rahim

Moulavi on receiving the amount of money took them to the Razakar camp at Kishoreganj old Thana[building] where they met Md. Fazlur Rahman[victim] who told them not to offer money to Rahim Moulavi as they would kill even the said amount of money was given. Then Rahim Moulavi took them [P.W.11 and his father] out of the camp and keeping them in waiting there he[Rahim Moulavi] went to Moulana Mosleh Uddin, the president of Kishoreganj Sub-Division Peace Committee and at about 2:30/03:00 P.M. returning therefrom informed them that Md. Fazlur Rahman had been released and then they returned home, but the inmates informed them that Md. Fazlur Rahman did not come back home. With this they [P.W.11 and his father] again moved to Rahim Moulavi in Kishoreganj who told them that Md. Fazlur Rahman was forwarded to court. But they could not have any trace of Md. Fazlur Rahman and he never returned.

365. In cross-examination, done on behalf of accused Shamsuddin Ahmed, P.W.11 stated that he had been at home when the Razakars took away his brother Md. Fazlur Rahman to Karimganj Razakar camp on picking up from gudara ghat and that their home was about one kilometre far from the said gudara ghat. He also stated in reply to question put to him by the defence that they sold one acre of land to 2/3 persons including one of his uncles. Moulana Mosleh Uddin, the president of Kishoreganj Peace

Committee, used to reside in Kishoreganj town. The place was Ekrapur where they were kept in waiting by Rahim Moulavi and on that day they returned home at about 03:30/04:00 P.M. P.W.11 also stated, in reply to defence question, that in addition to their family inmates many others of his grand-father's family also started searching for Md. Fazlur Rahman.

366. P.W.11 denied the defence suggestions that in 1971 he [P.W.11] was a minor boy, that accused Shamsuddin Ahmed was a student of class V of Karimganj Bazaar Government Primary School and in 1971 he [accused] was 12 years old, that accused Shamsuddin Ahmed did not belong to Razakar Bahini and was not involved with any criminal activity and that what he stated was untrue and tutored.

367. During cross-examination on behalf of the four absconding accused persons P.W.11 expressed ignorance about the identity of members of Karimganj Peace Committee excepting Rahim Moulavi. He also stated that accused Gazi Md. Abdul Mannan had been serving in Pakistan army before the war of liberation ensued and he heard that in 1970 accused ATM Nasir studied in class X in Jangal Bari High School. P.W.11 denied the suggestions put to him that accused ATM Nasir, Gazi Md. Abdul Mannan, Md. Hafizuddin and Md. Azharul Islam did not belong to Razakar force and they were not involved with any offence of crimes against humanity and

what he stated implicating these accused persons was untrue and tutored.

368. P.W.15 Md. Bazlur Rahman [56] is another younger brother of victim Md. Fazlur Rahman. Allegedly he was with the victim Md. Fazlur Rahman when they were returning home from Karimganj bazaar on 23 August 1971. In 1971, P.W.15 was 11 years old. P.W.15 stated that his elder brother Md. Fazlur Rahman who in 1970 was a teacher of Gunadhar High School under Karimganj Police Station and in 1970 he qualified in CSP examination. P.W.15 stated that in 1971 his brother Md. Fazlur Rahman came to their home and started organizing freedom fighters and he himself was taking preparation to go to India to join the war of liberation.

369. P.W.15 further testified that at about 10:00 A.M. on 23 August 1971 his elder brother Md. Fazlur Rahman being accompanied by him went to Karimganj bazaar and after purchasing a shirt while they[he and the victim] came to gudara ghat at about 11:00/11:30 A.M. on their way to home, accused Md. Azharul Islam, ATM Nasir, Shamsuddin Ahmed, Gazi Md. Abdul Mannan and Md. Hafizuddin and their cohort Razakars detained Md. Fazlur Rahman and after searching his body they took away him [Md. Fazlur Rahman] to the Razakar camp at Karimganj Dakbungalow. He [P.W.15] started following them up to

Karimganj Dakbungalow and saw them taking Md. Fazlur Rahman inside the Dakbungalow where he was subjected to torture. Then he returning home described the incident to his father and brother Mahtab Uddin [P.W.11].

370. P.W.15 also stated that his father and elder brother Md. Mahtab Uddin [P.W.11] rushed to Karimganj Dakbungalow in search of Md. Fazlur Rahman where he told that Razakar Md. Azharul Islam was there and asked them to quit the camp. They returned back home. Next, his father and brother Mahtab Uddin moved to Rahim Moulavi, the father of accused Md. Azharul Islam, at village Haidhoinkhali who demanded a big amount of money to release Md. Fazlur Rahman. With this they returned back home and collecting taka [rupee] thirty thousand by selling land property went to Rahim Moulavi, on the following day [24 August 1971] . Rahim Moulavi taking the amount went to Mosleh Uddin, the president of Kishoreganj Peace Committee, and returning back therefrom at about 02:30/03:00 P.M. he [Rahim Moulavi] informed that Md. Fazlur Rahman had been released and with this his father and brother came back home, but did not find him [Md. Fazlur Rahman] . Then his father and brother again moved to Rahim Moulavi when he told that Md. Fazlur Rahman was forwarded to court. But he[victim] could not be traced even on extensive hunt and he never returned.

371. P.W.15 in respect of reason of knowing the accused ATM Nasir, Shamsuddin Ahmed and other accused persons stated that accused Shamsuddin Ahmed used to stay at the house of one Tyebuddin of their village on lodging and move through the road in front of their house and accused ATM Nasir used to visit there. Accused Gazi Md. Abdul Mannan was the commander of Razakar Bahini and used to move around their locality. Accused Md. Azharul Islam also used to move along with him and accused Gazi Md. Abdul Mannan around their village, and as such, he knew him as well beforehand.

372. In cross-examination done on part of accused Shamsuddin Ahmed P.W.15 stated that their home was about one kilometre far from the Karimganj gudara ghat. The accused persons abducted his brother Md. Fazlur Rahman from gudara ghat when they had been waiting there to cross the river by boat. The Razakar camp was situated at a place 50 yards far from the said gudara ghat. P.W.15 denied the defence suggestions that in 1971 accused Shamsuddin Ahmed was 12 years old and that he did not have association with the Razakars and did not belong to Razakar Bahini and that what he stated implicating him was untrue and tutored.

373. P.W.15 also faced cross-examination done on behalf of the four absconding accused persons when he stated that he could not say whether accused ATM Nasir studied in school in 1970 and

whether he joined the Bangladesh army after independence. P.W.15 also stated in reply to question put to him by the defence that village home of accused ATM Nasir was at Dulipara village under Karimganj Police Station. P.W.15 expressed ignorance whether accused Gazi Md. Abdul Mannan had been serving in army in 1970 and whether he joined the Bangladesh army after independence. P.W. 15 also denied the defence suggestions that he could not say who took away Md. Fazlur Rahman on abduction to Razakar camp and that accused Md. Azharul Islam did not cause torture to Md. Fazlur Rahman at the Razakar camp and that these four accused persons did not belong to Razakar Bahini and were not involved with any criminal activity and that what he stated was untrue and tutored.

374. P.W.21 Md. Muslim [65], a resident of village Atkapara under Police Station Karimganj of the then Kishoreganj Sub-Division, was 22/23 years old in 1971. He stated that during the first part of Bangla month Bhadra in 1971, at about 12:00 P.M. he went to Karimganj bazaar and when he was at gudara ghat he saw Md. Fazlur Rahman of their village, on returning back to home, coming there after taking shirt from Karimganj bazaar when Razakars accused Md. Azharul Islam, ATM Nasir, Shamsuddin Ahmed, Md. Hafizuddin and their accomplice some other Razakars detained him and took him away therefrom to Karimganj

Dakbungalow. P.W.21 also stated that later on, he heard from Md. Bazlur Rahman, the brother of Md. Fazlur Rahman, that they attempted to get his brother released even in exchange of money but they did not have his trace even.

375. In cross-examination, P.W. 21 stated that his house was about 1/ 1 ½ kilometre far from the gudara ghat. Karimganj Dakbungalow was situated 100/150 feet away from the gudara ghat. There had been some other people in the gudara ghat besides him when Md. Fazlur Rahman was taken away on forcible capture but he did not know them. P.W.21 denied the defence suggestions that he did not see the event of abducting Md. Fazlur Rahman from gudara ghat, that accused Shamsuddin Ahmed was not a Razakar and was not involved in any criminal activities in 1971 and that what he stated implicating accused Shamsuddin Ahmed was untrue and tutored.

376. State defence counsel defending the rest four absconding accused persons cross-examined P.W.21 when he stated that he did not know what accused Gazi Md. Abdul Mannan's profession was but he was a foot-ball player. Accused ATM Nasir used to visit their village. He could not say about the profession of accused Md. Hafizuddin and Md. Azharul Islam. P.W.21 denied that these four accused persons did not belong to Razakar Bahini and they were

not involved with the event he narrated and that what he stated implicating them was untrue and tutored.

Finding with Reasoning on Evaluation of Evidence

377. The charge involves the event of deliberate act of abduction of Md. Fazlur Rahman from Karimganj bazaar gudara ghat followed by causing his death. The act of forcible capture of Md. Fazlur Rahman, the first phase of the event, accompanied by his younger brother Md. Bazlur Rahman [P.W.15] happened in day time when the victim was on the way back to home from Karimganj bazaar. A group of Razakars accompanied by the accused persons with common intent to cause his death had forcibly captured the victim Md. Fazlur Rahman and took him away first to Karimganj Dakbungalow torture cell and on the next day he was taken away to Kishoreganj Dakbungalow, another torture cell wherein he was again subjected to torture. And finally he was killed at an unknown place, the charge arraigns.

378. Prosecution examined three witnesses as P.W.11, P.W.15 and P.W.21 and of them first two are the younger brothers of victim Md. Fazlur Rahman and P.W.21 was a co-villager of the victim who allegedly saw the Razakars taking the victim Md. Fazlur Rahman away from Karimganj bazaar gudara ghat to Karimganj Razakar camp. P.W.15 allegedly was with the victim at the relevant

time when he was so picked up. P.W.11 stated the facts relevant to the event.

379. In respect of this charge involving killing of Md. Fazlur Rahman on abduction the learned prosecutor Mr. Sultan Mahmud argued that amongst the three witnesses examined to substantiate this charge two are direct witnesses to the act of forcible taking away the victim by a group of Razakars accompanied by all the five accused persons from gudara ghat adjacent to Karimganj bazaar and it happened in day time. The evidence presented shall demonstrate that the captured victim was first taken to near Razakar camp and then to Kishoreganj. It shall also be evinced that attempt was made to get him released. But it was in vain and since then he could not have been traced.

380. The learned prosecutor argued too that the killing of Md. Fazlur Rahman was the upshot of his abduction and since defence does not dispute the tragic fate of victim's death, recovery of his dead body was not required to characterize the criminal acts constituting the offences as crimes against humanity. The act of abduction was inevitably linked to victim's confinement and killing and since it has been proved from evidence of direct witnesses that the accused persons were with the group of Razakars while taking away the victim on abduction they are responsible also for the principal offence of killing.

381. Mr. M. Masud Rana, the learned counsel for accused Shamsuddin Ahmed argued that no witness examined in support of this charge claims to have seen the act of killing Md. Fazlur Rahman, and as such, it cannot be said that this accused was concerned or participated in committing the act of killing. Besides, there was no recovery of the victim's dead body to prove his death. P.W.11 and P.W.15 have testified implicating this accused with the act of abduction being tutored. Defence, on query however does not dispute the event of attack that resulted in Md. Fazlur Rahman's abduction. It simply avers that this accused was not engaged in any such criminal acts as testified and he was a pro-liberation person. The learned counsel also argued that this charge involves a single murder, and thus, murder of a single individual does not characterize the act as an offence of murder as crime against humanity as section 3(2) of the Act of 1973 states that the 'act' of 'murder' is to be directed against 'civilian population'.

382. Mr. Abdus Sukur Khan, the learned State defence counsel defending the rest four absconded accused persons submitted that Rahim Moulavi and his accomplices who were approached for release of the detained victim Md. Fazlur Rahman were the real offenders and they should have been prosecuted for the offences narrated in this charge, that the accused persons were not engaged at any phase of the event and they did not belong to local Razakar

Bahini. There is no evidence, direct or circumstantial, to connect these four accused persons with the alleged killing of detained victim Md. Fazlur Rahman.

383. At the out set, before adjudicating the commission of the crime and accused's alleged culpability therewith we prefer speaking to the issue on 'civilian population' raised by the defence. In respect of argument agitated by the learned defence counsel Mr. M. Masud Rana on the notion of 'civilian population' we reiterate that merely considering the number of victim of crime or the fact that an event related to single murder it is not correct to infer that the event of murder of a single individual was an isolated crime. The context in its entirety itself legitimately establishes that murder of Md. Fazlur Rahman was the outcome of a part of 'systematic attack' directed against member of 'civilian population'.

384. Defence argument on this aspect is totally misconceived and incompatible with the settled jurisprudence. Tribunal notes that conducts constituting 'Crimes' 'directed against civilian population' thus refers to organized and systematic nature of the attack causing acts of violence even to a single member belonging to civilian population. In this regard we recall the observation made by the **Appeals Chamber of ICTR in the case of *Nahimana, Barayagwiza and Ngeze***, that –

“A crime need not be carried out against a multiplicity of victims in order to constitute a crime

against humanity. Thus an act directed against a limited number of victims, or even against a single victim, can constitute a crime against humanity, provided it forms part of a 'widespread' or 'systematic' attack against a civilian population."
[Nahimana, Barayagwiza and Ngeze, Judgment, November 28, 2007, para. 924]

385. "Population" does not require that the crimes against humanity be directed against the entire population of a geographic territory or area. In view of above, we are not with the argument made by the defence on the notion of 'civilian population'. Accused Shamsuddin Ahmed belonged to locally formed Razakar Bahini, an armed auxiliary force to collaborate with the Pakistani occupation army to further policy and plan targeting the self-determined Bangladeshi civilian population. This settled history is now a fact of common knowledge. It may thus be legitimately inferred from the phrase "committed against any civilian population" as contained in section 3(2) of the Act of 1973 that the acts constituting the offence of crimes against humanity comprised part of a pattern of 'systematic' crimes directed 'against civilian population'. It is thus immaterial to show that the systematic attack launched had caused death or wrongs to numerous civilians.

386. Next, the learned defence counsel has argued that recovery of dead body is a requirement to prove death of a detained victim. We must say that the learned defence counsel has forgotten that the crimes under adjudication were not isolated crimes and the same were committed in war time situation in violation of customary

international law and in grave breaches of Geneva Convention, 1949 and in a case involving the offence of murder being a 'system or group crime' committed in 1971 during the war of liberation prosecution is not required to prove the recovery of dead body of the victim annihilated on forcible capture. What jurisprudence has been evolved in this regard? **In Krnojelac, the ICTY Trial Chamber**, in respect of *corpus delictus* (proof of death) held that:

"Proof beyond reasonable doubt that a person was murdered does not necessarily require proof that the dead body of that person has been recovered. The fact of a victim's death can be inferred circumstantially from all of the evidence presented to the Trial Chamber."

[Krnojelac ICTY Trial Chamber, Judgement March 15, 2002, Para- 326.]

387. Naturally, no one had occasion to see the event of killing. However, the act of abduction, causing torture keeping the victim in captivity at torture cell and finally causing his death are chained together. Now, we are to see how far the prosecution has been able to prove the nexus of the accused persons' act in causing abduction and the act of accomplishing the act of killing after inflicting torture in captivity.

388. We are to arrive at a decision whether the act and conduct and presence of the accused persons with the group of attackers in carrying out the forcible taking away the victim were the upshots of victim's abduction and the accused persons knowing the foreseeable consequence of their act physically participated in effecting the

forcible capture of the victim intending to further the common object of accomplishing the act of murder. All these have to be inferred on weighing the evidence, facts relevant to the event and circumstances.

389. P.W.15 Md. Bazlur Rahman, the younger brother of the victim, was with the victim Md. Fazlur Rahman when he was so abducted as narrated. P.W.15 allegedly a direct witness to the criminal acts of accused persons forming part of attack and saw them carrying out his brother's abduction. P.W.11 Md. Mahtab Uddin, another younger brother of the victim, heard the event from his brother P.W.15 and P.W.21 Md. Muslim also allegedly saw the accused persons taking away the victim from the *gudara ghat* at Karimganj bazaar. However, none could say when and how the abducted victim was killed.

390. Who was victim Md. Fazlur Rahman? Why he became target of the local Razakars? Was it practicable to resist the group of Razakars on part of other people when they took away the victim on abduction to the Karimganj Dakbungalow torture cell?

391. Defence does not dispute that the victim was abducted, taken away finally to Kishoreganj Dakbungalow torture cell at Razakar camp and since then he could not have been traced. It simply denies the accused persons' involvement and concern with the alleged

event of abduction. Defence also stressed, by putting suggestion that the accused persons did not belong to Razakar Bahini.

392. We have got it proved from evidence of P.W.11 Md. Mahtab Uddin, the younger brother of the victim, that in 1970 victim Md. Fazlur Rahman was a teacher of *Gunadhar* High School under Karimganj Police Station and in 1970 he qualified in the CSP examination. And in 1971 during the war of liberation his brother Md. Fazlur Rahman came to their home and started organizing freedom-fighters and was scheduled to go to India on 24 August 1971 along with some others intending to join the war of liberation.

393. Another younger brother of victim Md. Fazlur Rahman P.W.15 Md. Bazlur Rahman also stated that in 1971 his brother Md. Fazlur Rahman came to their home and started organizing freedom-fighters and he himself was taking preparation to go to India to join the war of liberation.

394. Thus, it stands proved from consistently corroborating evidence of competent and natural witnesses that victim Md. Fazlur Rahman, their [P.Ws. 11 and 15] elder brother, was scheduled to join the liberation war and was a brilliant man indeed as he got himself qualified in the CSP examination. Defence does not dispute this version, as made by two brothers of the victim, in relation to victim's brilliance and plan to move to India with the patriotic intent to join the war of liberation.

395. The above impels the rational inference that in some way the information about the victim's decision to go to India to join the war of liberation reached to the local Razakars which imbued them designing plan to annihilate him by taking him away on forcible capture. Presumably, the act of abduction of victim Md. Fazlur Rahman was accomplished deliberately, to further the policy and plan of Pakistani occupation army. And it happened in the context of War of Liberation.

396. It may be lawfully inferred that the accused persons belonging to local Razakar Bahini for the reason of victim's decision to go to India intending to join the war of liberation and his pro-liberation mindset termed him as a 'miscreant' and thus they had launched attack on him, particularly when the victim was scheduled to move to India on the following day. Razakars were loyal to the Pakistani occupation army and used to act under it as its auxiliary force. It is now settled. History says that freedom-fighters and pro-liberation Bengali people were treated as '*miscreants*'. Even reward was announced for the success of causing their arrest or to provide information about their activities. Objective of such announcement was to wipe out the pro-liberation Bengali civilians to resist and defy the war of liberation which was the core policy of the Pakistani occupation armed forces. Therefore, it is quite patent as to materializing that objective, the accused persons and their

cohorts had abducted Md. Fazlur Rahman and took away him to the torture cells.

397. Testimony of P.W.15, the younger brother accompanying the victim Md. Fazlur Rahman, demonstrates unambiguously that at about 11:00/11:30 A.M. on 23 August 1971 while they[he and the victim] came to gudara ghat on way back home from Karimganj bazaar, accused Md. Azharul Islam, ATM Nasir, Shamsuddin Ahmed, Gazi Md. Abdul Mannan and Md. Hafizuddin and their cohort Razakars detained Md. Fazlur Rahman and after searching his body they took away him [Md.Fazlur Rahman] to the Razakar camp at Karimganj Dakbungalow. He [P.W.15] started following them up to Karimganj Dakbungalow and saw them taking Md. Fazlur Rahman inside the Dakbungalow where he was subjected to torture. Then he retraining home described the incident to his father and brother Mahtab Uddin [P.W.11].

398. The above version of P.W.15, who was a direct witness to the event of abducting his elder brother from the place of gudara ghat, remained uncontroverted. Rather it has been re-affirmed in cross-examination that Md. Fazlur Rahman was so abducted from gudara ghat on the date and at the relevant time.

399. How the P.W.15 Md. Bazlur Rahman could recognise the accused persons? In this regard we have found from his evidence that the accused Shamsuddin Ahmed used to stay at the house of

one Tyebuddin of their village on lodging and move through the road in front of their[P.W.15] house and accused ATM Nasir used to visit there, that accused Gazi Md. Abdul Mannan was the commander of Razakar Bahini and used to move around their[P.W.15] locality, that accused Md. Azharul Islam also used to move along with accused Gazi Md. Abdul Mannan around their village, and as such, he knew them beforehand. Therefore, reason of knowing the accused persons beforehand, as stated by P.W.15, seems to be fairly natural. Besides, in war time situation, the locals naturally had various reasons of knowing the persons who were affiliated with the notorious Razakar Bahini formed to collaborate with the Pakistani occupation army. Therefore, testimony of P.W.15, a direct witness, portraying the accused persons' physical presence and participation in effecting Fazlur Rahman's forcible capture and taking him away to Karimganj torture cell stands credible.

400. P.W.21 Md. Muslim, a resident of village Atkapara under Police Station Karimganj of the then Kishoreganj Sub-Division was a co-villager of victim Md. Fazlur Rahman, and as such, he knew him. Evidence of P.W.21 speaks that he was also present at gudara ghat at the relevant time, and as such, he could see Razakars accused Md. Azharul Islam, ATM Nasir, Shamsuddin Ahmed, Md. Hafizuddin and their cohorts detaining Md. Fazlur Rahman and

taking him to Karimganj Dakbungalow when he was also on returning back home from Karimganj bazaar.

401. The above version of P.W.21, another direct witness, provides consistent corroboration to what has been testified by P.W.15, the younger brother of victim Md. Fazlur Rahman who was with the victim at the relevant time. Defence could not bring anything by cross-examining P.W.21 that he was not at the site at the relevant time and had no reason to recognise the accused persons.

402. In cross-examination, P.W.21 stated in reply to defence question put to him that he did not know accused Gazi Md. Abdul Mannan's profession but he was a foot-ball player, accused ATM Nasir used to visit their village and he did not know about the profession of accused Md. Hafizuddin and Md. Azharul Islam. Tribunal notes that mere knowing one's profession does not make somebody acquainted to him. The accused persons were members of local notorious Razakar Bahini and it alone made the locals acquainted to them, we infer. Besides, accused ATM Nasir used to visit their village and accused Gazi Md. Abdul Mannan was a local foot-ball player and obviously these were the reasons that made the P.W.21 able of recognizing them who were with the group of Razakars at the site where from Md. Fazlur Rahman was so abducted. Therefore, evidence of P.W.21, a direct witness to the

act of forcible capture of victim Md. Fazlur Rahman, having been corroborated by P.W.15, inspires credence and there has been no reason whatsoever to discard it. The way the accused persons and their cohorts committed the act of abduction as unveiled suggests justifiably that it was planned and done as steps towards commission of the principal crime, the murder of the abducted victim Md. Fazlur Rahman.

403. What happened next to forcible capture of Md. Fazlur Rahman? It has been affirmed in cross-examination of P.W.15 that the Razakar camp was situated at a place 50 yards far from the said gudara ghat. It is evinced that P.W.15 Md. Bazlur Rahman started following the group of Razakars as they were taking away his brother [Md. Fazlur Rahman] to Karimganj Dakbungalow [Razakar camp] and saw them taking Md.Fazlur Rahman inside the Dakbungalow where he was subjected to torture. Then he returning home described the incident to his father and brother Md. Mahtab Uddin [P.W.11]. Another direct witness to the event of abduction P.W.21 Md. Muslim corroborates the version of P.W.15. Defence does not dispute that on abduction the victim was taken to Karimganj Razakar camp.

404. It thus stands proved too, on rational appraisal of evidence, facts and circumstances divulged that the victim Md. Fazlur Rahman was kept in captivity first at local Razakar camp. It is not

disputed that next he was taken to Kishoreganj Razakar camp. Such act of keeping a defenceless 'protected person' in coercive captivity constituted the offence of 'confinement'. It was not practicable for anyone to see the treatment done to a detainee inside the Razakar camp. It may be lawfully presumed that in captivity the victim was subjected to torture. For a detainee who was eventually killed would have never been kept in captivity free from any physical mistreatment. And thus, victim's coercive captivity itself provides rational indication of constituting the offence of 'torture' as well, nevertheless there has been no direct evidence in this regard. Besides, P.W.15 saw the victim, his brother of being subjected to torture at Karimganj Razakar camp as he[P.W.15] went there by following the accused persons and their cohorts while they were taking away his brother to that camp. We find no reason to exclude this version as it speaks of truth.

405. On being informed of the event of son's forcible capture from P.W.15 what initiative the father of the victim took to get his son free from the clutches of Razakars? P.W.15 Md. Bazlur Rahman, the younger brother of the victim testified in this regard. According to him, his father and elder brother Md. Mahtab Uddin [P.W.11] rushed to Karimganj Dakbungalow in search of Md. Fazlur Rahman where they were asked by the victim to quit the camp as Razakar Azharul Islam [accused] was there. With this

they returned back home. Next, his [P.W.15] father and brother Md. Mahtab Uddin moved to Rahim Moulavi, the father of accused Md. Azharul Islam, at village *Haidhonkhali* who demanded big amount of money to set Md. Fazlur Rahman free. With this they returned back home and collecting taka [rupee] thirty thousand by selling land property went to Rahim Moulavi again on the following day [24 August 1971] who then taking the amount went to Mosleh Uddin, the president of Kishoreganj Peace Committee, and returning back therefrom at about 02:30/03:00 P.M. he [Rahim Moulavi] informed that Md. Fazlur Rahman had been released and with this his father and brother came back home, but did not find him [Md. Fazlur Rahman]. Then his father and brother again moved to Rahim Moulavi when they were told that Md. Fazlur Rahman was forwarded to court. But he [victim Md. Fazlur Rahman] could not have been traced even on extensive hunt and he never returned.

406. Tribunal notes that in 1971, during the war of liberation Peace Committee was one of guiding organisations of locally formed Razakar Bahini. It remained undisputed that Rahim Moulavi was the father of accused Md. Azharul Islam. We have already recorded our reasoned finding that the accused persons including the accused Md. Azharul Islam belonged to locally formed Razakar Bahini. Testimony of P.W. 15 also depicts that said

Rahim Moulavi had a close affiliation with Mosleh Uddin, the President of Kishoreganj Peace Committee. Defence could not refute it in any manner. Moving first to Rahim Moulavi, the father of accused Md. Azharul Islam, to get the victim released became frustrated when despite receiving a big amount of money from the father of the victim Rahim Moulavi had acted deceptively as he finally in disguise of having meeting the president of Kishoreganj Peace Committee informed that Md. Fazlur Rahman was forwarded to court. But the reality was that the victim could not have been traced at all. This fact itself is sufficient to prove victim Md. Fazlur Rahman's death resulting from his abduction, confinement and torture, we lawfully presume and prosecution is not required to prove recovery of victim's dead body as the event took place in war time situation. This view finds support from the observation of **ICTY Trial Chamber** made in respect of *corpus delictus* (proof of death) in the case of *Milorad Krnojelac* which is as below: :

"Proof beyond reasonable doubt that a person was murdered does not necessarily require proof that the dead body of that person has been recovered.the fact of a victim's death can be inferred circumstantially from all of the evidence presented to the Trial Chamber."

[Prosecutor v. Milorad Krnojelac, Case No. IT-97-25-T, Date of Judgment-15 March 2002, Para-326]

407. The matrix of facts indisputably leads to the conclusion that detained Md. Fazlur Rahman was eventually killed and naturally it

could not be known by any body as to when and where he was so killed. But the totality of facts as discussed above suggests that his killing was the upshot of his abduction in carrying out which all the five accused persons and their cohort Razakars actively participated. Normally, it was impracticable to anticipate any compassion or humanity on part of Peace Committee which was truly a guiding body of Razakar Bahini, in response to an approach made by the relative of the victim detained by Razakars. Nevertheless, the vulnerable father intending to save his dear son's life and to get him freed appealed to Rahim Moulavi, the father of Razakar Md. Azharul Islam, one of the five accused persons. But the attempt of his appeal became futile and he could not have any trace of his dear son victim Md. Fazlur Rahman. How this father carried out the trauma of missing his dear son!

408. There is no evidence that accused persons physically or directly participated to the actual commission of killing or were personally present at the execution site. The Tribunal notes that participation may occur before, during or after the act is committed. Accused persons' conduct and culpable and deliberate acts were manifestation of their willingness to be associated or concerned even with the subsequent criminal acts that resulted in victim's death. Their physical participation at the first phase of the attack offers the conclusion that accused persons must have also

concerned with the killing of Md. Fazlur Rahman and brutal physical mistreatment caused to the victim in captivity that ended in his killing as they all physically and culpably participated in accomplishing the act of victim's abduction which is chained to its upshot.

409. The accused persons, by their culpable conduct or criminal act at the phase of abduction, as divulged from evidence, took a consenting part even in the commission of killing the victim or were connected with the enterprises involved in its actual commission, as they belonged to the group engaged in the commission of forcible capture. Now, all legal authorities agree that where a common design of a group of attackers exists and the group has carried out its purpose, then no distinction can be drawn between the 'finger man' and the 'trigger man'. The facts related to the entire event, as unveiled, if examined in light of this principle do not leave any doubt that all the members of the group of perpetrators belonging to Razakar Bahini had a common intention in committing the killing of victim Md. Fazlur Rahman by taking him away on abduction.

410. The Tribunal notes that the P.W.15 and P.W.21 are with the truth, in narrating what they witnessed while the group of Razakars accompanied by the accused persons took away Md. Fazlur Rahman to Karimganj Razakar camp, on forcible capture. On

rational evaluation, their testimony does not appear to have been suffered from any embroidery.

411. It is now jurisprudentially settled that the 'assistance' or 'encouragement' encompasses even mere presence. Thus, an individual may abet by providing practical assistance, encouragement or moral support to the group of attackers, in accomplishing the crime. Unshaken testimony of P.W.15 and P.W.21, the direct witnesses, demonstrates that the accused persons were not merely present at the site of gudara ghat where from Md. Fazlur Rahman was picked up, but they physically participated, in accomplishing the act of abduction.

412. Accused persons' explicit and culpable act in accomplishing abduction of Md. Fazlur Rahman and keeping him in coercive captivity at Razakar camps, forming part of attack leading to the act of killing, the principal offence indicates beyond reasonable doubt that accused persons were knowingly 'concerned' even with the ending phase of the event, causing death of victim Md. Fazlur Rahman, as 'participants'.

413. Thus, it cannot be said that the accused persons incurred no liability for the offence of murder in question as there has been no evidence to show their personal and physical participation in committing the crime. This view finds support from the observation

made by the ICTR Appeals Chamber in the case of *Ntakirutimana and Ntakirutimana* which states--

"Murder as a crime against humanity under Article 3(a) does not require the Prosecution to establish that the accused personally committed the killing. Personal commission is only one of the modes of liability identified under Article 6(1) of the ICTR Statute."

[The Prosecutor v. Elizaphan Ntakirutimana and Gerard Ntakirutimana, Case Nos. ICTR-96-10-A and ICTR-96-17-A, Date of judgment-13 December 2004, Para-546]

414. Accused persons' proved guilty participation in committing the abduction of the victim, the first phase of the attack, in fact obviously facilitated and contributed to the commission of murder of detained victim as it clearly constituted 'instigation' or 'abetment' provided to the perpetrators of the crime, if it is said that accused persons had no personal participation in perpetrating the act of murder. It transpires that the accused persons remained active with the group in taking the captured victim Md. Fazlur Rahman first to Karimganj Razakar camp and next to Kishoreganj camp. This relevant facts lead to presume lawfully that the accused persons did not keep them distanced from the group of perpetrators until the event of attack ended in causing death of the victim Md. Fazlur Rahman.

415. Not necessarily the accused persons are to be shown to have participated in all aspects of the criminal acts. Accused persons' presence with a group at the site where from the victim was

forcibly picked up and was taken to local Razakar camp by launching attack is sufficient to conclude that they were consciously concerned even with the commission of the crime of murder in question.

416. On totality of evidence of witnesses, two of whom are brothers of the victim and another one was their co-villager it stands proved beyond reasonable doubt that by launching a designed and deliberate attack the accused persons and their cohorts forcibly captured the victim Md. Fazlur Rahman to further the object of causing his death. Such act forming part of systematic attack was done to further the policy of Pakistani occupation army under which Razakar Bahini, an auxiliary force used to act.

417. Therefore, the criminal acts and behaviour of the accused persons at the phase of abduction and taking away the victim to Razakar camp forming part of attack that resulted in his killing constituted the offence of crimes against humanity. Objective of such criminal act of the accused persons was to expel the victim, a pro-liberation civilian, beyond the boundary of his life by causing his death. It is to be noted that criminal act directed even against a single victim constitutes a crime against humanity if it forms part of systematic attack. In this regard we recall the observation of the **ICTR Appeals Chamber in the case of *Nahimana, Barayagwiza and Ngeze*** which states --

"The Appeals Chamber considers that, except for extermination, a crime need not be carried out against a multiplicity of victims in order to constitute a crime against humanity. Thus an act directed against a limited number of victims, or even against a single victim, can constitute a crime against humanity, provided it forms part of a widespread or systematic attack against a civilian population."

[Ferdinand Nahimana, Jean-Bosco Barayagwiza and Hassan Ngeze v. The Prosecutor, Case No. ICTR-99-52-A, Judgment-28 November 2007, Para-924]

418. On integrated evaluation of evidence presented we are of the view that the culpable acts of all the five accused persons in effecting abduction of the victim Md. Fazlur Rahman for which they are found, beyond reasonable doubt, to have had ‘concern’ even to the commission of the principal offence encompass ‘abetment’ and ‘facilitation’ which indisputably had substantial effect on commission of the principal offence of ‘abduction’, ‘confinement’ ‘torture’ and ‘murder’ which were chained together and were perpetrated to further same purpose. Therefore, accused (1) Shamsuddin Ahmed (2) Gazi Md. Abdul Mannan [absconded], (3) Nasiruddin Ahmed alias Md. Nasir alias Captain ATM Nasir [absconded] (4) Md. Hafizuddin [absconded] and (5) Md. Azharul Islam [absconded] are, therefore, found criminally liable under section 4(1) of the Act of 1973 for participating , facilitating, abetting, contributing and complicity, by their act and conduct forming part of attack, to the commission of killing of one unarmed civilian Md. Fazlur Rahman constituting the offence of ‘murder’ and also for the commission of the offences of ‘abduction’ and

'torture' as crimes against humanity', as specified in section 3(2) (a) (g)(h) of the Act of 1973 which are punishable under section 20(2) of the Act.

Charge No. 05

[Killing of Paresh Chandra Sarker of village Ramnagar under Police Station Karimganj]

419. Summary Charge: That on 07 September 1971 at about 10:00 A.M. while accused Shamsuddin Ahmed along with his cohort Razakars were on way towards Tarail with a box of ammunition, one Paresh Chandra Sarker of village Ramnagar under Police Station Karimganj of the then Kishoreganj Sub-Division was shot to death, as instructed by accused Shamsuddin Ahmed when he was working in a field situated on the bank of river in front of his house. Later on his dead body was buried behind his house.

420. Thereby, accused Shamsuddin Ahmed has been charged for participating, facilitating, abetting and substantially contributing and also for 'complicity' to the commission of offence of 'murder' as crime against humanity as part of systematic attack directing unarmed civilians as specified in section 3(2) (a)(g)(h) of the Act of 1973 which is punishable under section 20(2) of the Act for which the accused has incurred liability under section 4(1) of the Act.

Evidence of Witnesses Presented

421. In all four witnesses as adduced by the prosecution have been examined as P.W.10, P.W.11, P.W.13 and P.W.14 to prove this

charge involving the event of killing one Paresh Chandra Sarker of village Ramnagar under Police Station Karimganj of the then Kishoreganj Sub-Division allegedly committed by the accused Shamsuddin Ahmed and his cohort Razakars.

422. P.W.10 Md. Shah Alam [63] is from village Gujardia Ramnagar. In 1971 he was a student of class VIII in Karimganj Pilot High School, Paresh [victim], his class mate, was his only friend, P.W.10 stated, adding that in 1970 accused Shamsuddin Ahmed studied in class X in the same school, and thus, he knew him beforehand.

423. In describing the event, P.W.10 stated that around 10:00 A.M. on 07 September 1971 he and his friend Paresh were talking together sitting on the bank of river beside the road in front of their house and five minutes later Paresh left the place. His house was adjacent to that of Paresh. Five minutes after Paresh had left accused Shamsuddin Ahmed being accompanied by some Razakars arrived there along with an elderly man carrying a case of ammunition on head. Razakars freed that elderly man and they gave him the case of bullets to carry. After walking for some time, accused Shamsuddin Ahmed found Paresh working in a field in front of his house and asked his name. Accused Shamsuddin scolded Paresh for being a Hindu man saying -- " you *malaun*, how do I know your name, you stand here" -- and at one point accused

Shamsuddin Ahmed shot Paresh with a rifle and Paresh fell down, he [P.W.10] saw. Then accused Shamsuddin Ahemd and his cohorts started moving forward along with him [P.W.10]. After 2/3 minutes, they released him giving the case of bullets to one Hasu finding him on the road. Accused Shamsuddin asked him [P.W.10] to bury Paresh instead of cremating him and threatened that they would burn the village if Paresh's body was cremated, P.W.10 added.

424. P.W.10 went on to state that he then returned to Paresh and found him alive and then with the help of an elderly man took Paresh to his home where Paresh told others including family inmates that accused Shamsuddin Ahmed shot him and he[Paresh] would not survive. After a few minutes, Paresh died. P.W.10 stated that later, Paresh's dead body was buried. After independence, Paresh's remains were cremated as per their Hindu rituals.

425. P.W.10 has been cross-examined only on behalf of accused Shamsuddin Ahemd. The learned State defence counsel defending the four absconding accused persons declined to cross-examine him. In cross-examination, P.W.10 stated that the place where Paresh was shot was about 50 feet far from their house. He could not tell the name of Razakars accompanying the accused Shamsuddin Ahmed at the time of the event. It was Fazar Ali who carried the case of bullets on head. P.W.10 also stated in reply to

question put to him by the defence that none came forward to the place where his friend Paresh was shot by accused Shamsuddin Ahmed, on hearing gun firing. Hasu about whom he stated in examination-in-chief is not alive now.

426. P.W.10 expressed ignorance as to whether accused Shamsuddin Ahemd was a student of class V in 1971 and whether he passed SSC examination in 1975 under Comilla Board. He denied defence suggestions that in 1971 accused Shamsuddin Ahemd was 12 years old, that he was not a Razakar and that what he stated about the event implicating accused Shamsuddin Ahmed was untrue and tutored.

427. P.W. 11 Md. Mahtab Uddin [62] is from village Atkapara under Karimganj Police Station of the then Kishoreganj Sub-Division. In addition to the event narrated in charge no. 04 involving the killing of Md. Fazlur Rahman of village Atkapara P.W. 11 also testified the facts relevant to the event of killing Paresh Chandra Sarker as described in charge No. 05.

428. P.W. 11 stated that 12/13 days after his brother Md. Fazlur Rahman [victim of charge no. 04] was abducted he [P.W. 11] around 9.00/9.30 A.M. went to the sugar trader Brajendra Nath's house situated on the bank of river when he saw people running on the road in front of his [Brajendra Nath Sarker] house and heard them telling that Razakars had shot Paresh by gun. He [P.W. 11]

then moved to Paresh's house where he saw Paresh's body wrapped by a gamsa and he [Paresh] disclosed them that accused Shamsuddin Ahmed had shot him by gun and afterwards he died and then he [P.W. 11] came back home.

429. On cross-examination, in respect to the testimony relating to this charge P.W. 11 stated that Brajendra Nath's house was about 500/600 yards far from that of Paresh and he could not say how many families used to reside at Brajendra Nath's house. It has been re-affirmed in cross-examination that P.W. 11 on the date and time went to Brajendra Nath's house to collect sugar. P.W. 11 denied the defence suggestions put to him that the accused Shamsuddin Ahmed was not a Razakar, that he was not involved with any criminal activity and that what he stated about the killing of Paresh Chandra Sarker implicating accused Shamsuddin Ahmed was untrue, concocted and tutored.

430. P.W.13 Bashona Rani Chowdhury [55] is the sister of victim Paresh Chandra Sarker. She in 1971 at the relevant time had been living at her paternal home in village Ramnagar under Karimganj Police Station of the then Kishoreganj Sub-Division when her elder brother Paresh Chandra Sarker was killed. In 1971, she was 10 years old.

431. P.W.13 stated that during the last part of Bangla month Bhadra in 1971 at about 10:00 A.M. her brother [Paresh Chandra

Sarker] was working in a field near their home, where from she [P.W.13] saw that some Razakars had gathered near her brother Paresh having a case on the head of Shah Alam [P.W.10]. She informed it to her mother. Then she saw that one Razakar shot her brother Paresh and then they left towards east. Then they rushed to bullet hit Paresh and brought him to home and before breathing his last after being taken home, Paresh told them that accused Shamsuddin who studied in their school had shot him. After some time Paresh Chandra Sarker died.

432. P.W.13 also stated that Paresh's friend Shah Alam [P.W.10] told them that accused Shamsuddin Ahmed asked him [P.W.10] to bury Paresh instead of cremating him and threatened that they would burn the village if Paresh's dead body was cremated. Accordingly, being feared, they buried Paresh's dead body and after independence, Paresh's remains were cremated as per their Hindu rituals.

433. In cross-examination, done only on behalf of accused Shamsuddin Ahmed, P.W.13 stated that her brother Paresh Chandra Sarker studied in Karimganj High School in 1971. The field where Paresh had been working at the time of the incident was about 8/10 feet far from their house. One Ushan bandaged the wound Paresh received by a *gamsa*. One Rashed was also with them who brought bullet hit Paresh to home from the place of incident.

434. P.W.13 further stated in cross-examination that she could not know the identity of accused Shamsuddin Ahmed. P.W.13 in reply to question put to her by the defence stated that Shah Alam [P.W.10] was her brother Paresh's class mate. She denied the defence suggestions that in 1971 accused Shamsuddin Ahmed was 12 years old, that what she stated implicating accused Shamsuddin Ahmed was untrue and tutored by the rival group of accused Shamsuddin Ahmed.

435. P.W.14 Md. Abdul Rashid Bhuiyan [62] is a resident of village Ramnagar where the event described in this charge occurred. He stated that in 1971 he was 14 years old and studied in class VII in Karimganj Pilot High School and at that time Paresh [victim] and Shah Alam [P.W.10] also studied there in class VIII. He [P.W.14] also knew Shamsuddin Ahmed [accused] of village Dulipara who was a student of class X in the same school and he had been staying at one Tyebuddin's house at village Atkapara on lodging.

436. P.W.14 further stated that at about 9.30 A.M. on 07 September 1971 while he was engaged in fishing at river Narosingho in front of Paresh's house he saw accused Shamsuddin Ahmed accompanied by two other Razakars along with another one carrying a case on head moving towards east. When they arrived in front of Paresh's house, Paresh came to them as asked by accused

Shamsuddin Ahmed who wanted to know his name. 'Don't you know my name'? -- Paresh replied. With this accused Shamsuddin Ahmed started scolding him and instantly he [P.W.14] heard gun firing and hue and cry and saw the group of Razakars moving towards east. Meanwhile, the Razakars put the case on Shah Alam's [P.W. 10] head to carry. Then the Razakars released Shah Alam by engaging one Hasu to carry the case. After the Razakars had left the place he and Shah Alam came to Paresh and found him alive. One Hossain bandaged the wound Paresh received by a gamsa and then they brought him to home and after a few minutes, Paresh died .

437. P.W.14 also stated that Shah Alam [P.W.10] present at Paresh's home told that accused Shamsuddin Ahmed asked him [P.W.10] to bury the dead body of Paresh instead of cremating him and threatened that they would burn the village if Paresh's dead body was cremated. Accordingly, they buried Paresh's dead body.

438. In cross-examination, P.W.14 stated that he passed SSC examination in 1974. His home is about one mile away from that of accused Shamsuddin Ahmed. He was on fishing [on the date and time of the event] by net at Narosundha river about quarter kilometre far from his home. In reply to a specific question put to him by the defence, P.W.14 relied that after independence accused Shamsuddin Ahmed remained absconded for long time. Defence questioned whether P.W.14 knew that accused Shamsuddin Ahmed

had been in teaching profession since 2/3 years after independence till 2000. In reply, P.W.14 stated that he heard that accused Shamsuddin Ahmed was in teaching profession but could not say since when.

439. P.W.14 denied the defence suggestions that accused Shamsuddin Ahmed was 12 years old in 1971 and that he had been in teaching profession in different schools of their locality since 1995. P.W.14 expressed ignorance as to whether accused Shamsuddin Ahmed obtained graduation degree in 1983 and B. Ed. degree in 1995 from Mymensingh Teachers Training College. P.W.14 also denied defence suggestion that what he stated about the event implicating accused Shamsuddin Ahmed was untrue and tutored by his rival group.

Finding with Reasoning on Evaluation of Evidence

440. On the day and time as narrated in the charge framed while accused Shamsuddin Ahmed along with his cohort Razakars were on way towards Tarail with a box of ammunition, victim Paresh Chandra Sarker of village Ramnagar under Police Station Karimganj of the then Kishoreganj Sub-Division was shot to death, as instructed by accused Shamsuddin Ahmed. At the relevant time Paresh had been working in a field situated on the bank of river in front of his house. The event happened in day time at around 10:00 A.M at a place closer to Paresh's house. Prosecution requires

proving that death of Paresh was caused by gun shot on the date and time and at the place alleged and it was accused Shamsuddin Ahmed who was responsible for the killing of Paresh by gun firing. Of the four witnesses presented by the prosecution to prove the instant charge, P.W.13 is the sister of the victim Paresh Chandra Sarker who and two others i.e. P.W.10 and P.W.14 experienced the event as direct witnesses, prosecution claims. Prosecution also relied upon P.W.11 who is a resident of neighbouring village Atkapara who came to the crime villages and had occasion to hear the event and injured Paresh Chandra Sarker at his home where he breathed his last.

441. In advancing argument on this charge involving killing of one Paresh Chandra Sarker, the learned prosecutor Mr. Sultan Mahmud submitted that the event happened in day time and of four witnesses some had occasion to see the accused Shamsuddin Ahmed firing gun shot antagonistically aiming Paresh Chandra Sarker who few times later succumbed to injuries after he was taken to his house from the killing site nearer to their house and before he died he disclosed the event implicating the accused as the perpetrator. There has been no reason to disbelieve the prosecution witnesses examined to prove this charge. It has also been proved that the accused had his cohort Razakars with him at the relevant time and they were on move with pack of ammunition. Defence did

not dispute the event of killing. It however simply denied the accused person's complicity and his membership on local Razakar Bahini.

442. Mr. M. Masud Rana, the learned counsel for accused Shamsuddin Ahmed in advancing argument submitted that P.W.10 examined in support of this charge claims to be a direct witness but he could not tell the name of other Razakars allegedly accompanying the accused at the relevant time, as such, his testimony suffers from lack of credence. P.W.11 is a hearsay witness who claims to have learnt the event of gun firing by the accused from the victim Paresh Chandra Sarker.

443. It has been further argued by the learned defence counsel that it was natural to take the bullet hit Paresh Chandra Sarker to any hospital, if really he was shot by gun firing. P.W.13, the sister of the victim, could not tell the name of actual perpetrator and she however claims to have learnt accused's complicity and participation to the criminal act from her brother victim Paresh. Testimony of P.W.11 and P.W.13 does not ring the truth and they have testified being tutored. Accused Shamsuddin Ahmed was not with the group of Razakars and the witnesses were not acquainted with the identity of the accused at all.

444. The relevant fact that also needs to be proved that at the relevant time accused Shamsuddin Ahmed was moving towards

Tarail through the road adjacent to the bank of river with his cohort Razakars. The event relates to a single individual. But it by itself readily did not constitute an isolated crime as it happened in war time situation prevailing in 1971, and the perpetrator the accused belonged to Razakar Bahini formed to collaborate with the Pakistani occupation army to act under it as its auxiliary force. Finally, victim Paresh Chandra Sarker belonged to Hindu religion and this fact also needs to be taken into consideration together with the evidence presented to prove accused's act, conduct and behaviour in arriving at a decision as to liability of the accused Shamsuddin Ahmed for the commission of the offence of murder of a 'protected person'. However, now let us see what the P.W.10, P.W.13 and P.W.14, the three direct witnesses to the event testified before the Tribunal in respect of the event of attack directing Paresh Chandra Sarker that resulted in his death by gun firing.

445. According to P.W.10 Md. Shah Alam in 1971 he was victim Paresh Chandra Sarker's class mate and only friend and they studied in class VIII in Karimganj Pilot School. It also reveals that P.W.10 and the victim were from the same village i.e. village Ramnagar. We have also found from his testimony that in 1970 accused Shamsuddin Ahmed also studied in the same school in class X, and thus, he [P.W. 10] knew him beforehand.

446. It has been divulged from the testimony of P.W.10 that around 10:00 A.M on 07 September 1971, just before the event happened, P.W.10 and victim Paresh had been sitting together on the bank of river beside the road and after victim Paresh had left the place accused Shamsuddin Ahmed being accompanied by some Razakars arrived there along with an elderly man carrying a case of ammunition on head. Razakars freeing that elderly man gave him [P.W.10] the case of bullets to carry.

447. The above version could not be refuted in any manner in cross-examination. Thus, it stands proved that P.W.10 was with the group of Razakars accompanied by accused Shamsuddin Ahmed as he[P.W.10] was compelled to carry the box of ammunition on his head. P.W.10 knew the accused Shamsuddin Ahmed beforehand. Presumably considering the prevailing context and the status of the armed accused and his cohorts did not allow P.W.10 to be daring to refuse or resist the asking to move with them carrying the box of ammunition. As a result he[P.W.10] started moving with the armed group of Razakars carrying the box of ammunition on his head. What happened next?

448. Testimony of P.W.10 demonstrates that after walking for some time, accused Shamsuddin Ahmed found victim Paresh Chandra Sarker working in a field in front of his house and asked his name and scolded him [Paresh] for being a Hindu man saying --

' you *malaun*, how do I know your name, you stand here' -- and at one point accused Shamsuddin Ahmed shot Paresh Chandra Sarker with a rifle and Paresh fell down. P.W.10 saw this criminal act of gun firing directing Paresh as he was compelled to move with the group.

449. It has been affirmed too in cross-examination that the place where victim Paresh Chandra Sarker was shot was about 50 feet far from their house. Ignorance of name of accused's cohort Razakars does not render it untruthful that P.W.10 did not know accused Shamsuddin Ahmed and the group of Razakars was not accompanied by him. However, it stands affirmed that accused Shamsuddin Ahmed was with the group of Razakars.

450. On defence question put to him P.W.10 stated that none came forward to the place where his friend Paresh Chandra Sarker was shot by accused Shamsuddin Ahmed, on hearing gun firing. With this the act of gun firing directing Paresh Chandra Sarker at the place and at the relevant time becomes re-affirmed. Additionally, at the time of committing the crime the accused Shamsuddin Ahmed was accompanied by his accomplice Razakars. A group of Razakars was present at the crime site, while the crime was accomplished, evidence led proves it. Thus and context prevailing in war time situation naturally did not leave space for other civilians to resist the criminal acts and perpetrators thereof.

In such horrific situation, a criminal act which was part of organised criminal behaviour of Razakar Bahini to which the accused Shamsuddin Ahmed belonged naturally remained free from counter incentive either on part of the victims under attack or their relatives or the persons around the crime site. Thus, there can be no room to deduce that such event of gun firing by the accused Shamsuddin Ahmed directing Paresh Chandra Sarker at the place nearer to his house did not take place as no one came forward on hearing such gun firing.

451. P.W.14 Md. Abdul Rashid Bhuiyan, a resident of village Ramnagar, was a student of class VII in the same school i.e. Karimganj Pilot High School in 1971 and he knew the accused Shamsuddin Ahmed of village Dulipara who was also a student of class X in the same school and accused Shamsuddin Ahmed had been staying at one Tyebuddin's house at village Atkapara on lodging.

452. P.W.14, another direct witness to the event of attack by gun firing directing Paresh Chandra Sarker has consistently corroborated the P.W.10. He [P.W.14], at the relevant time, was engaged in fishing at river Narosingho in front of victim Paresh Chandra Sarker's house when he saw accused Shamsuddin Ahmed accompanied by two other Razakars along with another one carrying a case on head, on their way towards east, arrived in front

of victim Paresh's house, Paresh came to them as asked by accused Shamsuddin Ahmed who wanted to know his name. 'Don't you know my name'? -- victim Paresh replied and with this accused Shamsuddin Ahmed started scolding him and instantly he [P.W.14] heard gun firing and hue and cry and saw the group of Razakars moving towards east, leaving the site. Meanwhile, Razakars put the case on Md. Shah Alam's [P.W.10] head to carry and then the Razakars released Md. Shah Alam [P.W.10] by engaging one Hasu to carry the box.

453. The above version remained uncontroverted in cross-examination. This unshaken version lends fair corroboration to what has been stated by P.W.10 as to his accompanying the group by carrying the case of ammunition, under compulsion.

454. From the corroborative evidence of P.W.10 and P.W.14, two direct witnesses, it transpires patently that the accused Shamsuddin Ahmed started scolding victim Paresh Chandra Sarker, before he was gunned down by the accused Shamsuddin Ahmed. Without any provocation why the accused Shamsuddin Ahmed targeted Paresh Chandra Sarker? Presumably, Paresh Chandra Sarker belonged to Hindu religion and this fact predominantly imbued to cause Paresh's death by gun firing. It is now settled history that policy of the Pakistani occupation army was to annihilate the pro-liberation Bengali civilians and the civilians belonging to Hindu religion and

the accused Shamsuddin Ahmed, a member of Razakar Bahini, became culpably imbued to target Paresh Chandra Sarker intending to further such policy.

455. P.W.13 Bashona Rani Chowdhury is the sister of victim Paresh Chandra Sarker. In 1971 she was 10 years old. During the last part of Bangla month Bhadra in 1971 at about 10:00 A.M her brother [Paresh Chandra Sarker] was working in a field near their home, where from she [P.W.13] saw that some Razakars had gathered near her brother Paresh Chandra Sarker having a case on Shah Alam's [P.W.10] head. She [P.W.13] informed it to her mother and then she saw that one Razakar shot her brother Paresh and then they left the site towards east. Then they rushed to bullet hit Paresh and brought him to home and before breathing his last after being taken home, Paresh Chandra Sarker told them that accused Shamsuddin who studied in their school had shot him.

456. The above version relating to arrival of the group of Razakars at the site, nearer to victim Paresh's house, firing Paresh by gun, taking injured Paresh to home, disclosure by Paresh that accused Shamsuddin Ahmed, a student of their [victim] school, fired him by gun before he breathed his last due to injuries he sustained by gun firing, as stated by victim's sister P.W.13 inspires credence as it gets consistent corroboration from the evidence of

two other direct witnesses i.e P.W.10 and P.W.14. Defence could not impeach it in any manner by cross-examining the P.W.13.

457. What happened next to gun firing directing Paresh Chandra Sarker? Did such gun firing caused instant death of victim Paresh Chandra Sarker at the site? Evidence of P.W.10 Md. Shah Alam portrays that instantly after the event of gun firing directing Paresh Chandra Sarker the accused Shamsuddin Ahmed and his cohorts started moving forward along with him [P.W.10] and after two or three minutes, they released him giving the case of bullets to one Hasu finding him on the road. It appears to have been corroborated by P.W.14 Md. Abdul Rashid Bhuiyan as well. Defence could not bring anything in cross-examination that may reasonably taint this version.

458. It also transpires that accused Shamsuddin Ahmed, while releasing Md. Shah Alam [P.W.10] asked him to bury Paresh Chandra Sarker instead of cremating him and threatened that they would burn the village if Paresh's body was cremated. Such antagonistic threat reflected accused Shamsuddin Ahmed's intimidating mind set and stance to Hindu religious group. And it offers the unerring reason to pick Paresh Chandra Sarker as target, we conclude.

459. We have found from unshaken version of P.W.13, the sister of victim Paresh Chandra Sarker that the field where victim Paresh

had been working at the time of the incident was about 8/10 feet far from their house. Thus, it was quite likely for P.W.13 to see the event of gunning down victim Paresh by one of the group of Razakars from their house. Since the group of attackers had left the site where victim Paresh Chandra Sarker was gunned down and the site was very closer to their house naturally bullet hit injured Paresh could be instantly brought to home. It remains undisputed and before he breathed his last he unveiled the name of accused Shamsuddin Ahmed, the perpetrator who shot him by gun.

460. P.W.10 Md. Shah Alam testified that on being released by the accused and his cohorts he went to the crime site where he found victim Paresh Chandra Sarker alive receiving bullet hit injuries and then he with the help of an elderly man took Paresh to his home where Paresh Chandra Sarker told them and his family inmates that accused Shamsuddin Ahmed fired him by gun and he [victim Paresh] would not survive. After a few minutes, Paresh Chandra Sarker died due to injuries he sustained by gun shot. P.W.10 stated that later, victim Paresh's dead body was buried. After independence, victim Paresh Chandra Sarker's remains were cremated as per their Hindu rituals. Testimony of P.W.13 Bashona Rani Chowdhury, the sister of the victim, lends corroboration to this version made by P.W.10.

461. P.W.11, a resident of neighbouring village, who on the day and at the relevant time was coming to one sugar trader Brajendra Nath Sarker's house, neighbouring to victim Paresh's house, when he saw the people running on the road in front of Brajendra Nath Sarker's house and heard them telling that Razakars had shot Paresh by gun. This hearsay version goes with the truth as it gets corroboration from the evidence of P.W.10, P.W.13 and P. W.14, the three direct witnesses to the event. He [P.W.11] then moved to Paresh's house where he saw Paresh's injured body lying wrapped by a gamsa and before he died due to injury he sustained he [Paresh] made them known that accused Shamsuddin Ahmed had shot him by gun. Unshaken version of P.W.11 on this material particular adds further assurance as to link of accused Shamsuddin Ahmed with the criminal acts forming attack.

462. The fact of taking bullet hit injured Paresh Chandra Sarker to his home from the crime site as stated by P.W.10 and P.W.14 thus gets further corroboration even from the evidence of P.W.11 who also found wounded Paresh at his home and saw him embracing death due to injuries he sustained by gun shot. P.W.11 also heard victim Paresh unveiling the name of accused Shamsuddin Ahmed who fired by gun directing him [victim]. Evidence of P.W.10 and P.W.14 and P.W.13, the sister of victim Paresh, provides corroboration to this hearsay statement of P.W.11.

463. Besides, the testimony of P.W.11 Md. Mahtab Uddin so far as it relates to hearing the victim telling that accused Shamsuddin Ahmed shot him by gun and few minutes later the victim died indisputably impels to conclude that the saying of victim, just before he died due to injuries he sustained by gun firing, was rather a 'dying statement' that has been proved by all the four witnesses including victim's sister P.W.13. We do not find any reason to term these witnesses unreliable.

464. Seeing victim Paresh's injured body lying wrapped by a gamsa as stated by all the four witnesses indicates that Paresh Chandra Sarker did not die instantly despite receiving bullet hit and was alive even after he was brought to his house, very closer to the crime site, where his relatives and others gathered and heard injured Paresh disclosing, before he breathed his last, that the accused Shamsuddin Ahmed gunned him down.

465. The event and the facts relevant to it, as transpired from the above evidence, prompt us to an unerring conclusion that unlawful and criminal act of the accused Shamsuddin Ahmed combined with his extreme unsympathetic mindset directing the victim Paresh Chandra Sarker, a protected person, was the substantial cause of the death of the victim. The accused was engaged in such culpable and conscious brutal conduct intending to kill him, no doubt. This is sufficient to find him 'guilty' of the offence with which he has been

charged. In this regard we recall the **ICTY Trial Chamber's observation** that—

"The constituent elements of murder under Article 5(a) of the Statutecomprise the death of the victim as a result of the acts or omissions of the accused, where the conduct of the accused was a substantial cause of the death of the victim. It can be said that the accused is guilty of murder if he or she engaging in conduct which is unlawful, intended to kill another person or to cause this person grievous bodily harm, and has caused the death of that person."

[Prosecutor v. Kupreskic et al. Case No. IT-95-16 (Trial Chamber), Judgment -January 14, 2000, Para-560]

466. Based on all the evidence provided in support of this charge [charge no.05] the Tribunal finds that the criminal acts constituting the offence of murder with which the indictment is concerned was closely related to further the policy and plan of the Pakistani occupation army under which the Razakar Bahini used to act as its auxiliary force. Accused Shamsuddin Ahmed belonged to locally formed Razakar Bahini, already we have recorded our finding in this regard. Therefore, accused's criminal act pregnant of antagonistic mindset indisputably had a nexus with the policy of annihilation of Bengali pro-liberation civilians, freedom fighters and the persons belonging to Hindu religion, and thus, the same was a grave violation of international humanitarian law and custom of war. At the relevant time the armed accused was moving along with his accomplice Razakars having a box of ammunition with

them. All these as well allow concluding their visible nexus with the policy and planning of Pakistani occupation army.

467. The above deliberation based on evidence presented allows us to record the finding that the death of victim Paresh Chandra Sarker thus resulted from the act of deliberate gun shot by the accused Shamsuddin Ahmed who did it with intent to kill him or to cause severe bodily harm knowing the consequence of his criminal act and thereby the accused Shamsuddin Ahmed committed the offence of 'murder'. **ICTY Trial Chamber observed in the case of *Blagojevic and Jokic* that -**

"In the jurisprudence of both the Tribunal and the ICTR, murder has consistently been defined as the death of the victim which results from an act or omission by the accused, committed with the intent either to kill or to cause serious bodily harm with the reasonable knowledge that it would likely lead to death."

[Prosecutor v. Blagojevic and Jokic, Case No. IT-02-60-T (Trial Chamber), Judgment - January 17, 2005, Para -556]

468. Crimes against humanity encompass acts that are part of a widespread or systematic attack directed against any civilian population. Victim Paresh Chandra Sarker was a member of civilian population indeed. Killing the victim, a protected person, affected the fundamental rights and core dignity of human beings. Accused's 'physical participation' in gunning down the victim Paresh Chandra Sarker was a cruelty directed against human existence and thereby he incurred criminal liability as 'participant' to its commission. The attack that resulted in killing of victim

Paresh Chandra Sarker was undeniably a part of systematic attack carried out directing the civilian population in 1971 in the territory of Bangladesh by the accused Shamsuddin Ahmed associated with the Razakar Bahini created to collaborate with the Pakistani occupation army.

469. On careful appraisal of the evidence led we are convinced to arrive at a decision that the accused Shamsuddin Ahmed was the principal perpetrator who incurred individual criminal responsibility for ‘committing’ the offence of wilful killing of a ‘protected person’ belonging to Hindu religion as it has been proved that he personally and physically perpetrated the criminal act in question. It was the accused Shamsuddin Ahmed who personally ‘committed’ the crime although he was being accompanied by his cohort Razakars, the unimpeached evidence suggests indisputably concluding it. **The ICTY Trial Chamber observed in the case of *Blagojevic and Jokic that--***

"It is commonly understood that individual criminal responsibility will attach for ‘committing’ a crime where it is established that the accused himself physically perpetrated the criminal act or personally omitted to act when required to do so under law."

[Prosecutor v. Blagojevic and Jokic, Case No. IT-02-60-T (Trial Chamber), Judgment - January 17, 2005, Para- 694]

470. In a criminal act committed through 'participation', the accomplice plays a role distinct from that of the 'principal'. But in the charge under adjudication it has been proved that accused

Shamsuddin Ahmed himself 'participated physically' in accomplishing the crime by gunning down the victim Paresh Chandra Sarker instead of assisting or encouraging or abetting his accomplices in committing the killing the victim. And he did it in exercise of his spirited membership in local Razakar Bahini. Accused was thus the lone 'principal perpetrator' as he himself committed the crime, the evidence led proves it.

471. It appears that accused Shamsuddin Ahmed has been indicted for participating, abetting, facilitating and substantially contributing and also for 'complicity' to the commission of 'murder' in question. Aiding and abetting means rendering a substantial contribution to the commission of a crime. It is now settled jurisprudence that aiding and abetting includes all acts of assistance by words or acts that lend encouragement or support, as long as the requisite intent is present. But it has been found proved that accused Shamsuddin Ahmed was the lone 'principal perpetrator' and not a 'complicit'.

472. The accused Shamsuddin Ahmed could have been held responsible for 'complicity' as well if as a member of the group of Razakars he is found to have had assisted or encouraged or provided means, by act or conduct, to his accomplices in perpetrating the crime in question. But it has been found well proved that the accused Shamsuddin Ahmed himself participated to the commission of the crime although he was being accompanied

by his cohorts at the relevant time. And thus, the accused Shamsuddin Ahmed himself had acted as the 'participant' and not as a 'complicit' in accomplishing the criminal transaction.

473. Since at the time the accused Shamsuddin Ahmed started scolding Paresh Chandra Sarker showing antagonistic behaviour and then shot him by gun the other Razakars were with him although none of them is alleged to have had acted in any manner in perpetrating the crime. But presumably there had been an understanding amongst them that they were going to commit a crime and thus accused's accomplices may be said to have had acted, by their presence and inaction, in unison to put into effect accused's plan designed extemporaneously to inflict harm to Paresh Chandra Sarker by gun shot. On this score, accused's cohorts had complicity to the perpetration of the crime.

474. Here, it stands proved that at the relevant time the accused Shamsuddin Ahmed was accompanied by his cohort Razakars. But evidence does not offer any indication that accomplices of the accused also had any active role but accompanying the accused while the crime was committed. Besides, it is immaterial to arrive at a decision whether the accused abetted and facilitated his accomplices forming the group in accomplishing the criminal act of gunning down the victim, particularly when based on evidence as discussed above we have got it proved beyond reasonable doubt

that accused Shamsuddin Ahmed alone personally and physically gunned down Paresh Chandra Sarker, the victim that resulted in his death which constituted the offence of 'murder' as crime against humanity.

475. The attack resulted in death of a single individual, an unarmed civilian. Settled jurisprudence does not require multiplicity of victims of the attack as one of elements of constituting the offence of murder as crime against humanity, provided if it is proved that the criminal acts forming part of attack were done directing even to a single member of civilian population, under a context of hostility. What context prevailed in 1971 in the territory of Bangladesh? Policy was to target the self-determined Bangladeshi civilian community. Auxiliary forces were established in aiding the implementation of the policy. The regular and continuous brutal nature of atrocities were committed against the targeted non-combatant civilian population across the territory of Bangladesh.

476. Therefore, under the above context the specific offences enumerated in the Act of 1973 committed during the war of liberation in 1971 patently demonstrate that those were of course the consequence of part of 'systematic' attack directed against the unarmed civilian population. Under section 19(4) of the Act of 1973, the Tribunal can take judicial notice of the above context that

must prompt a person of common prudence that the offences of crimes against humanity as mentioned in section 3(2)(a) of the Act were inevitably the effect of part of systematic attack .

477. In 1971, accused Shamsuddin Ahmed, the perpetrator of the offence with which he has been charged was not a mere individual but was an active member of local Razakar Bahini, an auxiliary force of the Pakistani occupation army and obviously the criminal acts were done to the victim Paresh Chandra Sarker, an unarmed civilian belonging to Hindu religious group in the context of the war of liberation in 1971. Thus, number of victims of the crime committed pursuant to an attack is not the determining factor to characterize the offence of murder in question as crime against humanity. This view, on this pertinent aspect, finds support from the observation of the **ICTR Appeals Chamber in the case of *Nahimana, Barayagwiza and Ngeze that-***

"The Appeals Chamber considers that, except for extermination, a crime need not be carried out against a multiplicity of victims in order to constitute a crime against humanity. Thus an act directed against a limited number of victims, or even against a single victim, can constitute a crime against humanity, provided it forms part of a widespread or systematic attack against a civilian population."

[Ferdinand Nahimana, Jean -Basco Barayagwiza and Hassan Ngeze v. The Prosecutor, Case No. ICTR-99-52-A, Judgment -28 November 2007 , Para-924]

478. Prosecution has been able to prove it beyond reasonable doubt by leading direct evidence that it was the only accused Shamsuddin Ahmed who had the requisite *mens rea* at the time of

execution of the crime in question. It is now settled jurisprudence that in terms of 'perpetration', offences of crimes against humanity may be committed individually (by one person alone and directly), jointly with another person, or through another person. As a result, the only finding, we consider to pen, is that the accused Shamsuddin Ahmed by his deliberate criminal act as the principal perpetrator 'participated' in committing the offence of 'murder' of victim Paresh Chandra Sarker as knowing the consequence of his act he gunned down him [victim], and such brutal criminal act eventually forced the defenceless victim to breath his last. Accordingly, he is found criminally liable under section 4(1) of the Act of 1973 for 'participating' and 'complicity' to the commission of killing of one unarmed civilian Paresh Chandra Sarker forming part of attack against civilian population constituting the offence of 'murder' as crime against humanity as enumerated in section 3(2)(a)(h) of the Act of 1973 which is punishable under section 20(2) of the Act.

Adjudication of Charge No.06

[Abduction, torture and killing of Abu Bakar Siddique and Rupali Mia of villages Nobaid (Kalipur) and Molamkharchar respectively]

479. Summary Charge: That on 25 August 1971 at about 06:00 A.M. accused Gazi Md. Abdul Mannan[absconded] accompanied the group formed of armed Razakars in launching attack abducted a college student Abu Bakar Siddique from his

house at village *Nobaid* [Kalipur] under Police Station Karimganj of the then Kishoreganj Sub-Division and at about 10:00 / 11:00 A.M., in conjunction with the same attack, on instruction of accused Gazi Md. Abdul Mannan, his accomplices including Khorshed master[now dead] also abducted Rupali Mia from his house at village *Molamkharchar* under same Police Station and forcibly took both the captured civilians to a place near the bridge of *Patnibari* where they were subjected to torture by the accused and his cohorts. Afterwards, they were taken to Kishoreganj and since then they could not have been traced.

480. Thereby, accused Gazi Md. Abdul Mannan has been charged for participating, facilitating, abetting and substantially contributing and also for ‘complicity’ to the commission of offences of ‘abduction’ ‘torture’ and ‘murder’ as crimes against humanity as part of systematic attack directing unarmed civilians as specified in section 3(2)(a)(g)(h) of the Act of 1973 which are punishable under section 20(2) of the Act for which the accused has incurred liability under section 4(1) of the Act.

Evidence of Witnesses Presented

481. The charge under adjudication involves the event of torture followed by killing Abu Bakar Siddique and Rupali Mia on abduction. In order to substantiate this charge, prosecution relies upon three witnesses who have been examined as P.W.18, P.W.19

and P.W.20. Of these three witnesses, P.W.18 was a friend of victim Abu Bakar Siddique allegedly saw the act of abducting the victims, P.W.19 happens to be the brother of victim Abu Bakar Siddique who claims to have witnessed the act of taking away his brother on forcible capture and P.W.20 is a nephew of another victim Rupali Mia who claims to have watched the event of taking away his uncle on abduction on the date and time alleged. Now let us first see what those witnesses have testified before the Tribunal.

482. P.W.18 Kazi Ruhul Amin [65], a resident of village east Nobaid under Police Station Karimganj of the then Sub-Division Kishoreganj was 20 years old in 1971 when he was an SSC examinee from Karimganj High School. P.W.18 stated that accused Shamsuddin Ahmed was a student of class IX in the same school, may be in 1969/1970. He and his friend Abu Bakar Siddique [victim] were affiliated to the student wing of Awami League. After the war of liberation was ensued his friend Abu Bakar Siddique went to India to join the war of liberation and returned back to his home at village Nobaid in the Bangla month Bhadra [August-September] in 1971. P.W.18 further stated that they could not stay home as the local Peace Committee had provided the Razakar Bahini with a list of supporters of war of liberation, including him and his friend Abu Bakar Siddique [victim] and thus they used to stay in the house of Abdul Hamid of Maijpara of their village.

483. P.W.18 went on to state that during their staying at Maijpara, in the early morning on 25 August 1971 a group of 8/10 armed Razakars accompanied by accused Gazi Abdul Mannan, Shamsuddin Ahmed, ATM Nasir, Md. Hafizuddin and Md. Azharul Islam entering their village started searching for them. With this, his friend Abu Bakar Siddique [victim] went out to say *Fajar* prayer and also asked him [P.W.18] to go out. Four-five minutes later, on hearing hue and cry he [P.W.18] went into hid inside a bush near the house where from he saw accused Gazi Abdul Mannan, Shamsuddin Ahmed, ATM Nasir, Hafizuddin and Azharul Islam and their cohort Razakars bringing his friend Abu Bakar Siddique whose hands were tied behind his back towards his home which was about 100 feet far from the house of Hamid. The accused persons and Razakars had kept Abu Bakar Siddique fastened with a jackfruit tree in front of his [P.W. 18] house. Then they also brought Rupali [victim] apprehending him from neighbouring village and had kept him too fastened with Abu Bakar Siddique. The accused persons and Razakars then looted their houses and set those on fire and then went towards north taking the two detainees with them, leaving the site. He [P.W.18] then went to his sister's house at village Ashampur under neighbouring Baragharia Union. On the following day he went to India and on receiving training there he joined the war of liberation, and after

independence he returned to his village home when he knew from relatives of Abu Bakar Siddique and Rupali Mia that these two victims could not have been traced after they were taken away on abduction.

484. P.W.18 also stated that accused Gazi Md. Abdul Mannan was a known foot ball player. Accused ATM Nasir, Hafizuddin and Azharul Islam used to come to bazaar of their locality and Karimganj very often and thus he knew them.

485. On being cross-examined by accused Shamsuddin Ahmed, P.W.18 stated that he was involved with Chhatra League [student wing of Awami League] in 1971. Their village home was about one mile far towards south from Karimganj Sadar. His parents used to stay elsewhere in fear of Razakars. Only he himself joined the war of liberation as a freedom fighter. He could not say whether any brother or sister of Rupali [victim] is still alive, that on which date the Pakistani army came to Karimganj Thana Sadar and that whether the accused Shamsuddin Ahmed passed SSC examination in 1975. P.W.18 denied the defence suggestions that he did not disclose earlier to any body what he stated implicating accused Shamsuddin Ahmed and that in 1971 accused Shamsuddin Ahmed was 12 years old. P.W.18 also denied that accused Shamsuddin Ahmed was not a Razakar and that what he stated implicating this

accused was untrue and tutored by Abul Hashem Chowdhury, a rival candidate of accused.

486. P.W.18 has also been cross-examined by the State defence counsel defending the rest four absconding accused when he stated that Razzak Chairman was the president of Karimganj Peace Committee, but he however could not say on which date it was so formed. P.W.18 in reply to question put to him by the defence stated that accused Gazi Md. Abdul Mannan had been serving in army and thus he was made commander of local Razakar Bahini. He denied the defence suggestion that Gazi Md. Abdul Mannan joined the army even after independence. Accused Gazi Md. Abdul Mannan remained in absconsion after independence, P.W.18 further stated, adding that thousands of people of Karimganj will raise voice that the accused persons were Razakars as they know it. In 1971, accused Hafizuddin was a Razakar and he did not study during that time. P.W.18 denied defence suggestions that these accused persons were not Razakars and they did not abduct Abu Bakar Siddique and Rupali Mia, that what he stated in relation to the event implicating these accused persons was untrue and tutored.

487. P.W.19 Md. Chandu Miah [57], a younger brother of victim Abu Bakar Siddique, deposed the phase of attack in relation to the act of abducting his brother. He stated that in 1971 he [P.W.19] was 14/15 years old and a student of class VI. His elder

brother Abu Bakar Siddique passed SSC examination in 1969 and got admitted in Gurudoyal College, and since 1970 he was affiliated with the politics of Awami League. In 1971 in the month of March his brother went to India to have training intending to join the war of liberation.

488. P.W.19 next stated that during the first week of Bengali month Bhadra in 1971 his brother [Abu Bakar Siddique] returned home and decided to go to India along with others including Kazi Ruhul Amin [P.W.18] of their village. In the night of 25 August 1971 his brother Abu Bakar Siddique and Kazi Ruhul Amin had been staying at the house of Hamid of Maijpara of the same village. At the time of dawn, he [P.W.19] heard screaming of his brother Abu Bakar Siddique when he[P.W.19] was taking the cattle out of the cow shed of their house and then he saw therefrom that a group of 7/8 Razakars accompanied by accused Shamsuddin Ahmed, Gazi Md. Abdul Mannan, ATM Nasir, Md. Hafizuddin and Md. Azharul Islam moving towards north taking Abu Bakar Siddique with them and had kept him fastened with a jack fruit tree at the house of Kazi Ruhul Amin[P.W.18]. He [P.W.19] saw all these secretly remaining into hid inside the kitchen of the house of Kazi Ruhul Amin's uncle Ahammad. Few minutes later he saw some Razakars led by accused Gazi Md. Abdul Manna bringing Rupali there from neighbouring village who was also kept fastened with the same tree and then the

accused and Razakars started looting the house of Kazi Ruhul Amin and then set the house on fire and then they moved towards north taking away his brother Abu Bakar Siddique and Rupali with them.

489. P.W.19 further stated that he had occasions to meet and see the accused persons beforehand around the bazaar and different places of their locality. He [P.W.19] informed his father of the event of abduction of his brother and then his father met Suruj Moulavi, Khorshed Master, Hannan and Kalu, the members of local Peace Committee for requesting release of Abu Bakar Siddique when they agreed to release him in exchange of Taka[Rupee] 50,000. Then his father collecting Taka [Rupee] 36,000 provided it with Suruj Moulavi who told that Abu Bakar Siddique would be released by evening. But he was not released and could not have been traced.

490. In cross-examination, in reply to question put on behalf of accused Shamsuddin Ahmed, P.W.19 stated that Abdul Hamid's house was about 50 yards far from their house and Kazi Ruhul Amin's house was located two houses after that of Hamid. Ahammad, the uncle of Ruhul Amin, used to reside at Ruhul Amin's house. He knew Rupali [victim] but could not say how many brothers and sisters he had. Accused Shamsuddin Ahmed was a Rzakar.P.W.19 denied the defence suggestions that in 1971 he

was a child of 3 / 4 years of age, that accused Shamsuddin Ahmed was 12 years old in 1971, that accused Shamsuddin Ahmed was not a Razakar, that he did not see accused Shamsuddin Ahmed at the time of occurring the event he stated about and that what he stated implicating accused Shamsuddin Ahmed was untrue and tutored.

491. P.W.20 Abdul Mannan [56] is a nephew of Rupali Mia, one of the victims. In 1971, he was 12 years old and used to reside together with his mother, younger brother Dulal and his uncle Rupali at the same house. His uncle Rupali was associated with the politics of Awami League and used to provide assistance to freedom fighters, P.W.20 added.

492. In respect of the event involving the phase of forcible capture of Rupali, P.W.20 stated that during the first part of Bengali month Bhadra in 1971, at the time of dawn Khorshed Master and others led by Razakar Commander accused Gazi Md. Abdul Mannan took away his uncle Rupali from their house on forcible capture. At that time he [P.W.20] was on work in the field near their house, and thus, he saw it therefrom and followed them secretly. Arriving in front of Ruhul Amin's house he saw Abu Bakar Siddique [victim] tied up with a jack fruit tree and his uncle Rupali was also tied up there by the Razakars. He saw it remaining in hiding inside a bush near Ruhul Amin's house. The Razakars after looting and setting Ruhul Amin's house on fire had left the site taking away captured

Abu Bakar Siddique and Rupali with them. Returning home, he [P.W.2-0] informed his mother of the event and they did not have any trace of his uncle Rupali. P.W.20 finally stated that he knew accused Gazi Md. Abdul Mannan beforehand as he was a local foot ball player and happened to be a friend of Abu Bakar Siddique[victim].

493. P.W.20 has been cross-examined by the learned State defence counsel defending absconding accused Gazi Md. Abdul Mannan. P.W.20 stated that his house was about 100 yards far from that of Kazi Ruhul Amin. Khorshed Master of village Nobaid was a Razakar and now he is dead. P.W.20 denied defence suggestions that accused Gazi Md. Abdul Mannan was not a Razakar or its commander and he was not involved in abducting his uncle, that Rupali was picked up by the Razakars led by Khorshed Master and that what he stated implicating the accused Gazi Md. Abdul Mannan was untrue and tutored.

Finding with Reasoning on Evaluation of Evidence

494. This charge relates to the event of killing Abu Bakar Siddique of village *Nubaid* [Kalipur] and Rupali Mia of village *Molamkharchar* under Karimganj Police Station, on abduction. A group of Razakars led by accused Gazi Md. Abdul Mannan allegedly actively participated in committing the act of abduction that happened on 25 August 1971 at about 06:00 A.M. and

10:00/11:00 A.M. respectively. Both the victims were forcibly captured in conjunction with the same attack. One Khorshed Master [now dead] was one of accomplices of the accused Gazi Md. Abdul Mannan at the time of launching attack. The captured victims could not have been traced, the charge framed alleges.

495. In placing argument on this charge the learned prosecutor Mr. Sultan Mahmud submitted that this charge involved killing of Abu Bakar Siddique and Rupali Mia on abduction and only one accused Gazi Md. Abdul Mannan has been indicted for the offence narrated in this charge. In all three witnesses have been examined to prove this charge and all of them testified the commission of the act of abduction of victims and complicity of all the five accused therewith. The act of abduction was a phase of the event which was followed by killing and it remained undisputed. Since then they could not be traced even. Since all the accused persons were engaged in accomplishing the act of victims' abduction as testified by the P.W.s they all are responsible also for the act 'killing'.

496. Mr. Abdus Sukur Khan, the learned State defence counsel defending this absconded accused Gazi Md. Abdul Mannan argued that he was not with the group of attackers formed of Razakars and since the evidence provided involves engagement of all the five accused persons with the attack launched which is beyond the charge framed complicity of accused Gazi Md. Abdul Mannan

suffers from reasonable doubt. The witnesses examined in support of this charge are not truthful and their testimony does not lend credence. The event might have been accomplished in some other manner by the group which was not accompanied by this accused. Prosecution has failed to prove the arraignment brought against this accused, although the event of attack that resulted in killing of Abu Bakar Siddique and Rupali Mia is not disputed.

497. Before we make deliberation on evaluation of evidence to arrive at finding with reasoning, we are constrained to lay our view that only one accused Gazi Md. Abdul Mannan has been indicted for the offence narrated in this charge. We are not agreed with the submission advanced by the learned prosecutor that since the prosecution witnesses testified implicating all the five accused persons the other four accused persons who have not been indicted can be held guilty as well of the offence. The submission is sternly misconceived.

498. Without framing charge against a person he cannot be held liable for the offence. Testimony of P.W.s implicating other four accused persons deserves exclusion terming it to be exaggeration and then we are to see with caution whether the testimony of P.W.s relating to complicity of accused Gazi Md. Abdul Mannan deserves consideration and inspires credence, we conclude. There can be no room to record any finding as to guilt of the other four accused

persons who have not been formally indicted with for the offence narrated in this charge.

499. For the reasons above we are not convinced with the learned State defence counsel that mere exaggeration does not allow to turn down the entire evidence of witnesses examined terming it to be untruthful. Chiefly we have to rationally scrutinize the part of their testimony relating to Gazi Md. Abdul Mannan, in arriving at a decision.

500. In view of charge framed the attack formed of three phases. First phase involved abduction of victims from their villages. Second, taking them to a place near Patnibari bridge and then to Kishoreganj. Third phase was the act of killing the captured victims.

501. Of the three witnesses [P.Ws. 18, 19 and 20] examined in support of this charge P.W.18 was a friend of victim Abu Bakar Siddique and he allegedly saw the act of forcible capture of the victims. P.W.19 and P.W.20 are the brother and nephew of victims Abu Bakar Siddique and Rupali Mia respectively who claim to have seen the act of taking away the victims. None of them however claim to have seen the act of causing death of the detained victims. It is to be noted that the charge framed speaks that the victims could not have been traced since they were so forcibly taken away to Kishoreganj by the group of perpetrators belonging

to Razakar Bahini led by accused Gazi Md. Abdul Mannan. Presumably killing the victims was the upshot of their abduction. And accordingly the accused Gazi Md. Abdul Mannan has been indicted for the offences of 'abduction', 'torture' and 'murder' as crimes against humanity.

502. Now, the prosecution requires proving that the act of killing the victims was the end result of their abduction and the act and conduct of accused Gazi Md. Abdul Mannan formed part of attack that facilitated the accomplishment of the act of killing, the principal offence. And in proving it, prosecution needs to establish that (i) the acts of the accused took place in the context of systematic attack, (ii) the attack was directed against civilian population, (iii) the attack and the acts of the accused were pursuant to a pre-existing criminal plan, and (iv) the accused had knowledge that his acts formed part of the broader criminal attack.

503. Who were the victims and why they were so abducted by launching attack by the group of Razakars led by accused Gazi Md. Abdul Mannan? Did the criminal acts in causing victims' abduction form part of systematic attack?

504. P.W.18 Kazi Ruhul Amin stated that he and his friend Abu Bakar Siddique [victim] were affiliated to the student wing of Awami League. His friend Abu Bakar Siddique went to India to join the war of liberation and returned back to his home at village

Nobaid in the Bangla month Bhadra [August-September] in 1971. They could not stay home as the local Peace Committee had provided the Razakar Bahini with a list of supporters of war of liberation, including him and Abu Bakar Siddique [victim] and thus they used to stay in the house of Abdul Hamid of village Maijpara of their village.

505. P.W.20 Abdul Mannan, a nephew of victim Rupali Mia, stated that his uncle Rupali Mia was associated with the politics of Awami League and used to provide assistance to freedom fighters.

506. The above unshaken version of P.W.18 and P.W.20 inescapably leads to the unmistakable conclusion that the local Razakars targeted the victims as they had affiliation with the Awami League and its student wing and sided with the war of liberation. We have got it resolved too that the victim Abu Bakar Siddique was a freedom fighter and at the relevant time he had been at the house of one Abdul Hamid, his neighbour, returning from India. It is also evinced that at the time of causing his forcible capture he was non-combatant and it qualified him to be a member of 'civilian population'.

507. History says that Razakar force and other forces formed to collaborate with the Pakistani occupation army had carried out criminal activities across the territory of Bangladesh in 1971 during

the war of liberation with untold notoriety to further the policy and plan aiming to annihilate the pro-liberation Bengali civilians.

508. Thus, nexus between the acts of the perpetrators and the attack that resulted in killing of two captured civilians, the ‘protected persons’ made the offence elevated to the offence of crime against humanity. The recurrent and continuous commission of inhumane criminal acts committed around the locality of Karimganj Police Station of the then Kishoreganj Sub-Division in the context of the 1971 war of liberation was not isolated but those were of ‘systematic’ character. Even a single or limited number of acts on accused’s part would qualify as a crime against humanity, unless those acts may be said to be isolated or random and only the attack, not the individual acts of the accused needs to be shown to be systematic.

509. Additionally, since the specific offences of 'Crimes against Humanity' which were committed during 1971 are being tried under the Act of 1973, it is obvious that they were committed in the context of the 1971 war of liberation. 'Attack directed against any civilian population' means a course of conduct involving the multiple commission of acts referred to in section 3(2) of the Act of 1973 against any ‘civilian population’, and it may be pursuant to or in furtherance of organizational policy to commit such attack. However, existence of any such policy or plan may be evidentially

relevant, but it is not a legal element of the offence of crime against humanity.

510. Keeping all the above settled jurisprudence relevant to the elements to constitute the offence of crimes against humanity now let us first determine whether the victims were so taken away on forcible capture by the group of Razakars. Defence does not dispute that the victims were forcibly captured by the group of Razakars. It simply denied that the accused Gazi Md. Abdul Mannan was not with the group of perpetrators and the act of abduction was committed by the Razakars led by Khorshed Master [now dead], as it transpires from the trend of cross-examination of witnesses.

511. Accused Gazi Md. Abdul Mannan was a commander of Karimganj Razakar Bahini. Already we have recorded our reasoned finding on this issue in our preceding deliberation. Besides, it has been re-affirmed by P.W.18 as he in reply to defence question stated that accused Gazi Md. Abdul Mannan had been serving in army and thus he was made commander of local Razakar Bahini and he remained in absconsion after independence, adding that thousands of people of Karimganj will raise voice that the accused person was Razakar as they know it.

512. It transpires that the witnesses in narrating the event of abduction stated that accused Shamsuddin Ahmed, ATM Nasir, Hafizuddin and Azharul Islam were also accompanied the group of

Razakars. But only accused Gazi Md. Abdul Mannan led the group of Razakars, the charge framed speaks and no other accused persons who are being prosecuted jointly for other charges were with the group. But testimony of P.W.18 and P.W.19 implicating even the other four Razakars who have not been charged for the event constituting the offences as narrated in this charge [charge no.06] is not the indicator to diminish their credibility, particularly if they are found to have not made any dexterous exaggeration, in narrating the material facts. Such mere exaggeration so far as it relates to four other Razakars which is apparently beyond the charge framed does not *ipso facto* diminish the value of testimony the witnesses have made in relation to the event of criminal act under adjudication and complicity of the accused Gazi Md. Abdul Mannan therewith.

513. Tribunal notes that it would be appropriate and jurisprudentially logical if, in the process of appraisal of evidence, we separate the grains of acceptable truth from the chaff of exaggerations and improbabilities which cannot be safely or prudently accepted and acted upon. It is sound common sense to refuse to apply mechanically, in assessing the worth of necessarily imperfect human testimony, the maxim: "*falsus in uno falsus in omnibus*".

514. Therefore, and since the other four accused persons have not been indicted for the offences narrated in this charge[charge no.06] statement made by the P.W.18 and P.W.19 so far as it relates to complicity of those four other accused persons simply deserves exclusion from consideration and merely for this reason their testimony cannot be termed unreliable in its entirety. The court has to form its opinion about the credibility of the witnesses and record a finding as to whether their deposition inspires confidence. Exaggerations *per se* do not render the evidence brittle.

515. It is now settled that the offence of crimes against humanity is considered as 'group crime' and it is not perpetrated by a single individual. But however, even an individual may participate to the actual commission of the principal crime by his act or conduct, before or midst or after the crime committed. In this regard, the Tribunal notes that in adjudicating culpability of the person accused of offences, context and situations prevailing at the relevant time i.e the period of war of liberation in 1971[March 25 to December 16, 1971] together with his acts, conducts, attitude and association of any organisation, if any are to be considered.

516. Keeping the above in mind now we are to adjudicate whether accused Gazi Md. Abdul Mannan participated or substantially facilitated in abducting the victims and how his act or conduct formed part of attack directing civilian population. Accused's act

and conduct even at this phase may justifiably link his culpability even with the accomplishment of the principal offence. In this regard, we reiterate that the case relates to trial of internationally recognised crimes committed in violation of customary international law.

517. The offences are alleged to have been committed in the context of war of liberation in 1971. Section 23 of the Act of 1973 provides that provisions of the Criminal Procedure Code, 1898(V of 1898), and the Evidence Act, 1872(I of 1872) shall not apply in any proceedings under the said Act. Section 19 (1) of the Act of 1973 provides that a Tribunal shall not be bound by technical rules of evidence. Thus, in the case in hand, if we keep the provision of section 23 together with section 19(1) of the Act of 1973 in mind, it would be clear that the task of determination of culpability of a person accused of offences enumerated in section 3(2) of the Act of 1973 involves a quite different jurisprudence. Proof of all forms of criminal responsibility, through participation in any manner can be given by direct or circumstantial evidence. It is now settled jurisprudence.

518. Evidence of P.W.18 Kazi Ruhul Amin demonstrates that event of abduction happened in the early morning on 25 August 1971 by a group of 8/10 armed Razakars accompanied by accused Gazi Md. Abdul Mannan. His[P.W.18] friend Abu Bakar Siddique

[victim] went out to say *Fajar* prayer and also asked him [P.W.18] to go out as the Razakars started searching for them. Four-five minutes later, on hearing hue and cry he [P.W.18] went into hid inside a bush near the house where from he saw accused Gazi Md. Abdul Mannan, and his cohort Razakars bringing his friend Abu Bakar Siddique, tying up hands behind his back, towards his home which was about 100 feet far from the house of Hamid and then the Razakars had kept Abu Bakar Siddique fastened with a jackfruit tree in front of his [P.W.18] house. Then Razakars also brought Rupali Mia [another victim] apprehending him from neighbouring village and had kept him too fastened with Abu Bakar Siddique. Razakars then looted their houses and set those on fire and then went towards north taking the two detainees with them, leaving the site. On the following day he [P.W.18] went to India and on receiving training there he joined the war of liberation, and after independence he returned to his village home when he knew from relatives of Abdu Bakar Siddique and Rupali Mia that these two victims could not have been traced after they were taken away on abduction.

519. Defence could not impeach the above version which relates to the event of abduction of the victims, in conjunction with the same attack, and accused Gazi Md. Abdul Mannan's participation and presence at the site with the group of 8/10 armed Razakars. The

jackfruit tree with which the victims were kept fastened, on forcible capture, before they were taken away was in front of the house of P.W.18. The jackfruit tree was about 100 feet far from his house, as unveiled and thus naturally he had fair occasion to see the criminal acts carried out in materializing forcible capture of his friend Abu Bakar Siddique and Rupali Mia. It remained unimpeached too and thus the statement made by P.W.18 as to his seeing the event of bringing the victims there on forcible capture by the armed Razakars led by accused Gazi Md. Abdul Mannan inevitably inspires credence.

520. Defence, by cross-examining, could not bring anything that can reasonably cast doubt on what has been testified by the P.W.18. It remained unshaken too that P.W.18 knew the accused Gazi Md. Abdul Mannan as he was a known foot ball player of the locality. It however simply denied that accused Gazi Md. Abdul Mannan was not a Razakar and he did not have involvement in abducting the victims. P.W.18 denied this defence suggestion.

521. Accused Gazi Md. Abdul Mannan was a potential Razakar of the locality and was culpably involved with the atrocious activities committed around the locality of Karimganj Police Station in 1971. All these have been affirmed by P.W.18 as he stated in reply to defence question put to him that accused Gazi Md. Abdul Mannan had been serving in army and thus he was made commander of

local Razakar Bahini, that accused Gazi Md. Abdul Mannan remained in absconion after independence and that thousands of people of Karimganj will raise voice that the accused persons were Razakars as they know. This statement strengthens the fact of accused Gazi Md. Abdul Mannan's membership and active affiliation in local Razakar Bahini which adds assurance as well to his presence with the group of Razakars at the crime site in abducting the victims.

522. Besides, evidence of P.W.18 in relation to the event of abducting the victims on the date, time and in the manner gets corroboration from the evidence of P.W.19, the brother of victim Abu Bakar Siddique. P.W.19, at the time of dawn, could hear screaming of his brother [Abu Bakar Siddique] when he [P.W.19] was taking the cattle out of the cow shed of their house and then he saw therefrom that a group of 7/8 Razakars accompanied by accused Gazi Md. Abdul Mannan moving towards north taking Abu Bakar Siddique [victim] with them and keeping him fastened with a jack fruit tree at the house of Kazi Ruhul Amin [P.W.18]. He [P.W.19] saw all these secretly remaining into hid inside the kitchen of the house of Kazi Ruhul Amin's [P.W.18] uncle Ahammad. Few minutes later, he saw some Razakars led by accused Gazi Md. Abdul Mannan bringing Rupali there from neighbouring village who was also kept fastened with the same tree

and then the Razakars started looting the house of Kazi Ruhul Amin and then set those on fire and then the Razakars moved towards north taking away Abu Bakar Siddique and Rupali Mia with them.

523. Defence could not bring anything by cross-examining the P.W.19 Md. Chandu Miah that may reasonably taint the credibility of his testimony. P.W.19 had occasions to meet and see the accused beforehand around the bazaar and different places of their locality and this was the reason that made him [P.W.19] able to recognise the accused Gazi Md. Abdul Mannan accompanying the armed Razakars, we lawfully presume. We do not find any reason to put aside his testimony so far as it relates to the attack that resulted in forcible capture of two victims and accused Gazi Md. Abdul Mannan's complicity and participation therewith.

524. In addition to taking away the victims on abduction the Razakars committed looting and burnt down the house of Kazi Ruhul Amin before they had left the site. It also stands proved from the evidence of P.W.18, P.W. 19 and P.W.20. Defence could not controvert it in any manner. Such criminal acts of the group of attackers led by the accused Gazi Md. Abdul Mannan elevated the attack more aggravated.

525. What happened next to taking away the victims, on forcible capture? After the event of abduction the father of victim Abu

Bakar Siddique met Suruj Moulavi, Khorshed Master, Hannan and Kalu, the members of local Peace Committee for requesting release of Abu Bakar Siddique when they agreed to release him in exchange of Taka[Rupee] 50,000. Then his father collecting Taka [Rupee] 36,000 provided it with Suruj Moulavi who told that Abu Bakar Siddique would be released by evening. But he was not released and could not have been traced.

526. The above version of P.W. 19 relating to an effort of getting victim Abu Bakar Siddique released remained unshaken. P.W. 19, brother of victim Abu Bakar Siddique affirms the event of abduction and in absence of anything contrary it transpires to be believable that the father of victim Abdu Bakar Siddique attempted to get his son released even in exchange of money and the members of local Peace Committee were approached to get his release. It could not be impeached in any manner.

527. Totality of evidence presented does not speak as to finally where the victims were taken, on abduction. It was impracticable to know indeed, due to war time situation. So, presumably the father of victim Abu Bakar Siddique moved to the members of local Peace Committee and other Razakars with the hope that they would be kind to do somewhat in getting his son back, as testified by P.W.19. But they being the members of Peace Committee, another anti-liberation organ, and Razakar Bahini formed to collaborate

with the Pakistani occupation army rather, instead of responding the appeal, had naturally endorsed the acts of Razakars, the perpetrators of the crime, despite taking an amount of money fraudulently.

528. P.W.20 Abdul Mannan is a nephew of Rupali Mia, one of the victims. At the relevant time he had been in the field near their house where from he could see the arrival of the group of Razakars accompanied by accused Gazi Md. Abdul Mannan. He also saw the Razakars tying up Abu Bakar Siddique and his uncle Rupali Mia with a jack fruit tree, taking them there on forcible capture, remaining in hiding inside a bush near Kazi Ruhul Amin's [P.W.18] house. The Razakars after looting and setting Kazi Ruhul Amin's house on fire had left the site taking away captured Abu Bakar Siddique and Rupali Mia with them. Returning home, he [P.W.20] informed his mother of the event and they did not have any trace of his uncle Rupali. He [P.W.20] knew accused Gazi Md. Abdul Mannan beforehand as he was a local foot ball player and happened to be a friend of Abu Bakar Siddique [victim].

529. The above testimony of P.W.20, a direct witness to the event of abduction consistently provides corroboration to P.W.18 and P.W.19, the two other direct witnesses. His testimony could not be impeached in any manner and does not seem to have been suffered from any infirmity. It has been affirmed too in cross-examination

that the victims were abducted by a group of Razakars. P.W.20 admits that Khorshed Master was a member of Razakar Bahini, although P.W.20 denied the suggestion that the group was led by Khorshed Master in abducting the victims.

530. The victims who were targeted in the context of systematic attack in 1971 were much more vulnerable as one was a freedom fighter and another one actively sided with the war of liberation. It is to be noted that a victim of ordinary criminal conduct may have far better means of defense. He can call neighbours or even defend himself without having to fear. But the armed perpetrators of crimes against humanity committed in 1971 used to pose a greater threat because ordinary social correctives could not function properly for the reason of context prevailing at that time and non availability of strong counter incentive against such organised criminal behaviour, due to existing horrific situation. And actually the 'context' existing in 1971 during the war of liberation allowed the Pakistani occupation army and their local collaborators, the perpetrators in accomplishing the criminal acts without facing any social correctives or any kind of counter incentive either on part of the victims under attack or their relatives who had occasion to see such organised criminal attack upon their near and dear ones.

531. The above context of horrific climate of course did not allow the persons to resist or to make any counter effort to rescue the

civilian under attack despite the opportunity of seeing the accomplishing the criminal act by the perpetrators who truly had carried out such atrocious activities to further the policy and plan of the Pakistani occupation army, we emphatically conclude.

532. No direct evidence could have been provided by the prosecution to establish accused Gazi Md. Abdul Mannan's physical participation to the act of killing the detainees. First, for the reason of war time situation existing in 1971 it was not practicable to see horrific killing of civilians. Next, even in absence of direct evidence the fact of perpetration of the act of killing may be proved by circumstantial evidence, if the circumstances divulged form a chain which rationally indicates no other proposition excepting that of the complicity of the accused with the commission of the principal offence of murder. Tribunal notes that the law does not enjoin an obligation on the prosecution to lead evidence of such character which is almost impossible to be led or at any rate really difficult to be led.

533. Therefore, we arrive at a conclusion that even in absence of any direct evidence as to participation of the accused Gazi Md. Abdul Mannan with the act of actual killing the captured victims it may validly be held that the accused's act and conduct prior to the killing linked him even with the actual perpetration of the principal offence of murder. This view finds support from the decision given

by the **ICTY Trial Chamber in the case of *Aleksovski*** which is as below:

"Participation may occur before, during or after the act is committed. It can, for example, consist of providing the means to commit the crime or promising to perform certain acts once the crime has been committed, that is, behaviour which may in fact clearly constitute instigation or abetment of the perpetrators of the crime."

[The Prosecutor v. Zlatko Aleksovski, Case No. IT-95-14/1-T, Judgment: 25 June 1999, Para-62]

534. It is evinced that the accused culpably assisted, induced and encouraged, by his act or conduct, the perpetrators formed of Razakars in carrying out the act of forcible capture of two victims. Its probative link with certainty manacles the accused inescapably. Evidence presented conclusively suggests that accused Gazi Md. Abdul Mannan's commanding position in local Razakar Bahini and his culpable presence with the group of armed Razakars at the site steered and guided the criminal activities in accomplishing the act of victims' abduction by creating horror.

535. On totality of corroborative evidence of natural and competent witnesses [P.W.18, P.W.19 and P.W.20] it has been well proved that the accused Gazi Md. Abdul Mannan by his culpable presence with the group of Razakars and also by his explicit acts approved or instigated or abetted his accomplice Razakars in committing the offence of abduction of the victims. 'Participation' encompasses 'approval' or 'instigation' or 'encouragement' or

‘aiding’ or ‘abetment’. The accused Gazi Md. Abdul Mannan was a potential Razakar of Karimganj locality and naturally he had significant influence over the members of Karimganj Razakar Bahini and thus his presence at the crime site and his act or conduct substantially induced his cohort Razakars in accomplishing the act of forcible capture of two pro-liberation civilians.

536. The event of taking away the victims remained undisputed. Defence simply disputes the participation of the accused in that criminal act. But the uncontroverted incriminating and circumstantial evidence as discussed above indisputably connect the accused Gazi Md. Abdul Mannan with the criminal acts as narrated in charge no.06 and he is lawfully held liable even for the actual commission of murder, the upshot of the act of abduction, for his act and conduct at the phase of abduction.

537. Accused’s act and conduct were intended to assist, encourage or lend moral support to the perpetration of the act of forcible capture of the victims and this supports indisputably had a substantial effect upon the perpetration of the principal crime, the murder, evidence presented suggests to infer it. It is to be noted that providing ‘assistance’ or ‘instruction’ may not always be tangible. It may be perceived or inferred from circumstances and material facts. It has been observed by the **ICTY Trial Chamber in the case of *Simic, Tadic, and Zaric that-***

“The acts of aiding and abetting need not be tangible, but may consist of moral support or encouragement of the principals in the commission of the crime.”

[Prosecutor v. Blagoje Simic, Miroslav Tadic and Simo Zaric, Case No. IT-95-9-T, Judgment-17 October 2003, Para -162]

538. The evidence provided demonstrates that accused’s presence with the group in launching attack in accomplishing victims’ abduction was indeed culpable one and he actively participated to such criminal act that resulted in forcible capture of the victims. Besides, as a commander of the local Razakar Bahini obviously by his presence with the group culpably encouraged and induced to carry out the criminal activity, we validly infer.

539. Admittedly the victims could not have been traced, since they were forcibly taken away. The accused has been indicted for the offence of murder as crimes against humanity, the upshot of the act of abduction in committing which he is already found to have had active participation and concern. Since the event happened not in times of normalcy, proof beyond reasonable doubt that a person was murdered does not necessarily require proof that the dead body of that person was recovered. In situation prevailing during the war of liberation in 1971, a victim’s death may be established by circumstantial evidence provided that the *only* reasonable inference is that the victim is dead as a result of the acts or omissions of the accused.

540. It stands proved, as it transpires on weighing evidence presented, that the accused Gazi Md. Abdul Mannan was culpably with the armed group of Razakars till taking away the victims on forcible capture since launching attack in accomplishing the act of abduction of two targeted pro-liberation civilians and thus we unerringly conclude that the accused Gazi Md. Abdul Mannan intending to further the common object of the group of perpetrators participated, by act and conduct, substantially facilitated and contributed to the perpetration of the principal offence, the murder as well. Accused's participation at the phase of abduction itself is a fair indicative of his participation even to the killing of abductees, the upshot of their abduction as proved. For the act or conduct of accused Gazi Md. Abdul Mannan at the phase of attack that resulted in abduction was indisputably chained to the entire event that eventually caused murder of two abductees.

541. In view of above, we are of the view that the prosecution has been able to prove beyond reasonable doubt that the accused Gazi Md. Abdul Mannan knowingly and deliberately participated and facilitated the group of armed Razakars which he led in abducting the two victims who could not have been traced since then. Therefore, accused Gazi Md. Abdul Mannan is found criminally liable under section 4(1) of the Act of 1973 for participating, facilitating, abetting and substantially contributing, and also for

complicity, by his culpable act and conduct forming part of attack, to the actual commission of killing of two defenceless unarmed civilians namely, Abu Bakar Siddique and Rupali Mia constituting the offences of 'abduction' and 'murder' as crimes against humanity as enumerated in section 3(2) (a) (g)(h) of the Act of 1973 which are punishable under section 20(2) of the Act.

Adjudication of Charge No.07

[Wanton destruction at village Atkapara under Police Station Karimganj by arson constituting the offence of other inhumane act]

542. Summary Charge: That on 15 September 1971 at about 10:00 A.M. accused Gazi Md. Abdul Mannan[absconded] accompanied the group formed of armed Razakars in launching attack, in furtherance of a common plan and design to annihilate the pro-liberation civilians and the civilians belonging to Hindu community at village *Atkapara* under Police Station Karimganj of the then Kishoreganj Sub- Division and on his direction his accomplice Razakars destroyed 20/25 houses including that of Shahed Fakir, Abu Anis Fakir and Ali Akbar Master by setting those on fire.

543. Thereby, accused Gazi Md. Abdul Mannan[absconded] has been charged for participating, facilitating, abetting and substantially contributing and also for 'complicity' to the commission of offence of 'other inhumane act' as crime against humanity as part of systematic attack directing unarmed civilians as

specified in section 3(2) (a)(g)(h) of the Act of 1973 which are punishable under section 20(2) of the Act for which the accused has incurred liability under section 4(1) of the Act.

Evidence of Witnesses Presented

544. Only accused Gazi Md. Abdul Mannan has been indicted for the criminal act of committing wanton destruction of Hindu civilians' properties at village Atkapara by arson, being accompanied by a group of Razakars, constituting the offence of 'other inhumane act' as crime against humanity, the charge alleges. Two witnesses have been examined as P.W.21 and P.W.22, to prove this charge. First let us see what they have testified on dock.

545. P.W.21 Md. Muslim [65], is a resident of village Atkapara under Police Station Karimganj of the then Kishoreganj Sub-Division was 22/23 years old in 1971. He stated that in 1971 most of their villagers were supporters of Awami League and they excepting the members of 2/1 families joined the war of liberation, and as such, their village was the target of Razakars.

546. In narrating the event, P.W.21 stated that on one day around 10:00 A.M. during the last part of Bangla month Bhadra in 1971, a group of 10/15 Razakars accompanied by accused ATM Nasir, Shamsuddin Ahmed, Gazi Md. Abdul Mannan, Md. Hafizuddin and Md. Azharul Islam arrived on the Tarail bound road. There had been a mosque beside the said road. Arriving there accused Razakar

Gazi Md. Abdul Mannan ordered his cohort Razakars to set the village on fire as it was a den of freedom-fighters. On such order, accused Shamsuddin Ahmed, ATM Nasir and other Razakars set fire to 20/25 houses of their village including that of Shahed Fakir, Abu Anis Fakir and Ali Akbar Master. He further stated that he saw that attack by the Razakars as he had been staying at his Phupu's [father's sister] house beside the road and nearer to the crime site.

547. In cross-examination by the learned counsel appearing for the accused Shamsuddin Ahmed, P.W.21 stated that he could not recall the date of the incident. He denied the suggestions put to him that he did not disclose accused Shamsuddin Ahmed's complicity with the event earlier and elsewhere, that he had not been at his phupu's house at the relevant time or did not see the event he stated, that accused Shamsuddin Ahmed was not a Razakar and was not involved in any criminal activities in 1971 and that what he stated implicating accused Shamsuddin Ahmed was untrue and tutored.

548. The learned State defence counsel defending the rest four absconding accused persons cross-examined P.W.21 when he stated that he could not say whether the Pakistani army had its camp at Tarail Thana Sadar. He did not know what accused Gazi Md. Abdul Mannan's profession was but he was a foot-ball player. Accused

ATM Nasir used to visit their village. He could not say about the profession of accused Md. Hafizuddin and Md. Azharul Islam. P.W.21 denied that he did not disclose ATM Nasir's complicity with the event of arson earlier to any body. P.W.21 denied the defence suggestions that these four accused persons [absconded] did not belong to Razakar Bahini and they were not involved with the event he narrated and that what he stated implicating them was untrue and tutored.

549. P.W.22 Md. Suruj Ali [68] was a resident of village Atkapara in 1971 and during the war of liberation his age was about 23 years. He stated that during the war of liberation in 1971 most of their villagers were the followers of Awami League and many of them were freedom-fighters, and as such, the Razakars targeted their village. In narrating the event of attack, P.W.22 stated that on one day during the last part of Bangla month Bhadra in 1971 at about 10:00 A.M. while he had been staying near the mosque adjacent to their house, situated beside the Tarail bound road, he saw a group of 15/16 Razakars accompanied by accused Gazi Md. Abdul Mannan, Shamsuddin Ahmed and ATM Nasir arrived there and accused Gazi Md. Abdul Mannan ordered his accomplices to set the village on fire saying 'this village is the den of freedom fighters'. With this the accused persons and Razakars set fire to 20/25 houses of their village including that of Shahed Fakir, Abu

Anis Fakir and Ali Akbar Master and afterwards moved towards north leaving the site. P.W.22 stated that he knew the accused persons beforehand.

550. On cross-examination done on behalf of accused Shamsuddin Ahmed P.W.22 stated that he is a freedom-fighter although he does not have certificate and he received training inside the country. He was associated with Awami League politics. He however could not recall the date of the event he narrated. Accused Shamsuddin Ahmed was from village Karimganj and his house was about half kilometre far from that of his [P.W.22] own. P.W.22 denied the defence suggestions that in 1971 accused Shamsuddin Ahmed was 12 years old, that he did not see the event he narrated, that accused Shamsuddin Ahmed was not a member of Razakar Bahini and that what he stated implicating him was untrue and tutored by the local political rival of accused Shamsuddin Ahmed .

551. P.W.22 also faced cross-examination by the State defence counsel defending the rest four absconding accused persons when he stated that accused Gazi Md. Abdul Mannan was Razakar Commander during the war of liberation in 1971. He could not say whether accused Gazi Md. Abdul Mannan served in Pakistan army since before 1971. He also stated that accused ATM Nasir was a Razakar and he did not study in 1971. He further stated that he has been residing at village Ramnagar since last 34 years. P.W.22

denied the suggestions that he used to reside at village Ramnagar and not at village Atkapara in 1971, that the accused persons did not belong to Razakar Bahini and they were not involved with the event he narrated or that he did not see them at the crime site and that what he stated implicating them was untrue and tutored.

Finding with Reasoning on Evaluation of Evidence

552. This charge relates to the event of attack that resulted in destruction of 20/25 houses of village Atkapara by setting those on fire. A group of Razakars led by accused Gazi Md. Abdul Mannan allegedly committed the offence of such wanton destruction constituting the offence of 'other inhumane act' as crime against humanity. Two persons of the crime village have been adduced and examined as P.W.21 and P.W.22, to prove this charge. Both of them claim to have watched the event.

553. Drawing attention to the evidence of two witnesses examined it has been argued by the learned prosecutor Mr. Sultan Mahmud that the unimpeachable testimony of these two P.W.s proved the event of criminal acts constituting the offence of other inhumane act [destruction of properties] as crime against humanity and accused Gazi Md. Abdul Mannan and his cohorts were with him in carrying out the attack. Defence could not impeach what the P.W.s testified implicating him. The accused significantly induced his

cohorts in committing destructive activities, by his culpable act and conduct as have been proved from evidence of witnesses examined.

554. Mr. Abdus Sukur Khan, the learned State defence counsel for four absconded accused persons including this accused Gazi Md. Abdul Mannan submitted that prosecution failed to prove this charge. The evidence adduced in support of this charge does not carry any credence and the witnesses examined are not reliable, that the accused had no nexus with local Razakar Bahini and was not with the group of attackers at the crime site in carrying out destructive activities alleged.

555. In the preceding deliberation we have already recorded reasoned finding that all the five accused persons belonged to local[Karimganj] Razakar Bahini formed of about 70/80 Razakars under the guidance of local Peace Committee and the Pakistani occupation army who stationed in Kishoreganj Sadar on 20 April 1971. This charge [charge no.07] alleges that a group of Razakars led by accused Gazi Md. Abdul Mannan [absconded] had carried out destructive activities directing civilian population by act of arson. Rest four other accused persons have not been indicted for the offence narrated in this charge.

556. P.W.21 and P.W.22, as it appears, claim that accused Shamsuddin Ahmed, ATM Nasir, Md. Hafizuddin and Md. Azharul Islam were also with the group of attackers belonging to Razakar

Bahini at the crime site although they have not been indicted for the offence narrated in charge no.07.

557. It is to be noted that in the instant case, all the seven charges have been framed indicting the accused persons and their cohort Razakars. All the events of attacks narrated therein allegedly perpetrated around the localities of Karimganj Police Station by the group of Razakars and no Pakistani army man was with them in accomplishing the criminal acts.

558. But since the charge no.07 indicts only accused Gazi Md. Abdul Mannan and his cohort Razakars, the evidence provided implicating other four accused persons deserves exclusion. At the same time it does not mean that merely for such exaggeration, in relation to presence of those four accused persons with the group, direct evidence implicating the accused Gazi Md. Abdul Mannan shall go on air or the evidence of these two direct witnesses loses credibility in its entirety.

559. Defence does attack the truthfulness of the event of carrying destructive activities directing civilians' properties at village Atkapara on the date and time as evinced from the direct evidence of P.W.21 and P.W.22. It simply denied the complicity and involvement of the accused persons including the accused Gazi Md. Abdul Mannan, only who has been indicted in respect of this charge, with the event. Thus, the issue is the presence of the

accused Gazi Md. Abdul Mannan with the group of Razakars and not whether he physically participated to the commission of principal crimes at the crime site.

560. It is pertinent to note that focus should be put only on the conduct of accused Gazi Md. Abdul Mannan as a manifestation of a willingness to be associated with a crime and his support and encouragement to his cohorts forming the group of perpetrators in accomplishing the principal crime.

561. P.W.21 Md. Muslim is a direct witness to the event of attack. He also saw the group of Razakars arriving at place near the mosque beside the Tarail bound road when accused Razakar Gazi Md. Abdul Mannan ordered his cohort Razakars to set the village on fire as it was a den of freedom-fighters and on such order, accused Shamsuddin Ahmed, ATM Nasir [who have not been indicted in this charge] and other Razakars set fire to 20/25 houses of their village including that of Shahed Fakir, Abu Anis Fakir and Ali Akbar Master. He [P.W.21] saw this attack by the Razakars as he had been staying at his Phupu's [father's sister] house beside the road and nearer to the crime site. Defence could not impeach this pertinent version relating to the conduct of accused Gazi Md. Abdul Mannan and the attack by his accomplice Razakars that resulted in setting civilians' houses on fire. This version gets corroboration from the evidence of P.W.22, another direct witness to the event.

562. P.W.21, as to reason of knowing the accused Gazi Md. Abdul Mannan, stated in cross-examination that Gazi Md. Abdul Mannan was a foot-ball player. P.W.21 was 22/23 years old in 1971 and naturally he knew the accused Gazi Md. Abdul Mannan who was a local foot-ball player. Defence simply denied this accused's involvement with the event. But it could not bring anything in cross-examination that what the P.W.21 stated in respect of the attack and accused Gazi Md. Abdul Mannan's involvement with the act of setting the civilians' houses on fire.

563. The unshaken testimony of P.W.22 also demonstrates that accused Gazi Md. Abdul Mannan, the Razakar Commander, ordered his cohorts to set the village on fire saying 'this village is the den of freedom fighters', and with this the Razakars set 20/25 houses including that of Shahed Fakir, Abu Anis Fakir and Ali Akbar Master on fire.

564. P.W.22 Md. Suruj Ali stated that he knew the accused persons beforehand. In cross-examination, it has been affirmed as P.W.22 in reply to question put to him by the defence stated that Gazi Md. Abdul Mannan was Razakar Commander. In absence of anything contrary, we conclude that P.W.22 had reason of knowing the accused Gazi Md. Abdul Mannan since prior to the event of attack. Thus, his evidence as to seeing the accused with the group of Razakars and carrying out criminal activities inspires credence.

565. It thus patently evinced that it was accused Gazi Md. Abdul Mannan on whose order and culpable encouragement forming part of attack his accomplice Razakars eventually had carried out the criminal acts of wanton destruction. Defence could not impeach it in any manner that P.W.22 saw the event of attack by a group of 15/16 Razakars accompanied by accused Gazi Md. Abdul Mannan, staying near the mosque adjacent to their house, situated beside the Tarail bound road. We do not find any reason to discard the evidence of this direct witness. Mere denial as to accused Gazi Md. Abdul Mannan's complicity and presence with the group of Razakars at the crime site does not shiver the truthfulness of his testimony in any manner.

566. Therefore, conduct of the accused Gazi Md. Abdul Mannan as demonstrated from the unshaken evidence of P.W.21 and .W.22 fans the flames of grave inducement on commission of wanton destruction of civilians' properties of village Atkapara terming that locality the den of freedom fighters.

567. The evidence of P.W.21 and P.W.22, in relation to this charge, suggests indisputable conclusion that accused Gazi Md. Abdul Mannan, a local potential Razakar, led the group of attackers formed of Razakars, had guided and encouraged them in targeting the houses of prominent pro-liberation civilians of village

Atkapara, for carrying out wanton destruction intending to induce massive terror.

568. The above discussion based on evidence and other facts materially relevant it has been thus proved that accused Gazi Md. Abdul Mannan led the group of Razakars while it launched attack at village Atkapara and presumably, it was he on whose culpable order, encouragement, moral support and endorsement his cohort Razakars committed the act of burning down the houses of potential pro-liberation civilians, to further policy and plan of the Pakistani occupation army.

569. The event of attack under adjudication relates to wanton destructive activities directing civilians' properties causing mental harm by terrorizing the normal livelihood of non combatant civilians, violating the laws and customs of war, constituted the offence of 'other inhumane act' as crime against humanity.

570. It may also be validly presumed that at war time situation, in 1971, a member belonging to Razakar Bahini, an auxiliary force, formed to act under control of Pakistani occupation army, was engaged in atrocious activities directing civilian population and they being part of policy and plan did it to collaborate and assist them. The conduct of accused Gazi Md. Abdul Mannan in accomplishing the destructive activities, as already found proved,

provides conclusion that he was consciously a part of atrocious activities committed by the group of Razakars.

571. Defence does not challenge the fact, by cross-examining P.W.21 and P.W.22, that they knew the accused Gazi Md. Abdul Mannan even since prior to the event. Unshaken testimony of P.W.21 and P.W.22 rather implies that they knew the accused Gazi Md. Abdul Mannan prior to the event. Tribunal notes that knowing a person does not always necessarily refer to personal acquaintance. The facts, context and habitation of the witnesses around the geographic area of Karimganj Police Station rather made it likely for these two witnesses to 'know' the accused Gazi Md. Abdul Mannan, even since earlier, as he was a locally known foot ball player and in 1971 he joined the local Razakar Bahini as its commander. We are thus satisfied that the witnesses did not make an attempt to mislead the Tribunal by saying that they saw accused Gazi Md. Abdul Mannan with the group of attackers and ordering his cohorts to set the civilians' houses on fire, by carrying out the attack.

572. The attack in question included grave destruction of civilians' properties that caused massive harm to them. The perpetrators committed such vicious activities intending to create a climate of terror, particularly for the people who took stance in favour of the war of liberation, in furtherance of policy and plan.

573. Burning properties of civilians indeed involved serious despondency and disadvantage to the victims of the attack. Physical injury or harm might not have caused to any individual by such extensive destruction. But weight is to be given to the malicious intent behind such destructive activities.

574. The massive and malicious intentional destruction of houses and properties of civilian population detracts their customary livelihood and it is recognized as a blatant denial of their fundamental rights. Such terror inducing destructive acts were aimed to intimidate the non-combatant pro-liberation civilians, by launching attack at village Atkapara.

575. Accused Gazi Md. Abdul Mannan's act of ordering his accomplice Razakars, as unveiled, indisputably offers valid indication that he had conscious 'concern' and 'participation' in committing the act of 'wanton destruction of civilians' properties by burning down the same, and thus, he is equally responsible for the entire criminal activities in question. In this regard, we may recall the observation of the **ICTY Trial Chamber, in the case of *Tadic*** that-

“In sum, the accused will be found criminally culpable for any conduct where it is determined that he knowingly participated in the commission of an offence that violates international humanitarian law and his participation directly and substantially affected the commission of that offence through supporting the actual commission before, during, or after the incident. He will also be responsible for all that naturally results from the commission of the act in question”.

[Prosecutor v. Tadic, ICTY Trial Chamber, Case No. IT- 94-1-T, Judgment: 7 May, 1997, Para- 692]

576. Destruction or damage to property requires a showing that a considerable number of objects were damaged or destroyed, it does not require destruction in its entirety of a city, town or village. It stands proved from the evidence of P.W.21 and P.W.22, the direct witnesses, that 20/25 houses of their village Atkapara including that of Shahed Fakir, Abu Anis Fakir and Ali Akbar Master were burnt down, in conjunction with the attack. In ordering his accomplices accused Abdul Gazi Md. Abdul Mannan deliberately discriminated the village Atkapara as a 'den of freedom-fighters. Accused's act and conduct was thus gravely culpable and abetted his accomplice Razakars in carrying out the criminal acts that resulted in destruction of 20/25 houses of civilians. The act was wanton in nature that had caused grave detriment to the fundamental rights and livelihood of civilians.

577. It is now settled that the position of human rights law as guidelines for the minimum standards of treatment - the breach of which could be seen as inhumane - has been repeatedly recognized by the international tribunals. Here, in the case in hand, we may safely conclude that the criminal acts of destruction of civilians' properties had a nexus with the plan and policy of the Pakistani occupation army. And such act of wanton destruction was not for any military necessity.

578. It has been proved beyond reasonable doubt that the accused Gazi Md. Abdul Mannan consciously and knowing the consequence of his act of ordering his accomplices abetted his accomplices to burn down the village and on such order and inducement they had set civilians' houses on fire. Thus, act of ordering or directing or encouraging indisputably facilitated and substantially contributed to the commission of actual offence. The discussion we have made herein above on integrated evaluation of evidence provided impels to conclude that the accused Gazi Md. Abdul Mannan participated, facilitated, abetted and contributed and also had complicity to the commission of burning down civilians' properties intending to create horror and intimidation detrimental to rights of civilians constituting the offence of 'other inhumane act' as crime against humanity as enumerated in section 3(2)(a)(g)(h) of the Act of 1973 which is punishable under section 20(2) of the Act, and as such, he has incurred liability under section 4(1) of the Act .

XX. Conclusion:

579. Preamble of our Constitution speaks it unambiguously that the people of Bangladesh, having proclaimed their independence on the 26th March , 1971 and, through a historic struggle for national liberation, established the independent, sovereign People's Republic of Bangladesh.

580. The atrocities committed in 1971 in the territory of Bangladesh can not be termed as mere 'force used to prevent Awami League in East Pakistan from coming to power'. The Appellate Division of the Supreme Court of Bangladesh in disposing of the Criminal Review Petitions [**Abdul Quader Mollah vs. The Chief Prosecutor, Criminal Review Petitions Nos. 17-18 of 2013 , Page -2]** acknowledged the settled history as below:

"All the above incidents took place when the people of the country were fighting against the occupation army of Pakistan for liberation of the country."

581. In disposing of the above Review Petitions, the Appellate Division further observed [Page-3]:

"These offences were perpetrated in Bangladesh following the onslaught of 'Operation Search Light' from the night following 25th March, 1971 to 16th December, 1971, by the Pakistani occupation army and their collaborators after the declaration of independence of the country by late Sheikh Mujibur Rahman. There were wide spread atrocities like killing of three million people, rape, arson and looting of unarmed civilians, forcing 10 million people to take shelter in the neighbouring country, India."

582. The above depicts the core of the history of the birth of independent homeland of the Bengali nation. After the declaration of independence and birth of a separate homeland Bangladesh, the

Pakistani occupation armed forces and the armed *militia* forces formed to collaborate with them started committing barbaric atrocious activities directing civilians in the name of fighting the freedom fighters within the territory of Bangladesh and in this way they made them engaged with an **‘intra-state war or armed conflict’**.

583. History says that the Pakistani occupation army and their local collaborators had carried out their brutal criminal activities directing the Bengali civilian population in the territory of Bangladesh. Were those acts compatible with the notion of ‘protection of civilians’ in own territory during armed conflict or intra-state war or conflict as contained in the Geneva Convention or international humanitarian law or Laws of War? The answer is absolutely ‘NO’. The Pakistani occupation armed forces and their armed organs including the auxiliary forces indisputably had committed forbidden act of aggression against Bangladesh in 1971.

584. In the case in hand, on adjudication of all the seven charges it has already been found proved that the accused persons being the potential members of local Razakar Bahini committed various criminal atrocious activities constituting the offences of crimes against humanity as enumerated in section 3(2)(a) of the Act of 1973 around the locality under Police Station Karimganj of the then Kishoreganj Sub-Division.

585. The criminal acts committed by the accused persons directing civilian population in accomplishing intended crimes during the war of liberation in 1971 have been lawfully characterized as the offences of crimes against humanity. All those events of attacks happened around the locality of Karimganj Police Station under the then Kishoreganj Sub-Division. We have rendered our reasoned finding that the Pakistani occupation army almost immediately after they stationed in Kishoreganj formed Peace Committee and Razakar Bahini in Karimganj Police Station consisting of the pro-Pakistan people of the locality.

586. Out of seven charges all the five accused persons have been found guilty of killing numerous civilians constituting the offence of murder, by launching planned, systematic and concurrent attack [as listed in charge no.01]. And the accused persons were extremely antagonistic to the defenceless civilians and deliberately and brutally caused their death by gun shots. The way the accused persons acted in conjunction with the attack was barbaric indeed. They committed the horrific killings of villagers in day time and even within the knowledge of their near relatives, and thus, such dreadful acts obviously immensely traumatized them which they have been carrying with enormous pain till today. All these cumulatively aggravate the extent and pattern of the crimes committed.

587. All the accused persons sharing common intent of the group of Razakars consciously participated to the commission of such horrendous mission of killing protected persons. Accused Nasiruddin Ahmed alias Md. Nasir alias Captain ATM Nasir [absconded] and accused Shamsuddin Ahmed physically participated to the commission of such terrible crimes and the three other accused persons as well by their act and culpable conduct substantially assisted and contributed them and the gang of Razakars to its commission, the evidence presented and circumstances emerged, in respect of the event narrated in charge no.01, have proved it beyond reasonable doubt.

588. It has also been proved that on 13 November 1971, accused Nasiruddin Ahmed alias Md. Nasir alias Captain ATM Nasir and his accomplice Razakars by launching attack had killed a defenceless villager Md. Miah Hossain by gunshot [as listed in charge no.02] . Accused Nasiruddin Ahmed alias Md. Nasir alias Captain ATM Nasir is found to have had incurred liability of committing the act of deliberate killing a civilian as he actively participated to its commission. Conduct of the said accused as unveiled in conjunction with the attack demonstrates his antagonistic mind set towards Bengali civilian population and loyalty to Pakistani occupation army to further its policy and plan. Thus event involves murder of a single individual but it was

resulted from a systematic attack indeed intending to reigniting horror and intimidation amongst the pro-liberation civilians.

589. It stands proved beyond reasonable doubt that all the five accused persons excepting accused Gazi Md. Abdul Mannan had picked up Md. Abdul Gafur from his residence by launching an attack, being accompanied by accomplice Razakars, and the captured victim was killed instantly after his abduction taking him away to Khudir Jangal bridge nearer to the victim's house[as listed in charge no.03]. The attack was planned and the victim was taken away forcibly defying appeal made on part of his wife for his release. It was tragic indeed that the helpless wife could not resist the perpetrators and she had to witness the heart-rending fate of her husband as a mere spectator. Akhter Hafiza Khatun, the wife of victim Md. Abdul Gafur came on dock and described the traumatic experience which she has been carrying with her since more than four decades.

590. The event of abducting Md. Fazlur Rahman [as listed in charge no.04] happened in day time. It has been well proved that all the five accused persons being accompanied by their accomplices had taken away Md. Fazlur Rahman on forcible capture first to Karimganj Dakbungalow torture cell and was kept detained there and afterwards he could not have been traced. His relatives attempted to get him released but it was in vain. The act of

abduction was chained to the act of detaining the victim and killing him. Facilitating substantially by accompanying the group in effecting Md. Fazlur Rahman's abduction all the accused persons got them culpably engaged in accomplishing the principal offence of murder, we have concluded.

591. Criminal acts [as listed in charge no.04] demonstrate it further how notorious the Razakars were and how antagonistically they planned to annihilate pro-liberation civilians in 1971. Victim Md. Fazlur Rahman was a highly qualified person and was about to go to India to join the war of liberation. The act and conduct of all the accused persons forming part of attack were rather extreme brutality directing the Bengali nation indeed, not only directing a single individual.

592. Killing Paresh Chandra Sarker [as listed in charge no.05] belonging to Hindu religion reflects extreme aggressive attitude towards Hindu religious group. The event of attack that resulted in killing of Paresh Chandra Sarker by gunshot occurred in day time. It has been proved beyond reasonable doubt that accused Shamsuddin Ahmed while he was moving along with his accomplice Razakars with a pack of ammunition with them, he [accused] being aware of identity fired gun shot to Paresh Chandra Sarker, an innocent civilian, that resulted in his death. This event of killing [as listed in charge no.05] exceeded limit of notoriety. None

of the persons witnessing the event of attack could come forward to resist the accused and he had left the site along with his accomplices after accomplishing the murder. Such situation caused mammoth pain to the relatives of the victim. The event narrated in this charge no.05 speaks lot as to vulnerability of unarmed pro-liberation civilans staying in the territory of Bangladesh in 1971 as untold reign of horror was created across the territory of Bangladesh by the infamous Razakar Bahini formed to collaborate with the Pakistani occupation army, to further policy and plan.

593. The attack [as listed in charge no.06] formed of three phases. First phase involved abduction of two victims namely Abu Bakar Siddique and Rupali Mia from their village. Second, taking them to a place near Patnibari bridge and then to Kishoreganj. And third phase was the act of killing those two captured victims. It has been proved that accused Gazi Md. Abdul Mannan being accompanied by his cohort Razakars had carried out the attack and he actively participated and facilitated the group in effecting the forcible capture of the victims, unarmed civilians and the event happened in day time. This event [as listed in charge no.06] is another instance of the object of forming Razakar Bahini. In the name of collaborating Pakistani occupation army, it treated the unarmed pro-liberation civilians and freedom fighters as ‘miscreants, and their ‘enemy’ and it thought that annihilation of pro-liberation

Bengali civilians would frustrate the war of liberation. Accused Gazi Md. Abdul Mannan was in upper echelon of the locally formed Razakar Bahini, and thus, he was in guiding position in launching the barbaric attack [as listed in charge no.06] that resulted in killing two civilians, part of civilian population.

594. It has been proved that Gazi Md. Abdul Mannan, the commander of locally formed Razakar Bahini instigated, facilitated and contributed the group of Razakars in carrying out the attack that resulted in wanton destruction of civilians' properties [as listed in charge no.07] and the criminal acts of the accused indisputably caused grave mental harm to the affected civilians and the same was blatant denial of their fundamental rights to their normal livelihood. Accused Gazi Md. Abdul Mannan in ordering his accomplices to carry out the attack deliberately discriminated the crime village Atkapara as a 'den of freedom fighters' and act was indeed gravely culpable—it stands proved. Act of accused Gazi Md. Abdul Mannan, the Razakar Commander of Karimganj thus once again proves his vicious and notorious approach to the Bengali civilian population.

595. Horrifying pattern of the crimes as found proved shocks the conscience of mankind. The events of crimes proved are mere a small portrayal of massive magnitude of horrendous activities carried out across the territory of Bangladesh in 1971, during the

war of liberation. Accused persons despite being Bengali civilians sided with the Pakistani occupation army and got them engaged to act criminally directing civilian population. Their role, act and conduct they had shown in accomplishing the crimes, already established, have proven them to be notorious human beings.

596. 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 I, page 442: Ministry of External Affairs, New Delhi]

597. The above observation made on **16 June 1971** reflects an impression as to the tragic scale and dreadful nature of atrocities which were carried out through out the war of liberation in 1971. The offences for which the accused persons have been found responsible are the part of such atrocities committed in the context of the war of liberation 1971 in the territory of Bangladesh, in collaboration with anti-liberation and antagonistic political organisations, namely Jamaat-e-Islami, Muslim League, Nejam-e-Islami, group of pro-Pakistan people and the Pakistani occupation army with objective to annihilate the Bengali nation by resisting in achieving its independence.

598. Therefore, bearing it in mind the Tribunal notes that no guilty man should be allowed to go unpunished, merely for any faint doubt, particularly in a case involving prosecution of crimes against humanity committed in 1971 in violation of customary international law during the War of Liberation. Because, wrong acquittal, merely for any faint or unreasonable doubt, has its chain reactions, the law breakers would continue to break the law with impunity.

599. We reiterate that 'no innocent person be convicted, let hundreds guilty be acquitted' - the principle has been changed in the present time. In this regard it has been observed by the Indian Supreme Court that -

"A judge does not preside over a criminal trial, merely to see that no innocent man is punished. A Judge also presides to see that a guilty man does not escape. Both are public duties."

[Per Viscount Simon in *Stirland vs. Director of Public Prosecution: 1944 AC (PC) 315: quoted in State of U.P Vs. Anil Singh: AIR 1988 SC 1998]*

XXI. Verdict on conviction

600. For the reasons set out in the judgment and having considered all evidence, both oral and documentary, and arguments advanced by both the parties, this Tribunal-1 unanimously finds-

All the five accused persons, namely (1) Shamsuddin Ahmed, (2) Gazi Md. Abdul Mannan [absconded], (3) Nasiruddin Ahmed alias Md. Nasir alias Captain ATM Nasir [absconded], (4). Md. Hafizuddin [absconded], and (5) Md. Azharul Islam [absconded] in-

Charge No.01: GUILTY of the offences of participating, facilitating, abetting, contributing and complicity to the commission of offences of 'murder' and 'other inhumane act' as crimes against humanity as enumerated in section 3(2)(a)(g)(h) read with section 4(1) of the Act of 1973 and they be convicted and sentenced under section 20(2) of the said Act.

Accused Nasiruddin Ahmed alias Md. Nasir alias Captain ATM Nasir [absconded] in -

Charge No.02: GUILTY of the offences of participating and complicity to the commission of the offence of 'murder' as crime against humanity as enumerated in section 3(2)(a)(h) read with section 4(1) of the Act of 1973 and he be convicted and sentenced under section 20(2) of the said Act.

Accused (1) Shamsuddin Ahmed, (2) Nasiruddin Ahmed alias Md. Nasir alias Captain ATM Nasir [absconded], (3) Md. Hafizuddin Ahmed [absconded], and (4) Md. Azharul Islam [absconded] in -

Charge No.03: GUILTY of the offences of participating, facilitating, abetting, contributing and complicity to the commission of the offences of 'murder' and 'abduction' as crimes against humanity as enumerated in section 3(2)(a)(g)(h) read with section 4(1) of the Act of 1973 and they be convicted and sentenced under section 20(2) of the said Act.

Accused Gazi Md. Abdul Mannan [absconded] in-

Charge No.03: NOT GUILTY of the offences of 'murder' and 'abduction' as crimes against humanity as enumerated in section 3(2)(a) of the Act of 1973 and he be acquitted thereof accordingly.

All the five accused persons, namely (1) Shamsuddin Ahmed, (2) Gazi Md. Abdul Mannan [absconded], (3) Nasiruddin Ahmed alias Md. Nasir alias Captain ATM Nasir [absconded], (4) Md. Hafizuddin [absconded], and (5) Md. Azharul Islam [absconded] in-

Charge No.04: GUILTY of the offences of participating, facilitating, abetting, contributing and complicity to the commission of offences of 'murder', 'abduction' and 'torture' as crimes against humanity as enumerated in section 3(2)(a)(g)(h) read with section 4(1) of the Act of 1973 and they be convicted and sentenced under section 20(2) of the said Act.

Accused Shamsuddin Ahmed in -

Charge No.05: GUILTY of the offences of participating and complicity to the commission of offence of 'murder' as crime against humanity as enumerated in section 3(2)(a)(h) read with section 4(1) of the Act of 1973 and he be convicted and sentenced under section 20(2) of the said Act.

Accused Gazi Md. Abdul Mannan [absconded]in-

Charge No.06: GUILTY of the offences of participating, facilitating, abetting, contributing and complicity to the commission of offences of 'murder' and 'abduction' as crimes against humanity as enumerated in section 3(2)(a)(g)(h) read with section 4(1) of the Act of 1973 and he be convicted and sentenced under section 20(2) of the said Act.

Accused Gazi Md. Abdul Mannan [absconded]in-

Charge No.07: GUILTY of the offences of participating, facilitating, abetting, contributing and complicity to the commission of offence of 'other inhumane act' as crime against humanity as enumerated in section 3(2)(a)(g)(h) read with section 4(1) of the Act of 1973 and he be convicted and sentenced under section 20(2) of the said Act.

XXII. Verdict on sentence

601. Mr. Sultan Mahmud and Ms. Rezia Sultana, the learned prosecutors ended their summing up by making submission that the accused persons should face the highest sentence, being a sentence of death, as they are proved to have had participation, substantial contribution and facilitation to the commission of deliberate criminal acts constituting the offences of causing murder of numerous civilians and other crimes against humanity.

602. It has been further submitted that the accused persons, the members of Razakar Bahini formed in locality under Karimganj Police Station of the then Kishoreganj Sub-Division had carried out atrocious activities in furtherance of common purpose and design. Pattern of attacks that resulted in brutal killing of numerous

civilians deserves to be considered as an ‘aggravating factor’ in awarding the highest sentence.

603. Conversely, defence simply submitted that the accused persons were not with any such criminal activities for which they have been indicted and they had no nexus with the local Razakar Bahini. Prosecution failed to prove the accusation brought against them, and thus, they deserve acquittal.

604. It is now settled that the factors to be considered in awarding sentence principally inherent level of gravity of crime and degree and mode of participation of the convict accused. At the same time conscious knowledge about the consequence of act or conduct and common intent in committing crime increases culpability of the person found guilty.

605. At the outset, the Tribunal notes that it must render an order awarding sentence that is fair and just considering the gravity of the offence, the context and the mode of participation of the offender – this is known as the ‘principle of proportionality’. Pattern and characteristics of the offences will influence the severity of the sentence to be awarded. This is the legitimate objective of criminal justice system. The offences of crimes against humanity by nature are monstrous and diabolical and committed directing defenceless civilian population. In the case of *Abdul Quader Molla* the

Appellate Division of the Supreme Court of Bangladesh in respect of awarding sentence observed as below:

"In awarding the appropriate sentence, the tribunal must respond to the society's cry for justice against perpetrators of Crimes against Humanity. The perpetrator like the appellant has committed most worst and barbarous types of Crimes against Humanity. He participated in the killing and rape of innocent persons without just cause. His acts are comparable with none..... Justice demands that it should impose a sentence befitting the crime so that it reflects public abhorrence of crime. In Cases of murders in a cold and calculated manner without provocation cannot but shock the conscience of the society which must abhor such heinous crime committed on helpless innocent persons."

[Criminal Appeal Nos. 24 and 25 of 2013, Judgment: 17 September 2013, Pages- 247-248]

606. At the same time, we consider it appropriate to rely upon the observation made by the Appellate Division of the Supreme Court of Bangladesh as to the factors to be considered in inflicting punishment. In the **Criminal Review Petition No. 62 of 2015 [Ali Ahsan Muhammad Mujahid' case]** the **Appellate Division of the Supreme Court of Bangladesh** observed that Lord Justice Denning, Master of the Rolls of the Court of Appeal in England, appearing before the British Royal Commission on Capital Punishment, stated his views on this point as under:

"Punishment is the way in which society expresses its denunciation of wrongdoing; and in order to maintain respect for law; it is essential that the punishment

inflicted for grave crimes should adequately reflect the revulsion felt by the great majority of citizens for them. It is a mistake to consider the objects of punishment as being deterrent or reformatory or preventive and nothing else----- . The truth is that some crimes are so outrageous that society insists on adequate punishment, because the wrong doer deserves it, irrespective of whether it is a deterrent or not”.

[Criminal Review Petition No. 62 of 2015, Judgment: 18 November 2015, Pages 21-22]

607. The Appellate Division has also observed in the said Criminal Review Petition No. 62 of 2015 that -

"While awarding the sentence, the Court must take into consideration the unbearable pains, tears rolling down the cheeks and sufferings of the widows and children of the victims who cried for getting justice for about 43 years."

[Criminal Review Petition No. 62 of 2015, Judgment: 18 November 2015, Page -28]

608. Keeping the above in mind let us assess the intrinsic gravity of crimes together with mode of participation of the convict accused persons with the crimes for which they have been found guilty. The relatives of the victims shall never get their dear ones back. Since last more than four decades they have been shedding tears with immense torment and trauma while the culture of impunity allowed the offenders, the convict accused persons to escort their lives with all comforts. It made the nation shocked.

609. The preamble of the Act of 1973 itself speaks that the accused persons have been found criminally responsible not for committing any isolated offence punishable under the normal Penal Law. Commission of offences as specified in the Act of 1973 itself portrays enormity, gravity and diabolical nature of the crimes. Now, in assessing the aggravating factors, we must eye on the pattern and extent of the offences committed, the role the convict accused persons had played in accomplishing the crimes proved, and the trauma and harm sustained by the victims and their relatives.

610. The event as listed in the charge no.04 involves three phases. It stands proved that the convicted accused persons and their accomplices took away the victim Md. Fazlur Rahman first to Karimganj Dakbungalow torture cell on forcible capture and therefrom the victim was taken to elsewhere. Despite efforts, the relatives of the victim could not get him released and finally the victim could not have been traced. It however has been concluded that the act and conduct of convicted accused persons in abducting the victim substantially facilitated the act of commission of killing, the upshot of the act of abduction.

611. In respect of the event of killing Abu Bakar Siddique and Rupali Mia as listed in charge no. 06 only accused Gazi Md. Abdul Mannan has been indicted and he has been found guilty of the

offence. At the relevant time the convicted accused was accompanied by many of his cohort Razakars. Pattern of attack was systematic. Next, conduct of the convict accused Gazi Md.Abdul Mannan, in conjunction with the attack [as listed in charge no. 06], facilitated the commission of destructive activities constituting the offence of 'other inhumane acts' as listed in charge no.07. Objective of the attack launched was to create reign of terror intending to cause harm to the normal livelihood of civilian population of the crime locality.

612. We reiterate that the Tribunal constituted under the Act of 1973 does have an obligation to award appropriate punishment so as to respond the relatives of victims' cry for justice and the indescribable trauma they have sustained. We must keep in mind too, in awarding sentence, public abhorrence of the crimes proved needs a reflection the court's verdict in the measure of punishment.

613. The evidence presented proves it beyond reasonable doubt that the harrowing dynamics of terror created in launching attack directing villages Ayla, Bidyanagar and surrounding locality [as listed in charge no 01] impeccably demonstrates that the attack was systematic and designed which continued for couple of hours and eventually the attack resulted in deliberate and brutal killing of eight pro-liberation civilians and the criminal acts done by the convict accused persons accompanying the group of Razakars

exceeded all limits of violence. Two of five convict accused persons [accused Shamsuddin Ahmed and Nasiruddin Ahmed alias Md. Nasir alias Captain ATM Nasir] have been found to have had physical participation in gunning down two civilians to death, in conjunction with the attack and another one [accused Gazi Md. Abdul Mannan] led the group of attackers.

614. We have recorded finding too that all the five convict accused persons namely, (1) Gazi Md. Abdul Mannan[absconded] (2) Nasiruddin Ahmed alias Md. Nasir alias Captain ATM Nasir [absconded] (3) Shamsuddin Ahmed (4) Md. Hafizuddin [absconded], and (5) Md. Azharul Islam [absconded] knowingly, consciously and culpably accompanied the group at the crime sites and they by their act and conduct substantially facilitated the entire group including the actual perpetrator[s] in accomplishing the act of killing, and thus, they all are equally liable for the entire attack and its upshot, the killing of 08[eight] defenceless civilians [as listed in charge no.01]. All the five convict accused persons committed the crimes jointly, sharing intent of the gang. It is to be noted that to commit 'jointly with another person' seems to express no more than two requirements: first, there must be more than one person committing the crime, and secondly, they must work together.

615. Killing of Abdul Barek, one of the victims [of the event narrated in charge no.01] was perpetrated even in presence of his

dear ones. The event happened in day time. But the horror created by launching attack did not allow the victims to escape. The relatives even could not take effort to save the lives of their dear ones. Indeed the convict five accused persons, the potential members of local Razakar Bahini, had played grave culpable role in committing the barbarous massive killing targeting unarmed civilians. The barbarous designed attack was launched by the group formed of Razakars led by accused Gazi Md. Abdul Mannan, the local Razakar Commander. Presumably he played a dominating role in carrying out the horrendous attack directing civilian population and it increases the level of his participation.

616. Thus, the pattern and extent of the attack launched, number of victims and the role of the convict accused persons in carrying out the designed attack indisputably do not allow the letters of law to remain silent or lenient. The nation which achieved its independence must feel indebted to the three millions of martyrs who laid their lives and hundreds of thousand of our mothers, sisters and daughters who sacrificed their supreme honour for the cause of our independence. The eight civilians who were brutally killed in conjunction with the attack [as listed in charge no.01] by the convict five accused persons are not indivisible from the three millions of martyrs.

617. Md. Miah Hossain, the victim of the event of killing as narrated in charge no.02 was a civilian who was not directly associated with the hostility. He was a person protected under Geneva Convention 1949. But the accused Nasiruddin Ahmed alias Md. Nasir alias Captain ATM Nasir, being accompanied by his cohorts, on chasing had gunned down Md. Miah Hossain to death. It stands proved from the evidence presented that the convict accused Nasiruddin Ahmed Nasir himself physically participated in accomplishing the horrific crime. Mode of participation in carrying out the attack in accomplishing Md. Miah Hossain's killing was dreadful indeed and it aggravates the accused's liability. Conduct of the convict accused Nasiruddin Ahmed was simply beastly.

618. All the convict accused persons excepting accused Gazi Md. Abdul Mannan being accompanied by their cohorts had picked up victim Md. Abdul Gafur, a pro-liberation civilian from his house defying the victim's wife's appeal to release her husband [as listed in charge no.03]. These four convict accused persons did not pull out them from the group till the captured victim was shot to death at place nearer to victim's house. Victim's wife saw the convict accused Md. Hafizuddin gunning down her husband to death. Their barbaric wrong doing had rather painted the notion of humanity with untold shame and shock.

619. Similarly, the relatives including the wife of the victim Md. Abdul Gafur had to remain mere spectators even on seeing the attack directed. Victim's wife [P.W.12] came on dock and narrated her traumatic experience. Totality of the event [as listed in charge no. 03] suggests that the convict accused persons had launched a planned attack intending to wipe out the victim, an unarmed pro-liberation civilian, to further the policy and objective of Pakistani occupation army.

620. All the four convict accused persons are equally liable for the perpetratorship of killing the victim Md. Abdul Gafur [as listed in charge no.03]. It is to be noted that the `expansive' notion of perpetratorship is based on the assumption that whoever contributes any cause to the commission of a crime, regardless of how close to or distant the cause is from the final result, must be considered as (co-)author of the crime. Pattern of the crime and mode of participation of the four convict accused persons therewith inescapably strike not only the human conscience but the letters of law as well to respond to the cry of the wife and near ones of the victim.

621. Killing of Paresh Chandra Sarker [as listed in charge no.05] belonging to Hindu religion happened in day time. Convict accused Shamsuddin Ahmed himself perpetrated the killing when he was on the way to move along with his cohorts having a pack of

ammunition with them. Conduct of convict accused, at the relevant time was sternly aggressive to the Hindu community and it obviously amplifies the gravity of the crime. Some of the witnesses who testified in the Tribunal had occasion to see committing the killing but could not resist the offender and his accomplices. It proves again how exceedingly infamous the Razakar Bahini was in 1971.

622. All the five convicted accused persons by virtue of their membership in local Razakar Bahini were knowingly and culpably engaged in committing the horrendous activities constituting the offences of killing, abduction and other crimes against humanity. Their deliberate and barbaric acts and conduct in respect of the events narrated in all the charges framed rather force us to conclude that they, the potential members of Razakar Bahini, which was truly a locally formed 'bunch of hooligans' had carried out deliberate criminal acts in depraved manner directing civilians around the locality of Karimganj Police Station, to further policy and plan of the Pakistani occupation armed force.

623. The mode and degree of 'participation' of the convicted accused Gazi Md. Abdul Mannan, Shamsuddin Ahmed and Nasiruddin Ahmed alias Md. Nasir alias Captain ATM Nasir, as already found proved, aggravate their culpability in accomplishing the crimes for which they have been found 'guilty'[in respect of

charge nos. 01]. Convict accused Nasiruddin Ahmed alias Md. Nasir alias Captain ATM Nasir was the actual perpetrator of victim Md. Miah Hossain who was gunned down to death by him on chase [as listed in charge no.02], it stands proved. Convict accused Md. Hafizuddin is found to have had 'direct participation' in causing death of Md. Abdul Gafur by gun shot [as listed in charge no.03]. Convict accused Shamsuddin Ahmed by his conscious and deliberate conduct gunned down an innocent civilian Paresh Chandra Sarker belonging to Hindu community to death [as listed in charge no.05]

624. Grave brutality of the crimes as unveiled [as listed in charge nos. 01, 02, 03 and 05] from the respective criminal conduct of four convict accused persons, namely Gazi Md. Abdul Mannan, Shamsuddin Ahmed, Nasiruddin Ahmed alias Md. Nasir alias Captain ATM Nasir and Md. Hafizuddin, at the time of launching attack, resulted in horrendous killing of numerous unarmed civilians which shocks or pricks not only the judicial conscience but even the conscience of the humanity. Respective conduct forming violent participation of these four convict accused persons deserves to be considered as aggravating factor in respect of accomplishing the crimes [as listed in charge nos. 01, 02, 03 and 05] in awarding sentence.

625. The Tribunal finally notes that in a case involving the offences of crimes against humanity as enumerated in the Act of 1973 the forms of punishment must reflect both the calls for justice from the persons who have directly or indirectly been victims and sufferers of the crimes, chiefly considering the gravity of crimes.

626. In the case in hand, the crimes proved [as listed in charge nos. 01, 02, 03 and 05] were massive human rights violations committed during the war of liberation in 1971. Thus, the sentence to be awarded must be proportionate to the gravity of the crimes proved. In this regard it has been observed by the Appellate Division of the Supreme Court of Bangladesh **in the case of *Matiur Rahman Nizami*** that-

"It is the solemn duty of the courts to award proper sentence commensurate with the gravity of the crimes. Inappropriate lesser sentence causes injustice not only to the victims of crimes but sometimes to the whole society".

[Criminal Appeal No. 143 of 2014, Judgement: 06 January 2016, Page- 152]

627. In view of discussion and reasons rendered herein above and considering the nature and proportion to the gravity of offences and mode and level of participation of the convicted accused persons namely, Shamsuddin Ahmed [in respect of charge nos. 01 and 05], Gazi Md. Abdul Mannan [in respect of charge no. 01], Nasiruddin Ahmed alias Md. Nasir alias Captain ATM Nasir [in respect of charge nos. 01 and 02] and Md. Hafizuddin Ahmed [in

respect of charge no. 03] together with the aggravating factors as conversed above we are of the view that justice would be met if these four convicted accused persons who have been found guilty in respect of charge nos. 01, 02, 03 and 05 beyond reasonable doubt for the offences of which they have been charged with are sentenced to death.

628. At the same time in view of reasons recorded herein above, it would be appropriate if the convicted accused persons who have been found guilty as well for the charge nos. 01, 03, 04, 06 and 07 are condemned, considering their mode and level of participation, to the appropriate sentence of imprisonment to be awarded as below.

Accordingly, we do hereby render the following **ORDER ON SENTENCE.**

Hence it is

ORDERED

That accused (1) Shamsuddin Ahmed son of late Abdur Razzak Munshi and late Safurenessa alias Lutfor Nahar Lata of village Karimganj Modhopara (Dulipara), Police Station Karimganj, District- Kishoreganj, at present 411/1, Banani Morh, Chorsholakia, Police Station Kishoreganj, District Kishoreganj, (2) Gazi Md. Abdul Mannan [absconded] son of late Ibrahim and late Moharajer Ma of village Charpara, Police Station Karimganj,

District Kishoreganj, and (3) Nasiruddin Ahmed alias Md. Nasir alias Captain ATM Nasir [absconded] son of late Abdur Razzak and late Safurenessa alias Lutfor Nahar Lata of village Karimganj Modhopara (Dulipara), Police Station Karimganj, District Kishoreganj, at present 270, Charsholakia (Zenith View Bananir Morh), Police Station Karimganj, District Kishoreganj are held guilty for the offences of crimes against humanity as enumerated in section 3(2)(a)(g)(h) of the International Crimes (Tribunals) Act, 1973 as listed in **charge no. 01** and all of them be convicted accordingly and sentenced thereunder to death under section 20(2) of the said Act; **AND**

Accused (4) Md. Hafizuddin [absconded] son of late Ismat Ali and late Mosammat Fulbanu of House No. 129, Village- Khudir Jangal, Police Station- Karimganj, District Kishoreganj, and (5) Md. Azharul Islam son of late Md. Abdur Rahim and late Mosammat Umme Saleh of village Haidhonkhali, Police Station Karimganj, District Kishoreganj are also held guilty of the offences of crimes against humanity as enumerated in section 3(2)(a)(g)(h) of the International Crimes (Tribunals) Act, 1973 as listed in **charge no. 01** and both of them be convicted accordingly and sentenced thereunder to imprisonment for life i.e. rest of their natural life under section 20(2) of the said Act.

Accused Nasiruddin Ahmed alias Md. Nasir alias Captain ATM Nasir [absconded] is held guilty of the offence of crime against humanity as enumerated in section 3(2)(a)(h) of the International Crimes (Tribunals) Act, 1973 as listed in **charge no. 02** and he be convicted accordingly and sentenced thereunder to death under section 20(2) of the said Act.

Accused (1) Md. Hafizuddin [absconded] is held guilty of the offences of crimes against humanity as enumerated in section 3(2)(a)(g)(h) of the International Crimes (Tribunals) Act, 1973 as listed in **charge no. 03** and he be convicted accordingly and sentenced thereunder to death under section 20(2) of the said Act; **AND**

Accused (2) Shamsuddin Ahmed, (3) Nasiruddin Ahmed alias Md. Nasir alias Captain ATM Nasir [absconded], and (4) Md. Azharul Islam [absconded] are also held guilty of the offences of crimes against humanity as enumerated in section 3(2)(a)(g)(h) of the International Crimes (Tribunals) Act, 1973 as listed in **charge no. 03** and all of them be convicted accordingly and sentenced thereunder to imprisonment for life i.e. rest of their natural life under section 20(2) of the said Act; **AND**

Accused (5) Gazi Md. Abdul Mannan [absconded] is found not guilty of the offences of crimes against humanity as listed in **charge no. 03**, and he be acquitted of the said charge.

Accused (1) Shamsuddin Ahmed, (2) Gazi Md. Abdul Mannan[absconded], (3) Nasiruddin Ahmed alias Md. Nasir alias Captain ATM Nasir[absconded], (4) Md. Hafizuddin [absconded] , and (5) Md. Azharul Islam [absconded] are held guilty of the offences of crimes against humanity as enumerated in section 3(2)(a)(g)(h) of the International Crimes (Tribunals) Act, 1973 as listed in **charge no. 04** and all of them be convicted accordingly and sentenced thereunder to imprisonment for life i.e. rest of their natural life under section 20(2) of the said Act.

Accused Shamsuddin Ahmed is held guilty of the offence of crime against humanity as enumerated in section 3(2)(a)(h) of the International Crimes (Tribunals) Act, 1973 as listed in **charge no. 05** and he be convicted accordingly and sentenced thereunder to death under section 20(2) of the said Act.

Accused Gazi Md. Abdul Mannan[absconded] is held guilty of the offences of crimes against humanity as enumerated in section 3(2)(a)(g)(h) of the International Crimes (Tribunals) Act, 1973 as listed in **charge no. 06** and he be convicted accordingly and sentenced thereunder to imprisonment for life i.e. rest of his natural life under section 20(2) of the said Act.

Accused Gazi Md. Abdul Mannan[absconded] is held guilty of the offence as crime against humanity as enumerated in section 3(2)(a)(g)(h) of the International Crimes (Tribunals) Act, 1973 as

listed in **charge no. 07** and he be convicted accordingly and sentenced thereunder to rigorous imprisonment for 05[five] years under section 20 (2) of the said Act.

The above mentioned sentences of death be executed by hanging the accused convicted as above by the neck or by shooting them till they are dead, as decided by the government.

The sentences of imprisonment awarded to the convicted accused persons as above shall run concurrently.

However, as and when any sentence of death awarded to a convict accused as above will be executed, the other sentence of death and/or sentence (s) of imprisonment awarded to him as above would naturally get merged into the sentence of death executed.

The sentences of death and sentences of imprisonment awarded as above under section 20(2) of the International Crimes (Tribunals) Act, 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.

Since the convicted accused persons namely, (1) Gazi Md. Abdul Mannan, (2) Nasiruddin Ahmed alias Md. Nasir alias Captain ATM Nasir, (3) Md. Hafizuddin, and (4) Md. Azharul Islam have been absconding the 'sentences of death' and 'sentences of imprisonment' awarded to them as above shall be executed after

causing their arrest or when they surrender before the Tribunal, whichever is earlier.

The convicts are at liberty to prefer appeal before the Appellate Division of the Supreme Court of Bangladesh against their conviction and sentence within 30[thirty] days of the date of order of conviction and sentence as per provision of section 21 of the International Crimes (Tribunals) Act, 1973.

The convict Shamsuddin Ahmed be sent to the prison with conviction warrant accordingly.

Issue conviction warrants against the four absconding accused namely, (1) Gazi Md. Abdul Mannan, (2) Nasiruddin Ahmed alias Md. Nasir alias Captain ATM Nasir , (3) Md. Hafizuddin, and (4) Md. Azharul Islam.

The Secretary, Ministry of Home Affairs and the Inspector General of Police [IGP] are hereby directed to ensure the apprehension of the above mentioned four fugitive convict accused persons, if necessary with the help of the Inter-Pol.

Let certified copy of this judgment be provided to the prosecution and the convict Shamsuddin Ahmed free of cost, at once.

If the above mentioned absconding convicts are arrested or surrender within 30[thirty] days of the date of order of conviction

and sentence they will be provided with certified copy of this judgment free of cost.

Let a copy of this judgment together with the conviction warrant of the above mentioned four fugitive convict accused persons be sent to the District Magistrate, Dhaka for information and necessary action.

Let a copy of this order be sent together with the conviction warrant of the above mentioned four fugitive convict accused persons to the (1) Secretary, Ministry of Home Affairs, Bangladesh Secretariat, Dhaka, and (2) Inspector General of Police [IGP] , Police Head Quarters, Dhaka for information and compliance.

(Justice Anwarul Haque, Chairman)

(Justice Md. Shahinur Islam, Member)

(Justice Md. Shohrwardi, Member)