

# **International Crimes Tribunal-1 [ICT-1]-**

[Tribunal constituted under section 6 (1) of the Act No. XIX of 1973]

**Old High Court Building, Dhaka, Bangladesh**

**ICT-BD [ICT-1] Case No. 05 of 2016**

[Charges: Participating, committing, aiding and contributing the commission of offences constituting crimes against humanity as specified in section 3(2)(a)(g)(h) and the offence of genocide as specified in section 3(2)(c)(g)(h) of the Act No. XIX of 1973]

**Present:**

**Justice Md. Shahinur Islam, Chairman**

**Justice Amir Hossain, Member**

**Justice Md. Abu Ahmed Jamadar, Member**

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The Chief Prosecutor

Vs

(1)Md. Liakat Ali [absconding] and (2) Aminul Islam @ Rajab Ali @ K.M Aminul Haque @ Md. Aminul Haque Talukder [absconding]

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**For the Prosecution:**

Mr. Golam Arief Tipoo, Chief Prosecutor

Mr. Rana Das Gupta, Prosecutor

Mr. Mukhlesur Rahman, Prosecutor

Mr. Hrishikesh Saha, Prosecutor

Mr. Abul Kalam, Prosecutor

Ms. Rezia Sultana, Prosecutor

Ms. Sabina Yesmin Khan, Prosecutor

Mr. Tapas Kanti Baul, Prosecutor

Mr. Sheikh Mosfeq Kabir, Prosecutor

### **For the defence**

Mr. Gazi M.H Tamim, Advocate, Bangladesh Supreme Court:  
**State defence Counsel:** For both absconding accused (1)Md. Liakat Ali and (2) Aminul Islam @ Rajab Ali @ K.M Aminul Haque @ Md. Aminul Haque Talukder

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**Date of delivery of Judgment: 05 November, 2018**

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## **JUDGMENT**

**[Under section 20(1) of the Act XIX of 1973]**

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### **I. Introductory Words**

**1. Two** accused (1)Md. Liakat Ali and (2) Aminul Islam @ Rajab Ali @ K.M Aminul Haque @ Md. Aminul Haque Talukder have been indicted on seven counts for the atrocious criminal activities constituting the offences of ‘genocide’ and ‘murder’, ‘extermination’, ‘abduction’, ‘confinement’, ‘torture’ and ‘other inhumane acts’ as crimes against humanity committed in the localities under police station- Lakhai of District[now]-Habiganj and also in the localities under police stations- Nasirnagar of District[now] Brahmanbaria and Ashtagram of District[now]-Kishoreganj in 1971, during the war of liberation of Bangladesh, as arraigned in the charges framed.

2. Prosecution alleges that in 1971 the accused (1)Md. Liakat Ali was a potential member of locally formed Razakar Bahini and accused (2) Aminul Islam @ Rajab Ali @ K.M Aminul Haque @

Md. Aminul Haque Talukder was Al Badar commander. The accused persons, in exercise of their dominant position in those auxiliary forces participated and actively and culpably collaborated with the Pakistani occupation armed force in carrying out monstrous criminal activities aiming to annihilate the pro-liberation Bengali civilians, civilians belonging to Hindu religious group in furtherance of policy and plan of resisting the Bengali nation in achieving its self-determination and independence.

**3.** The trial took place in absentia. None of two accused could be arrested and since according to report of the enforcement agency there had been no immediate prospect of causing their arrest in execution of warrant issued at pre-trial stage as prayed by the investigation officer through the chief prosecutor the Tribunal ordered publication of notification in two national daily newspapers directing them to surrender before the Tribunal within the time stipulated therein, in compliance with necessary legal requirements. But none of the accused responded. As a result, trial proceeded in the absence of the accused persons, treating them absconded.

**4.** Today, this unanimous Judgment is being rendered by this Tribunal [ICT-1] for the prosecution of persons belonging to auxiliary force[s] allegedly responsible for the serious offences as enumerated in the International Crimes (Tribunals) Act,

1973[hereinafter referred to as the ‘Act of 1972’] committed in violation of international humanitarian law in the territory of Bangladesh in 1971, during the war of liberation.

5. Having jurisdiction under section 10(1) (j), section 20(1) and section 20(2) of the International Crimes (Tribunals) Act, 1973[Act No. XIX of 1973] this ‘Tribunal’ known as International Crimes Tribunal-1 [ICT-1] hereby renders and pronounces the following unanimous judgment.

## **II. Formation and Jurisdiction of the Tribunal**

6. The Act No. XIX enacted in 1973 in our sovereign parliament is meant to prosecute crimes against humanity, genocide and system crimes as enumerated in the Act committed in violation of customary international law is *ex-post facto* legislation. It is fairly permitted. The 1973 Act of Bangladesh has the merit and means of ensuring the standard of safeguards recognized universally to be provided to the person accused of offences punishable under the Act of 1973. And it is being maintained duly.

7. We reiterate that the Act of 1973 has been enacted to prosecute, try and punish not only the 'armed forces' but also the perpetrators who belonged to 'auxiliary forces', or who committed the offence in the capacity of an 'individual' or a 'group of individuals' or 'organisation'. It is manifested from section 3(1) of the Act of

1973 that even any person (individual), if he is *prima facie* found accountable either under section 4(1) or 4(2) of the Act of 1973 for the perpetration of offence(s), can be prosecuted and tried under the Act.

8. This Tribunal set up under the Act of 1973 is absolutely a domestic Tribunal but meant to try ‘internationally recognized crimes’ or ‘system crimes’ committed in violation of customary international law during the war of liberation in 1971 in the territory of Bangladesh. Merely for the reason that the Tribunal is preceded by the word “international” and possessed jurisdiction over crimes such as Crimes against Humanity, Crimes against Peace, Genocide, and War Crimes, it will be mistaken to assume that the Tribunal must be treated as an ‘‘International Tribunal’’.

### **III. Historical backdrop and Context**

9. The offences for which the accused persons have been indicted were not isolated crimes. Those are recognized as international crimes as happened in war time situation directing civilian population. The events narrated in the charges framed just form part of dreadful atrocities committed directing pro-liberation civilians, Hindu civilians, constituted the offences of crimes against humanity and genocide, in 1971 in the territory of Bangladesh during the nine-month bloody war of liberation.

10. We consider it expedient to note that the verdict of the Tribunal, a court of law is not only meant to render its decision on the arraignment brought. It must also reflect the truth and the context behind the commission of horrific criminal acts which shall create youth quake to go ahead with the spirit of the war of liberation.

11. In Bangladesh, the efforts initiated under a lawful legislation to prosecute, try and punish the perpetrators of crimes committed in violation of customary international law is an indicia of valid and courageous endeavor to come out from the culture of impunity.

12. In portraying the historical background, in succinct, that ensued the war of liberation of the Bengali nation in 1971 we reiterate that 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. The western zone was named West Pakistan and the eastern zone was named East Pakistan, which is now Bangladesh.

13. In 1952 the Pakistani 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 and eventually turned to the movement for greater autonomy and self-determination and finally independence.

14. The history goes on to portray that in the general election of 1970, the Awami League under the leadership of Bangabandhu Sheikh Mujibur Rahman, the Father of the Nation became the majority party of Pakistan. But deliberately defying the democratic norms Pakistan Government did not care to respect this overwhelming majority. As a result, movement started in the territory of this part of Pakistan and Bangabandhu Sheikh Mujibur Rahman, the Father of the Nation in his historic speech of 7th March, 1971, called on the Bangalee nation to struggle for independence.

15. It is to be noted with immense pride that the historic March 7 speech of Bangabandhu Sheikh Mujibur Rahman, the Father of the Nation has been recently recognised by the UNESCO as a ‘world documentary heritage’. The 07 March glowing speech of Bangabandhu calling on the freedom-loving Bangalees crucially activated and inspired the whole nation, excepting a few pro-Pakistan people to get prepared for the war of liberation.

16. In the early hour of 26th March, following the onslaught of “Operation Search Light” by the Pakistani Military on 25th March, Bangabandhu Sheikh Mujibur Rahman declared

Bangladesh independent immediately before he was arrested by the Pakistani authorities.

17. In the War of Liberation that ensued in 1971, all people of the then East Pakistan unreservedly supported and participated in the call to make their motherland Bangladesh free but a small number of Bangalees, Biharis, other pro-Pakistanis, as well as members of a number of different religion-based political parties, particularly Jamat E Islami (JEI) and its student wing Islami Chatra Sangha (ICS), Muslim League, Convention Muslim League joined and/or culpably collaborated with the Pakistani occupation army to aggressively resist the conception of independent Bangladesh and most of them committed and facilitated as well the commission of atrocious activities directing the pro-liberation civilian population.

18. Commission of systematic and widespread appalling atrocities directing civilian population in the territory of Bangladesh, in 1971 was intended to further the policy and plan of annihilating the dream of self-determination of Bengali nation. This is now a settled history of which this Tribunal takes judicial notice as permitted by the Act of 1973 and the ROP.

19. The Pakistani occupation army's widespread appalling brutality directing civilian population of Bangladesh was planned

and in furtherance of policy-- the policy to wipe out the pro-liberation Bengali civilians. The Appellate Division, in the case of **Abdul Quader Molla** has observed that –

“The way the Pakistani Army had acted, surpasses anything that could pass for legitimate use of force. It had resorted to wanton murder of civilians, including women and children in a deliberate plan to achieve submission by stark terror.

**[Appellate Division, Abdul Quader Molla Judgment, 17 September 2013 page 39]**

20. History testifies that Pakistani army who started its monstrous ‘mayhem’ since 25 March 1971 intending to liquidate the pro-liberation Bengali civilians, to resist their aspiration of self-determination. Grave and recurrent horrific atrocities committed directing the Bengali civilians in the territory of Bangladesh starting since 25 March 1971 did not thrive to foil the highest sacrifice to which the nation always pays tribute and homage to the blood of millions of patriotic martyrs and innocent defenceless people.

21. It is now an undisputed history that the local collaborators, knowing consequences, actively assisted the Pakistani occupation army in accomplishing their policy and plan to annihilate the pro-liberation Bangalee civilians. The local collaborators truly had

acted as traitors. It is now a settled history which needs no further document to prove.

22. Enactment of International Crimes (Tribunals), 1973 in our sovereign parliament eventually removed hurdles in prosecuting the perpetrators of crimes against humanity and genocide committed in 1971.

23. But the legislation remained dormant for decades together chiefly for the brutal assassination of Bangabandhu Sheikh Mujibur Rahman and most his family members on 15 August 1975 and also for the mindset of the military usurpers who started ruling the country and for the reason of rehabilitating the people who took muscular stance with the Pakistani occupation army in 1971.

24. In 1971, the Pakistani occupation army had no companion in Bangladesh—except a few traitors who took stance against the war of liberation and they belonged to the ideology of pro-Pakistan political parties, e.g Muslim League, the Convention Muslim League, the Jamaat-E-Islami [JEI] and the Nizam-i-Islami. We have already observed in the case of Muhammad Kamaruzzaman, Ali Ahsan Muhammad Mujahid that JEI culpably and actively assisted and facilitated the Pakistani occupation army

by forming Razakar, Al-Badar-- Para militia forces, intending to collaborate with them.

25. Prosecution avers that the accused persons being the potential members of Razakar Bahini and Al Badar Bahini, para militia forces did not keep them distanced from the strategy of JEI to further the policy and plan of the Pakistani occupation army in carrying out barbaric atrocities against the non-combatant pro-liberation civilians that resulted in commission of offences enumerated in the Act of 1973, in grave breach of Geneva Convention and Genocide Convention. It is rather now a settled history.

26. The ‘aggression’ that resulted in untold violation of civilians’ rights and their indiscriminate killings in the territory of Bangladesh started with launching the ‘operation searchlight’ was in grave breaches of Geneva Convention 1949. After the ‘operation search light’ on the night of 26<sup>th</sup> March 1971 ten millions of Bengali civilians were forced to deport under the horrors of dreadful violence and brutality spread over the territory of Bangladesh.

27. The untold atrocious resistance on part of thousands of local collaborators belonging to Razakar Bahini, Al-Badar Bahini could

not impede the nation's valiant journey to freedom. Undeniably, the way to self-determination for the Bangalee nation was strenuous, swabbed with enormous blood, struggle and immense sacrifices.

28. The author of the book titled '**History of the Liberation War**', citing **Jagjit Singh Aurora** states the statistics showing the strength of locally formed para militia and other forces intending to provide collaboration with the Pakistani occupation army in 1971, he states that--

“During the liberation war in Bangladesh, there were about eighty thousand Pakistani soldiers, twenty five thousand militia, twenty five thousand civilian forces, and fifty thousand Razakars, Al-Badr, and Al-Shams members”

**[Source: Figures from the Fall of Dacca by Jagjit Singh Aurora in the Illustrated Weekly of India, 23 December, 1973]**

29. In the present-day world history, conceivably no nation paid as extremely as the Bangalee nation did for its self-determination and for achieving independent motherland. The nation shall remain ever indebted to those best sons and daughters of the soil who paid

supreme sacrifices for an independent motherland – **Bangladesh**.

The nation always pays tribute and homage to the blood of millions of patriotic martyrs and innocent defenceless people.

#### **IV. Brief Account of the Accused Persons**

**30.** Before we move to resolve the alleged arraignments brought and accountability of the accused persons therewith we consider it necessary to have a glance on the brief account of the accused persons which is as below:

##### **(i) Md. Liakat Ali [absconded]**

Accused Md. Liakat Ali son of late Md. Khelu Miah alias Khelu Miah and late Rezia Khatun of Village Morakuri, Police Station-Lakhai, District- Habiganj was born on 01.01.1954. He passed S.S.C Examination in 1969 from Fandauk High School under Nasirnagar Police Station, District-Brahmanbaria. As his mother died in his early age, he was brought up at his maternal uncle Babru Miah alias Babu Miah's residence situated at Fandauk Village under Nasirnagar Police Station, District Brahmanbaria. He was a supporter of Convention Muslim League, prior to 1971. Prosecution alleges that In 1971 during the war of liberation accused Md. Liakat Ali being the Razakar commander of Fandauk Union committed the offences of genocide and crimes against humanity around the localities under police stations- Lakhai, Ashtagram and Nasirnagar of the then Habiganj, Kishoreganj and

Brahmanbaria Sub-Division respectively in close connivance with his cohort Razakars, Al Badars and Pakistani occupation army.

**(ii) Aminul Islam @ Rajab Ali @ K.M. Aminul Haque @ Md. Aminul Haque Talukder [absconded]**

Accused Aminul Islam @ Rajab Ali @ K.M. Aminul Haque @ Md. Aminul Haque Talukder son of late Abdul Gani Munshi alias Abdul Gani Talukder alias K.H.M.A. Gani of Village- Ali Nagar, Police Station Ashtagram, District-[now] Kishoreganj was born on 18. 10. 1953 [according to the Admission Register of Ashtagram High School]. But according to the Tabulation Sheet for the S.S.C Examination, 1969 his date of birth is 09.10.1954. He studied in Haji Hasmat Ali College, Bhairab and in 1970 he became the president of Islami Chatra Sangha [ICS] of Bhairab. Prosecution alleges that in 1971 during the war of liberation he formed Al-Badar Bahini at Ashtagram of the then Kishoreganj Sub-Division [now district]. He collaborated with the Pakistani occupation army and he became the commander of Al Badar Bahini and got engaged in committing the offences of genocide and crimes against humanity in different places under Lakhai, Ashtogram and Nasirnagar Police Stations of the then Habiganj, Kishoreganj and Brahmanbaria Sub-Division respectively, prosecution alleges.

## **V. Procedural History**

31. The Investigation Agency of the Tribunal constituted under section 8 of the Act of 1973 initiated the task of investigation by appointing Hari Debnath as Investigation Officer pursuant to information recorded as complaint register serial no.42 dated 05.11.2014, in respect of commission of offences enumerated in section 3(2) of the Act of 1973 allegedly perpetrated by the two suspected accused (1) Md. Liakat Ali and (2) Aminul Islam @ Rajab Ali @ K.M Aminul Haque @ Md. Aminul Haque Talukder.

32. During investigation, the IO prayed for causing arrest of the suspected accused (1)Md. Liakat Ali and (2) Aminul Islam @ Rajab Ali @ K.M Aminul Haque @ Md. Aminul Haque Talukder on 29.04.2015 through the Chief Prosecutor.

33. During investigation, the Investigation Officer examined witnesses, collected documents and materials and found involvement of the accused persons with the offences enumerated in section 3(2) of the Act of 1973 and thus the IO submitted its report together with documents collected and statement of witnesses, on conclusion of investigation, before the Chief Prosecutor on 27.12.2015 against two accused (1)Md. Liakat Ali and (2) Aminul Islam @ Rajab Ali @ K.M Aminul Haque @ Md. Aminul Haque Talukder.

34. Afterwards, the Chief Prosecutor, on the basis of the report and documents submitted therewith by the Investigation Agency, on completion of investigation, submitted the 'Formal Charge' under section 9(1) of the Act of 1973 before this Tribunal on 03.05.2016 against the accused (1)Md. Liakat Ali and (2) Aminul Islam @ Rajab Ali @ K.M Aminul Haque @ Md. Aminul Haque Talukder as sufficient materials were found in support of their culpability and participation in committing the commission of the offences of 'crimes against humanity' and 'genocide' during the period of War of Liberation in 1971 around the localities under police station-Lakhai of District[now]-Habiganj and also under police station-Ashtagram of District[now]-Kishoreganj , as narrated in the formal charge.

35. The 'formal charge' submitted discloses that the accused persons, in exercise of their affiliation in Razakar Bahini and Al Badar Bahini allegedly participated, facilitated and had complicity in the commission of the alleged diabolical offences by launching systematic attack directing civilian population and Hindu religious group of the localities under police station-Lakhai of District [now]-Habiganj and police station-Ashtagram of District [now]-Kishoreganj and they appear to have had allegedly acted in furtherance of common purpose and design in accomplishing such offences, being part of the criminal enterprise

and therefore, the 02[two] accused persons have been recommended for prosecution jointly as permissible under Rule 36 of the Rules of Procedure[ROP], 2010 of this Tribunal-1.

36. Thereafter, on 18.05.2016 the Tribunal-1, under Rule 29(1) of the Rules of Procedure [ROP], took cognizance of offences as mentioned in section 3(2) (a)(c)(g)(h) of the Act of 1973 having found *prima facie* case in consideration of the formal charge and the documents submitted therewith and the statement of witnesses.

37. After taking cognizance of offences, it was found that both the accused (1)Md. Liakat Ali and (2) Aminul Islam @ Rajab Ali @ K.M Aminul Haque @ Md. Aminul Haque Talukder could not be arrested yet in execution of warrant of arrest and as such the Tribunal directed the enforcement agency to submit report in execution of warrant of arrest issued against them.

38. On getting the report in execution of W/A it appeared that the accused (1)Md. Liakat Ali and (2) Aminul Islam @ Rajab Ali @ K.M Aminul Haque @ Md. Aminul Haque Talukder remained absconded and there was no chance of causing their immediate arrest and thus for holding trial in *absentia*, the Tribunal ordered publication of notification in 02 national daily newspapers as required under law.

39. After publication of such notification asking those two accused to surrender before this Tribunal within the period mentioned therein the Tribunal proceeded to keep up the proceedings in *absentia* against them and fixed the date for hearing the charge framing matter by appointing Mr. Gaji M.H Tamim as state defence counsel to defend the absconding accused persons, at the cost of the Government. Prosecution was directed to provide the copy of formal charge and other documents it relied upon to the appointed state defence counsel so that he can get preparation to defend the accused persons.

40. On conclusion of hearing about the charge framing matter the Tribunal framed charges on seven counts against both the accused (1)Md. Liakat Ali and (2) Aminul Islam @ Rajab Ali @ K.M Aminul Haque @ Md. Aminul Haque Talukder, by rendering decision on 01.11.2016 .

41 The charges so framed could not be read over and explained to the accused persons as they remained absconded. With this the trial of the case commenced and prosecution placed its opening statement on 04.12.2016 and started examining witnesses.

42. In course of trial prosecution adduced in all 17 witnesses including the Investigation Officer [IO] intending to substantiate

the arraignments brought in the charges framed. Defence however duly cross-examined all the witnesses examined.

43. On closure of prosecution evidence, defence refrained from adducing and examining any witness. And thus, date was fixed for placing summing up which started on 07.08.2018. Before commencement of placing summing up prosecution drew attention to an application under section 19(2) of the Act of 1973 submitted on 29.05.2018 and prayed for necessary order on it.

44. On hearing both sides and on perusal of the application and papers submitted therewith the Tribunal allowed the application and accordingly statement made to the IO by two witnesses— Abdul Malek @ Malu Mia[ witness serial number 15 of the volume of statement of witnesses made to the IO] and Mostak Ahmed Khokon[witness serial number 21 of the volume of statement of witnesses made to the IO] as named in the application has been permitted to be received in evidence, considering their physical inability to come on dock due to severe ailment.

45. Then prosecution started placing summing up on 07.08.2018.Next, the learned state defence counsel placed his summing up which got concluded on 16.08.2018.

46. After conclusion of summing up the Tribunal then kept the case in CAV, for delivery and pronouncement of its judgment.

## **VI. Applicable laws**

47. Section 23 of the Act of 1973 debars the applicability of the Code of Criminal Procedure, 1898 and the Evidence Act 1872 in dealing with the proceedings by the Tribunal.

48. In adjudicating the accusation brought and liability of accused therewith the Tribunal is authorized to take judicial notice of any fact of common knowledge which is not needed to be formally proved by tendering evidence [Section 19(4) of the Act], in addition to the ocular evidence tendered. Even the Tribunal shall not be bound by the technical rules of evidence and may admit any evidence which it deems to have probative value [section 19(1) of the Act of 1973]. The Tribunal shall have discretion to consider hearsay evidence by weighing its probative value [Rule 56(2)].

49. Cross-examination is a significant way of confronting evidence or what is testified by witness. The Act of 1973 provides right of accused to cross-examine the prosecution witnesses on his credibility and to take contradiction of the evidence given by him [Rule 53(ii)].

50. But it is to be noted that in the judgment of *Abdul Quader Molla* it has been observed by the Appellate Division that---- “Sub-rule (ii) of rule 53, speaks of ‘contradiction of the evidence given by him’. This word ‘contradiction’ is qualified by the word ‘examination-in-chief’ of a witness. So, the contradiction can be drawn from the statements made by a witness in his' examination-in-chief only, not with respect to a statement made to the investigating officer of the case in course of investigation” [Page **196 of the Judgment**].

51. It has been further observed by the Appellate Division that-- “There is no scope to draw contradiction of the statement of a witness made in course of examination-in-chief with his/her earlier statements made to the investigating officer or other agency.” [Page **205 of the Judgment**].

52. On closure of examination of prosecution witnesses the Act of 1973 provides right of opportunity of examining witnesses [Section 10(1) (f) of the Act of 1973], if any.

53. The Act of 1973, the guiding legislation and the Rules (ROP) have effectively ensured the universally recognized defence rights. Moreover, the Tribunal, in exercise of its prudence and inherent powers as contained in Rule 46A of the ROP, has adopted

numerous practices for ensuring fair trial by providing all possible rights of the accused.

54. Since the Act of 1973 is meant to prosecute and try the persons responsible for the offences committed in violation of customary international law, the Tribunal however is not precluded from seeking guidance from internationally evolved applicable jurisprudence, if needed for the purpose of resolving legal issues related to adjudication of arraignments and culpability of the accused therewith.

## **VII. Summing up**

### **Summing up by the prosecution**

**55. Mr. Rana Das Gupta** the learned prosecutor who being assigned conducted the case placed summing up, drawing attention to the evidence made by the witnesses examined in Tribunal and the materials relied upon in support of facts related to the arraignments brought. At the outset a brief procedural history leading to commencement of trial of this case has been portrayed by the learned prosecutor.

56. In showing the affiliation of the accused persons with the auxiliary forces in 1971 it has been asserted by Mr. Rana Das Gupta, the learned prosecutor by drawing attention to the

document **Exhibit-7** [page 5 of the prosecution documents volume] together with the oral testimony that accused Md. Liakat Ali was a potential member of locally formed Razakar Bahini.

57. In respect of status and identity the accused Aminul Islam @ Rajab Ali @ K.M Aminul Haque @ Md. Aminul Haque Talukder had in 1971 it has been submitted that the book titled *ØAøg Aj e`i ej mQØ* demonstrates that he was a self-declared potential member of Al Badar Bahini. This accused being the author of this book has patently portrayed himself as a commander of Al Badar Bahini. Besides, oral testimony of witnesses examined as well shall reveal too that they were acquainted with the identity of this accused and they all unequivocally narrated the position of this accused in Al Badar Bahini, the learned prosecutor added.

58. Apart from focusing on identity of the accused persons that they had in 1971 the learned prosecutor placed argument on factual aspects related to arraignments brought in each charge. In doing so he drew attention to the testimony of witnesses examined. He submitted that most of witnesses are direct witnesses and survived victims and thus they had opportunity of watching the criminal activities carried out.

59. To prove the arraignments brought prosecution examined in all 17 witnesses including the Investigation officer [IO] and

statement of two witnesses whose name finds place in serial no.15 and 21 in the statement of witnesses' volume [ page 33-34 and 48-49 of the volume] has been received in evidence under section 19(2) of the Act of 1973 as they were not in position to be adduced before the Tribunal due to their severe ailment, the learned prosecutor added.

60. The learned prosecutor also submits that the events narrated in first four charges are chained together as those happened on the same day around the adjacent localities and by the same group of perpetrators and accordingly many of witnesses examined had occasion of seeing and experiencing facts related to the events narrated in these four charges.

61. The learned prosecutor further submitted that all the events of attack narrated in charge nos. 01,02,03 and 04 were chiefly calculated to destroy the Hindu religious group, either whole or in part and the attacks arraigned in rest three charges were intended to annihilate pro-liberation civilians to further policy and plan; that the accused persons consciously, actively and culpably participated in accomplishing the crimes of annihilating the Hindu civilians and pro-liberation civilians; that mode of their participation was extremely antagonistic and that they knowingly collaborated with the Pakistani occupation army in perpetrating the crimes of which they have been indicted. However, argument

advanced in relation to charges deserves to be well addressed at the time of adjudicating the same independently.

### **Summing up by the defence**

**62. Mr. Gaji M.H Tamim** the learned state defence counsel first submitted that accused Md. Liakat Ali was not against the war of liberation and all along he was engaged with the politics of Awami League. His name does not find place in the alleged list of Razakars and he made a rejoinder against the attempt to term him as a Razakar made in the document of local Muktijodhdha Sangsad [Exhibit-2]. Terming this accused as a Razakar commander by such initiative was the outcome of local political rivalry and oral testimony relied by the prosecution on this matter is not consistent with the documents relied upon, the learned defence state counsel added.

63. The learned defence counsel next submitted that another accused Aminul Islam @ Rajab Ali @ K.M Aminul Haque @ Md. Aminul Haque Talukder was not affiliated with Al Badar Bahini. In three cases he was prosecuted for offences committed in 1971 under the Collaborators Order, 1972 but not for any of alleged offences brought now in this case under the Act of 1973. It indicates his non-involvement with any of offences alleged. Even

the book titled *ଆମ୍ବା ଆଜେଇ ଏଇମ୍ବା* authored by him does not speak of his involvement with any of arraignments brought against him.

64. In respect of the arraignments brought the learned defence counsel chiefly submitted that the prosecution witnesses had no rationale of knowing the accused persons; that none of them are credible; that they had no practicable reason of seeing the facts they narrated and they testified falsely implicating the accused persons out of local rivalry.

65. It has been further submitted by the learned state defence counsel that no allegation was initiated against any of accused persons for the alleged offences during last four decades. Delayed prosecution casts doubt as to complicity of accused persons with the commission of alleged offences. Hearsay testimony made by many of witnesses cannot be relied upon, the learned state defence counsel added. However, submission made by the learned state defence counsel on factual aspects may be well addressed at the time of independent adjudication of the charges.

### **VIII. The way of adjudicating the charges**

66. In the case in hand, the evidence relied upon by the prosecution to substantiate the arraignments brought is chiefly testimonial. Survived victims, residents of crimes villages who

allegedly directly experienced and witnessed the criminal activities carried out by the gang of perpetrators came on witness dock. The witnesses naturally did not have occasion of seeing all the criminal acts forming part of attack. They testified material facts they allegedly experienced, in conjunction with the alleged attacks.

67. However, their testimony deserves to be weighed and assessed in search for the truth on the alleged deliberate atrocious events that happened in 1971, during the war of liberation directing the Hindu civilians and pro-liberation Bangalee civilians. The key task is to duly weighing value, relevance and credibility of such testimonies.

68. At the same time their testimony requires to be examined whether the alleged facts they experienced constituted the offences alleged and mode of involvement of the accused persons therewith, in a most dispassionate manner and keeping in mind that the accused is presumed innocent, till they are found guilty.

69. The alleged atrocious events took place more than four decades back, in 1971 and as such memory of witness may have been faded. But however, the trauma the victim sustained was such an experience or episode which remains alive in human memory for

long time. In this regard, the Appellate Division of Bangladesh Supreme Court has observed in its judgment [*Abdul Quader Molla*] that “the science of psychology teaches us about voluntary and involuntary memory, suggesting that events like the ones that took place in 71 to the victims would fall within the category of voluntary memory, which may survive ad-infinitum.”

## **IX. General Considerations Regarding the Evaluation of Evidence in a case for the crimes enumerated in the Act of 1973**

70. We consider it to reiterate that the proceedings before the Tribunal-1 are guided by the International Crimes (Tribunals) Act 1973, the Rules of Procedure 2010[ROP] formulated by the Tribunal-1 under the powers conferred in section 22 of the Act.

71. Tribunal notes that a criminal trial is a voyage to discovery in which truth is the quest. In the case in hand, truthfulness of the criminal acts constituting the alleged offences is chiefly set up on oral evidence presented by the prosecution and documentary evidence as well.

72. It would be expedient to eye on the facts of common knowledge of which Tribunal has jurisdiction to take into its judicial notice [Section 19(3) of the Act of 1973] in addition to the circumstances divulged, 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.

73. It is to be kept in mind that the term ‘**context**’ refers to the events, organizational structure of the group of perpetrators, para militia forces, policies that furthered perpetration of alleged crimes in 1971 during the war of liberation. We reiterate that context prevailing in 1971 within the territory of Bangladesh will adequately illuminate as to whether it was probable to witness all the phases of atrocities carried out as spectator.

74. The horrific profile of atrocities committed in 1971 naturally left little room for the people or civilians to witness all the criminal acts forming part of the attack. Additionally, sometimes it happens that due to the nature and magnitude of international crimes, their chaotic circumstances, and post-conflict instability, these crimes usually may not be well-documented by post-conflict authorities. All these realities needs to be kept in mind in assessing the evidence presented.

75. It is now well settled the testimony even of a single witness on a material fact does not, as a matter of law, require corroboration. In a case involving the offences of genocide and crimes against humanity corroboration is not a legal requirement for a finding to be rendered.

76. It is now well settled too that 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]. However, before acting upon hearsay evidence it is to be considered together with the circumstances and relevant material facts depicted. That is to say, hearsay evidence is admissible if it is found to have been corroborated by ‘other evidence’.

77. It is to be noted too that an insignificant discrepancy does not tarnish witness’s testimony in its entirety. Any such discrepancy needs to be contrasted with surrounding circumstances and testimony of other witnesses. This view in respect of weighing any such discrepancy finds support from the observation made by the ICTR Trial Chamber in the case of **Nchamihigo which is as below:**

“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]

78. Further, inconsequential inconsistency by itself does not taint the entire evidence made by witness before the Tribunal. This principle is compatible with the evolved jurisprudence as well as with the Act of 1973. In this regard it has been observed by the **ICTY Trial Chamber in the case of Prosecutor v. Mico Stasic & Stojan Jupljan** that--

“In its evaluation of the evidence, in assessing potential inconsistencies, the Trial Chamber took into account: the passage of time, the differences in questions put to the witnesses at different stages of investigations and in-court, and the traumatic situations in which many of the witnesses found themselves, not only during the events about which they testified, but also in many instances during their testimony before the Trial Chamber.

Inconsequential inconsistencies did not lead the Trial Chamber to automatically reject evidence as unreliable.”

**[Prosecutor v. Mico Stasic & Stojan Jupljan**

Case No. IT-08-91-T 27 March 2013]

79. However, according to universally recognised jurisprudence and the provisions as contained in the ROP of the ICT-1 onus squarely lies upon the prosecution to establish accused persons' presence, acts or conducts forming part of attack that resulted in actual commission of the offences of genocide and crimes against humanity as enumerated in section 3(2) of the Act of 1973 for which they have been arraigned.

80. Nature of offences of which the accused persons have been charged demands due assessment of the evidence to be made on the basis of the totality of the evidence presented and also considering the context prevailing in 1971 in the territory of Bangladesh. In the process of appraisal of evidence, we require to separate the grains of acceptable truth from the chaff of exaggerations and improbabilities which cannot be safely or prudently accepted and acted upon.

## **X. Did the accused persons belong to Razakar Bahini and Al Badar Bahini in 1971?**

81. The Act of 1973 permits to prosecute and try even an ‘individual’ or ‘group of individuals’ for the offences enumerated in this Act and committed in 1971 during the war of liberation.

But in the case in hand, prosecution avers that the accused persons in exercise of their potential position in Razakar Bahini and Al Badar Bahini, the auxiliary forces created to collaborate with the Pakistani occupation army allegedly committed the crimes enumerated in the Act of 1973. Defence denies any such affiliation of accused persons with those auxiliary forces.

82. In view of above, before we move to adjudicate the charges brought it seems expedient to resolve this pertinent issue i.e. the alleged identity and status or affiliation of accused persons had with those auxiliary forces in 1971.

83. Prosecution avers that accused Md. Liakat Ali was a Razakar having potential position. Mr. Rana Das Gupta the learned prosecutor submitted that the relevant documentary evidence together with oral testimony provides valid indication of his potential affiliation with the locally formed Razakar Bahini intending to collaborate with the Pakistani occupation army in conducting attacks directing civilian population. The witnesses examined had rationale reason of knowing this accused

beforehand. Besides, notoriety of a member of such auxiliary force became anecdote to the people of the localities, the learned prosecutor added.

84. On contrary, defence asserts that accused Md. Liakat Ali is now associated with the politics of Awami League and even in 1971 he was in favour of the war of liberation and that he has been falsely implicated in this case branding him as a Razakar commander out of local political rivalry. Mr. Gaji M.H Tamim the learned state defence counsel argued that it was not at all practicable for the witnesses of knowing this accused beforehand.

85. The Tribunal notes that accused Md. Liakat Ali has been absconding. He could not be arrested in execution of warrant of arrest issued by the Tribunal. Even he did not respond to the notification published in two daily newspapers for securing his surrender before the Tribunal. Thus, the trial took place in absentia. The report submitted by the enforcement agency demonstrates that there had been no immediate prospect of causing his arrest as he was on run. Why? Why he went into hiding evading arrest? If really he had no concern with any atrocious activities carried out in 1971 or he in fact took stance in favour of the war of liberation then why he opted to go into hiding, instead of facing prosecution?

86. Besides, there has been nothing to show his stance in favour of the war of liberation in 1971 as asserted by the defence. Next, the Tribunal notes that act or political affiliation subsequent to the commission of offence does not make an accused absolved of liability if he is found to have had involvement and participation to the perpetration of the offence of which he is being prosecuted. Thus, mere present or subsequent affiliation of the accused with the political party Awami League does not allow any degree of inference of his innocence or negates that he belonged to Razakar Bahini in 1971.

87. On integrated evaluation of oral testimony of witnesses the residents of the crime localities it transpires that they had fair reason of knowing the accused persons beforehand. Their frequent movement in local bazars indisputably made a fair space to the people of knowing their affiliation with those auxiliary forces created to collaborate with the Pakistani occupation army, to further policy and plan, it may be legitimately inferred.

88. It has been affirmed in cross-examination of P.W. 01 that he knew the accused Md. Liakat Ali beforehand as he was a resident of neighbouring village Morakuri and he was a Razakar commander.

89. It has been unveiled too in cross-examination of P.W.09 that Babru Mia the chairman of peace committee of their locality was the maternal uncle of accused Md. Liakat Ali who was a Razakar commander.

90. Additionally, what has been unveiled from the evidence of witnesses examined is that the accused persons were with the gang of attackers. An orchestrated attack would not have been possible for the Pakistani occupation army to launch at rural vicinity without the active assistance and aid of their local collaborators especially belonging to Razakar and Al Badar. Thus, seeing the accused persons present with the gang at the crime sites indisputably impels the conclusion that the accused persons in exercise of their association with those auxiliary forces opted to accompany the Pakistani occupation army.

91. The information narrated in the book titled '**Muktijudhdhe Dhaka 1971**' demonstrates that in 1971, Jamat E Islami with intent to provide support and assistance to the Pakistani occupation army formed armed Razakar and Al-Badar force and obtained government's recognition for those *para militia* forces. The relevant information states that -

ପରିବାରକାରୀ ବନ୍ଦୀ ଗ୍ରହଣି ରିଅଟକିଲ  
ଚାଲି ମାଗିକ ରିଶିକ ମାତ୍ର କି | ଜିଲ୍ଲା

mnvqZvi Rb" Ab"ib" agn" `j nbtq c"lgZ  
 MVb Kti kn"l KngU/ cieZr©mg"tq mk-i  
 ewnbx iRvKvi I Avje`i MVb Kti Ges  
 miKvix "KZx Av`vq Kti/ hytK agn"  
 intmte cPvi Yr Pvij tq DM"agx" Db"bv myoi  
 tPov Kti/ Avi Gi Avor"j mb"t`i mnvqZvq  
 Pvj vq nb"lePti bksm MYnZ"i, jy, bvix  
 nbhizb, AcniY I Pvuv Av`vq/ me"kl RvZi  
 neteK eyxRxet`i nZ"i Kiv nq/ 0

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

92. At this phase we are not going to resolve the matter of commission of offences alleged and complicity of the accused persons therewith. But the testimony of witnesses examined demonstrates that in the face of the attack they went into hiding wherever they could. Remaining in hiding they saw the gang moving being ‘accompanied by the accused persons’. It was quite natural. Even some of witnesses are victims who had direct occasion of experiencing how the accused persons participated to the commission of the offences alleged.

93. It is really challenging indeed to collect documentary evidence to prove activities and status of an offender facing prosecution

under the Act of 1973, particularly long more than four decades after the horrific atrocities happened in 1971. Besides, with the brutal assassination of the Father of the Nation Bangabandhu Sheikh Mujibur Rahman on 15 August 1975 the regime which started ruling the country not only rehabilitated the anti-liberation people but facilitated space of destroying documents intending to conceal the nexus of those who were associated with the crimes committed in 1971.

94. The document dated 09 March 2010[**Exhibit-2: page 5-6 of the prosecution documents volume**] of Lakhai Upazila Command, Bangladesh Muktijodhdha Sangsad states that the accused Md. Liakat Ali was a notorious Razakar commander in 1971 who is now the president of Upazila Awami League and he was associated in committing atrocious activities in 1971 around the localities of Krishnapur, Godainagar that resulted in killing hundreds of Hindu civilians. The document appears to have been signed by a number of local freedom fighters. We do not find any reason to keep what they have endorsed in this document aside.

95. The IO [P.W.17] also admits in cross-examination that accused Md. Liakat Ali was the president of Lakhai Thana Awami League since 2003 to 2013, true. It has been asserted by the defence that due to political rivalry the local Muktijodhdha

Sangsad by taking such resolution termed the accused Md. Liakat Ali as a Razakar commander. Thus, and since none of signatories of this document **Exhibit-2** has been examined as witness the same cannot be relied upon, the learned defence counsel added.

96. But we are not in agreement with the defence submission. We find no reason whatsoever to falsely terming this accused as a Razakar commander by the body formed of a number or freedom fighters. Merely for the reason that this accused Md. Liakat Ali was a local leader of Awami league since 2003 to 2013 the core information about the status and role of this accused in 1971 as contained in **Exhibit-2** cannot be readily brushed aside, particularly when it gets corroboration from the evidence of witnesses examined.

97. Besides, a collaborator who was actively engaged in committing alleged prohibited acts directing defenceless civilians in 1971 during the war of liberation might have opted to take shelter under the umbrella of Awami League's ideology, intending to enjoy impunity and hide the unlawful deeds he committed and his culpable role in accomplishing the alleged crimes. Thus, subsequent political affiliation of an individual to pro-liberation political party does not diminish the status and anti-liberation role that he had in 1971 during the war of liberation. On contrary, there

has been nothing to show that accused Md. Liakat Ali took stance with the war of liberation in 1971.

98. The nation had to endure the inaction of bringing the perpetrators of atrocities committed in 1971 to justice till formation of the Tribunal on 25 March 2010 under the International Crimes (Tribunals) Act, 1973. Presumably, finally the freedom fighters the signatories of the document **Exhibit-2** unsurprisingly did not desire to allow accused Md. Liakat Ali who collaborated with the Pakistani occupation army in committing alleged crimes directing civilian population continuing politics of Awami League that had played the key role in organizing the war of liberation under the leadership of the Father of the Nation Bangabandhu Sheikh Mujibur Rahman. And thus just before formation of the judicial forum [Tribunal-1] under the Act of 1973 to prosecute try and punish the perpetrators of crimes enumerated in the said Act the local freedom fighters associated with the local Muktijodhdha Sangsad bravely raised their collective voice unfolding the truth and not to fulfill any ill will or political rivalry as claimed by the defence, we conclude.

99. Prosecution alleges that the accused Aminul Islam @ Aminul Haque @ Rajab Ali was actively involved with the politics of Islami Chatra Sangha [ICS], the student wing of Jamat E Islami [JEI] and had played active role in forming Al-Badar force in

Kishoreganj and had close nexus with the Pakistani occupation army stationed at Ashtagram police station.

100. Despite affirmative indication depicted from oral evidence of P.W.s, the issue in question may be fairly revealed predominantly from relevant documentary evidence and authoritative source. Provision of section 19(1) of the Act of 1973 empowers the Tribunal to admit information or report published in book or news papers, if the same deems to have probative value.

101. First, let us see why the Al Badar Bahini was formed and of which people in 1971? It is now settled history that in 1971 Al Badar which was known as ‘death squad’ was formed purely of members of Islami Chatra Sangha [ICS], the student wing of JEI. It gets corroboration from the information depicted in the book titled '**Sunset at Midday**' authored by Mohi Uddin Chowdhury, a leader of Peace committee, Noakhali district in 1971 who left Bangladesh for Pakistan in May 1972 (Publisher’s note): Qirtas Publications, 1998, Karachi, Pakistan]. The information contained therein speaks that --

“To face the situation Razakar Force, consisting of Pro-Pakistani elements was formed. This was the first experiment in East Pakistan, which was a successful

experiment. Following this strategy Razakar Force was being organized throughout East Pakistan. This force was, later on Named Al-Badr and Al-Shams and Al-Mujahid. The workers belonging to purely Islami Chatra Sangha were called Al-Badar, the general patriotic public belonging to Jamaat-e-Islami, Muslim League, Nizam-e-Islami etc were called Al-Shams and the Urdu-speaking generally known as Bihari were called al-Mujahid.

102. The Al-Badar formed with the workers of Islami Chatra Sangha [ICS] the student wing of Jamat E Islam [JEI] was created aiming to provide support to the occupation armed forces. A report published in **The Economist 01 July, 2010** speaks as below:

“Bangladesh, formerly East Pakistan, became independent in December 1971 after a nine-month war against West Pakistan. The West's army had the support of many of East Pakistan's Islamist parties. They included Jamaat-

e-Islami, still Bangladesh's largest Islamist party, which has a student wing that manned a pro-army paramilitary body, called Al Badr."

**[Source: The Economist: 01 July 2010:**

*see also*<http://www.economist.com/node/16485517?zid=309&ah=80dcf288b8561b012f603b9fd9577f0e>]

103. Thus, it stands proved that in 1971 Al Badar Bahini was formed of people who were associated with the ICS the student wing of JEI. Al-Badar was thus made up of militants from the student wing of Jamat E Islami [JEI]. History accuses this group [force] of working like ‘death squad’---killing, looting and disgracing Bengalis whom they accused of being ‘anti-Islam’, ‘*infiltrators*’ and ‘miscreants’.

104. Perpetration of systematic atrocities directing civilian population in 1971 by the AB force indeed was no lesser than that of the Pakistani occupation army. JEI and its student wing ICS had acted as the think tank and colluded as key architect of the crimes against humanity and genocide committed in 1971 in the territory of Bangladesh. All these are now settled history.

105. In the case in hand it transpires patently that the accused Aminul Haque @ Rajab Ali was actively affiliated in ICS since his college life and had played key role in forming Al Badar Bahini in Kishoreganj. All these are found patent from the book titled ***ଅମ୍ବାଯି ଏଇ ମନ୍ଦିର*** he authored.

106. The book titled ***ଅମ୍ବାଯି ଏଇ ମନ୍ଦିର*** relied upon by the prosecution is the authoritative document of proving active and potential affiliation of accused Aminul Haque @ Rajab Ali with the Al Badar Bahini. The book has been authored by the accused himself where he narrated himself as a self declared potential Al Badar and what he experienced inside jail as he was put therein after the independence achieved.

107. It is found from the narrative of the book he made that he was sentenced to imprisonment for the offences he committed in 1971 during the war of liberation directing pro-liberation civilian population.

108. In the preface of the book titled ***ଅମ୍ବାଯି ଏଇ ମନ୍ଦିର*** published in 1988 the accused Aminul Haque @ Rajab Ali stated—

ØAung Aij e`i lQj vg/ GKvEtii m×vŠl Avgvi  
lbR-1 Avgvi netekKi mv‡\_ cingk©K‡i G  
m×vŠl Avgvi b‡q0j vg/Ø

109. It transpires from the narrative made in the book that the accused Aminul Haque @ Rajab Ali was the president of Islami Chatra Sangha[ICS], the student wing of JEI of Bhairab College in **1970 [ page 9 and 17 of the book]**. The accused, the author of the book also narrates that ---

ØAóM‡gi mweqvblMi t‡K Kij qvi Pi ntq  
K‡kvi M‡Ä G‡m msMV‡bi tbZet‡`i mv‡\_  
thvM‡hvM Kij vg/ Zvici Avgv‡`i mggbv netkl  
K‡i Qv‡ msMV‡bi m`m‡`i lb‡q Avg Aij e`i  
ewnb‡ Mv‡b Kij vg/[page 30 of the book]

110. The accused Aminul Haque @ Rajab Ali in the book authored by him also admits that – **ØAvg fvi Z‡K KLbI mZvKisLx g‡b Kwi‡b** / [page 17 of the book]. It impels that the accused was extremely antagonistic to Hindu civilians and India.

111. In view of above, we are again persuaded to infer that objective of creating the Al-Badar force 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 indiscriminate atrocities in a systematic manner

directing the unarmed Bengali civilian population throughout the territory of Bangladesh in 1971.

112. It appears to have been affirmed in cross-examination of P.W.11 and P.W.14 that accused Aminul Islam @ Aminul Haque @ Rajab Ali had been in jail, after independence. The book titled *ଆମ୍ବାଜ ଆଜେଇ ଏହିମାତ୍ର* authored by this accused also speaks of his being detained in jail after independence. In absence of anything contrary this fact also leads to the conclusion that the accused Rajab Ali in exercise of his affiliation with Al Badar Bahini got himself engaged with the alleged criminal activities for which he was so detained.

113. Admittedly accused Aminul Islam @ K.M Aminul Haque @ Rajab Ali was prosecuted under the Collaborators Order, 1972 for the criminal acts constituting the offences punishable under The Penal Code. It together with the self declaration made by him in the book authored by him and evidence presented it stands well proved that accused Aminul Islam @ K.M Aminul Haque @ Rajab Ali was a potential Al Badar.

114. Besides, there has been nothing before us to show that this accused was prosecuted under the Collaborators Order, 1972 for the same offences of which he is accused in this case. Thus , prosecution, trial and conviction for another offence under a

distinct legislation does not create any bar under the doctrine of double jeopardy to prosecute him for the other criminal acts constituting the offences enumerated in the Act of 1973.

115. It is to be noted that one witness Abdul Malek @ Malu whose name finds place in serial no.15 of the volume of statement of witnesses made statement to the IO but could not come to depose due to his severe ailment. Raising this ground prosecution by initiating an application under section 19(2) of the Act of 1973 prayed to receive his statement made to the IO into evidence. Tribunal allowed the prayer.

116. Now, on having a look to the statement of this witness Abdul Malek @ Malu a resident of village- Fandauk under police station Nasirnagar of District [now] Brahmanbaria made to the IO it depicts too that accused Md. Liakat Ali was in a leading position of Razakar Bahini formed in Fandauk union and accused Aminul Islam @ Rajab Ali was an Al Badar commander of their neighbouring Ashtogram police station and he had a good relation with accused Md. Liakat Ali and they used to move together and that the accused Md. Liakat Ali was affiliated with the Razakar camp set up at community centre of Fandauk bazaar.

117. The above together with the reasoned discussion as made above indisputably adds assurance to the fact that both the accused persons belonged to auxiliary forces having their potential position. It is not disputed that Fandauk was a locality nearer to Ashtogram police station. Thus, with intent to further policy and plan they in exercise of their association with Razakar Bahini and Al Badar Bahini used to move around Fandauk bazaar, as stated by Abdul Malek @ Malu to the IO.

118. In view of discussion made above we arrive at decision that the prosecution has been able to prove that accused Md. Liakat Ali was a potential Razakar commander of Nasirnagar police station and accused Aminul Islam @ K.M Aminul Haque @ Rajab Ali was a commander of Al Badar Bahini of Ashtogram police station and they allegedly maintaining close association with the Pakistani occupation army stationed in Ashtogram had allegedly carried out criminal activities which deserve to be adjudicated.

## **XI. Adjudication of charges framed**

119. In all seven counts of charges have been framed against the accused persons. Of those first four involve the offence of ‘genocide’ allegedly conducted in the localities under police station- Lakhai of District[now]-Habiganj and last three arraign the commission of the offences of crimes against humanity

allegedly committed in the localities under police station-Nasirnagar of District[now]-Brahmanbaria and police station-Ashtogram of District [now] Kishoreganj.

120. Intending to prove the arraignments brought prosecution adduced and examined survived residents of crime villages and near relatives of victims. Some of them testified the criminal acts carried out in accomplishing the principal crimes, as alleged. Alleged crime sites were rural vicinities and not too far from each other. Charge nos. 01, 02, 03 and 04 relate to successive attacks launched on the same day at crime villages adjacent to each other and by the same group of perpetrators. Thus, many of witnesses testified facts relating to more than one event.

121. Prosecution avers that the accused Md. Liakat Ali and accused Aminul Islam @ K.M Aminul Haque @ Rajab Ali belonged to Razakar Bahini and Al Badar Bahini respectively. Already we have arrived at decision on this matter in the preceding deliberation. By virtue of their potential position with the auxiliary forces they had close nexus with the Pakistani occupation army stationed at Ashtogram and the activities carried out at Razakar camp and had allegedly participated, abetted and facilitated the commission of crimes alleged. Burden squarely lies with the prosecution to prove these pertinent facts in issue, till the accused persons are found guilty.

122. Conversely, defence denied involvement of accused persons with the alleged offences. Burden to prove the affirmative defence case lies with the defence. Nevertheless, success of prosecution does not rest upon failure of the defence case.

123. Keeping all the above matters in mind now let us begin adjudicating the charges framed.

#### **Adjudication of Charge No.01**

##### **[Genocide, abduction, confinement, torture and plundering committed at village Krishnapur under Lakhai Police Station]**

124. That on 18.09.1971 at about 05.00 A.M the accused **(1) Md. Liakat Ali**, commander of the then Razakar Bahini of Fandauk Union under Nasirnagar Police Station of the then Brahmanbaria Sub-Division [now district] and accused **(2) Aminul Islam alias Rajab Ali alias K.M. Aminul Haque alias Md. Aminul Haque Talukder**, the then Al-Badar commander [previously Razakar] of Ashtagram Police Station of the then Kishoreganj Sub-Division [now district] along with 50/60 Razakars, Al-Badars and 20/25 Pakistani occupation army men by riding 2[two] boats and 3/4 speed boats from the Razakar camp of Ashtagram having gone to Krishnapur village under Lakhai Police Station of the then Habiganj Sub-Division [now district] attacked the same and started plundering houses. Then the two accused persons and their

accomplices having abducted about 50/52 villagers from their houses took them away to the house of Nripen Roy son of late Nani Gopal Roy and kept them confined there and at about 01.00 P.M all the detained persons were made stood in lines and then the two accused persons and the Pakistani occupation army, with intent to destroy the Hindu religious group, in whole or in part, killed 43 [forty-three] detained victims by gun-shots out of said 50/52 detained victims. 08[eight] detained victims, namely (i) Haridas Roy (ii) Sukumar Sutradhar (iii) Banobihari Roy [now dead] (iv) Nabadip Roy [ now dead] (v) Krishna Kumar Roy [now dead](vi) Priyatosh Roy (vii) Biswanath Roy, and (viii) Bhusan Sutradhar [now dead] were injured. The dead bodies were made floated in the nearby *haor*[swamp] and river, after the gang had left the site and treatment was provided to the injured victims.

Thereby, the accused (1) Md. Liakat Ali and (2) Aminul Islam alias Rajab Ali alias K.M. Aminul Haque alias Md. Aminul Haque Talukder have been charged for participating, abetting, facilitating, contributing and complicity in the commission of offences of ‘genocide’ and abduction, confinement, torture and plundering [other inhumane act] as ‘crimes against humanity’ as enumerated in section 3(2)(a)(c)(g)(h) of the Act of 1973 which are punishable under section 20(2) of the said Act for which the

accused persons have incurred liability under section 4(1) of the Act of 1973.

## **Evidence of witnesses examined**

125. Prosecution intending to prove the arraignment adduced as many as 08 witnesses 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.09. Of them many are direct witnesses to the facts crucially related to the attack.

126. It is to be noted that the events as narrated in charge nos.01, 02, 03 and 04 are chained together. For it appears from the narrative made in these charges framed that the same group of attackers by launching successive attack at village-Krishnapur and its neighbouring vicinities on the same day conducted its criminal mission of killing civilians belonging to Hindu religious group.

127. The witnesses testifying facts related to the event narrated in charge no.01 also testified facts linked also to the events narrated in three other charges i.e charge nos. 02, 03 and 04. Therefore, we consider it expedient to focus on the evidence of witnesses relevant to charge no.01. Their evidence in relation to the events arraigned in three other charges shall be taken into account when those charges will be adjudicated.

128. P.W.01 Haridas Roy [66], one of survived victims and a resident of crime village narrated what he watched and experienced in conjunction with the attack launched at their village-Krishnapur.

129. P.W.01 stated that in 1971 their village-Krishnapur was Hindu dominated and surrounded by swamp [*haor*]. All the residents of their village were in favour of the war of liberation and followers of Awami League. On 18 September, 1971 in the early morning a group formed of about 50/60 Razakars, Al Badars and 20/25 Pakistani occupation army coming by two boats and 3-4 speed boats had launched attack at their village. With this the villagers started running away wherever they could. He [P.W.01] however could not quit in the face of sudden attack and thus remained stayed at their house.

130. P.W.01 next stated that at about 08:00 A.M Razakars, Al Badars and 8/10 Pakistani occupation army detained him[P.W.01] by attacking their house when he saw the accused Razakar commander Liakat Ali and Al Badar commander Aminul Islam @ Rajab Ali of police station-Ashtagram leading the gang. He knew the accused persons beforehand. The gang took him away to the place in front of the house of Nripen Roy of their village where he found 20/25 Hindu civilians keeping detained under vigilance of

Razakars, Al Badars and army men. He [P.W.01] also saw three boats and one speed boat keeping anchored at Ghatla of the house of Nripen Roy.

131. P.W.01 went on to narrate that he saw the Razakars, Al Badars and army men bringing 20/25 Hindu civilians there on forcible capture from village- Krishnapur by launching attack at their houses and kept them detained too with him and other detainees under watchfulness.

132. What happened next? P.W.01 testified that on the same day at about 01:00 P.M accused Liakat Ali, Aminul Islam @ Rajab Ali and their accomplice Razakars and Al Badars and army men made them the 50/52 detainees stood in three lines and then accused Liakat Ali, Aminul Islam @ Rajab Ali and one army man started gun firing directing them and thus they fell down on ground and then the accused Liakat Ali, Aminul Islam @ Rajab Ali started beating them up with stick that resulted in injury on his[P.W.01] forehead. The gang accompanied by the accused persons then had left the site at about 01:45 P.M. Next, at about 04:00 P.M some people including Nripen Roy and his mother rescued 5/7 injured including him.

133. What the P.W.01 experienced after his rescue from the killing site? He [P.W.01] saw bullets hit dead bodies of 43

civilians lying in the house of Nripen Roy. Later, he received treatment from local doctor Ramesh Chandra Roy [now dead]. The people of neighbouring village also came to the site and saw the bodies of victims lying there. The dead bodies were made floated in haor[swamp] and almost all the residents of their village opted internal displacement quitting the locality, apprehending further attack of Razakars, Al Badars and army men. He [P.W. 01], some youths and elderly villagers however remained stayed.

134. In cross-examination defence chiefly denied what has been testified by the P.W.01. Some facts testified in examination-in-chief appear to have been affirmed. In reply to defence question P.W.01 stated that on the day of the event happened at about 08:00 A.M he heard gun firing and he saw a big boat, two small boats and one speed boat kept anchored at the ghat [anchoring place] of Nripen Roy's house.

135. P.W.02 Nripen Krishna Roy [64] a resident of crime village-Krishnapur is a direct witness to the material facts related to the principal crimes as narrated in charge no.01.

136. P.W.02, before testifying the event of attack, stated that their village was Hindu dominated vicinity residents of which were the followers of Awami League. They used to keep their locality under their guard in fear of Pakistani occupation army, Razakars

and Al Badars. On 18 September 1971 at about 05:00/05:30 A.M his mother made him awakened by disclosing the arrival of Pakistani occupation army at their village. Then he [P.W.02] coming out from the dwelling hut saw that the Pakistani occupation army and Razakars had attacked their village encircling which they kept under guard so that none could escape. The villagers started running away with screaming and he[P.W.02] went into hiding inside their kitchen wherefrom he could see the Al Badars, Razakars and army men making the villagers assembled by bringing them at the open space of their house, nearer to the kitchen.

137. P.W.02 next stated that about 01:00 P.M those Razakars, Al Badars and army men made 50/52 civilians stood in three lines at the anchoring place of their house by taking them there on forcible capture. He [P.W.02] could recognize the accused Razakar commander Liakat Ali and Al Badar commander Aminul Islam @ Rajab Ali accompanying the gang.

138. What happened after the 50/52 detainees were made stood in lines? P.W.02 stated that accused Liakat Ali, Aminul Islam @ Rajab Ali and army men fired indiscriminate gun shots directing the detainees and thus they fell down when the accused persons started beating them by sticks. He [P.W.02] saw it remaining in hiding inside the kitchen, P.W.02 stated. The gang then looted

gold ornaments and money, before they had left the site at about 01:45 P.M.

139. P.W.02 also stated that his mother who is now 95 years old remained in hiding inside the pond in front of their house, at the time of launching the attack at their house and she came out after the gang had left the site and then he [P.W.02], his [P.W.02] mother and grand-mother and some of neighbouring people moved inside their house where they found his [P.W.2] bullet injured friend Radhika Mohon Roy screaming to have water to drink. But few minutes later Radhika Mohon Roy succumbed to injuries, after taking water given by his [P.W.02] mother. He [P.W.02] found 43 bullets hit dead bodies lying there. Of them he [P.W.02] could identify Anil Majhi, Sunil Sharma, Kishori Mohon Roy, Nani Chakraborti, Sunil Chakraborti, Dharendra Roy, Ishan Das, Brajendra Roy, Bamacharan Roy, Shailesh Roy, Subhash Sutradhar, Reboti Roy, Shabranjan Roy and Haricharan Roy.

140. P.W.02 finally stated that some of detainees who fell down with gun firing got survived despite being injured and of them Haridas Roy has been at his village, Sukumar Roy has been in India and the rest of injured victims are now dead. The monstrous event forced many Hindu residents of their village to deport to India.

141. In cross-examination in reply to defence question P.W.02 stated that he arranged treatment of injured Haridas and Banobihari by calling village doctor Ramesh Chandra Roy[now dead], a neighbouring resident; Pakistani occupation army did not come to their locality prior to the event of attack he narrated, but Razakars used to come occasionally. P.W.02 denied the defence suggestion that the accused persons did not belong to any auxiliary force and that they were not involved with the event he testified.

142. P.W.03 Hiramont Sharma [63] a resident of crime village-Krishnapur narrated some facts materially related to the attack. In 1971 he was 16/17 years old.

143. P.W.03 testified that on 02 Aswin[1971] in the early morning he had been at the house of their villager Anjon Roy[now dead] to listen Mahalaya program in radio and at a stage at about 05:00/05:30 A.M he heard Kalidas Roy of their village asking to quit by shouting as Razakars and Pakistani occupation army had arrived. With this he [P.W.03] came out and saw two big boats and 3-4 speed boats anchored at the ghat of Kalidas Roy's house. He [P.W.03] also saw 50/60 Razakars and 20/25 Pakistani occupation army moving towards places of their village. He then went into hiding inside a ditch nearer to their house wherefrom he

could see Pakistani occupation army, Razakars and Al Badars going around the village so that nobody could escape.

144. He[P.W.03] also saw his villagers Indu Bhushan Roy and his brother Bidhu Bhushan's wife[both are now dead] running to go into hiding when accused Liakat Ali, accused Aminul Islam @ Rajab Ali and an army man resisting them who were made freed after looting gold ornaments.

145. P.W.03 also stated that remaining in hiding inside the ditch he heard gun firings and at about 01:00 P.M he heard indiscriminate gun firing too from the north end of their village.

146. P.W.03 next testified what he experienced after the gang had left the site. P.W.03 stated that at about 04:00 P.M on hearing shouting of his father that the gang had left the site he came out of the hiding place and heard from his father that the Razakars, Al Badars and army men had killed numerous civilians at the house of Nripen Roy and then he [P.W.03] moved there where he found injured Haridas Roy, Banobihari Roy, Nabadip Roy, Krishna Kumar Roy and Nripen Roy. He also saw many dead bodies lying there who were the residents of their village. Haridas Roy had to receive treatment by a village doctor as he sustained injury on his forehead.

147. What the P.W.03 heard about the killing and perpetrators of the said horrific criminal acts? P.W.03 stated that he heard from injured victims Haridas Roy and Banobihari Roy that accused Liakat Ali and accused Rajab Ali and their accomplices and army men had killed numerous civilians at the house of Nripen Roy. Then he [P.W.03] opted to take shelter at village Jirunda and on the following day he heard from his father that the accused persons, their accomplices and army men killed 43 civilians at the house of Nripen Roy.

148. P.W.03 finally stated that he knew the accused persons beforehand as they used to move around the local Bazar very often.

149. In cross-examination, defence simply denied what has been testified by the P.W.03. P.W.03 stated in reply to defence question that 20/30 minutes after the speed boats moved towards Ashtagram his father asked him to come out.

150. P.W.04 Amal Krishna Roy [76] a resident of crime village-Krishnapur is a direct witness to some crucial facts materially related to the event of attack that resulted in killing of numerous villagers. In 1971 he was 27 years old.

151. P.W.04 stated that they used to keep their village under lookout in fear of Pakistani occupation army and Razakars. On 02 Aswin in 1971 at about 04:00/04:30 A.M he returned home from the task of guarding village and at about 05:00 A.M he on hearing a gun firing came out in front of their house when he saw two boats and three speed boats moving through the river Balavadra from the end of Ashtagram, west to their house and then they understood that army men were coming. With this he [P.W.04] coming back home asked all to go into hiding. The residents of neighbouring villages took shelter at their village treating it safer as their village was chiefly Hindu dominated. At that time his [P.W.04] maternal father-in-law Prafulla Roy and Brajalal Roy [both are now dead] remained sheltered at their house with their family inmates. He [P.W.04] went into hiding inside a bush, south to their house wherefrom he saw Pakistani occupation army and Razakars keeping their village guarded by roaming around by speed boats.

152. P.W.04 next stated that few minutes later he saw Razakars and Pakistani occupation army gunning down Jogendra Sutradhar and Mukunda Sutradhar to death at a place near the rice mill of Ramendra Roy, 15/20 hands far from the bush where he[P.W.04] remained in hiding. He [P.W.04] also saw 2/3 Razakars and army men beating Bahari Lal Sutradhar [now dead], one of his villagers.

Few minutes later he heard a girl crying as she was taking away by Razakar accused Md. Liakat Ali and Razakar Baltu [now dead] towards the house of Harihar Roy.

153. P.W.04 went on to state that next he saw the Razakars and army men looting their house and also saw the accused Liakat Ali and Rajab Ali taking away Haricharan the son of his[P.W.04] maternal father-in-law forcibly towards north. Few minuses later he heard gun firings.

154. What happened after the gang had left the site? P.W.04 stated that sensing normalcy of the situation he came out of the bush and did not find anybody at their house. Then he saw his wife and daughter coming back home. He then moved to the house of Nripen Roy when he saw Doctor Ramesh Chandra Roy [now dead] providing treatment to injured Haridas Roy and Banobihari Roy.

155. P.W.04 next stated that he heard from those two injured victims that accused Liakat Ali, Rajab Ali, their accomplices and army men made 50/52 detained Hindu villagers stood in lines and fired gun shots to them at the place behind their house. He [P.W.04] then found 43 dead bodies of Hindu civilians including that of Shab Ranjan Roy, Radhika Mohon Roy, Nani Gopal Chakraborti, Kishori Roy. In evening they made the body of his

brother-in-law Haricharan Roy floated in river without any religious ritual.

156. In cross-examination in reply to defence question P.W.04 stated that the gang which came to their village at the time of the event[of attack] formed of 50/60 Pakistani army, Razakars and Al Badars; that Ramendra Roy's rice mill was about 20/25 hand far from their house ; that he could not say whether the accused Liakat Ali was the president of Thana Awami League ;that he could not say the name of the father of accused Rajab Ali; that walking distance between their house and that of Nripen Roy was 3-4 minutes and that the house of Haridas[victim] was about 50-60 yards far from that of their own.

157. P.W.04 however denied the defence suggestion that he did not know the accused Liakat Ali and he did not belong to Razakar Bahini and that the accused were not involved with the event he testified; that he did not see the alleged event and what he testified was untrue and tutored.

158. P.W.05 Bablu Roy [56] is the son of a martyr. His father was wiped out in conjunction with the attack. He watched some activities substantially correlated to the attack launched at their village-Krishnapur that resulted in killing numerous villagers belonging to Hindu community. In 1971 he was 11 years old.

159. P.W.05 stated that on 2<sup>nd</sup> Aswin 1971 in early morning he woke up with shouting of his father as he sensed movement of Pakistani occupation army towards their village. Then he and his mother went into hiding inside a latrine nearer the house of Kumud Master wherefrom he saw the army men, Razakars and Al Badars committing looting at houses and taking away the civilians on capture towards west. At that time he heard gun firing from different directions and also heard noise of movement of speed boats. Remaining in hiding he [P.W.05] at about 10/11 A.M also saw Razakar commander accused Liakat Ali and Al Badar commander Aminul Islam @ Rajab Ali, their accomplices and army men taking away some Hindu civilians towards west.

160. What happened next? P.W.05 came out of the hiding place at about 05:00 P.M after the gang had left the site and he saw 43 bullets hit dead bodies lying at the ghat of Nripen Roy's house. He could identify the bodies of their neighbours Radhika Mohon Roy, Bama Charan Roy, Shabranjan Roy, Sunil Sharma, Subhash Sutradhar, and Anil Majhi. He [P.W.05] also found Nabadip Roy [now dead], Bonobihari Roy, Haridas Roy and Bhushan Sutradhar survived receiving injuries and they got treated by their village doctor Ramesh Roy.

161. P.W.05 heard from injured victims Haridas Roy and Bonobihari Roy that accused Liakat Ali, Rajab Ali and their

accomplices and Pakistani occupation army attacking at houses of their village carried out looting and forcibly captured 50/52 Hindu civilians who were taken at the ghat of Nripen Roy's house and at about 01:00 P.M the detainees were made stood in lines and the accused persons and army men then gunned them down to death and the accused persons ordered to beat the detainees who fell down on having gun shots.

162. In cross-examination P.W.05 denied the defence suggestions that he did not know the accused persons; that they did not belong to auxiliary force and that he did not see the accused persons with the gang at the crime sites. The event of attack that resulted in annihilation of a large number of Hindu civilians does not appear to have been impeached by cross-examining the P.W.05, in any manner.

163. P.W.06 Sunil Chandra Das [70] is a resident of village-Godainagar Krishnapur. He testified the events of attacks as narrated in charge nos.01, 02, 03 and 04. The gang had carried out atrocious activities one after another directing civilians of village-Krishnapur and adjacent localities, the above four charges arraigned. P.W.06 narrated what he watched remaining in hiding and what happened to him at a phase of attack as narrated in charge no.03. Now, let us see what he testified in relation to charge no.01.

164. P.W.06 stated that on 18 September i.e 2<sup>nd</sup> day of Aswin in 1971 in early morning he had been standing on the bank of river adjacent to the courtyard of Jaharlal Das's house when he saw the Pakistani occupation army, Al Badars and Razakars moving towards Krishnapur by boats and speed boats. Few minutes later he saw the army men going round their village by speed boats and with this the residents of the village attempted escaping wherever they could. The army men gunned down some civilians to death when they attempted to escape. Then he [P.W.06] along with his father and wife went into hiding inside a bush wherefrom he heard gun firing from the end of village-Krishnapur. He also heard gun firing at about 01:00 P.M from the end of village Krishnapur, remaining in hiding.

165. What more happened when the P.W.06 remained in hiding? P.W.06 stated that at about 03:00 P.M the army men, Razakars and Al Badars tracing them in hiding one army men gunned down his [P.W.06] father to death and took him [P.W.06] away to the Ghatla of Chitta Das's house of their village where he found 30/32 Hindu civilians keeping detained. Few minutes later, accused Al Badar Rajab Ali and Razakar accused Liakat Ali and two army men made them stand in three lines and then they fired gun shots to them with which they fell down on the ground. 26 bullets hit civilians died. Miraculously he did not receive any bullet hit and

nevertheless he lied down like a dead man. Then the gang moved to Krishnapur leaving the site.

166. The above version relates to the event arraigned in charge no.03. However it was carried out on the same day and by the same gang. Therefore, this piece of evidence so far as it relates to presence of accused persons with the killing squad at the crime sites seems to be relevant also in respect of the event narrated in charge no.01.

167. In respect of killing of 43 civilians at Nripen Roy's house at village-Krishnapur P.W.06 is a hearsay witness. P.W.06 stated in relation to charge no.01 that on the same day just before dusk Nripen Roy, Haridas Roy, Bonobihari Roy, Nabadip Roy and others came to their village and he heard from them that the gang formed of army men, Razakars and Al Badars brought ten Hindu civilians from village Ganganagar to village- Krishnapur on forcible capture and carried out killing of 43 civilians at Nripen Roy's house at village-Krishnapur.

168. In cross-examination P.W.06 in reply to defence question stated that it was the day of 'Mahalaya' [preliminary phase of Hindu religious festival] and thus they 20/30 people remained stayed at the courtyard of Jaharlal house.

169. P.W.07 Abu Taher Miah @ Ashu [74] is a resident of village Fandauk. He chiefly testified the event of attack narrated in charge no.05. In relation to charge no.01 he is a hearsay witness.

170. P.W.07 stated that one month after the event of attack he testified[ as narrated in charge no.05] he heard that accused Md. Liakat Ali and accused Aminul Islam @ Rajab Ali being accompanied by Pakistani occupation army by launching attack at Hindu dominated villages- Chandipur, Krishnapur and Godainagar Krishnapur had killed more than hundreds of Hindu civilians.

171. In cross-examination P.W.07 denied the defence suggestion that he did not hear the events of attacks [as narrated in charge no.01] and that what he testified was untrue and tutored.

172. P.W.09 Md. Jummon Miah [63] is also a resident of village Fandauk. His testimony chiefly relates to the event of attack as narrated in charge no.05 that resulted in his father's killing. In relation to charge nos.01-04 he is a hearsay witness.

173. P.W.09 stated that one month after his father was killed he heard that accused Rajab Ali and Liakat Ali being accompanied by Pakistani occupation army stationed at Ashtagram had killed more than hundreds of Hindu civilians by launching attack at

villages Krishnapur, Chandipur and Godainagar under police station-Lakhai. In cross-examination P.W.09 denied the defence suggestion that he did not hear the killing of more than hundreds Hindu civilians.

### **Finding with Reasoning based on Evidence Adduced**

174. Mr. Rana Das Gupta the learned prosecutor submitted that prosecution relied upon in all 08 witnesses of whom P.W.01, P.W.02, P.W.03, P.W.04, P.W.05, P.W.06 are direct witnesses to the facts materially chained to the principal offences and P.W.07 and P.W.09 testified what they heard about the event of attack and their evidence gets corroboration from the direct evidence. By launching attack at Hindu dominated village- Krishnapur the group of attackers formed of Pakistani occupation army, accused persons and their accomplice Razakars and Al Badars not only wiped out 43 defenceless Hindu civilians but their criminal acts resulted in bodily injury, mental trauma and devastating activities, internal displacement and deportation which collectively constituted the offence of ‘genocide’, the learned prosecutor argued.

175. The learned prosecutor next submitted that P.W.01 a survived victim was detained too along with the victims wiped out and coming on dock he recounted how the event of attack was

carried out for hours together with active participation of accused persons at phases of the attack. The detainees were made assembled in front of the house of Nripen Roy is a crucial fact related to the perpetration of the principal crime the killing which has been rather affirmed in cross-examination of P.W.02 a direct witness, the learned prosecutor argued.

176. P.W.02–P.W.06 the direct witnesses had practicable opportunity of seeing the activities carried out, in conjunction with the attack, remaining in hiding at nearer places. Their evidence cumulatively proves beyond reasonable doubt the commission of the crimes and participation of accused persons therewith, the learned prosecutor added.

177. Mr. Gaji M.H Tamim submitted that the testimony of witnesses relied upon does not carry any credence. Despite knowing that the Razakars and Al Badars used to move in local Bazaars, as testified it was not realistic for the Hindu civilians of continuing their staying at their homes at the crime village. Thus, what they testified as to experiencing the attack when they allegedly had been at their homes is not credible. Prosecution could not prove by lawful evidence the alleged presence of the accused persons with the group of attackers at the crime site and what the witnesses testified was untrue and tutored.

178. This charge involves brutal killing of large number of Hindu civilians with intent to destroy Hindu religious group, either whole or in part constituting the offence of genocide at village Krishnapur, the charge framed arraigns. In conjunction with the attack the gang had carried out devastating activities too. The survived civilians including the witnesses came on dock to narrate what they watched. They being gravely panicked and intimidated had to go into hiding and naturally could not resist the perpetration of such horrific criminal mission. All these cumulatively caused intense mental harm to them, the defenceless civilians. The attack was conducted with intent to destroy the Hindu religious group of village Krishnapur, either whole or in part, the charge framed arraigns.

179. Tribunal notes that prosecution alleges that successive attacks were launched on the same day and by the same group of attackers being accompanied by the accused persons at villages- Krishnapur, Chandipur-Krishnapur and Godainagar-Krishnapur. These sites were adjacent to each other. Attack launched at Krishnapur resulted in killing 43 Hindu civilians who were made assembled at the Ghatla of Nripen Roy's house by bringing them there on forcible capture, the charge framed arraigns.

180. Pattern and magnitude of the attack naturally did not allow the defenceless villagers to see all the activities carried out by the

gang in accomplishing the killing. Out of eight witnesses P.W.01 is a survived victim, P.W.02-P.W.06 are witnesses to some crucial facts relating to the principal crime, the killing and the other two witnesses i.e P.W.07 and P.W.09 are hearsay witnesses.

Prosecution requires proving that---

- (i) An orchestrated and systematic attack was launched first at village Krishnapur on 18 September 1971;
- (ii) The gang arrived at Krishnapur from Ashtagram by boats and speed boats;
- (iii) The gang formed of the accused Md. Liakat Ali, Aminul Haque @ K.M Aminul Haque @ Rajab Ali and their accomplice Razakars, Al Badars and Pakistani occupation army;
- (iv)The gang in conjunction with the attack carried out looting, forcible capture of defenceless Hindu civilians and caused serious mental harm by causing internal displacement and deportation;
- (v) The gang perpetrated killing of 43 Hindu civilians by taking them at the Ghatla of Nripen Roy's house;

- (vi) The accused persons actively participated and contributed to the commission of the killing, sharing common intent; and
- (vii) Intent of the gang was to cripple and destroy the Hindu religious group, either whole or in part.

181. P.W.01 is a survived victim. He is a resident of village Krishnapur. His testimony demonstrates that the gang, by launching attack at their house detained him [P.W.01] as he could not escape and the squad took him away to the house of Nripen Roy, the killing site.

182. It also transpires that P.W.01 saw the accused Liakat Ali and Aminul Haque @ Rajab Ali present at the house of Nripen Roy, the killing site with the group and also saw 20/25 civilians kept detained under their vigilance. That is to say, it may be presumed that the gang brought those detainees there on forcible capture before the P.W.01 was taken there, detaining him from his house.

183. Keeping the boats and speed boats anchored at the Ghatla of Nripen Roy's house as testified by P.W.01 appears to have been affirmed in cross-examination. Obviously the squad did not come to the rural vicinity on pleasure trip or to materialize any task for effecting well being of civilians. Thus, arrival of the group was intended to conduct attack, it stands proved. These crucial aspects

relating to the attack could not be shattered by the defence in any way. At the same time we do not find any reason to disbelieve P.W.01.

184. Seeing the accused persons present at the killing site as testified by P.W.01 irresistibly leads to the conclusion that they were conscious part of the attack and remained stayed with the gang with intent to play key role in accomplishing the intent of the attack.

185. Of course the accused persons were not with the gang at the killing site as mere spectators. It has been unveiled from testimony of P.W.01, a survived victim that they the 50/52 detainees were made stood in three lines and then accused Md. Liakat Ali, Aminul Islam @ Rajab Ali and one army man started gun firing directing them and thus they fell down on ground when the accused persons started beating them up with stick that resulted in injury on his [P.W.01] forehead and he[P.W.01] and some detainees somehow got survived.

186. The above pertinent piece of evidence of P.W.01 could not be shattered by defence in any way. Rather, in reply to defence question P.W.01 stated that on the day of the event happened at about 08:00 A.M he heard gun firing and he saw a big boat, two small boats and one speed boat kept anchored at the ghat

[anchoring place] of Nripen Roy's house. It in other words has affirmed the act of attack and taking away the P.W.01 at the house of Nripen Roy, the killing site on unlawful capture.

187. After the attackers accompanied by the accused persons had left the killing site P.W.01 saw bullets hit dead bodies of 43 civilians lying in the house of Nripen Roy—P.W.01 the survived victim testified it. Killing those civilians was the upshot of bringing the victims there on unlawful capture, in conjunction with the attack. We do not find any reason to disbelieve P.W.01.

188. It also remained uncontroverted that almost all the residents of the crime village opted internal displacement and some had to deport quitting the locality, apprehending further attack as testified by P.W.01.

189. It appears that crucial facts significantly linked to the killing, the principal crime have been corroborated by the other witnesses, the residents of the crime village who went into hiding to save their lives, in the face of the attack.

190. But Testimony of P.W.01, a survived victim of the attack alone proves indubitably that an organised attack was launched at village-Krishnapur; that the accused persons were at the crime site with the gang chiefly formed of Pakistani occupation army

stationed at Ashtagram, Kishoreganj and that the accused persons actively and culpably participated to the commission of the horrendous killing of 43 Hindu civilians and presumably in accomplishing it the accused persons played key role in effecting unlawful detention of Hindu civilians.

191. However, on totality of evidence of P.W.01, P.W.02 and P.W.03 it depicts that the gang of attackers formed of Pakistani occupation army, Razakars and Al Badars accompanied by accused persons arrived at village- Krishnapur in early morning by boats and gun boats. Sensing the attack P.W.02 and P.W.03 went into hiding. But P.W.01 could not. The gang detained him from his house and took him away to the Ghatla of the house of Nripen Roy [the killing site]. The fact of arrival of the gang of perpetrators gets corroboration even from the evidence of P.W.04, another villager who managed to go into hiding, in the face of the attack.

192. P.W.04 and P.W.05 too went into hiding in the face of the attack launched. They remaining in hiding saw the criminal activities carried out, in conjunction with the attack. It has been unveiled from the evidence of P.W.04 that he remained in hiding till the gang had left the sites and during his staying inside the hiding place he saw the accused Md. Liakat Ali and Aminul Haque @ Rajab Ali and their accomplices carrying out looting

and taking away Baltu and his maternal father-in-law Haricharan. P.W.04 also saw the killing of Jogendra Sutroodhar and Mukunda Sutroodhar and beating one villager. That is to say the accused persons actively participated in effecting killings and devastating activities.

193. The sworn testimony of witnesses as discussed above demonstrates unerringly that after arriving at the crime village by boats and speed boats the accused persons accompanying the squad actively participated even in carrying out the act of looting, by keeping the crime site under their vigilance and watch so that the villagers could not escape. It remained uncontroverted

194. Seeing the accused persons and their accomplices taking away one villager Baltu and his [P.W.04] maternal father-in-law Haricharan on forcible capture as testified by P.W.04 irresistibly proves that the accused persons were with the squad, being part of the criminal enterprise, sharing common intent.

195. We have already found it proved that P.W.01, one of survived victims saw the accused persons and army men firing gun shots directing 50/52 detainees of whom 43 died at the house of Nripen Roy where they the detainees were made assembled and kept detained, on forcible capture.

196. Unshaken testimony of P.W.02 related to the principal crime also demonstrates that the accused persons physically participated in accomplishing the killings. It gets corroboration from evidence of P.W.01 who is a survived victim.

197. It also transpires that P.W.02 upon visiting the killing site found 43 dead bodies and survived injured victims including Haridas Roy [P.W.01] there. Thus, it stands proved that 43 Hindu civilians were gunned down to death by bringing them at the said killing site on forcible capture.

198. P.W.03 also stated that remaining in hiding inside the ditch he heard gun firings and at about 01:00 P.M he heard indiscriminate gun firing from the north end of their village. This fact is linked to the act of killing the detained civilians.

199. The above provides further assurance to what has been testified by the other witnesses in respect of the act of wiping out the Hindu civilians by gun firing. Defense does not appear to have made effort to refute it.

200. He[P.W.03] also saw his villagers Indu Bhushan Roy and his brother Bidhu Bhushan's wife[both are now dead] running to go into hiding when accused Liakat Ali, accused Aminul Islam @

Rajab Ali and an army men resisting them looted gold ornaments and made them freed.

201. The above demonstrates that the gang arrived at crime village and the accused persons were with the group of attackers and they actively participated even in carrying out the act of looting, by keeping the crime site under their violent vigilance and guard so that the villagers could not escape. It remained uncontroverted.

202. Seeing numerous dead bodies lying at the house of Nripen Roy as testified by P.W.03 proves that the massacre was carried out at the house of Nripen where the detained victims were taken by the gang forcibly.

203. P.W.03 did not see conducting the killing, true. But he saw bullet hit injured civilians and dead bodies of a large number of Hindu civilians lying at the place of Nripen Roy's house. Besides, P.W.03 heard from his father that the attack resulted in killing 43 civilians. All these remained uncontroverted.

204. The above rather has affirmed that the P.W.03 sensing the arrival of the gang went into hiding inside a ditch. It makes the testimony of P.W.03 believable. Besides, it transpires that the P.W.03 testified simply what he watched and experience. No exaggeration appears to have been made.

205. Uncontroverted testimony P.W.04 a resident of crime village also connects the accused persons who participated to the commission of the crimes, being part of the criminal enterprise. P.W.04, remaining in hiding, saw the criminal acts carried out by the group formed of Pakistani occupation army, accused persons and their cohorts. Defence could not controvert it.

206. The bush inside which the P.W.04 remained in hiding was few yards far from the killing site. P.W.04 testified it. Thus, it was fairly practicable of witnessing the criminal acts conducted by the gang as testified by P.W.04. It inspires credence to testimony of P.W.04.

207. Defence could not controvert that after the gang had left the site P.W.04 upon visiting found the killing site covered with 43 dead bodies some of whom he could identify and also saw two injured victims receiving treatment.

208. Another witness P.W.05 a resident of the4 crime village too remained in hiding place till the gang had left the sites. He also saw the accused persons and their accomplices taking detained civilians away towards west and later heard gun firing from different ends and also saw looting which was the constituent of devastating acts directing civilians' property and normal livelihood.

209. Such prohibited acts together with mass killing by causing forcible capture cumulatively indicate that the intent of the gang was to wipe out the Hindu religious group of particular vicinity and thus the gang detained only the Hindu civilians for wiping them out and eventually brutally wiped them out, we infer it reasonably.

210. The phase of killing conducted at the house of Nripen Roy gets corroboration as P.W.05 in the evening coming out of hiding place found 43 dead bodies lying there where he found some injured victims as well. Defence could not impeach it.

211. P.W.05 heard from survived victims that the accused persons actively participated in conducting the attack that resulted in mass killing. In context of sudden and horrific pattern and magnitude of attack all the residents of the crime village did not have opportunity of going into hiding.

212. However, many including the witnesses who could escape by staying in hiding place have been examined. But naturally they did not have equal opportunity of experiencing all the aspects of the attack. But their testimony tendered collectively impels the conclusion that target of the attackers was Hindu religious group of the localities under attack and the gang was formed of army men, accused persons and their cohorts belonging to auxiliary

forces which were in fact para militia forces created to collaborate with the Pakistani occupation army, to further policy and plan.

213. Unrefuted testimony of P.W.06, another resident of the crime village also proves the arrival of the gang at village-Krishnapur and deliberate killing of Hindu civilians when they attempted to escape. P.W.6 witnessed these facts which were materially linked to the systematic attack. It has been affirmed that P.W.06 had been at the courtyard of Jaharlal house when he saw the gang coming to their village. P.W.06, his wife and father remained in hiding till 03:00 P.M.

214. It transpires that at a stage, his [P.W.06] father was gunned down to death and he [P.W.06] was taken away from the hiding place to the Ghatla of Chitta Das's house of their village [the killing site of the event as narrated in charge no.03]where he found 30/32 Hindu civilians detained and of them 26 were killed by gun shots. P.W.06 however survived.

215. Killing of 26 Hindu civilians as narrated in charge no.03 was conducted on the same day by the same gang of attackers at the adjoining vicinity. Thus, it was chained to the event of attack as narrated in charge no.01.

216. Thus seeing the accused persons accompanying the gang as testified by the P.W.06 in accomplishing the killing at Chitta Das's house [ as narrated in charge no.03] leads to the unmistakable conclusion that the accused persons were also consciously engaged, being part of the criminal enterprise intending to participate, assist and facilitate the criminal mission by accomplishing the killing 43 Hindu civilians at the house of Nripen Roy as narrated in the charge no.01, sharing common intent.

217. Besides, it remained uncontested that P.W.06 heard from some survived victims that the gang being accompanied by the accused persons had killed 43 Hindu civilians at the Ghatla of Nripen Roy's house. This piece of hearsay evidence cannot be brushed aside as it gets assurance from the fact of seeing 43 dead bodies lying at the house of Nripen Roy, the killing site.

218. The Defence attacked the credibility of most of prosecution witnesses. The Defence submitted that most of the witnesses who claimed that they saw the accused persons with the gang had no reason of knowing them. The Defence further submitted that some of these witnesses could not identify the accused persons.

219. Tribunal notes that there has been no rationale of discarding the testimony of witnesses examined. Defence, by cross-

examining them, could not shatter what they testified on crucial facts linked to the commission of the principal crimes and as such their sworn version carries trustworthiness. In this regard we recall the observation of the **Appellate Division** made in the case of

**Delwar Hossain Sayedee** which is 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. [**Delwar Hossain Sayedee Judgment, page 138-139]**

220. Next, merely for the reason that P.W.07 and P.W.09 are hearsay witnesses their testimony cannot be kept aside. P.W.07 and P.W.09, the two hearsay witnesses chiefly testified the event narrated in charge no.05. Additionally, they stated what they heard about the killings accomplished by launching attack at villages-Krishnapur, Chandipur and Godainagar as narrated in charge nos. 01-04. It is now settled that hearsay evidence is not inadmissible *per se*. It may be taken into account together with other evidence.

221. In the case in hand, it stands proved beyond reasonable doubt from the direct evidence of six other witnesses that large scale killing of Hindu civilians occurred at those villages and the accused persons were actively with the squad at the crime sites and they participated and provided substantial contribution and facilitation to the commission of such horrific annihilation.

222. Subsequent to these attacks that resulted in killing of hundreds of Hindu civilians it was likely for the neighbouring people to hear the monstrous event which in fact became an anecdote.

223. The testimony in respect of initiation of attack as discussed above could not been discredited in any way. The witnesses testifying this aspect are natural and competent witnesses, who had no reason to falsely depose against the accused persons and we find it safe to rely upon their testimony.

224. The facts they testified are of clinching nature and all of them irresistibly lead to the conclusion that the accused persons were with the gang and actively participated in accomplishing the killing. The circumstances unveiled seem to be consistent only with the hypothesis of the guilt of the accused persons and are totally inconsistent with their innocence.

225. Besides, the act of mass killing of Hindu civilians does not seem to be disputed. Naturally, the event of large scale killing of Hindu civilians became anecdote around the localities and it gets assurance from the direct witnesses who watched the facts materially related to the criminal mission. Therefore, the hearsay evidence of P.W.07 and P.W.09 carries probative value and we find no room to keep it aside from consideration.

226. The narrative made in the book titled *Omtj tU MYnZ* also speaks of the horrific attack launched at village Krishnapur. The book narrates that—

j vLvB DctRj vi cDtg Ktkvi MÄ tRj v Aew-Z/  
Ktkvi MÄ tRj vi AóMög \_vbv m`ti wQj cvKewbxi  
GKU k3kvj x NwU/ GLvb t\_tK 20 tmPxt tfvi i vtZ  
8/10 wU tbSKv I GKU w-uWtevtU ej f~ b~ x w`tq ~Z  
teM i I qvbr nq/ w-uWtevtU wQj nvbr`vi ewnbxi  
`j tbZv/ ZvB tbZtZj QBI qvj v KtqKU tbSKvq Ae~b  
Ki wQj 10/12 Rb cvKtmbv, tmB mvf\_ cPz msL^K  
iRvKvi/ tfvi cvPvri gta~ w-uWtevtU Ges tbSKv ,tj v  
Kcyc Mög tcStQ hq/ MöguK Pvi w`K t\_tK tNivI Kti  
tdtj Zviv/ tbSKv t\_tKB MöguUi Pvi w`K j y~ Kti Zviv  
Gtj vcvZmo ,wj QatZ ii x Kti/ Zv~i ,wj tZ gwby I

Mew` ci' bnZ ntZ \_itK || mg -i Mötg Ptj gZ yAvi  
 aYstmi GK ZvÜebZ | .....cV K nvbi` vi I  
 Zvt` i c` tj nx ekse` ivRvKvi i v Mötg XKtZ ii aKti | G  
 mgq Zvt` i migtb cov AmsL tji vKtK Zviv ,y Kti  
 nZv Kti | .....MöguUtk cwi bZ Kti Kvi eyj vi  
 cišti |

**Iml t Amijtu MYnZv ZvRy tgwip: eBtqi cgv-199:**  
**cñKDkb Gi `wyjyK f j gyGi cgv-164]**

227. The above narrative though not states presence of accused persons with the gang indisputably provides corroboration to the fact of launching monstrous attack at village-Krishnapur as unveiled from testimony of survivors. Defence does not question the authenticity of narrative made in this book.

228. The author of the book might not be able in collecting information about the presence of the accused persons with the squad. Nevertheless the narrative speaks of presence of Razakars with the gang and it together with the direct evidence leads to the conclusion that the accused persons in exercise of their potential affiliation with the Razakar Bahini and Al Badar Bahini were also with the squad, sharing common intent.

229. Accused Rajab Ali is a self-declared Al Badar. In 1972 he was prosecuted under The Collaborators Order, 1972 and was convicted and sentenced in two cases of Ashtagram police station. The relevant papers relied upon by the prosecution demonstrates that he was so prosecuted for the criminal acts constituting the offences punishable under the Penal Code. Presumably, he had culpable nexus with the Pakistani occupation army stationed in Ashtagram. It is to be noted that the narrative made in the book speaks of existence of army camp at Ashtagram.

230. Admittedly, in 1971 Krishnapur was remote vicinity under police station-Lakhai of District [now]- Habiganj and it was located in swamp alongside the river Balabhadra. It is found from evidence tendered that the village-Krishnapur and neighbouring localities were Hindu dominated in 1971.

231. It transpires that on the day of the event conducted the gang formed of Pakistani occupation army, Razakars, Al Badars and the accused persons arrived at village-Krishnapur from Ashtagram camp in Kishoreganj by boats and speed boats and encircled the entire village. Then the gang started firing indiscriminately as they entered the village. The gang started patrolling around the village. It has been unveiled that the accused persons, their accomplices and army men then began looting.

232. Sensing the attack and on hearing sudden indiscriminate gun firing the residents of the crime village and neighbouring localities attempted to escape and thus went into hiding wherever they could---it has been found proved from the evidence of residents of the crime village. Defence could not controvert it in any manner. We find no reason to disbelieve it and thus this proved fact provides indubitable suggestion that the squad targeting the Hindu dominated locality had launched the attack directing the Hindu community.

233. What was the intent of targeting the Hindu community of village-Krishnapur and neighbouring localities? Intent was to destroy or cripple the Hindu religious group. Magnitude and pattern of the attack unerringly suggest this conclusion.

234. In 1971, during the war of liberation the Pakistani occupation army and their local collaborators had plan to make the then East Pakistan free of Hindus. It was their one of policies and plans. History says it. **Mofidul Hoque** in his article titled '**A Forgotten Genocide**' published in **The Daily Star** states that ---

`The attack against the Bengali population especially targeting Hindus clearly showed the intent of the perpetrators to annihilate either wholly or partially a particular religious group.

Most of the criminality was aimed at making  
East Pakistan free of Hindus.'

[**The Daily Star, November 18, 2014 Bangladesh 1971: A Forgotten Genocide:** Mofidul Hoque: [www.thedailystar.net/bangladesh-1971-a-forgotten-genocide-50941](http://www.thedailystar.net/bangladesh-1971-a-forgotten-genocide-50941)]

235. Proved destructive activities together with unlawful detention, deliberate killings by creating horror and panic by launching successive attacks in the Hindu dominated localities collectively suggest the inference that the intent of the gang was to destroy the Hindu religious group, in whole or in part.

236. The accused persons are found to have had direct participation in committing crimes against Hindu communities. The victims were systematically selected because they belonged to the Hindu religious group and for the very fact that they belonged to the said group. Such selective attack would not have been possible to carry out without the substantial contribution of the accused persons and their cohort Razakars and Al Badars who were familiar with the Hindu dominated localities.

237. The accused persons played 'key coordinating role' in carrying out the attacks. The pattern and magnitude demonstrates that the gang had a 'high level and deliberate genocidal plan'. It is

not necessary to prove that the perpetrators intended to achieve the complete annihilation of the entire Hindu religious group. It is not necessary for the Prosecution to establish that the perpetrators intended to achieve the complete annihilation of the Hindu community of crimes villages.

238. The intent of the group of attackers was to accomplish certain specific types of destruction against the Hindu religious group of selected vicinity which could not have been attacked without the assistance and aid of the accused.

239. Tribunal finds that the only reasonable conclusion is that the accused persons who physically perpetrated the killings, being part of the criminal enterprise possessed the intent to destroy in whole, or in part, the Hindu religious group of the crimes village Krishnapur and thus the criminal acts carried out constituted the offence of genocide. Genocide is a crime requiring specific intent, and this intent may be proven through inference from the facts and circumstances of a case.

240. The ICTY Trial Chamber notes that it is generally accepted in the jurisprudence of the Tribunal and of the ICTR that, in the absence of direct evidence, the specific intent for genocide can be inferred from “the facts, the concrete circumstances, or a 'pattern

of purposeful action”.[ICTY Trial Chamber, IT-99-36-T, 1 September 2004, Radoslav Brsanin, para 704]

241. The facts and circumstances together with the magnitude of the attack lead to the inference that the accused persons are culpable because they knew or should have known that the act they committed would destroy, in whole or in part, the Hindu religious group. Thus, the accused persons had acted intentionally that they were contributing to the crime of genocide directing Hindu religious group, we are convinced to arrive at this rationale presumption.

242. ‘Key co-ordinating role’ played by the accused persons, being part of the criminal enterprise indicates that their participation was of an extremely significant nature. Participation of accused persons in a joint criminal enterprise was more akin to direct perpetration or accomplice liability. It gets support from the observation of ICTY in the case of **Brdjanin which is as below:**

“The Trial Chamber regards genocide under Article 4(3)(a) as encompassing principal offenders, including but not limited to the physical perpetrators and to those liable pursuant to the theory of [joint criminal

enterprise.” [Brdjanin, ICTY Trial Chamber, September 1, 2004, para. 727]

243. We have found it proved that upon arrival at the execution site, the survived villagers including many of the witnesses examined in Tribunal saw the killing field covered of bodies of the Hindu civilians who were brought to the execution site before they were killed. After having witnessed the executions of relatives and near ones and in some cases suffering from injuries the survived victims sustained indisputably inflicted further mental anguish and harm, we are forced to deduce it taking the totality of facts and circumstances unveiled. The **ICTR Trial Chamber** in the case of **Kayishema and Ruzindana** observed that-

“The Chamber is in no doubt that a third party could suffer serious mental harm by witnessing acts committed against others, particularly against family or friends.”

[**Kayishema and Ruzindana, (Trial Chamber), May 21, 1999, para. 153**]

244. The trauma and mental harm the survived Hindu civilians sustained on seeing dead bodies of their dear and near ones cannot be weighed in any way. At the same time it made them extremely

terrorized too that resulted in their internal displacement and deportation. All these together caused serious mental harm to them which was a constituent of the offence of genocide. In this regard we recall the decision of the **ICTY** made in the case of

**Blagojevic and Jokic** which is as bellow:

“The Trial Chamber finds that there is sufficient evidence to establish beyond reasonable doubt that the trauma and wounds suffered by those individuals who managed to survive the [Srebrenica] mass executions does constitute serious bodily and mental harm.”

[**Blagojevic and Jokic**, ICTY Trial Chamber,  
January 17, 2005, paras. 647-649]

245. The term "destroy" as required in the genocide definition encompasses the internal displacement or forcible transfer of the survived members of the targeted group.

246. It appears from the evidence presented that immediately after the massacres, many of the remainder of the Hindu population of the crime localities got internally displaced being panicked and traumatized which was a patent manifestation of the specific intent to rid the crime villages of its Hindu civilian population, we infer it reasonably.

247. The massacre had an impact on the Hindu religious group of the crime villages beyond the death of the civilians annihilated. It also intended to send a message to the survived members of the group of their fate – that their lives, too, could be taken at any time.

248. It is now jurisprudentially settled that there is no numeric threshold of victims necessary to establish genocide. That is to say, there is no upper or lower limit to the number of victims from the protected group. At the same time complete destruction of a protected group is not required to be established to prove the offence of genocide.

249. On cautious appraisal of evidence tendered it stands proved that the accused persons were responsible for committing and also for otherwise substantially aiding and abetting in the planning, preparation and execution of the massacre that resulted in killing a large number of Hindu civilians and serious bodily and mental injuries with intent to destroy the Hindu religious group which constituted the offence of ‘genocide’.

250. It is now settled that for the crime of genocide to occur, the mens rea must be formed prior to the commission of the genocidal acts. In the case in hand, pattern of the attack suggests that it was to further the genocidal intent. Attack was a purposeful criminal

mission and it together with the magnitude of killing mission demonstrates that plan and intent of the gang was to wipe out or destroy the Hindu community of the localities it attacked, in whole or in part.

251. What constitutes the ‘destruction of a group’? In this regard we echo the settled proposition that it is not necessary to intend to achieve the total annihilation or destruction of a protected group from every place of the territory. In this regard we may seek guidance from the decision of the **ICTR** made in the case of **Muvunyi** which is as below:

“At the very least, it must be shown that the intent of the perpetrator was to destroy a substantial part of the group, regardless of the number of victims actually involved.”

**[Muvunyi, (Trial Chamber), September 12, 2006, para. 483]**

252. We have found it proved that the horrific criminal acts were directed towards the Hindu community of the crime villages under police station- Lakhai, a specific group and the attacks eventually resulted in brutal annihilation of hundreds of defenceless Hindu residents, looting households, mental harm to survived civilians

and internal displacement. This impels irresistible conclusion that the intent of the squad was to destroy the Hindu religious group and it made them enthused in launching attacks at Hindu dominated localities.

253. Already in resolving the charge no.01 which relates to violent attack directing Hindu community of village-Krishnapur it stands proved that the criminal acts carried out by the squad resulted in killing 43 Hindu civilians , serious mental harm and destruction of civilian objects cumulatively intended to destroy the Hindu religious group, in whole or in part.

254. It transpires that chiefly the accused persons coordinated the attack in accomplishing the killings. The pattern and magnitude of the attack demonstrates that the gang had a ‘high level and deliberate genocidal plan’. It is not necessary to prove that the perpetrators intended to achieve the complete annihilation of the entire Hindu religious group.

255. Prosecution is not required to establish that the perpetrators intended to achieve the complete annihilation of the Hindu community of crimes villages. In this regard we recall the observation made by the **ICTR** Trial chamber in the case of **Seromba** that --

“To establish specific genocidal intent, it is not necessary to prove that the perpetrator intended to achieve the complete annihilation of a group throughout the world.”

**[Seromba,(Trial Chamber), December 13, 2006, para. 319]**

256. Aiding and abetting may assume a variety of forms of assistance, including mere presence at the scene of the crime which substantially encouraged the gang of perpetrators or provided them psychological support. In the case in hand, the accused persons are found to have had actively assisted and aided the squad in accomplishing the criminal mission, in addition to physical participation to the commission of killing some of victims.

257. The accused persons and their accomplices and the army men had the common intent to exterminate the Hindu religious group and the accused persons were key instrumental in accomplishing the mission.

258. In addition to physical participation to the commission of killings the accused persons’ potential position in Razakar and Al Badar Bahini constitutes a pertinent factor in determining whether

their act and conduct lent encouragement and facilitation in perpetrating the massacre.

259. The gang of perpetrators being accompanied and aided and assisted by the accused persons carried out conscious, intentional or volitional criminal acts knowing consequences which were likely to result.

260. Non-physical aggressions such as the infliction of strong fear or strong terror, intimidation or threat are also serious mental harm. Prosecution witnesses including some survived victims watched the accused persons and their cohorts and army men committing looting, forcibly capturing defenceless civilians, beating detainees and gunning them down to death, remaining in hiding.

261. We emphatically observe that sometimes physical attack done to one causes serious mental attack to other. All the heinous acts were conducted within the sight of witnesses examined which made them severely terrorized and intimidated. Obviously it was rather graver than physical aggression which caused immense and serious mental harm and trauma to them. Inflicting such serious mental harm was rather in pursuit of the specific intent to destroy the Hindu community, in whole or in part. The entire attack was

thus calculated to cause physical destruction of the Hindu community.

262. Accused persons are found criminally responsible based on their conscious participation in a joint criminal enterprise to kill the Hindu civilians at crime villages. Witnesses' accounts show sufficiently that it was a large-scale massacre that resulted in numerous deaths of non combatant Hindu civilians, a 'particular religious group'.

263. It has been found proved too that the event of the massacre attributed to the accused Md. Liakat Ali and Aminul Islam @ K.M Aminul Haque @ Rajab Ali were not the outcome of an individual action but it was the consequence of the activities of a group formed of Pakistani occupation army, Al-Badars and Razakars to which they were active part and by their participation and conscious acts, facilitated to carry out the operation, at its preparatory stage and its actual commission stage too.

264. The massacre committed at village-Krishnapur targeting the Hindu community constituted blatant denials of fundamental rights that indisputably had a severe impact not only on the victims but also on the survived segment of the Hindu community of the crime village.

265. In the case in hand, it has been well depicted from evidence tendered that the accused persons not only remained physically present with the gang at the crime site as mere spectators but they had played a significantly culpable role in conducting the criminal mission directing Hindu religious group of village-Krishnapur. Apart from this, it is evinced too that by being present during the attack the accused persons actively participated through gunning down some of Hindu civilians to death.

266. The Tribunal finds it proved beyond reasonable doubt that the accused persons participated in the attacks at the Hindu populated rural vicinities, and that the accused persons were fully aware that their actions formed part of a systematic attack. The accused persons were not only “concerned in the killing” by providing substantial contribution and assistance to the commission of the crime in the knowledge that the crime was going to be committed, but they consciously physically participated in perpetrating the mass killing of a large number of civilians for the reason that they belonged to Hindu religious group. Prosecution has been able to establish the ‘genocidal requirement’ and ‘group requirement’ for bringing the event within the ambit of the offence of ‘genocide’.

267. Acts and conduct of accused persons substantially lent assistance, encouragement, facilitation and moral support to the

perpetration of the appalling crimes. And thus, they knowingly acted pursuant to a common purpose which made them responsible under the doctrine of first category of JCE [Basic Form], we conclude. Presumably, the accused Md. Liakat Ali and Aminul Islam @ K.M Aminul Haque @ Rajab Ali and their cohorts substantially contributed to the commission of the criminal acts, in exercise of their potential affiliation in auxiliary forces-- Razakar Bahini and Al Badar Bahini and thus they incurred equal liability under the doctrine of JCE [Basic Form]. This view is in conformity to the provisions in respect of 'liability' contained in section 4(1) of the Act of 1973.

268. On cautious appraisal of evidence presented as made above we eventually arrive at decision that the prosecution has been able to prove that the accused (1) Md. Liakat Ali and Aminul Islam @ K.M Aminul Haque @ Md. Aminul Haque Talukder @ Rajab Ali are found criminally liable under section 4(1) of the Act of 1973 for participating, abetting, assisting, substantially contributing, by their act and conduct forming part of systematic attack, to the accomplishment of devastating criminal activities and mass killing constituting the offences of '**genocide**' as enumerated in section 3(2)(c)(i)(ii)(g)(h) of the Act of 1973 which are punishable under section 20(2) of the said Act.

## **Adjudication of Charge No.02**

### **[Genocide, torture and plundering committed at village-Chandipur Krishnapur under Lakhai Police Station]**

269. That after commission of genocide and crimes against humanity at Krishnapur village under Lakhai Police Station of the then Habiganj Sub-Division [now district] from 05.00 A.M. to 01.45 P.M. on 18.09.1971 as arraigned in charge no. 01, accused Md. Liakat Ali, commander of Razakar Bahini of Fandauk Union under Nasirnagar Police Station of the then Brahmanbaria Sub-Division [now district] and accused Aminul Islam alias Rajab Ali alias K.M. Aminul Haque alias Md. Aminul Haque Talukder, the then Al-Badar commander [previously Razakar] of Ashtogram Police Station of the then Kishoreganj Sub-Division [now district] along with other accompanying members of Razakar and Al-Badar Bahini and Pakistani occupation army rushed towards Chandipur Krishnapur village, about 200/250 yards away from the house of Nripen Roy of Krishnapur village, under Police Station-Lakhai of the then Habiganj Sub-Division [now district] and looted the houses of that village and then with intent to destroy, in whole or in part, the Hindu religious group killed 09[nine] Hindu people of which 05[five] victims namely, Chandra Kumar Roy, Joy Kumar Roy, Shanta Roy, Madan Roy and Dashu Sukla Baidda, all of said Chandipur Krishnapur village were identified.

In conjunction with the same attack, the accused persons and said companions injured Sukomal Roy [now dead] and Sarada Roy [now dead]. Thereafter, the villagers floated the dead bodies in the nearby haor and river after 04.30/05.00 P.M. on that day as there was no arrangement for cremation, and arranged treatment of the injured victims.

Therefore, accused (1) Md. Liakat Ali, and (2) Aminul Islam alias Rajab Ali alias K.M. Aminul Haque alias Md. Aminul Haque Talukder have been charged for participating, abetting, facilitating, contributing and complicity in the commission of offences of genocide, torture and plundering [other inhumane act] as crimes against humanity as part of systematic attack directed against unarmed civilians as enumerated in section 3(2)(a)(c)(g)(h) of the Act of 1973 which are punishable under section 20(2) of the said Act for which the accused persons have incurred liability under section 4(1) of the Act of 1973.

### **Evidence of witnesses Examined**

270. Charge no.02 involves the killing of nine [09] Hindu civilians of village- Chandipur Krishnapur adjacent to village- Krishnapur. It is to be noted that the events of attacks as narrated in first 04 charges happened on the same day and by the same group of attackers, as arraigned. The witnesses who have been examined as P.W.01-06 testified the facts materially related to charge no.01.

They are the residents of the crime localities. P. W. 09 is hearsay witness.

271. In addition to narrating what they watched and experienced in respect of the event narrated in charge no.01 they also testified facts materially related to the event of attack launched at village-Chandipur Krishnapur that resulted in killing of nine[09] Hindu civilians.

272. Now, for the purpose of adjudicating this charge no.02 we deem it just to focus the testimony of these witnesses so far as it relates to the principal crime, the killing conducted at village-Chandipur-Krishnapur together with the facts they testified in relation to the attack and presence of the accused persons with the group of attackers at the crimes sites. Now, let us see what the witnesses relied upon by the prosecution testified in respect of the arraignment brought in this charge no.02.

273. P.W.01 Haridas Roy [66]is a resident of village-Krishnapur. He is a survived victim of the event narrated in charge no.01. P.W.01 is a hearsay witness in respect of the charge under adjudication. Two survived victims of the event of attack narrated in charge no.02 were the source of his knowing about the event of attack and complicity of accused persons therewith.

274. P.W.01 stated that at about 05:00 P.M on the day of the event of attack [happened on 18 September 1971] he being accompanied by Nripen Roy [now dead], Anjan Kumar Roy [now dead], Sanju Roy [now dead], Sukumar Roy [now dead] and Banobihari Roy [now dead] who too sustained injuries moved towards the house of Sukla Baddya of village-Chandipur-Krishnapur [crime site of the event narrated in charge no.02] where they found nine[09] bullet hit dead bodies lying at the courtyard. They also found injured Sukamal Roy and Sarada Roy there. He could identify four of civilians killed as his relatives.

275. P.W.01 next stated that he heard from injured Sukamal Roy and Sarada Roy that accused Liakat Ali and Aminul Islam @ Rajab Ali, their accomplice Razakars , Al Badar and Pakistani occupation army after carrying out the killing at the house of Nripen Roy[as narrated in charge no.01] by launching attack at village –Chandipur Krishnapur looted 14/15 house , detained 11 Hindu civilians and then made them assembled at the courtyard of the house of Sukla Baddya where they gunned down nine detainees to death and two however got survived.

276. In cross-examination P.W.01 denied the defence suggestion that what he testified was untrue; that the accused were not Razakar or Al Badar and that he did not hear the event he testified.

P.W.01 in reply to defence question stated that in 1971 accused Liakat Ali was Razakar commander.

277. P.W.02 Nripen Krishna Roy [64] is a resident of village-Krishnapur. Already he testified what he witnessed in relation to the event narrated in charge no.01. The gang had carried out criminal activities at their house which he witnessed remaining in hiding, P.W.02 already testified it.

278. In respect of the event narrated in charge no.02 P.W.02 stated that 30/35 minutes after the gang had left their house he heard gun firing and loud piercing outcry from the end of village-Chandipur-Krishnapur and thus they guessed that the gang had attacked that village too. P.W.02 next stated that at about 03:00 P.M he heard indiscriminate gun firing from the west-south end of village Chandipur-Krishnapur.

279. P.W.02 also stated that at about 04:30 P.M on the same day he along with injured Haridas Roy[P.W.01] and Bono Bihari Roy moved towards village-Chandipur-Krishnapur where they found nine [09] dead bodies lying at the courtyard of the house of Dasu Sukla Baddya where they discovered Sukumar Roy and Sarada Roy in injured condition and he knew from them that the Pakistani occupation army, Razakars and Al Badars detained Hindu civilians from their houses and bringing them at the house of

Sukla Baddya made them stood in a line and then accused Liakat Ali and Aminul Islam gunned them down to death.

280. In cross-examination P.W.02 denied the defence suggestion that he did not hear the event he testified; that he did not know the accused persons; that what he testified was untrue and that being influenced by the political rival of accused Liakat Ali he testified implicating him falsely. P.W.02 however admits that accused Liakat Ali was elected president of Lakhai Thana Awami League in 2007.

281. P.W.03 Hirammon Sharma [63] is a resident of village Krishnapur [Gokulpara] under police station-Lakhai of District [now]-Habiganj. In 1971 he was about 17 years old. In addition to testifying the arrival of the gang of perpetrators at their village and the facts related to the event of attack carried out by the gang he testified also the facts related to the events narrated in charge no.s 02,03 and 04. His sworn testimony demonstrates that after launching attack at their village [as narrated in charge no.01] he went into hiding inside a ditch nearer to their house.

282. In respect of the attack launched at their neighbouring village- Chandipur- Krishnapur[ as narrated in charge no.02] P.W.03 simply stated that at about 02:00 P.M he could hear

indiscriminate gun firing from the end of village- Chandipur-Krishnapur, remaining in hiding inside the bush.

283. In respect of the event of killing, P.W.03 is a hearsay witness. He [P.W.03] stated that on the following day he heard from his father that the accused Liakat Ali, Rajab Ali, their cohorts and Pakistani occupation army had wiped out nine [09] civilians at the house of Sukla Baddya of village-Chandipur-Krishnapur.

284. P.W.04 Amal Krishna Roy[76] is a resident of village-Krishnapur under police station-Lakhai of District[now]- Habiganj , the crime site which was attacked first [ as narrated in charge no.01].P.W.04 in addition to narrating what he experienced in conjunction with this attack also testified some facts crucially linked to charge nos.02,03 and 04.

285. It is to be noted that P.W.04 already testified that he went into hiding inside a bush as the gang arrived at their village being accompanied by the accused Liakat Ali and Rajab Ali and he as well saw the gang carrying out criminal activities that resulted in killing, looting and detaining civilians.

286. In respect of the event of attack as arraigned in charge no.02 P.W.04 stated that remaining in hiding he at about 01:00 P.M heard frequent gun firing from the west end and an hour later he furthermore heard indiscriminate gun firing from the end of village- Chandipur- Krishnapur.

287. P.W.04 also stated that at about 04:00-04:30 P.M he came out of the hiding place and spending night at home, on the following day he along with family inmates took shelter at village- Bamoi wherefrom they returned back 4/5 days later when he heard from Nripen Roy, Haridas Roy and Bono Bihari Roy that the Razakars he named and Pakistani army men conducted its killing mission at the house of Sukla Baddya of village- Chandipur- Krishnapur. The attack resulted in killing nine [09] civilians including Joy Kumar, Dasu Sukla Baddya and Madan Roy and Sukomal Roy and Sarada Roy got injured, P.W.04 stated.

288. In cross-examination P.W.04 stated in reply to defence question that the house of Sukla Baddya[ crime site of the event narrated in charge no.02] was about 100 yards west at village- Chandipur from their house. P.W.04 denied the defence suggestion that he did not know the accused persons; that he did not hear anything about the killings; that the accused persons did not belong to auxiliary force[s] and what he testified was untrue and tutored.

289. P.W.05 Bablu Roy [56] is a resident of village-Krishnapur under police station-Lakhai of District [now] Habiganj. In 1971 he was 11 years old. He sensing the attack with frequent gun firing at their village went into hiding inside a latrine wherefrom he saw the accused Liakat Ali, Rajab Ali their cohorts and army men forcibly taking away some Hindu civilians towards west.

290. In testifying in support of the event of attack narrated in charge no.01 P.W.05 has made the above version. In addition to it and other facts he experienced, in respect of the event of attack narrated in this charge no.02 P.W.05 stated that he heard gun firing from west end, remaining in hiding and about one hour later he heard gun firing as well from the end of village-Chandipur Krishnapur.

291. What more P.W.05 testified in respect of the event arraigned in charge no.02? P.W.05 stated that at about 06:00 P.M on the same day he returned back home and in the next early morning went away to village Jirunda quitting their village, apprehending further attack. 10/12 days later, he along with other villagers came back home and heard from Haridas Roy [P.W.01], Nripen Roy and others that on the day of the event of attack conducted the two accused he named, their accomplices and army men looted households, detained 11 Hindu civilians by launching attack and

then gunned down nine [09] to death and two somehow got survived.

292. Finally, P.W.05 stated that he knew the accused persons beforehand as they very often used to visit Chakbazar of their village.

293. In cross-examination, P.W.05 denied the defence suggestion that he did not know the accused persons; that he did not hear anything about the event of killings; that they did not belong to auxiliary force and what he testified was untrue and tutored.

294. P.W.06 Sunil Chandra Das [70] chiefly testified what he experienced, remaining in hiding, in conjunction with the attack launched at village-Godainagar [as narrated in charge o.03]. He is a resident of village- Godainagar- Krishnapur where the same gang of perpetrators conducted criminal activities on the same day as a part of consecutive attack directing Hindu civilians[ as narrated in charge no.03].

295. P.W.06 stated that on 18 September 1971 in early morning he saw the gang formed of Pakistani occupation army, Razakars and Al Badars moving towards village-Krishnapur by boats and speed boats, coming from the end of Ashtagram, went to their village and with this the villagers started escaping wherever they could

when the army men gunned down some of them to death. He [P.W.06] along with his father and wife went into hiding inside a bush nearer to their house. Till 03:00 P.M he [P.W.06] remained stayed inside the bush, P.W.06 stated. Just before 02:00 P.M he could hear indiscriminate gun firing from the end of village-Chandipur Krishnapur.

296. In respect of killing conducted at the house of Sukla Baddya P.W.06 stated that on the same day in evening after the gang had left the sites he heard from Nripen Roy, Haridas Roy[P.W.01], Banobihari Roy, Nabadip Roy and others that nine [09] were killed and two got injured at the house of Sukla Baddya of village-Chandipur[Chandipur Krishnapur] and then he upon visiting the house of Sukla Baddya could identify the dead bodies of Dasu Sukla Baddya, Chandra Kumar, Joy Kumar and Dasu Sukla Baddya lying there.

297. P.W.06 is one of victims of the event narrated in charge no.03. He also testified what happened to him and his father when they remained stayed inside the bush. Testimony on this crucial matter the P.W.06 made seems to be indisputably linked even to the act of the event of killing of nine [09] civilians as narrated in charge no.02.

298. It is found that in narrating criminal acts constituting the offences as arraigned in charge no.03 P.W.06 stated that the accused Liakat Ali, Rajab Ali and two army men made the detainees including him stood in three lines at the north-west corner of the house of their villager Chitta Das, before gun shots were fired to them when he got survived miraculously.

299. Finally, P.W.06 stated that he knew the accused persons beforehand as they used to visit Krishnapur Chakbazar very often.

300. In cross-examination P.W.06 in reply to defence question stated that the village-Chandipur [Chandipur Krishnapur]was about 150 yards north-east to their house. P.W.06 denied the defence suggestion that he did not know the accused persons; that the accused persons were not Razakar and Al Badar and that what he testified was untrue and tutored.

301. P.W.09 Md. Jummon Mia [63] is a resident of village Fandauk under police station- Nasirnagar of Distract [now] Brahmanbaria. He is the son of the victim of the event of killing as narrated in charge no.05. In addition to narration he made in respect of facts materially related to the event of attack that resulted in his father's killing P.W.09 simply stated that one month after his father was killed he heard that accused Rajab Ali, Liakat Ali and the Pakistani army men coming from Ashtagram

had killed hundreds of Hindu civilians by launching attack at villages- Krishnapur, Chandipur and Godainagar.

### **Findings with Reasoning on Evaluation of Evidence**

302. Mr. Rana Das Gupta the learned prosecutor submitted that the event arraigned in this charge was continuance of the attack conducted at village-Krishnapur. The crime sites were Hindu dominated. The gang targeted the civilians belonging to Hindu religious group of village-Chandipur- Krishnapur with same intent i.e intent to destroy the Hindu religious group, either whole or in part. The witnesses testified facts materially related to this charge are residents of both crime localities i.e. villages- Krishnapur and Chandipur-Krishnapur.

303. The learned prosecutor went on to submit that evidence presented shall demonstrate that village-Chandipur- Krishnapur was about 150-200 yards far from the crime scene of the event arraigned in charge no.01 and thus the residents of village Krishnapur had reasonable opportunity of witnessing acts forming part of attack launched at Chandipur-Krishnapur although it was not practicable for all the witnesses of seeing the actual killing. But the event of killing conducted just after the criminal mission carried out at village-Krishnapur does not appear to have been disputed by the defence, and the event of killing 09 Hindu

civilians constituted the offence of ‘genocide’, the learned prosecutor added.

304. Mr. Gaji M.H Tamim the learned state defence counsel submits that in context of alleged horrific pattern of attack it was not practicable of seeing the event of attack and thus what the prosecution witnesses testified in this regard is not credible. Six P.W.s relied upon by the prosecution are hearsay witnesses in respect of the alleged killing and they did not state the presence of the accused persons with the gang. P.W.03 testified implicating the accused persons out of rivalry. Prosecution could not prove the involvement of the accused persons with the commission of alleged event of killing at village-Chandipur Krishnapur.

305. Tribunal notes that this charge involves killing of 09 Hindu civilians, the residents of village-Chandipur-Krishnapur, the adjacent vicinity of village-Krishnapur. It has already been proved that the gang formed of Pakistani occupation army, the accused persons and their cohorts by launching attack first at village-Krishnapur accomplished killing of 43 Hindu civilians, with intent to destroy the Hindu religious group, in whole or in part. That is to say, the accused persons have been found liable for committing the offence of ‘genocide’. We have rendered our reasoned finding

based on facts and circumstances unveiled on this issue [in adjudicating charge no.01].

306. Now, the event of killing of 09 Hindu civilians of village-Chandipur-Krishnapur [as narrated in charge no.02] was the next phase of the criminal mission conducted by the same group of attackers, it transpires from the charge framed and also from the evidence presented by the witnesses.

307. In adjudicating the charge no.01 it has been found that the witnesses testified not only the facts related to the event of attack launched at village-Krishnapur but they narrated crucial facts which relate also to the event of attacks as narrated in charge nos. 02, 03 and 04 as well. Those witnesses were the residents of crime villages and they somehow managed to go into hiding wherefrom naturally they experienced the criminal activities carried out by the criminal enterprise for couple of hours.

308. Attacks were carried out successively at villages- Krishnapur, Chandipur-Krishnapur and Godainagar- Krishnapur. The gang had left the crime sites couple of hours after it started carrying out attacks directing Hindu population of those vicinities. It has already been proved. We have already rendered reasoned finding on it, as the same has been considered relevant also in resolving the charge no.01.

309. Since in adjudicating charge no.01 it has been found well proved that the accused persons were with the gang, being part of the criminal enterprise and actively participated, aided and assisted in perpetrating the horrific killing and other devastating criminal acts and the same gang then moved to village-Chandipur-Krishnapur we do not consider it necessary to make any comprehensive repetition by making analysis of evidence in respect of this aspect.

310. The act of killing 09 Hindu civilians of village-Chandipur-Krishnapur remained undisputed. Defence could not controvert it in any manner. Defence simply denied accused persons' presence at the crime site with the gang and their involvement to the commission of the killing.

311. Thus, and in view of reasons stated herein above chiefly the matters need to be proved are that whether the victims were taken at the killing site i.e. at the courtyard of the house of Sukla Baddya of village-Chandipur-Krishnapur on unlawful capture and what role the accused persons played in accomplishing the killing. At the same time we must assess whether what the witnesses testified reasonably links the accused persons with the commission of the killing. Now, let us see what facts the witnesses narrated in relation to the attack at village-Chandipur Krishnapur.

312. The attack launched at village-Chandipur-Krishnapur gets corroboration also from the fact of hearing frequent gun firing from the end of village-Chandipur-Krishnapur as testified by P.W.02 who remaining in hiding watched what the gang did at their village- Krishnapur, in conjunction with the attack there.

313. It transpires from consistently corroborating testimony that after the gang had left the sites P.W.02 along with P.W.01 and other one moved to the village-Chandipur-Krishnapur where they found nine[09] dead bodies lying at the courtyard of the house of Sukla Baddya. P.W.02 also heard from two survived injured victims that accused persons gunned down the nine [09] Hindu detainees to death there.

314. Finding nine Hindus' dead bodies lying at the courtyard of Sukla Baddya's house proves that the killing was conducted there by bringing the victims there on forcible capture.

315. Finding two injured victims Sukamal Roy and Sarada Roy there and hearing from them that accused Liakat Ali and Aminul Islam @ Rajab Ali, their accomplices Razakars, Al Badar and Pakistani occupation army by launching attack at village – Chandipur-Krishnapur looted 14/15 house , detained 11 Hindu civilians and then made them assembled at the courtyard of the

house of Sukla Baddya where they gunned down nine detainees to death and two however receiving injuries got survived, as testified by P.W.01 and P.W.02 inspires credence . Defence could not controvert these material facts in any manner.

316. The Tribunal finds it reasonable to act upon such hearsay evidence. It was not anonymous. They heard what they narrated from two survived victims, now dead. Besides, the attack conducted at Chandipur-Krishnapur does not seem to have been disputed. This phase of attack was chained to the attack first launched at Krishnapur. Same gang accompanied by the accused persons moved towards village-Chandipur-Krishnapur, after it had accomplished killing 43 Hindu civilians at Krishnapur [as narrated in charge no.01], it stands proved.

317. The above hearsay evidence together with the fact of seeing bullet hit dead bodies of 09 Hindu civilians lying at the killing site proves the attack that resulted in detaining Hindu civilians unlawfully and acts of looting. All these were conducted selecting Hindu community as target. Tracing dead bodies at the killing site leads to conclude that the victims were brought there on unlawful capture.

318. What was the intent to target the Hindu community of village Chandipur-Krishnapur? The massacre happened at this site was

continuation of the attack that resulted in killing 43 Hindu civilians of village Krishnapur. Thus, we are convinced to arrive at decision that with the same intent the gang had carried out attack also at village-Chandipur-Krishnapur which eventually resulted in killing numerous Hindu civilians at the house of Sukla Baddya.

319. Defence by putting suggestion to P.W.02 has made an effort to show that out of political rivalry accused Md. Liakat Ali has been implicated in this case and since he owns the political ideology of Awami League he cannot be presumed to have had complicity in committing the alleged crimes in 1971 and that he was not a Razakar.

320. We reiterate that the accused Md. Liakat Ali has been prosecuted for the offence committed in 1971 and that mere act and status subsequent to the offences alleged cannot make him absolved of liability of such crimes if he is found to have had involvement with the crimes for which he has been arraigned.

321. P.W.03 is a hearsay witness about the event of killing. But he however heard frequent gun firing from the end of the killing site this unshaken fact was linked to the act of killing. On the following day he[P.W.03] heard from his father that the accused

Md. Liakat Ali, Rajab Ali , their cohorts and Pakistani occupation army had wiped out nine [09] Hindu civilians at the house of Sukla Baddya of village-Chandipur Krishnapur.

322. The above unimpeached version unerringly leads to the conclusion that the gang just after conducting its criminal mission continued launching attack next at village-Chandipur Krishnapur.

323. The account made by P.W.04 patently demonstrates that the same gang formed of army men, accused persons and their cohorts had conducted successive attack at village-Chandipur-Krishnapur as it is found also from his evidence that at about 02:00 P.M he remaining in hiding heard frequent gun firing from the end of village- Chandipur-Krishnapur.

324. Hearing frequent gun firing from the end of village-Chandipur- Krishnapur was crucial fact related to the principal crime. It is found to have been corroborated by P.W.02. This fact was linked to the act of killing. It also transpires from the narration made by P.W.04 that later on he heard that the gang had annihilated nine [09] Hindu civilians at the house of Sukla Baddya of village-Chandipur-Krishnapur by conducting its criminal scheme.

325. Hearing gun firing from the end of the killing site, presence of accused persons with the squad, launching successive attack at Chandipur-Krishnapur on the same day together leads to the conclusion that the accused persons being part of the criminal mission actively participated in accomplishing the killing nine Hindu civilians.

326. Testimony of P.W.04 so inspires credence and it carries probative value. He has not opted to make any exaggeration. The nature, pattern ad magnitude of the attacks did not allow the survived residents of crime villages or the Hindu civilians who had to go into hiding to see all the criminal acts forming part of attacks carried out successively in different sites.

327. In fact it was not practicable of witnessing the criminal activities carried out one by one, by the same criminal enterprise. P.W.02 , P.W.03 and P.W.04 heard gun firing from the end of village-Chandipur-Krishnapur, just after the attack at Krishnapur was concluded and later on they heard that nine Hindu civilians were gunned down to death at the house of Sukla Baddya of village Chandipur Krishnapur.

328. Finding dead bodies of Hindu civilians at the killing site as testified by P.W.01 and P.W.02 provides corroboration to the hearsay evidence of P.W.03 and P.W.04 as to the act of killing

which was the upshot of the attack that ended in death of detained victims by gun firing. For hearing gun firing and finding bullet hits dead bodies are significantly linked to the commission of principal crimes, the killings.

329. Going into hiding sensing orchestrated attack as testified by P.W.05 was natural. P.W.05 did not make exaggeration in any manner. He simply testified what he experienced remaining in hiding. Defence however could not shake it in any way, by cross-examining the witnesses, that the accused Md. Liakat Ali and Aminul Islam @ K.M Aminul Haque @ Rajab Ali remained distanced from the group when it launched attack at Chandipur-Krishnapur.

330. Seeing the accused persons, their cohorts and army men taking away Hindu civilians on forcible capture towards west together with the fact of hearing indiscriminate gun firing from the end of the crime site i.e village-Chandipur-Krishnapur as testified by P.W.05 indisputably suggests the conclusion that the accused persons were with the gang till it ended its almost day long successive criminal scheme.

331. Defence by cross-examining the P.W.05 could not controvert it any manner that he [P.W.05] had no reason of knowing the accused persons beforehand. We do not find any reason of

keeping the testimony of P.W.05 aside merely on the ground agitated by the defence that in 1971 P.W.05 was a tender aged boy. In this regard we have already rendered our decision based on settled jurisprudence. Merely for the reason of tender age one's testimony cannot be brushed aside. As the Trier of fact we are to weigh its credibility and value. Defence could not bring anything by cross-examining this witness acting upon which we may not take his evidence into account.

332. It also transpires from unimpeached evidence of P.W.05 that the squad carried out looting households, in conjunction with the attack and the horrendous attacks eventually compelled the panicked survived Hindu civilians to opt internal displacement. Obviously all these cumulatively caused serious mental harm to them and their normal livelihood.

333. The accused persons have been indicted in charge no. 02 also for committing the offence of 'other inhuman act' as crime against humanity. The offence of 'other inhuman act' has not been defined in the Act of 1973. However, the phrase itself implies that it is of such kind of 'treatment' which is manifestly detrimental to physical or mental safety of an individual who is predominantly an unarmed civilian. Thus, we are convinced to conclude that the offence of 'other inhuman acts' judiciously and logically

encompasses the ‘*coercive acts*’ which are injurious for one’s physical or mental wellbeing which is detrimental to normal livelihood.

334. What we see in this case? Uncontroverted evidence presented to substantiate this charge goes to demonstrate too that the accused persons participated and substantially facilitated the commission of the act of looting households, causing forced internal displacement, serious bodily injury and mental harm to the survived residents of the crime locality which were not only with intent to destroy the Hindu community of village-Chandipur-Krishnapur but also to cause bodily and mental harm of the survived individuals and therefore, those prohibited criminal acts cumulatively constituted the offence of ‘other inhuman act’. Normal livelihood of the remaining segment of the Hindu population of the crime locality was deliberately harmed by coercive acts and by accomplishing barbaric annihilation of a number of Hindu civilians.

335. P.W.06 had no occasion of seeing activities carried out in conjunction with the attack at village- Chandipur Krishnapur. Thus, naturally he has not testified anything as to manner of committing crimes and involvement of accused persons therewith. But since by launching consecutive attacks at villages adjacent to each other under police station Lakhai of District [now]-Habiganj

by the same squad of perpetrators and on the same day the testimony of P.W.06 so far as it relates to presence of the accused persons with the gang in accomplishing the event of killing at village-Godainagar Krishnapur [as narrated in charge no.03] manifestly linked them even to the killings occurred at village-Chandipur-Krishnapur [as narrated in charge no.02]

336. It is manifested from the evidence of P.W.06 too that the squad was accompanied by the accused persons and their accomplice Razakars; that gang had carried out successive attack also at village-Godainagar-Krishnapur when the numerous Hindu civilians including the father of P.W.06 was shot to death and P.W.06, a key witness somehow got survived. P.W.06 categorically stated active presence of the accused persons in accomplishing this event of killing which happened after accomplishing the killing 09 Hindu civilians at the house of Sukla Baddya[as arraigned in charge no. 02]. Presence of accused persons at the next crime site Godainagar-Krishnapur is a fair indicia of accused persons' presence and participation in perpetrating killing carried out at Chandipur-Krishnapur[as arraigned in charge no.02]

337. P.W.09 Md. Jummon Mia is a resident of village Fandauk under police station- Nasirnagar of Distract [now] Brahmanbaria

is a hearsay witness as regards killings conducted at villages Krishnapur, Chandipur- Krishnapur and Godainagar-Krishnapur. He heard it one month after his father was killed on forcible capture [as arraigned in charge no.05.]

338. Taking the situation existing in 1971 into account the Tribunal notes that extremely orchestrated heinous mass killing carried out in the territory of Bangladesh could not be kept hidden. Such horrendous atrocities became anecdote around the localities. Thus, even the people of neighbouring localities naturally had occasion of knowing the brutal mass killing as testified by the P.W.09. Hearsay testimony of P.W.09 thus cannot be kept aside from consideration particularly when it gets corroboration from the evidence of other witnesses as discussed above.

339. The Tribunal is satisfied, on appraisal of evidence presented, that the only reasonable inference to be drawn from the evidence presented is that there was an understanding amounting to an agreement among the members of the killing squad pursuant to which it had carried out vicious attacks targeting a particular religious group and the accused persons played culpable role in targeting or locating the members of Hindu religious group of the crime sites.

340. The magnitude of the action and the pattern it took demonstrates patently that there was a deliberate plan of what happened. The plan was not the coinage of an individual who would have never accomplished it, but of a group to which the accused persons were the potential part, in exercise of their potential affiliation with Razakar Bahini and Al Badar Bahini.

341. The Tribunal notes that incongruity sometimes emerges in the account made by a witness. But if such incongruity is not glaring the same does not affect the credibility of the total narration made by the witness. The witnesses examined in support of this charge appeared trustworthy and credible as they watched the crucial facts forming part of the militia violence and also for the practicable opportunity they saw and recognized the accused persons with the squad, whom they knew beforehand, from a close distance. Their testimony does not reflect any sign of ambiguity.

342. According to the doctrine of “common design” if a group sets out to commit a crime, all are equally guilty of the act committed by one of them in the pursuance of that criminal goal whether or not they materially contribute to the execution of the crime.

343. Thus, even in absence of any direct evidence as to role and mode of participation of accused persons in perpetrating the killing 09 Hindu civilians at the house of Sukla Baddy a the

entirety of facts and continuing sequence of attack and presence of accused persons with the squad suggests the unerring inference that they were part to the ‘common design’ of the gang.

344. Already they are found to have had physical participation in perpetrating the killing of 43 Hindu civilians, just prior to the event of killing carried out at the house of Sukla Baddya and therefore, they are held equally liable also and also for the event of killing 09 Hindu civilians and causing injuries to 02 detainees. In conjunction with the attack serious bodily injury was caused to defenceless Hindu civilians, it is found proved.

345. It has been found proved that the accused persons remained engaged to the commission of the killing with the intent that they had also in committing killing 43 civilians belonging to Hindu religious group[as narrated in charge no.01]. It fairly proves accused persons’ knowledge about the plan and intent of the gang to which they were active part and thus cannot evade responsibility of perpetrating killing 09 civilians and causing severe physical and mental injury to 02 individuals. We agree with the submission advanced in this regard on part of prosecution.

346. Besides, culpable presence of accused persons with the criminal squad at the crime sites, their active participation in

accomplishing the event of killings combined with their potential status they had in Razakar Bahini and Al Badar Bahini and their knowledge about the purpose of the criminal enterprise are sufficient for holding them liable.

347. Survivors of such traumatic experiences cannot reasonably be expected to recall the precise minutiae of events. They reasonably may not be expected to recall every single element of a deadly and traumatic sequence of an event of attack. Thus, the Tribunal is not convinced to attach any significance to the inconsistencies, if occurs.

348. Cumulative appraisal of unshaken evidence of witnesses consistently proves the presence of accused persons at the scenes of the crimes committed. There has been nothing material to cast doubt on the sworn testimony on it.

349. In the case in hand, it already stands well proved that the gang of perpetrators that had committed killing 43 Hindu civilians at village-Krishnapur also conducted attack just next at Chandipur-Krishnapur with ‘same intent’ directing Hindu community as this attack eventually wiped out the civilians for the reason of their membership in Hindu religious group and it happened not by reason of victims’ individual identity. Thus, the

acts of the squad constituted the offence of ‘genocide’. In the case of **Alfred Musema** the **ICTR Trial Chamber observed that –**

“For any of the acts charged to constitute genocide, the said acts must have been committed against one or more persons because such person or persons were members of a specific group, and specifically, because of their membership in this group. Thus, the victim is singled out not by reason of his individual identity, but rather on account of his being a member of a national, ethnical, racial or religious group.”[**Alfred Musema the ICTR Trial Chamber: 27 January 2000, para-165]**

350. Actual destruction of a religious group is not required as an element to constitute the offence of ‘genocide’. Intent to destroy is to be inferred from the facts and circumstances chained to the attack. Even it is not required to show the annihilation of substantial part of the group. In this regard we recall the settled jurisprudence evolved in the case of **Mpambara** which is as below:

“The actus reus of genocide does not require the actual destruction of a substantial part of the group; the commission of even a single instance of one of the prohibited acts is sufficient, provided that the accused genuinely intends by that act to destroy at least a substantial part of the group.**[Mpambara,**

**ICTR Trial Chamber, September 11, 2006,**  
**para. 8]**

351. It has been proved that the accused Md. Liakat Ali, Aminul Islam @ KM Aminul Haque @ Rajab Ali were knowingly related to the criminal scheme or system which intended to achieve a criminal outcome by carrying out deadly atrocious activities directing the Hindu community of Chandipur-Krishnapur and eventually the upshot of the attack, the killings happened at the house of Sukla Baddya, making the detained victims assembled there on forcible capture. The accused persons had acted being part of the criminal enterprise and thus they incurred liability under section 4(1) of the Act of 1973 which refers to the doctrine of JCE [Basic Form].

352. Since the event of killing as narrated in charge no.01 is indisputably chained to the event arraigned in this charge no.02 we may safely arrive at decision that the gang being accompanied

by the accused persons opted to extend its criminal mission with ‘same intent’ also at the adjacent vicinity Chandipur-Krishnapur that eventually resulted in killing 09 Hindu civilians, looting and injury of two victims. Thus, the deadly criminal acts preferred by the gang to further its deliberate plan constituted the offence of ‘genocide’.

353. On totality of evidence it stands proved that the attack launched at Chandipur-Krishnapur was an extension of the attack launched first at Krishnapur by the same gang being accompanied by the accused Md. Liakat Ali, Aminul Islam @ KM Aminul Haque @ Rajab Ali and their cohorts and on the same day.

354. Prosecution has been able to prove it beyond reasonable doubt that presence, conduct, act, and the level of influence and authority of the accused Md. Liakat Ali, Aminul Islam @ KM Aminul Haque @ Rajab Ali together, qualified to be the constituent of ‘participation’ to the actual commission of the crimes as those substantially contributed to, or have had a substantial effect on the perpetration of the event of killing 09 Hindu civilians at the house of Sukla Badhya constituting the offence of ‘**genocide**’. Not only mass killing of members of a particular protected group with intent to destroy it, either whole or in part, but the systematic attack was also calculated to cause normal livelihood of the survived civilians including the relatives

of victim which constituted the offence of '**other inhumane act**' as crimes against humanity, it has been proved too beyond reasonable doubt. Therefore, the accused Md. Liakat Ali, Aminul Islam @ Md. Aminul Islam Talukder @ KM Aminul Haque @ Rajab Ali are found criminally liable under section 4(1) of the Act of 1973 for participating, abetting, assisting, substantially contributing, by their act and conduct forming part of systematic attack, to the accomplishment of actual commission of the offence '**genocide**' as enumerated in section 3(2)(a)(c)(i) (ii)(g)(h) of the Act of 1973 and also for the offence of '**other inhuman 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 said Act.

### **Adjudication of Charge No.03**

#### **[Genocide, abduction, confinement and torture committed at Godainagar Krishnapur under Lakhai Police Station]**

355. That after commission of genocide and crimes against humanity at Chandipur Krishnapur village under Lakhai Police Station of the then Habiganj Sub-Division [now district] from 02.00 P.M. to 02.45 P.M. on 18.09.1971 as narrated in charge no. 02, accused Md. Liakat Ali, commander of Razakar Bahini of Fandauk Union under Nasirnagar Police Station of the then Brahmanbaria Sub-Division [now district] and accused Aminul

Islam alias Rajab Ali alias K.M. Aminul Haque alias Md. Aminul Haque Talukder, the then Al-Badar commander [previously Razakar] of Ashtogram Police Station of the then Kishoreganj Sub-Division [now district] along with other accompanying members of Razakar and Al-Badar Bahini and Pakistani occupation army rushed towards Godainagar Krishnapur village, an adjacent village of Chandipur Krishnapur, under Lakhai Police Station of the then Habiganj Sub-Division [now district] and having abducted 30/32 Hindu people from that village confined them in lines at the out-skirts of the house of Chittaranjan Das and with intent to destroy, in whole or in part, the Hindu religious group at about 03.00 P.M. killed all of them of which 06[six] victims namely, Jagadish Das, Piyari Das, Rasaraj Das, Joygobinda Das, Biswanath Das and Mahadeb Das, all of said Godainagar Krishnapur village were identified. Besides, 06[six] other detained victims namely, Sunil Das, Bijit Roy [now dead], Umesh Das [now dead], Jyotindra Das[ now dead], Dhirendra Das [now dead] and Gyanendra Roy [now dead] were injured by bullet shots. Thereafter, the villagers floated the dead bodies in the nearby haor and river after 04.30 P. M. on that day as there was no arrangement for cremation and arranged treatment for the injured victims.

Therefore, accused (1) Md. Liakat Ali, and (2) Aminul Islam alias Rajab Ali alias K.M. Aminul Haque alias Md. Aminul Haque Talukder have been charged for participating, abetting, facilitating, contributing and complicity in the commission of offences of genocide, abduction, confinement and torture as crimes against humanity as part of systematic attack directed against unarmed civilians as enumerated in section 3(2)(a)(c)(g)(h) of the Act of 1973 which are punishable under section 20(2) of the said Act for which the accused persons have incurred liability under section 4(1) of the Act of 1973.

### **Evidence of Witnesses Examined**

356. This charge involves indiscriminate killing of 26 Hindu civilians of village-Godainagar-Krishnapur. This crime site in fact was part of village-Krishnapur where the gang of perpetrators carried out its systematic attack first and then at the locality of Chandipur-Krishnapur [as narrated in charge no.02]. Those two events of attack were followed by attack at Godainagar-Krishnapur, another Hindu dominated adjacent vicinity, the charge framed arraigns.

357. To prove this charge prosecution relies upon seven witnesses-- P.W.01-P.W.03, P.W.05-P.W.07 and P.W.09. Most of them testified what they saw and experienced in relation to charge

nos. 01, 02 and 03. They are the residents of crime sites under police station-Lakhai of District [now]-Habiganj.

358. Naturally, the witnesses relied upon by the prosecution did not have occasion of seeing all the acts of perpetrators forming part of attack launched at Godainagar-Krishnapur. However, in addition to the facts linked to the event of attacks narrated in charge nos. 01 and 02 they also testified crucial facts they experienced in conjunction with the attack launched at Godainagar-Krishnapur. Before we weigh their testimony first let us see what they narrated in respect of the event arraigned in this charge no.03.

359. P.W.01 Haridas Roy [66] is a resident of village-Krishnapur. He testified facts materially related to the killings carried out at village-Krishnapur and its adjacent localities Chandipur-Krishnapur and Godainagar Krishnapur. Attacks launched at three vicinities were chained together. The same killing squad and on the same day, one after one had conducted such attacks – already it has been proved.

360. In testifying the event of attack which was launched first at village-Krishnapur P.W.01 already stated that on 18 September 1971 at about 08:00 AM a gang formed of Pakistani army, accused Liakat Ali, Rajab Ali and their accomplice Razakars and

Al Badar by launching attack at their house took him away , on forcible capture, at the Ghatla of the house of Nripen Roy where he along with 50/52 detainees were made stood in lines and then the accused Liakat Ali, Rajab Ali and one army man fired gun shots to them which resulted in killing of 43 Hindu civilians and P.W.01 somehow got survived despite receiving bullet hit injury.

361. The above version involving the attack that resulted in large scale killing has been arraigned in charge no.01. P.W.01 as a direct witness testified this phase of attack with detail precision as he being one of detainees had occasion of witnessing the criminal treatment done to the detainees by the perpetrators and the accused persons.

362. What more the P.W.01 testified, in addition to testifying facts related to charge no.01? He in evening on the same day moving to the house of Sukla Baddya found nine [09] dead bodied lying there. This killing was the upshot of the attack at village-Chandipur Krishnapur [as arraigned in charge no.02]. It is found proved too that P.W.01 got two survived victims at the killing site at village Chandipur Krishnapur [as narrated in charge no.02]. P.W.01 heard from them as to what happened at village-Godainagar-Krishnapur.

463. P.W.01 next stated that on hearing it he [P.W.01] then moved to the house of Chitta Das of village-Godainagar-Krishnapur and found **26** dead bodies lying at the north-west corner and also saw 5/6 injured victims lying in veranda of whom he could identify Bijit Roy, Umesh Das, Jatindra das, Dhirendra Das, Gyannedra Roy [five of them are now dead].

364. P.W.01 also stated that he heard from the injured victims that the accused persons, their accomplices being accompanied by the Pakistani occupation army by launching attack at village-Godainagar-Krishnapur detained 32/33 civilians and brought them at the place near the Ghatla of Chitta Das's house where they were made stood in lines and then accused Liakat Ali, Rajab Ali and one army man fired gun shots to them which resulted in death of **26** civilians and 6/7 got injured.

365. In respect of reason of knowing the accused persons P.W.01 stated that the accused persons used to visit Chandipur bazaar very often and thus he knew them beforehand.

366. In cross-examination, P.W.01 stated in reply to defence question that on the day of event of attack at about 08:00 A.M he heard gun firing and saw a big boat , two small boats and speed boat anchoring at the ghat of Nripen Roy's house; that accused Liakat Ali was Razakar commander in 1971. P.W.01 denied

defence suggestion that the accused persons did not belong to auxiliary force[s]; that he did not know the accused persons and that he did not see or hear what he testified.

367. P.W.02 Nripen Krishna Roy [64] a resident of village-Krishnapur under police station- Lakhai of District [now]-Habiganj testified facts related to all the four charges i.e charge nos. 01, 02, 03 and 04. Already it has been proved from his testimony that on 18 September 1971 in early morning the Gang formed of Pakistani occupation army, Razakars and Al Badars attacked their house and with this he went into hiding inside the kitchen of their house wherfrom he saw the gang being accompanied by the accused Liakat Ali and Rajab Ali carrying out criminal activities.

368. Testimony of P.W.02 also demonstrates that the gang of perpetrators moved back to Ashtogram at about 04:00 P.M. P.W.01 is a hearsay witness in respect of the attack launched at Godainagar- Krishnapur.

369. P.W.02 stated that he heard from Haridas Roy, Bonobihari Roy the two injured victims of the event of attack launched at Krishnapur as narrated in charge no.01 that the gang had carried out atrocities also at Godainagar-Krishnapur. Then he [P.W.02] moved to Godainagar-Krishnapur along with Haridas Roy and

others when he found 26 dead bodies lying at the Ghatla of Chitta Das's house.

370. P.W.02 also stated that he could identify some of victims. He found four victims in injured condition and none of them is alive now. Sunil Das one of survived victims is still alive. He [P.W.02] heard from the injured and survived victims that the victims were brought at the house of Chitta Das on forcible capture from different houses and then the accused Liakat Ali, Rajab Ali and their accomplices fired gun shots to them, making them stood in three lines.

371. P.W.02 next stated that accused Liakat Ali was a resident of village Morakuri about two miles far from their[P.W.02] house and accused Aminul Islam @ Rajab Ali was a resident of village Deoghar Paon under police station-Ashtogram, about 8/9 miles far from their[P.W.02] house. Accused Liakat Ali was Razakar commander of Fandauk Union of police station Nasirnagar of District [now] Brahmanbaria and he [P.W.02] saw the accused persons moving at Krishnapur Chandipur Bazar very often and thus he knew them beforehand.

372. In cross-examination P.W.02 stated in reply to defence question that speed boats and boats moved back towards

Ashtogram from the Ghatla of Kali Das Roy's house; that on the following day his family inmates took refuge at the house of Sobhan Mia of village Jirunda. P.W.02 denied the defence suggestion that he did not see and hear what he testified; that he did not know the accused Rajab Ali ; that they did not belong to Razakar and Al Badar Bahini and what he testified implicating the accused was untrue and tutored.

373. P.W.03 Hirammon Sharma [62] is a resident of village Krishnapur. P.W.03 testified facts related to attack carried out by the same group of perpetrators at villages Krishnapur, Chandipur-Krishnapur and Godainagar-Krishnapur. All these sites were adjoining to each other. Defence does not dispute it.

374. P.W.03 testified that on 2<sup>nd</sup> Aswin 1971 in early morning he saw the gang arriving at the ghat of Kali Das Roy of their village by boats and speed boats. With this being panicked he[P.W.03] went into hiding under water hyacinth of a trench, west to their house wherefrom he saw the accused Liakat Ali, Rajab Ali and one army man looting gold ornaments from the wife of Bidhu Bushan when she attempted to go into hiding. It is found from his evidence that he came out of the said hiding place at 04:00 P.M after the gang had left the sites.

375. What further the P.W.03 experienced during his staying inside the said hiding place? P.W.03 stated that at about 03:00 P.M he perceived sound of frequent gun firing from the end of village-Godainagar Krishnapur, west to their village.

376. In respect of the event of killings as narrated in charge no.03 P.W.03 is a hearsay witness. P.W.03 stated that returning back to home from hiding place he took refuge at village-Jirunda and on the following day he heard from his father that the accused persons he named [Liakat Ali and Rajab Ali], Razakars, Al Badars and Pakistani occupation army had killed 26 civilians at the house of Chitta Das of village-Godainagar-Krishnapur.

377. As regards reason of knowing the accused persons P.W.03 stated that they used to move very often around their neighbouring Chandipur bazaar and thus he knew them beforehand.

378. In cross-examination, P.W.03 denied the defence suggestion that he did not know the accused persons; that the accused persons were tender aged at the time of the alleged event and that he did not see or hear what he testified implicating the accused was untrue.

379. P.W.05 Bablu Roy [56] is a resident of village Krishnapur, the first crime site. In addition to what he experienced in respect

of the attack launched at their village [as narrated in charge no.01] he testified some facts which are claimed to be relevant to the event of attack as arraigned in charge no.03 which involves brutal killing of 26 Hindu civilians at neighbouring locality Godainagar-Krishnapur.

380. P.W.05 in his sworn testimony first stated that on 2<sup>nd</sup> Aswin 1971 in early morning on sensing the attack launched at their village he along with his mother went into hiding inside the latrine wherefrom at about 10:00 A.M he saw the accused Liakat Ali, Rajab Ali and their accomplice Razakars, Al Badars and army men taking some Hindu civilians away towards west.

381. The above unshaken fact has been considered in adjudicating charge no.01. P.W.03 had no occasion of seeing the attack launched at the adjacent locality Godainagar-Krishnapur. He however stated that he heard sound of indiscriminate gun firing from the end of village-Godainagar-Krishnapur at about 03:00 P.M, remaining stayed inside the hiding place.

382. P.W.05 stated that after 04:00 P.M the gang of attackers had left the sites by speed boats and then he along with others moved to the house of Nripen Roy, the killing site of the event as narrated

in charge no.01 where he found injured victim Haridas Roy [P.W.01] and 43 dead bodies lying there.

383. In respect of the killing carried out at Godainagar-Krishnapur P.W.05 is a hearsay witness. He [P.W.05] stated that he heard [after the gang had left the sites] from Haridas Roy [P.W.01], Nripen Roy and other villagers that after conducting the killing scheme at village-Chandipur-Krishnapur the accused persons, their cohort Razakars, Al Badars and Pakistani occupation army by launching attack at the houses of civilians of village-Godainagar-Krishnapur, carried out looting and detained 32/33 Hindu civilians who were made assembled at the courtyard of Chitta Das's house and then the accused persons and one army men shot 26 detainees to death there and one detainee Sunil Das somehow stayed alive.P.W.05 finally stated that he knew the accused persons beforehand as they used to move around the Chakbazar of their village.

384. In cross-examination, P.W.05 stated in reply to defenec question that Godainagar-Krishnapur was about 300/350 yards far from their village; that he returned back home just before 06:00 P.M from the house of Nripen Babu. P.W.05 denied the defence suggestion put to him that he did not know the accused persons; that they were not Razakar and Al Badar; that accused Liakat Ali

was in favour of the war of liberation; that he did not see the accused persons with the gang at the crime sites and that he did not see or hear what he testified.

385. P.W.06 Sunil Chandra Das [70] is a resident of crime village Godainagar-Krishnapur. He is the son of one of victims. He is a direct witness to the event of killing accomplished at the house of Chitta Das [as arraigned in charge no.03]. In addition to the event of killing as arraigned in this charge no.03 he testified facts related to the other phases of attacks carried out successively at Krishnapur and Chandipur-Krishnapur[ as narrated in charge nos. 01 and 02].

386. It is to be noted that successive attacks carried out directing Hindu civilians of villages- Krishnapur, Chandipur- Krishnapur and Godainagar- Krishnapur on the same day and by the same group of attackers that resulted in killing large number of Hindu civilians and devastating activities causing detrimental effect of normal livelihood. All the sites under such attacks were adjacent vicinities.

387. Attack at village- Godainagar- Krishnapur has been arraigned in charge no.03. Arrival of the killing squad at the sites is a crucial fact which is related to all the phases of attack as narrated in the charge nos. 01, 02, 03 and 04. Thus, before focusing what has

been testified by the P.W.06 in respect of the event of killing at Godainagar-Krishnapur let us see what he has stated in respect of this pertinent fact.

388. In respect of arrival of the gang of perpetrators at the crime sites P.W.06 stated that on 2<sup>nd</sup> Aswin 1971 at about 05:00/05:30 A.M he had been at the courtyard of Hararlal Das's house adjacent to the bank of the river when he saw armed Pakistani occupation army being accompanied by Razakars and Al Badars moving towards Krishnapur by boats and speed boats. With this the people started running away wherever they could. At that time some people who attempted to flee by boats were gunned down to death. Then he [P.W.06] along with his wife and father went into hiding inside a bush nearer to their house wherefrom he heard sound of gun firing from the end of village-Krishnapur.

389. What happened further during his [P.W.06] staying inside the bush? Testimony made by him in this regard materially relates to the event of attack as narrated in this charge no.03. P.W.06 stated that at about 03:00 P.M some army men, Razakars and Al Badars seeing them hiding inside the bush fired gun shot that resulted his father's death [P.W.06 started shedding tears at this stage of his deposition].

390. P.W.06 next stated that Razakars and Al Badars then took him away on forcible capture to the Ghatla of Chitta Das's house where he found 30/32 Hindu civilians kept detained. Few minutes later accused Al Badar commander Rajab Ali, Razakar Md. Liakat Ali and two Pakistani occupation army men made them stood in three lines and then the two accused and one army men fired gun shots to them with which they fell down. He [P.W.06] did not receive bullet hit but nevertheless he lied down like a dead.

391. P.W.06 also stated that the Pakistani army men, Razakars and Al Badars then moved back towards Krishnapur. 26 detained Hindu civilians were gunned down to death there[Ghatla of Chitta Das's house] and of them he could identify Jagadish Das of their village, Mahadev Das, Rasa Raj Das and Biswanath Das of village-Noagaon under police station-Nasirnagar.

392. In respect of reason of knowing the accused persons P.W.06 stated that they used to move around the Krishnapur Chakkazar, 50/60 yards far from their house and as such he knew them beforehand.

393. In cross-examination, P.W.06 stated in reply to defence question put to him that Ashtagram was about 5/6 miles far from their house; that after independence he had occasion of meeting accused Liakat Ali; that he could not say whether this accused had

affiliation with any political party; that it was the day of *Mahalaya*[ceremony of Hindu religious festival] and thus he and 20/30 others got assembled at the courtyard of Jaharlal Das's house. P.W.06 denied the defence suggestion that he did not know the accused persons; that he did not see what he testified and that what he testified was untrue and tutored.

394. P.W.07 Abu Taher Mia @ Ashu [74] and P.W.09 Md. Jummon Mia are residents of village- Fandauk under police station-Nasir Nagar of District [now]-Brahmanbaria. P.W.09 is the son of the victim of the event of killing as narrated in charge no.05. P.W.07 and P.W.09 chiefly testified the event arraigned in charge no.05. In respect of the arraignment brought in this charge no.03 both of them are hearsay witnesses.

395. They [P.W.07 and P.W.09] stated that one month after the event of killing the father of P.W.09 heard that accused Liakat Ali Aminul Islam @ Rajab Ali being accompanied by the Pakistani occupation army had killed hundreds of Hindu civilians of villages- Krishnapur, Chandipur-Krishnapur and Godainagar-Krishnapur.

#### **Finding with Reasoning on Evaluation of Evidence presented**

396. Mr. Rana Das Gupta, the learned prosecutor by drawing attention to the evidence of witnesses relied upon submitted that

corroborative evidence of those witnesses has proved the commission of the event of killing 26 Hindu civilians of Godainagar-Krishnapur and participation of accused persons therewith. Defence could not impeach what has been testified by the P.W.s in relation to the event of killing arraigned in this charge.

397. The learned prosecutor further submitted that P.W.06 Sunil Das is a direct witness and son of one victim and his evidence provide sturdy corroboration to hearsay evidence of other witnesses, on some pertinent facts. The gang being accompanied by the accused persons carried out successive attacks, on the same day, directing Hindu civilians of three vicinities and the pattern and magnitude of the attacks reflected extreme antagonistic mindset of the perpetrators including the accused persons. The event of killing 26 civilians as arraigned in this charge was perpetrated with intent that the gang had in accomplishing killings as narrated in charge nos.01 and 02 which constituted the offence of ‘genocide’ and thus the killing of 26 civilians of Hindu community of Godainagar-Krishnapur which was chained to two prior arraignments constituted the offence of ‘genocide’, the learned prosecutor added.

398. Mr. Gaji M.H Tamim echoing the submission made in respect of charge nos.01 and 02 submits that the evidence presented by the P.W.s relied upon by the prosecution is not credible; that it was not practicable of seeing and recognizing the accused persons accompanying the alleged gang of perpetrators; that the hearsay evidence of many of P.W.s carries no value. Accused Md. Liakat Ali has not been prosecuted for any of alleged offences during last four decades and it negates his complicity with any of alleged offences for which he is charged with.

399. The accused Md. Liakat Ali and Aminul Islam @ K.M Aminul Haque @ Rajab Ali have been indicted in this charge for the commission of killing a number of Hindu civilians , with intent to destroy the community, either whole or in part constituting the offence of ‘genocide’ as the same gang and on the same day by launching similar pattern of attack at neighbouring vicinity Godainagar-Krishnapur in continuation of the event of killings conducted first at Krishnapur and next at Chandipur-Krishnapur had annihilated 26 Hindu civilians, with same intent. The charge framed arraigns it explicitly.

400. Of the P.W.s relied upon by the prosecution in proving this charge P.W.06 is a direct witness and the son of one of victims. The other witnesses are hearsay witnesses in respect of the event

of killing. But however the fact of initiation of attack by the squad accompanied by the accused persons in early morning first at Krishnapur has already been found proved from their consistent evidence. Naturally, the horrific situation existing in conjunction with the attack they did not have opportunity of seeing or experiencing all the criminal acts including the actual commission of the killing carried out. However, for the purpose of arriving at decision, we are to resolve –

- (a) that the event of killing of 26 Hindu civilians of Godainagar-Krishnapur happened on 18 September 1971;
- (b) that the event of attack was continuation of two other attacks launched on the same day and by the same criminal enterprise that resulted in killing 43 and 09 Hindu civilians of two adjacent Hindu dominated vicinities;
- (c) that the accused Md. Liakat and Aminul Islam @ K.M Aminul Haque @ Rajab Ali , being part of the criminal enterprise remained stayed with the gang even in course of this third attack;
- (d) that the accused persons culpably participated and facilitated the commission of the massacre;

(e) that the event of killing was aimed to wipe out members of Hindu religious group, with intent to destroy it, in whole or in part.

401. In respect of the event of mass killing conducted at Godainagar- Krishnapur P.W.01 is a heresy witness. P.W.01 heard from two injured victims he found at Chandipur-Krishnapur that on the same day[18 September 1971] the accused persons, their accomplices and Pakistani army men carried out attack at village-Godainagar- Krishnapur after they accomplishing its killing mission at village- Chandipur Krishnapur[ as narrated in charge no.02].

402. After the gang had left the site, P.W.01 moved to the house of Chitta Das of village-Godainagar -Krishnapur where he found 26 dead bodies lying at the north-west corner and also saw 5/6 injured victims lying in veranda. This version remained unshaken. Thus, finding a number of dead bodies lying the house of Chitta Das indisputably points that the barbaric mass killing was accomplished there. It gets corroboration from the evidence of P.W.02 who also upon visiting the killing site at Godainagar- Krishnapur found 26 dead bodies lying at the house of Chitta Das and saw some injured victims as well.

403. Tracing numerous dead bodies at this site, after the gang had left the sites as testified by P.W.01 and P.W.02 unerringly proves that the gang carried out killing also at the house of Chitta Das by bringing detained Hindu civilians there. Besides, defence does not appear to have made any effort to controvert it, by cross-examining the witnesses.

404. It is evinced too from the hearsay evidence of P.W.01 that by launching attack at village- Godainagar-Krishnapur the gang detained 32/33 civilians and brought them at the place near the Ghatla of Chitta Das's house where they were made stood in lines and then accused Md. Liakat Ali, Aminul Islam @ Aminul Haque @ Rajab Ali and one army man fired gun shots to them which resulted in death of **26** civilians and 6/7 got injured. In absence of anything contrary as to presence of accused persons with the killing squad and since the event of this killing is continuation of two other event of attacks the hearsay evidence of P.W.01 so far as it relates to participation of accused persons even in effecting killings of 26 Hindu civilians bringing them at Chitta Das's house inspires untainted credence.

405. Defence could not refute that the bullet hit dead bodies were found at the house of Chitta Das's and 6/7 detainees survived receiving bullet hit injuries. This unshaken fact prompts us to conclude that the detainees were brought there on forcible capture

with intent to wipe them out for the reason that they were members of a particular religious group. Causing forcible capture of detainees happened in conjunction with the attack at the targeted vicinities, we may safely presume.

406. Therefore, naturally P.W.01 knew from the survived victims how the detained victims were brought at the killing site and who physically participated in causing death of detained victims by gun shot. Hearsay evidence of P.W.01 so far as it relates to accused persons' presence at the killing site with the squad and their participation to the actual commission of the killing carries truthfulness.

407. There has been no reason whatsoever that may lead to the conclusion that not the gang that had launched attack at villages-Krishnapur and Chandipur-Krishnapur but another group of perpetrators had carried out atrocities at village-Godainagar Krishnapur.

408. It has been affirmed in cross-examination of P.W.01 that the gang of attackers arrived on the day of event of attack at crime villages and on arrival they started gun firing intending to spread terror and coercion around the localities. We have already rendered finding on this pertinent fact in adjudicating charge nos.

01 and 02. This fact, as it appears is linked to all the events of attacks carried out directing Hindu community of Krishnapur, Chandipur-Krishnapur and Godainagar-Krishnapur.

409. Already in adjudicating charge no.01 we have found it proved from evidence of P.W.01 that the accused persons actively participated in killing the detained 43 Hindu civilians Krishnapur. Defenec could not refute it. P.W.01 was one of victims of the event narrated in charge no.01. He was taken away to the killing site on forcible capture and the accused persons and army man fired gun shots to them. But P.W.01 somehow got survived receiving bullet hit injuries. This event of killing witnessed by P.W.01 was chained to next phases of orchestrated criminal scheme that occurred on the same day at the house of Chitta Das of village Godainagar- Krishnapur.

410. P.W.01 heard from the 5/6 injured and survived victims that the victims were brought at the house of Chitta Das on forcible capture from different houses and then the accused Liakat Ali, Rajab Ali and their accomplices fired gun shots to them, making them stood in three lines that resulted in killing of 26 Hindu civilians.

411. The above together with the proved fact of accused persons' presence and participation in committing the killings of 43 Hindu

civilians [as arraigned in charge no.01] suggests to infer legitimately that the hearsay testimony of P.W.02 does have probative value and it inspires credence so far as it relates to the act of mass killing at the house of Chitta Das of Godainagar-Krishnapur and participation of accused persons there with.

412. It has already been found proved in adjudicating charge no.01 that the P.W.02 knew the accused persons beforehand. P.W.02 stated reasons of knowing them which remained unshaken. Thus recognizing the accused persons accompanying the gang was quite practicable.

413. In view of evidence presented in support of this charge together with the findings made in adjudicating charge nos.01 and 02 it stood proved that the same criminal gang formed of Pakistani occupation army, accused persons and their cohorts continued its criminal mission even by launching attack at Godainagar-Krishnapur.

414. There is no direct evidence as to physical participation of accused persons in causing death of detained civilians. But since the same gang was engaged in carrying out serious wrong doing and killing of numerous Hindu civilians the accused Liakat Ali and Aminul Islam @ K.M Aminul Haque @ Rajab Ali who remained stayed with the gang were culpably and actively

engaged even in accomplishing killing of 26 Hindu civilians of village Godainagar-Krishnapur, the facts and circumstances lead to this conclusion. The accused persons thus cannot absolve liability even for the killings carried out at the phase of attack launched at Godainagar- Krishnapur.

415. Tribunal notes that it has already been proved from the evidence of P.W.02 that the accused persons were with the gang and actively participated in carrying out atrocious and devastating activities at their house. P.W.02 saw it staying in hiding inside the kitchen of their house.

416. P.W.02 does not claim to have seen the killing occurred at Godainagar- Krishnapur, true. But what he testified in respect of the event of killing carried out first at Krishnapur was chained to subsequent attacks launched at Chandipur-Krishnapur and Godainagar-Krishnapur.

417. P.W.02 heard from survived victims that the gang accompanied by the accused persons deliberately accomplished the act of killing 26 Hindu civilians. Hearsay evidence of P.W.02 in this regard leads to the conclusion that the accused persons were with the gang and they did not make them distanced from launching attack even at village-Godainagar-Krishnapur which occurred on the same day.

418. In cross-examination of P.W.02 it has been affirmed that the horrific criminal activities including mass Killing spread out terror and coercion which made them and survived villagers taking refuge at village-Jirunda on the following day. That is to say, the horrific attack resulted also in internal displacement affecting normal livelihood of civilians. Such wrong indisputably caused mental harm and trauma to the survived villagers.

419. P.W.03 is a hearsay witness to the attack launched at village-Godainagar- Krishnapur that resulted in killing 26 Hindu civilians. But perceiving sound of indiscriminate gun firing form the end of crime site Godainagar-Krishnapur and later on hearing the fact of killing 26 civilians occurred at the house of Chitta Das of village Godainagar as testified by P.W.03 were sequenced together.

420. The above two facts together with the fact of seeing the accused persons accompanying the gang at initial phase of the attack and looting gold ornaments from the wife of Bidhu Bhutan by the accused persons as evinced from testimony of P.W.03 unmistakably leads to the conclusion that the accused persons continued staying with the gang even when it carried out the killing of 26 civilians at the house of Chitta Das and actively participated in accomplishing the same.

421. Hearsay evidence of P.W.03 so far as it relates to the killing of 26 Hindu civilians, in course of third phase of the orchestrated attack gets corroboration from the evidence of P.W.01 and P.W.02 too who found the bodies of victims lying at the house of Chitta Das, the killing site, after the gang had quitted the crime sites.

422. Presence of accused persons with the gang at the crime sites as testified by P.W.02 gets strong assurance also from the testimony of P.W.03. Defence could not refute it in any manner by cross-examining these witnesses.

423. It has already been found proved that P.W.05 being panicked in the face of the attack launched first at village-Krishnapur went into hiding along with his mother. Tribunal notes that in 1971 sensing such horrific attack defenceless civilians naturally had to attempt to escape by going into hiding wherever they could. In rural vicinity even remaining in hiding inside a bush or such a place it was practicable too of watching activities carried out by the attackers.

424. P.W.05 does not claim to have witnessed the actual commission of killing occurred at Chitta Das's house at Godainagar-Krishnapur. Tribunal notes that war time killing is not required to be proved by direct evidence. In most cases, it is rather

impracticable. Act and conduct of the perpetrators forming part of attacks at Krishnapur and Chandipur-Krishnapur provide their nexus patently also with the crime committed at Godainagar-Krishnapur.

425. Killing site Chitta Das's house at Godainagar-Krishnapur was about 300/350 yards far from the house of P.W.05. It has been affirmed in cross-examination of P.W.05. Considering the distance as has been testified it was fairly practicable of perceiving sound of gun firing from the end of the killing site, remaining in hiding.

426. It is evinced that P.W.05 could hear sound of frequent gun firing from the end of this killing site when he remained stayed in hiding place and later on, after the gang moved back in evening upon visiting the house of Chitta Das at village-Godainagar Krishnapur he found 26 dead bodies of Hindu civilians lying there. It also stands affirmed in cross-examination.

427. Frequent gun firing from the end of this killing site which the P.W.05 heard and later on seeing 26 bullets hit dead bodies at the killing sites proves indisputably that the event of killing was conducted at the house of Chitta Das of village-Godainagar Krishnapur.

428. The victims were not the residents of the house of Chitta Das. The above two facts as have been testified by P.W.05 cumulatively suggests the unerring conclusion that the barbaric killing of numerous Hindu civilians happened at this killing site, by bringing the victims there on forcible capture and the gang did it in conjunction with the attacks launched at the crime vicinities, on the same day.

429. Since it has already been found from evidence of P.W.05 that the accused persons, their accomplices and army men took away some Hindu civilians towards west on initiation of attack at village- Krishnapur it may lawfully be presumed that the accused persons remained stayed with the gang and actively participated also in accomplishing detaining and the killing of 26 Hindu civilians. Thus, the hearsay evidence of P.W.05 which gets corroboration from evidence of other witnesses particularly that of P.W.06 a direct witness to the commission of the killing inspires credence.

430. We have already arrived at decision that the attack that resulted in killing 43 Hindu civilians of Krishnapur and 09 Hindu civilians of Chandipur-Krishnapur were chained together and those were conducted with same intent i.e intent to destroy the Hindu religious group, in whole or in part.

431. The next attack that resulted in killing 26 Hindu civilians of Godainagar-Krishnapur was carried out by the same gang of perpetrators being accompanied by the accused Md. Liakat Ali and Aminul Islam @ K.M Aminul Haque @ Rajab Ali and this attack was followed by the first two attacks happened on the same day, we find it proved beyond reasonable doubt, based on evidence presented.

432. There has been nothing to show that after conducting first attack at Krishnapur the accused persons remained distanced from the gang or the gang had left the site. Besides, the pattern of attack leads to the inference that without the culpable presence and participation of accused persons having potential position in Razakar Bahini and Al Badar Bahini such deadly attacks directing Hindu dominated vicinities would not have been likely. For the Pakistani occupation army obviously were not familiar in identifying Hindu dominated rural localities and the civilians to be targeted.

433. Therefore, we may safely and unerringly conclude that Hindu civilians of Godainagar- Krishnapur were also made the target of the criminal enterprise to which the accused persons were active part, agreeing to accomplish the same intent--intent to destroy the Hindu religious group.

434. The attack launched at three adjacent vicinities continued for couple of hours, till evening. Commission of killings by launching successive attacks on the same day at adjacent Hindu dominated vicinities cumulatively suggest the conclusion that the civilians were selected to be wiped out for the reason of their membership to Hindu religion and with same intent.

435. Defence argued that P.W.05 was a tender aged boy of 11 years in 1971 and thus it was not practicable for him to see and hear what he testified and he was not supposed to know the accused beforehand. It was not practicable for him of recalling the facts happened long more than four decades ago.

436. We are not convinced with this argument. Merely for the reason of tender age at the time of the event of attack happened one's testimony cannot be readily brushed aside if it is found to have probative value and gets corroboration from other evidence.

437. Indisputably extremely horrific episode of attack caused severe trauma to P.W.05 and such episodic event naturally retains in human memory for long. Besides, already in adjudicating charge no.02 we have rendered our reasoned finding that testimony of P.W.05 cannot be kept aside simply for the reason of his tender age in 1971. Defence could not negate credibility of his

sworn testimony in any manner and his testimony seems to be consistent to what has been testified by other witnesses on material facts.

438. The evidence presented intending to substantiate the arraignments amply suggest the conclusion that there were widespread attacks against the Hindu population at Krishnapur and two other adjacent vicinities on 18 September in 1971. Witnesses who came on dock recounted how the gang had carried out its successive criminal activities in Hindu dominated vicinities.

439. The attacks, which were carried out by the group of attackers, were directed against numerous victims, on the ground that they belonged to the Hindu religious group. The evidence of the killings at the three massacre sites as well as their massive scale are sufficient to lead to the reasonable conclusion that the assailants who physically perpetrated these attacks possessed the intent to destroy, either whole or in substantial part, the Hindu religious group.

440. It may be lawfully inferred that the killers being accompanied by the accused Md. Liakat Ali and Aminul Islam @ K.M Aminul Haque @ Rajab Ali targeted the victims for the reason of their

Hindu ethnicity and intent was to destroy a substantial number of Hindu civilians.

441. Accused persons' complicity and participation at all phases of attacks already stands proved from evidence of other witnesses who had rationale of knowing the accused persons beforehand. Thus, conceding with the defence argument if we decide not to act upon the testimony of P.W.05 so far as it relates to reason of knowing the accused persons beforehand the very fact of presence of the accused persons with the gang and their culpable participation in getting the killings done shall not go on air at all.

442. The ethnicity of the victims, the scale of the killings, and the context within which they took place, the only reasonable conclusion is that the physical perpetrators of the brutal mass killings possessed the intent to destroy in whole or in part the Hindu religious group. Accordingly, criminal acts carried out eventually constituted the offence of 'genocide'.

443. Genocide is mass murder deliberately planned and carried out by group of individuals, all of whom are equally responsible whether they designed the plan, gave the order or physically carried out the killings. Both the **Krstic' and Jelisic'** Trial Judgments held that the killing of all members of the part of a group located within a small geographical area, although resulting

in a lesser number of victims, would qualify as genocide if carried out with the intent to destroy the part of the group as such located in this small geographical area. [ **ICTY Krstic` Trial Judgment, para. 590; Jelisic` Trial Judgment, para. 83** ]. This observation lends backup in arriving at decision that the event of killing 26 Hindu civilians conducted at Chitta Das's house constituted the offence of 'genocide'.

444. Genocidal intent can be well inferred either from the facts and circumstances, or 'a pattern of purposeful action.' In the case in hand, the accused persons have been indicted for committing the offence of 'genocide' as the gang they accompanied directed its attack against the Hindu dominated vicinities which were adjacent together, the charge nos. 01, 02 and 03 arraign.

445. We have already resolved the charge nos. 01 and 02 and we have rendered reasoned finding that the attack narrated in charge no. 02 was chained to the first attack launched at Krishnapur [as narrated in charge no. 01] and then the gang formed of same Pakistani occupation army, accused persons and their accomplices substantially extended its criminal mission next and Chandipur-Krishnapur and then at Godainagar- Krishnapur, the crime site of the event narrated in this charge no. 03.

446. It transpires too that on the following day P.W.01 and his family inmates took refuge at the house of Sobhan Mia of village-Jirunda. Evidence of P.W.03 demonstrates that the accused Liakat Ali, Rajab Ali and one army man looted gold ornaments from the wife of one Bidhu Bushan.

447. P.W.05 in his sworn testimony first stated that on 2<sup>nd</sup> Aswin 1971 in early morning on sensing the attack launched at their village he along with his mother went into hiding inside the latrine wherefrom at about 10:00 A.M he saw the accused Liakat Ali, Rajab Ali and their accomplice Razakars, Al Badars and army men taking away some Hindu civilians away towards west.

448. It appears from testimony of P.W.06 that at about 03:00 P.M some army men, Razakars and Al Badars seeing them hiding inside the bush, fired gun shot that resulted his father's death [P.W.06 started shedding tears at this stage of his deposition]. Demeanor the Tribunal observed when P.W.06 made sworn testimony standing on dock must shock human conscience. However, it adds credibility of his evidence.

449. The version of P.W.05 and P.W.06 together proves that the accused persons were with the gang of attackers, not as mute spectators but they actively participated to materialize the plan of the criminal enterprise, by killing, looting, creating horror and

coercion which even compelled internal displacement of many villagers.

450. The relatives and survived residents witnessed the horrendous criminal activities and none of them could resist the deadly deeds, for obvious reason. The war time situation did not permit it. They had to experience immense trauma and pain. All these collectively caused serious mental harm to them which constituted ‘other inhumane act’.

451. The victims, as it has been unveiled were first forcibly captured, in conjunction with the attack and then kept detained at the house of Chitta Das, the killing site and then they were brutally annihilated there by the gang accompanied by the accused persons.

452. Therefore, we may indisputably conclude that the same group of attackers with the intent that they had in accomplishing killings at Krishnapur and Chandipur-Krishnapur had carried out deliberate killings of a number of civilians only for the reason that they were members of a particular religious group. The Act of 1973 enumerates the ‘religious group’ as a protected group which goes compatibly with the Genocide Convention 1948.

453. The killing of 26 Hindu civilians, as arraigned in this charge no.03 was not simply to annihilate them. Intention of causing such barbaric mass killing directing a particular protected group was to destroy it, either whole or in part.

454. Destruction does not refer to destruction in its entirety. Even a significant number of killing civilians for the reason of their membership in a particular religious group together with devastation activities causing harm to normal livelihood irresistibly suggest that the intent was to destroy the religious group, either whole in part.

455. 'Intent' is to be inferred from the scale and pattern of the attack and casualties and harm caused. In this regard **ICTY Appeal Chamber** in the case of **Jelisic observed that --,**

“As to proof of specific intent, it may, in the absence of direct explicit evidence, be inferred . . . from a number of facts and circumstances, such as the general context, the perpetration of other culpable acts systematically directed against the same group, the scale of atrocities committed, the systematic

targeting of victims on account of their membership of a particular group, or the repetition of destructive and discriminatory acts.”

[ ***Jelisic, (Appeals Chamber), July 5, 2001, para. 47]***

456. On totality of evidence there can be no room to deduce that the event of killing 26 Hindu civilians carried out at the house of Chitta Das at Godainagar-Krishnapur was an isolated event. Rather, it has been found proved beyond reasonable doubt that the same gang of attackers being accompanied by the accused persons and on the same day after carrying out attacks at Krishnapur and Chandipur-Krishnapur opted to target Hindu civilians of Godainagar-Krishnapur and in doing so the gang detaining the Hindu civilians on forcible capture made them assembled at the house of Chitta Das and then accused persons and army men physically participated in gunning them down to death. In absence of anything contrary we arrive at irresistible finding that with the intent and purpose that the gang of attackers had in accomplishing killings as arraigned in charge nos. 01 and 2 this event of mass killing of 26 members of Hindu religious group was conducted which constituted the offence of ‘genocide’.

457. At the same time it appears that the victims were not wiped out instantly. First, they were forcibly captured and detained. The witnesses who happened to be the relatives and near ones of victims had to watch and experience the criminal acts and material facts that eventually resulted in brutal death of detained victims and later on many of them opted to go on internal displacement.

458. Always ‘force’ is not the requirement to cause ‘displacement’. For the term ‘forced’ is not limited to physical force-- it may also include coercion or spreading terror which is caused by fear of violence. In the case in hand, cumulative effect of the criminal activities was such a coercive situation which caused internal displacement of civilians from their homes on discriminatory grounds. It naturally caused serious mental harm to them constituting the offence of ‘other inhuman act’. The ICTY Trial Chamber observed in the case of *Brdjanin* that—

“[D]isplacement within the boundaries  
of a State constitutes ‘forcible transfer,’  
punishable as ‘other inhumane acts’  
**[Brdjanin, ICTY Trial Chamber,  
September 1, 2004, para. 544:].**

459. In conjunction with the attack some of detained victims got somehow survived despite receiving bullet hit injuries, it stands

proved. Defence could not refute it. Obviously, it caused serious bodily harm to them. Tribunal further notes that any form of arbitrary physical deprivation of liberty of a non-combatant individual constitutes the offence of unlawful confinement. In the case in hand, first abduction of unarmed civilians was committed who were kept unlawfully confined and finally two of detainees got survived although bodily injury was inflicted to them. Bodily injury and serious mental harm caused to the detained civilians as found to have been proved constituted the offence of torture.

460. Detaining unarmed civilians is prohibited act which constituted the offence of crime against humanity. Spreading terror and coercion which prompted the survived civilians to deport internally caused serious mental harm which constituted the offence of ‘other inhumane act’—already we have observed. It has been found proved that the accused persons being part of the criminal enterprise were knowingly and culpably engaged in carrying out those criminal activities, in addition to killings.

461. Collectively all these horrific and deliberate criminal acts adversely impacted on the livelihood of survived Hindu civilians of the crime vicinities. Pattern and magnitude of attacks lead to conclude that intent of the perpetrators was not to simply killing

civilians but to cripple or destroy the religious group the victims belonged to.

462. The attack was discriminatory as it targeted the victims because of their membership in a group defined by the perpetrators on religious basis. It was a blatant denial, on discriminatory grounds, of fundamental right, recognised in international customary law. Such attack launched at Godainagar-Krishnapur was part of the concerted plan of which the accused persons were quite aware. Intent of launching successive attacks -- first at Krishnapur, second at Chandipur-Krishnapur and finally at Godainagar-Krishnapur were chained together and were carried out with same intent and by the same gang of attackers and thus the event of killing 26 Hindu civilians was not an isolated one.

463. On appraisal of evidence and facts and circumstances unveiled we have already arrived at reasoned finding that the events of attacks narrated in charge nos. 01 and 02 constituted the offence of ‘genocide’ and the accused Md. Liakat Ali, Aminul Islam @ K.M Aminul Haque @ Rajab Ali, their accomplices and the Pakistani occupation army actively participated in accomplishing a large number of Hindu civilians.

464. Therefore, the event of annihilation of 26 civilians belonging to Hindu religious group of Godainagar-Krishnapur which was chained to those two events also constituted the offence of ‘genocide’. And in committing genocide the perpetrators by their act and conduct caused serious mental harm to survived Hindu civilians and 5/6 detained victims somehow got survived despite receiving bullet hit injuries. That is to say, the offence of unlawful detention and causing bodily injury were also committed which constituted the offences of crimes against humanity as well.

465. Defence could not bring anything by cross-examining the witnesses that the accused persons were not with the gang while it launched attack at Godainagar- Krishnapur. Defence however argued that there has been no evidence as to accused persons’ physical participation in accomplishing killings that happened at the house of Chitta Das.

466. We disagree with the above defence submission. It is to be reiterated that the liability mode contained in section 4(1) of the Act of 1973 refers to ‘common plan of collective criminality’ which corresponds to JCE [Basic Form]. It is now settled that the expression ‘common purpose’, ‘awareness of foreseeable consequence’ of act or conduct, ‘intent’ are the key factors involved with the notion of JCE liability. In the case in hand,

proved act of accompanying the gang at the crime sites itself indicates accused persons' conscious decision to participate in committing the crime, sharing common intent, we conclude.

467. Not only direct evidence but facts materially related to the commission of the principal crime may lead to the conclusion on mode of participation of accused persons in committing the crimes for which they have been arraigned. In the case in hand, even in absence of any direct witness about accused persons' physical participation to the killing 26 civilians it may justifiably and reasonably be concluded that since this event was chained to the prior two events constituting the offence of 'genocide'[as narrated in charge nos. 01 and 02] and since the accused continued to remain stayed with the gang, sharing common intent even in launching attack at Godainagar-Krishnapur the accused persons are thus equally liable for the genocide and crimes against humanity arraigned in this charge no.03 under the doctrine of Joint Criminal Enterprise[JCE- Basic form] which refers to section 4(1) of the Act of 1973.

468. In view of deliberation based on evidence and settled legal proposition we arrive at decision that the prosecution has been able to prove beyond reasonable doubt that the accused (1) Md. Liakat Ali and (2) Aminul Islam @ K.M Aminul Haque @ Rajab

Ali @ Md. Aminul Haque Talukder participated and contributed to the commission of killing 26 Hindu civilians at Chitta Das's house at Godainagar-Krishnapur with intent to destroy it, either whole or in part and also unlawfully confined and caused serious bodily and mental harm to survived civilians belonging to Hindu community and survived victims. Therefore, the accused (1) Md. Liakat Ali, (2) Aminul Islam @ K.M Aminul Haque @ Rajab Ali@ Md. Aminul Haque Talukder are found criminally liable under section 4(1) of the Act of 1973 for participating, abetting, assisting, substantially contributing, by their act and conduct forming part of systematic attack, to the accomplishment of actual commission of the offence of '**genocide**' as enumerated in section 3(2)(a)(c)(i)(ii)(g)(h) of the International Crimes (Tribunals) Act, 1973 and also for the offence of '**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 said Act.

## **Adjudication of Charge No. 04**

**[Genocide, abduction, confinement and torture committed at Krishnapur, Chandipur Krishnapur and Godainagar villages under Lakhai Police Station and at cremation ghat of Hindus of Paon village under Ashtagram Police Station]**

469. That during the commission of genocide and crimes against humanity at Krishnapur, Chandipur Krishnapur and Godainagar Krishnapur villages under Lakhai Police Station of the then Habiganj Sub-Division [now district] from 05.00 A.M. to 03.00 P.M. on 18.09.1971 as narrated in charge nos. 01, 02 and 03, accused Md. Liakat Ali, commander of Razakar Bahini of Fandauk Union under Nasirnagar Police Station of the then Brahmanbaria Sub-Division [now district ] and accused Aminul Islam alias Rajab Ali alias K.M. Aminul Haque alias Md. Aminul Haque Talukder, the then Al-Badar commander [previously Razakar] of Ashtagram Police Station of the then Kishoreganj Sub-Division [now district] along with other accompanying members of Razakar and Al-Badar Bahini and Pakistani occupation army detained **(1) Haridas Roy (2) Khitish Chandra Gope (3) Nitish Gope (4) Hiralal Gope (5) Promod Das (6) Sudarshan Das (7) Dinesh Biswas (8) Manoranjan Biswas (9) Narendra Gope, and (10) Joykumar Das**, who took shelter in those villages in fleeing condition on boat and then they were taken away to Kalidas Roy's ghat situated at Krishnapur village and thereafter took them away therefrom to the cremation ghat of Paon village, which was by the side of Dhaleswari river, under Ashtagram Police Station of the then Kishoreganj Sub-Division [now district] at 10.00 P.M.

Thereafter, the accused persons with intent to destroy, in whole or in part, the Hindu religious group shot fire towards all the 10[ten] detained victims and also charged bayonet that resulted in death of 08[eight] detainees and the rest 02[two ]victims namely, Narendra Gope [now dead] and Joykumar Das [now dead] being seriously injured got survived. Later on the dead bodies were made floated by the villagers in the nearby Dhaleswari River.

Thereby, accused (1) Md. Liakat Ali, and (2) Aminul Islam alias Rajab Ali alias K.M. Aminul Haque alias Md. Aminul Haque Talukder have been charged for participating, abetting, facilitating, contributing and complicity in the commission of offences of **genocide, abduction, confinement and torture as crimes** against humanity as part of systematic attack directed against unarmed civilians as enumerated in section 3(2)(a)(c)(g)(h) of the Act of 1973 which are punishable under section 20(2) of the said Act for which the accused persons have incurred liability under section 4(1) of the Act of 1973.

## **Evidence of witnesses examined**

470. This charge involves killing of eight [08] Hindu civilians who were allegedly captured in conjunction with the attack launched at village- Krishnapur [as narrated in charge no.01]. The victims were the residents of neighbouring village Ganga Nagar. The killing was the upshot of the event of unlawful detention of

ten [10] Hindu civilians who attempted to flee, in the face of the attack launched. But the gang allegedly apprehending them forcibly took away towards Ashtagram in evening, after it completed its criminal mission at the crime sites as narrated in charge nos. 01,02 and 03 and on the way the gang had killed 08 of 10 detainees taking them at the place near the cremation of village- Paon, this charge framed arraigns.

471. Prosecution relies upon testimony of P.W.01-07 and P.W.09 and P.W.11. Naturally, none of them had occasion of seeing the act of actual commission of killing. They chiefly testified the facts materially related to the principal crime arraigned in charge no.04. Now, first let us eye on what the witnesses testified.

472. P.W.01 Haridas Roy is a direct witness to the event of attack as narrated in charge nos.01, 02 and 03. He is a survived victim of the event arraigned in charge no.01. In addition to these three charges he also testified what he heard about the event as narrated in charge no.04 which involves the event of forcible capture of Hindu civilians, residents of villages-Ganga Nagar when they attempted to flee, just before the attack the gang had launched at village- Krishnapur [as narrated in charge no.01] which ended in killing numerous detainees taking them to the cremation of village

Paon. The act of killing happened in night, the charge framed alleges.

473. P.W.01 stated that two days after the killing happened at village- Godainagar-Krishnapur he on meeting two of ten detained civilians who returned back in injured condition heard from them that just before the accused Liakat Ali, Aminul Islam @ Rajab Ali, their accomplices and army men launching attack at village Krishnapur detained 10 including them from village-Ganga Nagar and made them assembled at the ghat of Kali Das Roy of their village and on the same day at about 04:30 P.M the gang took them away by boats and speed boats towards the cremation besides the river Dhaleswari at village-Paon under police station- Ashtagram. At about 10:00 P.M accused Liakat Ali, Rajab Ali and their cohorts Razakars, Al Badars and Pakistani occupation army by firing gun shots and charging bayonets killed eight of ten detainees. The two injured victims are now dead. A commemorative plaque has been erected in front of Krishnapur High School in remembrance of martyrs.

474. Defence simply suggested that what he testified or heard about the event alleged in this charge was untrue and tutored. P.W.01 denied it.

475. P.W.02 Nripen Krishna Roy, a resident of village-Krishnapur. He chiefly testified what he experienced in conjunction with the attack carried out successively at villages-Krishnapur, Chandipur- Krishnapur and Godainagar-Krishnapur [as narrated in charge nos. 01,02 and 03]. Two survived victims of the event of attack as arraigned in charge no.04 were the neighboring residents of P.W.02.

476. P.W.02 is also a hearsay witness in respect of the attack that resulted in killing of eight Hindu civilians of village Ganga Nagar. He heard the event from the survived victims. Let us see what the P.W.02 testified on the event as narrated in charge no.04.

477. P.W.02 stated that two days after the massacre carried out at their village and adjacent localities Joy Kumar @ Joy Gopal Das and Narendra Gope returned back home, about 100 yards far from that of their]P.W.02] own. He[P.W.02] heard from them that on the day of launching attack at village-Krishnapur ten[10] civilians including them were apprehended and were taken away to the place near the Ghatla of Kali Das's house where they were kept detained till 04:00 P.M and then the gang took them away towards Ashtagram and on the way at about 10:00 P.M at the cremation of village-Paon the Pakistani army men, Al Badar commander Aminul Islam @ Rajab Ali fired gun shots and charged bayonets

to them that resulted in death of eight[08] detainees and they two got survived. The two survived victims are not alive now.

478. P.W.02 denied the defence suggestion that he did not hear anything he testified and that what he testified or heard about the event alleged in this charge was untrue and tutored. P.W.02 denied it.

479. P.W.03 Hiramont Sharma is resident of village- Krishnapur. He testified chiefly the events of attack carried out at their village and neighbouring localities. In respect of the event of killing as alleged in charge no.04 he is a hearsay witness.

480. P.W.03 stated that he heard from his father that on the same day the gang formed of Razakars, Al Badars and army men that had launched attack at their village forcibly apprehended ten[10] civilians of their neighboring village-Ganga Nagar under Brahmanbaria district[now]and kept them detained at the Ghatla of Kali Das's house and in evening there from they were taken away towards village-Paon and of them eight were killed and two Joy Kumar[now dead] and Narendra Gope[now dead] got survived and returned back home receiving injuries.

481. P.W.03 denied the defence suggestion that he did not hear anything he testified; that in 1971 he was a minor and that what he testified or heard about the event alleged was untrue and tutored. P.W.02 denied it.

482. P.W.05 Bablu Roy, a resident of village-Krishnapur is a hearsay witness in respect of the event of killing eight [08] Hindu civilians by taking them to the cremation of Paon village. He is the son of martyr Kali Das Roy. P.W.05 chiefly narrated the facts relating to the events of attack carried out at village- Krishnapur and adjacent localities on 18 September 1971.

483. It transpires from evidence of P.W.05 that he along with his mother went into hiding on sensing the attack launched at their village. He came out of the hiding place when the squad had left the crime sites. Only then he had opportunity of learning how and who carried out the attacks. Remaining in hiding he saw the gang carrying out criminal activities being accompanied by accused Liakat Ali and Aminul Haque @1 Rajab Ali. In conjunction with the attack his [P.W.05] father Kali Das Roy was also killed and his dead body was found lying in the field of Lal Chand Primary School of their village.

484. P.W.05 saw 43 bullets hit dead bodies lying at the Ghatla of Nripen Roy [as narrated in charge no.01] and some injured victims

including Haridas Roy and others when he visited the killing site after the gang departed. Haridas Roy [P.W.01] is a survived victim of the event narrated in charge no.01.

485. In respect of the event of killing narrated in charge no.04 P.W.05 stated that he heard from Haridas Roy and Nripen Roy that accused Liakat Ali, Aminul Haque @ Rajab Ali, their cohort Razakars, Al Badars and Pakistani occupation army bringing ten [10] civilians on forcible capture from village Ganga Nagar under police station-Nasirnagar of District-Brahmanbaria kept them detained making assembled at the Ghatla of their [P.W.05] house [Kali Das's house] and after accomplishing killing of 43 civilians the gang took those ten[10] detainees away with them towards Ashtagram.

486. It also transpires that P.W.05, after the events happened he and family inmates being panicked took refuge at village-Jirunda wherefrom 10/12 days later returned back home. P.W.05 stated that 2/3 days after they returned back home from Jirunda he heard from Joy Kumar Das [now dead], a survived victim [of the event arraigned in charge no.04] that they the ten [10] detainees were taken away to the cremation on the bank of the river Dhaleswari of village-Paon and at about 10:00 P.M eight [08] were gunned

down and bayoneted to death and Joy Kumar Das and another detainee got somehow survived receiving injuries.

487. In cross-examination in reply to defence question P.W.05 stated that on the day of the event he quitted their house in early morning and just before 06:00 P.M he returned back home from the house of Nripen Roy [the killing site of the event narrated in charge no.01]. P.W.05 denied the defence suggestion that he did not hear or see what he testified; that he did not know the accused persons and that what he testified was untrue and tutored.

488. P.W.06 Sunil Chandra Das, a resident of village-Godainagar-Krishnapur is the son of martyr Sukdev Das. He was also apprehended and kept detained along with other detainees at the house of Chitta Das [as narrated in charge no.03]. He saw the accused persons and their accomplices accomplishing the killing of detainees including his [P.W.06] father.

489. In respect of charge no.04 P.W.06 is a hearsay witness. He stated that 5/6 days after the event occurred [at their village and adjacent localities] he heard from Joy Kumar that of 10 detainees eight [08] were gunned down and bayoneted to death taking them at the cremation on the bank of the river Dhaleswari of village-Paon. Joy Kumar and another detainee miraculously got survived.

490. In cross-examination defence does not appear to have even denied what the P.W.06 heard about the killing of eight [08] Hindu civilians of village Ganga Nagar from Joy Kumar, one of survived victims.

491. P.W.07 Abu Taher Mia and P.W.09 Jummon Miah are the residents of village-Fandauk under police station-Nasirnagar of District- Brahmanbaria. They are hearsay witnesses to the event of killings occurred on the same day at Krishnapur and adjacent localities as narrated in charge nos.01,02,03 and 04. They mainly testified the event of attack narrated in charge no.05.

492. P.W.07 and P.W.09 stated that one month after the event of attack they testified[in respect of charge no.05] heard that accused Liakat Ali, Aminul Islam @ Rajab Ali, their cohorts and army men by launching attacks at villages- Krishnapur, Chandipur-Krishnapur and Godainagar-Krishnapur had killed hundreds of Hindu civilians launched.

493. The hearsay testimony of P.W.07 and P.W.09 does not seem to be specific as to the event of killing 08 civilians by taking them to the cremation of village-Paon. But it however indicates the happening of large scale massacre directing Hindu population of the crimes villages and the massacre include the event of killing eight civilians as well, as arraigned in charge no.04.

## **Finding with Reasoning on Evaluation of Evidence**

494. Mr. Rana das Gupta drawing attention to the evidence of witnesses relied upon submitted that the same group of attackers accompanied by the accused persons unlawfully detained 10 Hindu civilians from Ganga Nagar, in conjunction with the attacks carried out on 18 September, 1971 at Krishnapur, Chandipur-Krishnapur and Godainagar-Krishnapur and finally in evening when the gang moved back the detained civilians were taken away towards Ashtogram by boats by the same gang. Taking away the detained victims has been proved by the evidence of direct witnesses. Naturally, the act of killing could not be seen as it happened in night at the cremation of village-Paon. But totality of evidence proves it beyond reasonable doubt that the accused persons were engaged in causing death of 08 out of 10 detainees. Two detainees somehow got survived from whom the other witnesses heard how and where the act of killings was accomplished and by whom. Thus, hearsay evidence in this regard carries probative value and inspires credence, the learned prosecutor added.

495. The learned prosecutor further submitted that this event of killing 08 civilians of Hindu religious group was continuation of the criminal mission of committing ‘genocide’ as arraigned in charge nos. 01,02 and 03. The accused persons are liable for the

killings of 08 Hindu civilians chained to the events arraigned in first three charges constituted the offence of ‘genocide’. For this event was conducted also with the intent that the accused persons and their cohorts had in committing the mass killing of Hindu civilians at Krishnapur, Chandipur-Krishnapur and Godainagar Krishnapur, the learned prosecutor added.

496. On contrary, Mr. Gaji M.H Tamim submits that prosecution failed to prove this charge; that this charge chiefly based on hearsay evidence; that P.W.05 was a tender aged boy in 1971 and thus he did not have any reason of knowing the accused persons beforehand; that it could not be proved that the accused persons were involved in committing the killing of 08 Hindu civilians as alleged and that the evidence tendered suffers from inconsistencies and untruthfulness.

497. Prosecution requires proving that –

- (i) The gang formed of Pakistani occupation army accused persons and their cohorts in conjunction with the daylong attacks they carried out as narrated in charge nos.01,02 and 03 forcibly captured 10 Hindu civilians from Ganga Nagar;
- (ii) The civilians ,so forcibly captured were kept detained at the Ghatla of Kali Das’s house and finally in evening

there from they were taken away towards village-Paon of Ashtogram;

(iii) Out of 10 detained Hindu civilians 08 were killed later on, in night;

(iv) The accused persons participated and facilitated , aided and assisted in accomplishing killing of 08 Hindu civilians, sharing common intent;

(v) The killing was continuation of the events of mass killings of Hindu civilians as narrated in charge nos. 01,02 and 03;

(vi) The killing was intended to destroy the Hindu community, either whole or in part; and

(vii) The criminal acts constituted the offence of genocide, abduction, confinement and torture as crimes against humanity.

498. Tribunal notes that this charge no.04 involves killing of eight [08] Hindu civilians of village-Ganga Nagar-Krishnapur. This site was adjacent to Krishnapur, the killing site of the event narrated in charge no.01. The mass killing carried out at Krishnapur,

Chandipur-Krishnapur and Godainagar-Krishnapur [arraigned in first three charges] is found to have been found chained together. It also stands proved that those attacks were calculated to accomplish the ‘same intent’. The ten victims, Hindu civilians were forcibly captured from Ganga Nagar in conjunction with the attack conducted at village-Krishnapur and neighbouring localities by the same gang and on the same day.

499. It transpires from evidence of P.W.05 that before the 10 detainees were taken away by boats they were kept detained making assembled at the Ghatla of Kali Das’s house [the house of P.W.05 who remained in hiding in course of the attacks launched. P.W.05 however heard it later on from one of survived victims. Thus, even the hearsay evidence together with materially related facts and circumstances unveiled the act of detaining the 10 Hindu civilians of Ganga Nagar, in conjunction with the daylong attacks and taking them away towards Ashtagram seems to have been proved reasonably.

500. The killing of 08 Hindu detainees as arraigned in charge no.04 happened in night and not within anybody’s sight. Thus, direct evidence to the act of killing cannot be expected. However, unlawful capture of victims, detaining them at the Ghatla of Kali Das’s house and in evening taking theme therefrom away towards

Ashtagram are the crucial facts which may justifiably connect the accused persons with the principal crime, the killing of 08 Hindu civilians.

501. We have found it proved that the accused persons actively and culpably accompanied that gang and not as mere spectators but they actively participated to the commission of killings at three adjacent Hindu dominate vicinities on the same day, it already stands proved.

502. This charge no.04 rests chiefly upon hearsay evidence of witnesses some of whom had occasion of seeing the activities carried out by the gang, in course of conducting day-long concerted attacks. Their evidence depicts too that the accused persons were with the gang of attackers at all the killing sites. Some crucial facts and circumstances unveiled together with their hearsay testimony deserve to be weighed cumulatively in arriving at decision in respect of resolving the killing and participation of accused persons therewith as arraigned in this charge no.04.

503. The victims of the charge no.04 are from village Ganga Nagar which was neighbouring vicinity of the crime sites of the event of attacks narrated in first three charges.

504. The act of taking away 10 Hindu civilians of Ganga Nagar away towards Ashtogram took place just after the criminal mission ended in evening on 18 September 1971. The same gang did it, the charge framed arraigns. Naturally, none had occasion to watch the fate of those detained civilians. The witnesses relied upon in support of this charge are hearsay witnesses. The charge framed alleges that out of 10 detainees 08 were killed taking them at the cremation of village-Paon and 02 victims Joy Kumar @ Joy Gopal Das and Narendra Gope got somehow survived and returned back home.

505. P.W.01, P.W.02, P.W.05 and P.W.06 are the residents of Krishnapur and Godainagar-Krishnapur, the Hindu dominated localities where the massacre was carried out on 18 September 1971. The gang with intent to destroy the Hindu religious group, either whole or in part annihilated a large number of Hindu civilians.

506. P.W.01, P.W.02, P.W.05 and P.W.06 heard the event and the upshot of the attack which was continuation of attacks at Krishnapur, Chandipur-Krishnapur and Godainagar-Krishnapur from the survived victims. In narrating what these four witnesses heard from those victims consistently stated core facts which are materially related to the event of killings.

507. It transpires from testimony of P.W.01 that two days after the genocide committed at village-Godainagar-Krishnapur he on meeting **two** of ten detained civilians who returned back in injured condition heard that just before the accused Liakat Ali, Aminul Islam @ Rajab Ali, their accomplices and army men launching attack at village-Krishnapur detained 10 including them from village-Ganga Nagar and kept them confined at the ghat of Kali Das Roy of their village and on the same day at about 04:30P.M the gang took them away by boats and speed boats towards the cremation besides the river Dhaleswari at village-Paon under police station-Ashtagram.

508. P.W.01 also heard from the survived victims that at about 10:00 P.M accused Liakat Ali, Rajab Ali and their cohorts Razakars, Al Badars and Pakistani occupation army by firing gun shots and charging bayonets killed eight of ten detainees.

509. P.W.02 Nripen Krishna Roy a resident of village Krishnapur, corroborating P.W.01 also stated that two survived victims Joy Kumar @ Joy Gopal Das and Narendra Gope were his neighboring residents. Two days after the massacre carried out at their village and adjacent localities [on 18 September, 1971] Joy Kumar @ Joy Gopal Das and Narendra Gope returned back home. Defence could not refute it in any manner. Hearing what the

survived victims experienced and how they got survived was quite natural.

510. P.W.02 also heard from the survived victims Joy Kumar @ Joy Gopal Das and Narendra Gope that on the day of launching attack at village-Krishnapur ten[10] civilians including them were apprehended and were taken away to the place near the Ghatla of Kali Das's house where they were kept detained till 04:00 P.M and then were taken away therefrom towards Ashtagram and on the way at about 10:00 P.M at the cremation of village-Paon the Pakistani army men, Al Badar commander Aminul Islam @ Rajab Ali fired gun shots and charged bayonets to them that resulted in death of eight[08] detainees and they two got survived.

511. P.W.05 Bablu Roy, a resident of village-Krishnapur. He in addition to hearing the event from Haridas Roy and Nripen Roy , the survived victims of the event narrated in charge no.01 had occasion of hearing from two survived victim Joy Kumar Das [now dead] as to how they were apprehended, forcibly taken away to the cremation on the bank of the river Dhaleswari of village- Paon and when and how eight [08] were gunned down and bayoneted to death and Joy Kumar Das and another detainee got somehow survived receiving injuries.

512. It is evinced too from testimony of P.W.06 Sunil Chandra Das, a resident of village- Godainagar- Krishnapur that 5/6 days after the event of genocide occurred [at their village and adjacent localities] on 18 September, 1971 he heard from Joy Kumar that of 10 detainees eight [08] were gunned down and bayoneted to death taking them at the cremation on the bank of the river Dhaleswari of village-Paon. Joy Kumar is a survived victim. Thus hearing the act of detaining 10 Hindu civilians and killing 08 of 10 detainees was quite natural. Defence could not refute that Joy Kumar was one of detainees who could survive and return back home in injured condition.

513. The above hearsay evidence of P.W.01, P.W.02, P.W.05 and P.W.06 is not anonymous. They testified what they heard from two survived victims [now dead]. Defence argued that mere hearsay evidence is not sufficient to prove the arraignment brought.

514. Tribunal notes that 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, (ICTY Trial Chamber)*,**

**September 12, 2006, para. 12]**

515. In the case in hand, the criminal gang carried out its horrendous criminal mission directing Hindu civilians , the residents of three adjacent localities of village -Savianagar and it continued for hours together. Horrific situation existed in conjunction with the attacks around the crime sites. Many of residents of crime sites managed to go into hiding and escape. Naturally, it was not possible of seeing which victim was detained and how. But defence could not controvert the fact of unlawfully detaining 10 Hindu civilians from Ganga Nagar, in conjunction with the daylong attack. Evidence of P.W.01, P.W.02, P.W.05 and P.W.06 also demonstrates that the 10 civilians detained from Ganga Nagar, in conjunction with the attacks were made assembled at the Ghatla of Kali Das’s house.

516. Already it has been found proved that the squad of killers had left the sites in evening by boats and speed boats towards Ashtogram of District-Kishoreganj [now] . Hearsay testimony of witnesses also impels that the gang after it accomplished its criminal mission moved back in evening towards Ashtogram taking 10 Hindu detainees with them.

517. It may be unerringly presumed that the accused persons who were active part of the gang knowingly participated even in causing detention of 10 civilians of Ganga Nagar and it was done for the reason of their membership in Hindu religion. Evidence presented together with the findings already made and facts and circumstances unveiled in adjudicating charge nos.01,02 and 03 collectively leads to the conclusion that no other gang but the gang accompanied by the accused persons participated in effecting unlawful detention of 10 Hindu civilians from Ganga Nagar. At the same time it may also be reasonably concluded that the same gang was responsible for the killing of eight out of ten detainees.

518. The accused persons remained with the squad when it had left the crime sites in evening taking 10 detainees with them. This proves indisputable nexus of the accused persons with the act of killing 08 detainees and causing bodily injury to two others who eventually could return back home.

519. Two survived victims Joy Kumar @ Joy Gopal Das and Narendra Gope are now dead. Defence does not dispute that they were also taken away along with 08 other Hindu civilians on forcible capture and before taking them towards Ashtogram they were kept confined at the Ghatla of Kali Das's house. Why the ten detainees were not annihilated at once? It was best known to the gang of perpetrators.

520. But it is quite patent that all the 10 civilians were apprehended for the reason that they were members of a particular religious group. Detaining them and causing death of eight by gun firing and charging bayonet as testified by P.W.01, P.W.02, P.W.05 and P.W.06 on the day the gang had carried out genocide by effecting killing a large number of Hindu civilians of Hindu dominated localities impels unerring conclusion that the gang accompanied by the accused persons with 'same intent' and purpose opted to annihilate also the Hindu civilians detained unlawfully that ended in killing 08 Hindu civilians which constituted the offence of 'genocide'.

521. P.W.03 Hiramont Sharma, a resident of village-Krishnapur heard from his father that on the same day the gang formed of Razakars, Al Badars and army men that had launched attack at their village and forcibly apprehended ten[10] civilians of their

neighboring village-Ganga Nagar under Brahmanbaria district[now]and kept them detained at the Ghatla of Kali Das's house and in evening they were taken away there from towards village-Paon and of then eight were killed and two Joy Kumar[now dead] and Narendra Gope[now dead] got survived and returned back home receiving injuries.

522. P.W.05 Bablu Roy, a resident of village Krishnapur heard from one survived victim Joy Kumar Das [now dead] as to how they were apprehended, forcibly taken away to the cremation on the bank of the river Dhaleswari of village-Paon and when and how eight [08] were gunned down and bayoneted to death and Joy Kumar Das and another detainee got somehow survived receiving injuries. Act of forcibly taking away and inflicting deliberate injury to two of ten detainees indisputably constituted the offences of 'abduction' and 'torture'.

523. Hearsay testimony of P.W.03 and P.W.05 seems to be credible and consistent and the same gets corroboration from facts and circumstances unveiled. It also transpires that the victims were from their neighbouring village Ganga Nagar.

524. Hearsay evidence of P.W.07 Abu Taher Mia and P.W.09 Jummon Miah, the residents of village-Fandauk however indicates the happening of large scale massacre directing Hindu population

of the crimes villages and the massacre includes the event of killing eight civilians as well, totality of facts and circumstances and pattern of attacks lead to this conclusion.

525. On cautious appraisal of facts and circumstances divulged it stands proved that the accused Md. Liakat Ali and Aminul Islam @ K.M Aminul Haque @ Rajab Ali remained stayed with the gang even when it moved towards Ashtogram leaving the crime sites, taking ten[10] detained civilians with them. Presumably, such criminal act was carried out in continuation of day long attacks carried out in the Hindu dominated localities and with the ‘same intent’.

526. Act of accompanying the squad and the level of influence and authority of the accused persons together, which have already been convincingly proved, are thus qualified to be the constituent of ‘*participation*’ too, in furtherance of common purpose. Thus, the act of killing was accomplished on substantial contribution of the accused Md. Liakat Ali, and Aminul Islam @ K.M Aminul Haque @ Rajab Ali and accordingly the accused persons incurred liability under section 4(1) which refers to Joint Criminal Enterprise [JCE-Basic Form].

527. Tribunal notes that JCE is an agreement or understanding to execute a ‘common criminal plan’. As to Joint Criminal Enterprise

(JCE), it is uncontroversial that all participants in a JCE-I must ‘share’ the specific intent of the respective offence. It is to be noted too that for joint Criminal Enterprise [JCE] liability an accused can participate in a joint criminal enterprise by passive, rather than active.

528. The facts and circumstances suggest the conclusion that the accused Md. Liakat Ali and Aminul Islam @ K.M Aminul Haque @ Rajab Ali , as ‘participants’ were involved in ‘committing’ the crimes perpetrated, sharing common intent. In this regard we may recall the observation of the **ICTY Appeal Chamber** in the case of **Tadic** that--

The objective and subjective prerequisites for imputing criminal responsibility to a participant who did not, or cannot be proven to have, effected the killing are as follows: (i) the accused must voluntarily participate in one aspect of the common design (for instance, by inflicting nonfatal violence upon the victim, or by providing material assistance to or

facilitating the activities of his co-perpetrators); and (ii) the accused, even if not personally effecting the killing, must nevertheless intend this result.

[*Tadic*      *ICTY*      Appeals  
Judgement, para. 196]

529. The accused persons have been indicted for the offence of ‘genocide’ and ‘other inhumane act’. We are to see with which intent the perpetrators annihilated 08 Hindu civilians. We reiterate that it is impossible to adduce direct evidence of the perpetrator’s intent to commit genocide and such intent may be well inferred from the surrounding facts and circumstances. It is now well settled that genocide is a crime which requires specific intent, and the intent may be proven through inference from the facts and circumstances of a case. The ICTR Trial Chamber in the case of **Nahimana, Barayagwiza and Ngeze** observed that--

“The jurisprudence accepts that in most cases genocidal intent will be proved by circumstantial evidence. In such cases, it is necessary that the finding that the accused had genocidal intent be the only reasonable inference from the totality of the evidence.”

**[*Nahimana, Barayagwiza and Ngeze, (Appeals Chamber), November 28, 2007, para. 524*]**

530. The event arraigned in charge no.04 is not an isolated event, in true sense although separate count of charge has been framed on it. Victims of all the four charges including charge no.04 were Hindu civilians of adjacent vicinities. Attacks launched upon them were deliberate and planned. It has already been proved that the killing squad after accomplishing horrific large scale killing of Hindu civilians moved back towards Ashtogram by boats and speed boats taking away ten[10] detained Hindu civilians with them.

531. Obviously, the gang to which the accused persons culpably participated in committing the diabolical killing of 08 Hindu civilians conducted the attack with ‘same intent’ i.e intent to destroy a particular religious group, either whole or in part, we emphatically and justifiably conclude it. That is to say, the event of killing arraigned in charge no.04 formed part of attacks that resulted in killing a large number of Hindu civilians constituting the offence of ‘genocide’, as already proved in adjudicating the charge nos. 01, 02 and 03.

532. 02 victims Joy Kumar @ Joy Gopal Das and Narendra Gope got somehow survived despite receiving injury and returned back home. It has been proved. Defence does not dispute it. The serious bodily harm and mental harm inflicted on two members of a protected group rather threatened its destruction as well, in whole or in part, which was a constituent of the offence of ‘genocide’.

533. The fact that the accused persons were with the gang when it took away the 10 detainees towards Ashtogram is materially related to the killing that happened in night at the cremation indisputably offer valid indication that the accused persons had conscious ‘concern’ and ‘participation’ in committing the act of killing as well and thus they are found criminally responsible for the commission of the murder in question which was with intent to destroy the Hindu religious group, either whole or in part. 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, paragraph 692]]

534. It is quite patent that the event of killing 08 Hindu civilians as arraigned in this charge is chained to the offence of ‘genocide’ committed on the same day at three sites and by the same group of perpetrators. Therefore, we are persuaded to arrive at decision that with intent to materialize the same vicious goal of harming only the members of a particular religious group the accused persons, being part of the criminal enterprise knowingly participated and substantially contributed in effecting detention of 10 civilians of whom 08 were eventually brutally wiped out which constituted the offence of ‘genocide’.

535. In view of facts and circumstance divulged from evidence adduced together with the nexus thereof with the offences of genocide committed at three sites on the same day and by the same squad and settled legal preposition we arrive at decision that

the prosecution has been able to prove beyond reasonable doubt that the accused (1) Md. Liakat Ali and (2) Aminul Islam @ K.M Aminul Haque @ Rajab Ali being imbued by the same purpose and goal participated and substantially contributed in effecting abduction of 10 Hindu civilians of Ganga Nagar for the reason that they were members of Hindu religious group with intent to destroy it, either whole or in part.

536. It has also been proved that the accused persons, sharing common intent also participated and facilitated the commission of killing 08 and causing torture to 02 detainees, by carrying out deliberate and systematic attack. Therefore, the accused (1) Md. Liakat Ali, (2) Aminul Islam @ K.M Aminul Haque @ Rajab Ali are found criminally liable under section 4(1) of the Act of 1973 for participating, abetting, assisting, substantially contributing, by their act and conduct forming part of systematic attack, to the actual commission of the offence of '**genocide**' as enumerated in section 3(2)(a)(c)(g)(h) of the Act of 1973 and also for the offences of '**abduction**' and '**torture**' 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 said Act.

## **Adjudication of Charge No. 05**

**[Murder, abduction, confinement and torture committed at the premises of Post Office, Fandauk Community Hall**

**situated at Fandauk bazaar and at Dattabari Canal, all under Nasirnagar Police Station].**

537. That on any day of the first week of the Bengali month Bhadra of 1971 at about 10.00 A.M. accused Md. Liakat Ali, commander of Razakar Bahini of Fandauk Union under Nasirnagar Police Station of the then Brahmanbaria Sub-Division [now district] and accused Aminul Islam alias Rajab Ali alias K.M. Aminul Haque alias Md. Aminul Haque Talukder, the then Al-Badar commander [previously Razakar] of Ashtagram Police Station of the then Kishoreganj Sub-Division [now district] in close collaboration with 10/12 armed Razakars and Al-Badars having abducted Rangu Miah son of late Lal Miah from his shop situated at the premises of post office building, Fandauk bazaar and Bachchu Miah from the front side of the said shop, who were supporters of Awami League and the war of liberation , took them away to Razakar camp situated at Fandauk Community Hall and confined and tortured them there. On the next day at about 10.00 A.M. the accused persons and their companions along with the two victims rushed towards Nasirnagar Police Station by boats and after bringing the victims at a lonely place by the side of Dattabari Canal situated at the western side of Dukbungallow under Nasirnagar Police Station at about 12.00 P.M. the accused persons killed detained victim Rangu Miah and threw his dead body in the canal. The other detained victim Bachchu Miah was

taken to an unknown place situated at the Sadar of Nasirnagar Police Station and his relations in exchange of money by contracting with Soab Ali Chowdhury, the convener of Razakar Bahini of Nasirnagar Police Station however succeeded to let him off from their clutches.

Thereby, accused (1) Md. Liakat Ali, and (2) Aminul Islam alias Rajab Ali alias K.M. Aminul Haque alias Md. Aminul Haque Talukder have been charged for participating, abetting, facilitating, contributing and complicity in the commission of offences of murder, abduction, confinement and torture as crimes against humanity as part of systematic attack directed against unarmed civilians as enumerated 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 Examined**

538. Prosecution relies upon testimony of four witnesses--- P.W.07, P.W.08, P.W.09, and P.W.12 to prove the arraignment brought in this charge involving the killing of unarmed pro-liberation civilian constituting the offence of crimes against humanity. Of these witnesses P.W.08 and P.W.09 happen to be the sons of victim Rangu Miah. Now let us see what the witnesses

narrated in relation to the event, before we weigh credibility and truthfulness of the same. The event of attack happened in three phases. First, the victims were unlawfully detained from Fandauk bazaar. Next, the victims were kept in captivity at the Razakar camp- at Fandauk bazaar and finally, on the following day the victims were taken away to haor by boats and the mission ended in killing detainee Rangu Miah and another detainee got freed, the charge framed arraigns.

539. P.W.07 Abu Taher Miah @ Ashu [74] is a resident of village- Fandauk under police station-Nasirnagar of District [now]- Brahmanbaria. He is a direct witness to the fact of forcible capture of the victims and some other crucial facts related to the commission of the principal crime.

540. P.W.07 stated that Babru Miah was the chairman of Fandauk Peace committee and he was the maternal uncle of accused Liakat Ali who was the commander of Fandauk Razakar Bahini. Another accused Aminul Islam @ Rajab Ali the Al Badar commander of Ashtagram happened to be close friend of accused Liakat Ali and he[P.W.07] saw them moving together very often around Fandauk bazaar.

541. In respect of the event arraigned in charge no.05 P.W.07 stated that one day of first week of Bangla month Bhadra at about

10:00 A.M he was taking tea at the tea stall of Malakar in front of post office at Fandauk bazaar when he suddenly saw the accused Liakat Ali, Aminul Islam@ Rajab Ali and their 10/12 cohorts detaining his[P.W.07] cousin brother Bachchu Miah from the road and Rangu Miah from his shop who were taken away to Razakar camp set up at the community center at Fandauk bazaar where they were kept confined. At that time he [P.W.07] saw Jummon Miah [P.W.09] the elder son of detained Rangu Miah standing in front of the shop. Upon witnessing it he [P.W.07] went back home and disclosed the event.

542. P.W.07 next stated that on the following day he along with 3-4 of his family inmates moved to the house of Ram Chandra Debnath [now dead] nearer the Razakar camp wherefrom at about 10:30/11:00 A.M they could see the accused Liakat Ali, Aminul Islam @ Rajab Ali and their cohorts taking away Bachchu Miah and Rangu Miah making them blindfolded and tying their hands up towards Nasirnagar Thana Sadar through the river Balabhadra by making them boarded on boats anchored nearer the camp. He [P.W.07] then returned back home and disclosed this phase of attack to his father and others.

543. What happened next? In respect of the next phases of the event P.W.07 is a hearsay witness. P.W.07 stated that on the same

day at about 12:00 A.M his father started approaching towards Nasirnagar police station. He [P.W.07] at about 03:30/04:00 P.M going to the house of Rangu Mia also heard from Jummon Miah the son of victim Rangu Mia that his father [Rangu Miah] was taken away by the Razakars on boats. Jummon also disclosed that he [Jummon Miah] and Khelu Miah saw the boats on which the detainees were taking away at the place near Dattabari canal adjacent to Nasirnagar Duk Bungalow and accused Liakat Ali gunned down his[Jummon] father to death and threw the dead body into the canal.

544. P.W.07 also stated that returning from the house of Jummon Miah on the same day just before the dusk his[P.W.07] father brought back Bachchu Miah[now dead] who disclosed that he and Rangu Miah were subjected to torture in captivity at Razakar camp and later on they were taking away by two boats and he[Bachchu Miah] was kept detained at an unknown place at Nasirnagar and then Soab Ali the chairman of Nasirnagar peace committee in exchange of ransom money given to him handed him[ Bachchu Miah] over to his father who then brought him back to home.

545. P.W.08 Md. Humayun Kabir [58] is a resident of village-Fandauk under police station-Nasirnagar of District-

Brahmanbaria. He is the son of the victim Rangu Miah. In 1971 he used to assist his father in running his father's shop at Fandauk bazaar.

546. He [P.W.08] stated that his farther secretly used to provide assistance to the freedom fighters. Before narrating the event P.W.08 stated the identity of the accused Md. Liakat Ali. P.W.08 stated that Babru Mia of their village was the chairman of Fandauk Union and the chairman of local peace committee as well. Babru Mia and his brothers were anti-liberation people. Accused Md. Liakat Ali used to go on with his education staying at the house of Babru Mia, his maternal uncle. Accused Md. Liakat Ali was a leader of Razakar Bahini.

547. In respect of the event P.W.08 stated that one day of the first week of the month Bhadra in 1971 at about 10:00 A.M he went to home for bringing the container of biscuits as asked by his father and at that time his elder brother Jummon were staying at his father's shop[at Fandauk bazaar]. On the way to home he [P.W.08] saw the accused Md. Liakat Ali , Aminul Islam @ Rajab Ali and their 10/12 cohorts moving around the bazaar.

548. P.W.08 next stated that returning back to bazaar he saw his brother crying who told that accused Liakat Ali, Aminul Islam @

Rajab Ali and their cohorts detaining his father and Bachchu Mia took away to the Razakar camp set up at the community hall of Fandauk bazaar.

549. What happened next? P.W.08 stated that he and his brother coming back home disclosed the event to family inmates and on the same day in evening they moved to Razakar camp to secure his father's release. But the accused Liakat Ali and Aminul Islam @ Rajab Ali asked them to secure his father's release from Nasirnagar police station and at a stage they could hear the screaming of the detainees from inside the Razakar camp.

550. P.W.08 went on to state that on the following day at about 09:30 A.M he along with his mother, elder brother and relatives again moved to the Razakar camp to get his father released in exchange of Rupees 5000. But when they arrived near the camp they saw the accused persons and their cohorts taking away his father making him blindfolded and tying his hands up towards Nasirnagar police station by boats. With this he and his mother returned back home and his elder brother and relative started moving to Nasirnagar police station on foot.

551. P.W.08 next stated that on the same day at about 04:00 P.M his elder brother and relative coming back home disclosed that they saw the accused persons gunning down his father to death at

about 12:00 A.M at the Dattabari canal near Nasirnagar Duk bungalow and threw the dead body into water of the canal. On seeing it his elder brother and relative attempted to move forward when the accused persons and their accomplices made them panicked by fixing fire arms to them and thus they returned back home.

552. P.W.08 also stated that after the dusk on the same day they heard that Tuku Mia the maternal uncle of another detainee Bachchu Mia secured his[ Bachchu Mia] release in exchange of 5000 Rupees given to Soab Ali the peace committee chairman of Nasirnagar police station. They heard the event of killing also from Tuku Mia [now dead], the survived detainee. Finally, P.W.08 stated that accused Rajab Ali used to move around the Fandauk bazaar and thus he knew him beforehand.

553. In cross-examination, P.W.08 in reply to defence question stated that Abu Taher [now dead], Nurdhon Mia, Zabed Moulavi were the accomplice Razakars of the accused persons; that accused Liakat Ali was elected chairman of their Union Parishad for once; that he could not say whether he [accused Md. Liakat Ali] was involved with the politics of Awami League; that he [accused Md. Liakat Ali] used to change his political stance

considering which political party was in power and the accused Rajab Ali was the resident of village Ashtogram.

554. P.W.08 denied the defence suggestion put to him that what he testified implicating accused persons was untrue ; that they were not involved with the event he narrated ; that they did not belong to any auxiliary force and that he did not see any fact he testified.

555. P.W.09 Md. Jummon Mia [63]is another son of victim Rangu Mia. He is the elder brother of P.W.08. He too used to assist his father in running a shop at Fandauk Bazaar wherefrom his father was allegedly forcibly captured. Corroborating the P.W.08 he stated too that his father used to assist freedom fighters secretly.

556. In respect of the event of his father's forcible capture P.W.09 stated that on a day of first week of Bangla month Bhadra in 1971 at about 10:00 A.M he had been at his father's shop when accused Liakat Ali, Aminul @ Rajab Ali being accompanied by 10/12 cohorts forcibly detained his father from the shop and one Bachchu Miah staying in front of the shop and took them away to Razakar camp set up at community centre at Fandauk bazaar.

557. P.W.09 next stated that he disclosed it to his brother Humayun Kabir [P.W.-8] when he returned back to bazaar from home taking container of biscuits. Then they informed it to their mother and the villagers, coming back to home. Then he along with his brother, mother and relative Khelu went to the Razakar camp at about 03:00/03:30 P.M when accused Liakat and Aminul Islam @ Rajab Ali told them that his father would be released on following morning from Nasirnagar police station. They then remained stayed outside the Razakar camp till mid night when they heard Rangu Miah screaming in captivity. Later on, they returned back home.

558. P.W.09 next stated that on the following morning at about 09:00 A.M they taking 5000 rupees with them moved towards Razakar camp at Fandauk bazaar. On arriving there they saw the accused persons and their accomplices taking away his father making blind folded and tying his hands up towards Nasirnagar by boats. Then he and his relative Khleu started approaching towards Nasirnagar on foot. At a stage, they saw the accused Liakat gunning down his father to death at Dattabari canal near Nasirnagar Duk Bungalow. They then attempted to move ahead raising shouting but could not as the accused persons made them panicked by fixing fire arms directing them. With this they returned back home. They could not trace the dead body of his

father. Returning back home they described the event to family inmates when Ashu Mia present at their house also told that he too remaining in hiding inside the house of one Ram Chandra Deb saw the accused persons taking away his father and Bachchu Miah towards Nasirnagar.

559. P.W.09 next stated that on getting information about the release of detainee Bachchu Miah they moved to Bachchu Miah's house after the dusk and then came to know that in exchange of 50,000 rupees and on intervention of place committee chairman Soab Ali another detainee Bachchu Miah got release. Bachchu Miah demonstrated the injuries he sustained due to torture inflicted to him.

560. In cross-examination, P.W.09 stated that Nasirnagar was about three and half miles far from Fandauk bazaar; that he did not initiate any case on the event of his father's killing; that he could not say accused Rajab Ali's father's name. P.W.09 denied the defence suggestion that he did not see what he testified; that on instigation of accused Liakat Ali's political rival he testified falsely and being tutored.

561. P.W.12 Haji Ahmed Ali [85] is a resident of village-Morakuri under police station-Lakhai of District [now] Habiganj. In 1971 he used to run a stationary shop at Fandauk bazaar. He

stated that he knew the accused Liakat Ali and his friend Aminul Islam @ Rajab Ali as they used to move at Fandauk bazaar and in front of his shop. He [P.W.12] is a direct witness to the fact of unlawful detention of Rangu Mia and Bachchu Mia from Fandauk bazaar as narrated in this charge no.05.

562. P.W.12 stated that one day of first week of Bangla month Bhadra at about 10:00 A.M he saw accused Liakat Ali and Aminul Islam @ Rajab Ali going through the front of his shop. Few minutes later he heard that they[the accused persons] forcibly captured Bachchu Miah, a follower of Awami League and then he[P.W.12] came out of his shop when he saw accused Liakat Ali and Aminul Islam @Rajab Ali dragging out Rangu Miah from his shop. The two detainees were then tied up and were taken away to Razakar camp set up at the community hall at Fandauk bazaar. He [P.W.12] also saw Jummon Miah the son of Rangu Miah rushing behind them [the accused persons] with cry.

563. P.W.12 also stated that he heard Rangu Miah and Bachchu Miah screaming after they were taken at Razakar camp. On the following day at about 10:00 A.M he went nearer to the Razakar camp when saw the accused persons taking the detainees away towards Nasirnagar police station by boats anchored at the canal near the camp.

564. P.W.12 next stated that later on, he [P.W.12] heard from Jummon Mia[son of victim Rangu Miah] and his relatives that accused Liakat Ali and Rajab Ali gunned down Rangu Miah to death at the Dattabari canal and another victim Bachchu Miah was kept detained at unknown place. Later on he [P.W.12] heard that Bachchu Miah was set at liberty.

565. In cross-examination, in reply to defence question P.W.12 stated that in 1971 his shop at Fandauk bazaar was about 200 hands far from the post office and 4/5 hundred yards far from the community center. P.W.12 denied the defence suggestion that he did not know the accused persons; that the accused persons did not belong to Razakar or Al Badar Bahini and that what he testified was untrue and out of political rivalry.

### **Findings with Reasoning on Evaluation of Evidence**

566. Mr. Rana Das Gupta the learned prosecutor in course of placing summing up, drawing attention to the evidence of witnesses relied upon submitted that the accused persons physically participated in effecting forcible capture of two unarmed civilians from Fandauk bazaar and it happened in day time and as such the witnesses present at bazaar had opportunity of seeing the gang taking away the victims one of whom Rangu Miah, a potential devotee of the war of liberation was the father of

P.W.08 and P.W.09. Another victim Bachchu Miah however finally got release in exchange of ransom money.

567. The learned prosecutor further submitted that evidence presented demonstrates that the victims were subjected to torture in captivity at Razakar camp set up at community centre of Fandauk bazaar and on the following day they were taken away by boats therefrom. P.W.09 the son of victim Rangu Mia saw the accused Md. Liakat Ali gunning down his father to death at Databari canal near Nasirnagar Duk Bungalow. Defence could not impeach or controvert it and the facts materially related to the commission of the principal crime, in any manner. Finally, the learned prosecutor drew attention to the statement of witness Khalilur Rahman[ his name finds place in serial no.15 of the volume of statement of witnesses] made to the IO which by order of Tribunal's order no.30 dated 07.08.2018 has been received in evidence as permitted under section 19(2) of the Act of 1973.

568. The learned prosecutor submitted that witness Khalilur Rahman was not in position to be brought before the Tribunal for the reason of his grave ailment and his statement made to the IO which has been received in evidence also demonstrates the commission of the crimes arraigned in this charge and participation and complicity of the accused persons thereof.

569. Conversely, Mr. Gaji M.H Tamim submitted that the testimony of witnesses relied upon by the prosecution suffers from inconsistencies and untruthfulness; that the manner the witnesses described the alleged event was not practicable; that P.W.08 was an interested witness and had no reason of knowing the accused persons and P.W.12 testified implicating the accused out of rivalry.

570. This charge involves the act of forcible capture of two unarmed civilians from Fandauk bazaar under police station-Nasirnagar of District [now] Brahmanbaria and keeping them in captivity at Razakar camp set up at the community centre situated at the said bazaar. Such prohibited acts eventually resulted in killing one detainee. Another detainee however later on got freed.

571. The charge framed arraigns that the accused Md. Liakat Ali and Aminul Islam @ K.M Aminul Haque @ Rajab Ali were the key actors in perpetrating the criminal acts. The event of forcible capture and taking the detainees away to the Razakar camp happened in day time, the charge framed alleges.

572. It remained undisputed that the victim Rangu Miah the father of P.W.08 and P.W.09 took strong stance in favour of the war of liberation by act of providing assistance to the freedom fighters. In

1971, during the war of liberation, the freedom-fighters staying inside the territory of Bangladesh to combat the Pakistani occupation army and their local collaborators had obviously to take assistance from the pro-liberation Bengali civilians. The father of P.W.08 and P.W.09 was one of those pro-liberation Bengali civilian. This matter however could not be kept hidden, we presume. And this is the reason of targeting him.

573. Not the Pakistani occupation army men but the group formed of Razakars and Al Badar accomplished the unlawful detention of the victims Rangu Miah from his shop and Bachchu Miah from the bazaar and were taken away to Razakar camp where they were subjected to torture in captivity. It indicates that the accused persons being enthused by the policy and plan of the Pakistani occupation army had carried out the attack directing non-combatant civilians, in violation of customary international law.

574. On appraisal of evidence presented it transpires that victim Rangu Miah used to run a tea stall at Fandauk bazaar, having assistance of his two sons P.W.08 and P.W.9. Defence does not dispute that victim Rangu Miah, on the day of the event had been at his stall along with his sons. Thus, it was quite practicable of seeing the act of unlawfully detaining their father from the shop.

575. Another victim Bachchu Miah also had been at Fandauk bazaar at the relevant time and thus the act of taking him away on forcible capture was naturally witnessed by P.W.07 and P.W.12 one of whom was a shop-keeper of Fandauk bazaar.

576. The group of attackers was formed only of Razakars and Al Badar. No Pakistani army man was with the gang. The accused persons, in exercise of their potential position in Razakar Bahini and Al Badar Bahini orchestrated and guided the attack, it may be safely presumed. Why the victims were so targeted by the gang?

577. We have got from evidence of P.W.08 and P.W.09 that victim Rangu Miah, their father was a potential pro-liberation civilian and used to provide patronage to the freedom fighters secretly. It has also been found too that another victim Bachchu Miah was a strong follower of Awami League. Therefore, the stance the victims had in 1971 in support of the war of liberation was the reason of targeting them.

578. It is now historically settled that Razakar Bahini and Al Badar Bahini were created to further policy and plan of the Pakistani occupation army. And the policy was to annihilate the pro-liberation Bengali civilians, Hindu religious group, intellectuals. Detaining the victims from Fandauk bazaar by the

group of attackers led by the accused persons was thus intended to further the policy of Pakistani occupation army.

579. It stands proved that P.W.09 the elder son of the victim Rangu Mia , P.W.12 a shop-keeper at Fandauk bazaar saw the gang led by the accused persons taking away the two detainees Rangu Miah and Bachchu Miah towards Razakar camp. P.W.08 the younger son of victim Rangu Miah also witnessed it when, on the day of the event of attack, he returned back bazaar taking the container of biscuits from home as asked by his father.

580. Corroborating evidence of P.W.08, P.W.09 and P.W.12 indubitably and beyond reasonable doubt proves that the accused persons played key and culpable role in effecting unlawful capture of two victims-- Rangu Miah and Bachchu Miah from Fandauk bazaar. The people present at bazaar could not naturally resist the said criminal activities as the situation created by the gang in launching such systematic attack was intimidating and coercive indeed, it may be unerringly inferred.

581. Taking the victims away to the Razakar camp set up at community centre at Fandauk bazaar where they were subjected to torture in captivity has been proved from the facts and circumstances unveiled. Defence does not dispute the existence of Razakar camp at Fandauk bazaar.

582. Besides, it transpires too from the evidence of P.W.12 that the said camp was nearer to the bazaar and adjacent to a canal. P.W.09 heard screaming from inside the camp, after the victims were taken there on forcible capture. It proves the act of causing torture to detainees in captivity.

583. It transpires from the evidence of P.W.08 and P.W.09, the sons of victim Rangu Miah that they with the hope of securing his father's release made futile efforts. They moved to the Razakar camp, stayed around it and even on the following day they came there again when they saw the accused persons and their cohorts taking away their father and another detainee Bachchu Miah by two boats kept anchored at the canal adjacent to the camp.

584. Testimony on all these matters materially related to the principal crime remained unshaken. Taking away the detained victims towards Nasirnagar by boats through Dattabari canal by the gang led by the accused Liakat Ali and Aminul Islam @ Rajab Ali gets corroboration also from the evidence of P.W.12, a shop keeper of Fandauk bazaar. Defence could not controvert what the P.W.12 testified on this matter.

585. What happened on the following day when the sons of victim Rangu Miah and their relatives saw the accused persons and their

accomplices moving by boats taking away Rangu Miah with them? Seeing it Jummon Miah [P.W.09] and one of his relatives naturally could not remain mere spectator and they started following the gang by moving towards Nasirnagar on foot. Defence could not controvert it too in any manner.

586. It has also been unveiled from the evidence of P.W.09 that at a stage, at Dattabari canal they saw the accused Liakat Ali gunning down his father to death and on seeing it they attempted to go ahead but they were made panicked by the accused persons by fixing fire arms to them which eventually forced them to come back home and then they disclosed the event to others including the P.W.07 and P.W.12. Testimony of P.W.09 presented on the crucial aspect of the event that resulted in killing Rangu Miah remained uncontroverted in cross-examination. We do not find any reason of disbelieving P.W.09 and other witnesses.

587. The act of forcible capture of victims from Fandauk bazaar, keeping them confined at Razakar camp, causing torture to them in captivity and on the following day taking those away towards Nasirnagar by boats thus have been found well proved from the evidence of P.W.07, P.W.08, P.W.09 and P.W.12 who were natural and direct witnesses.

588. The act of keeping the victims detained at Razakar camp on forcible capture and on the following day taking them away towards Nasirnagar by boats had a perceptible causal nexus with the commission of the act of killing that was carried out at Dattabari canal.

589. It is not required to prove the act of killing by corroborative direct evidence. Although P.W.09 the elder son of victim Rangu Mia claims to have seen the accused Liakat Ali killing his father at Dattabari canal by gun shot as he was following the gang when it was taking away the victim by boats.

590. The principle reflected in the Latin maxim *unus testis, nullus testis*, which requires testimonial corroboration of a single witness's evidence as to fact in issue, is not applicable in international criminal law. The ICTY Trial Chamber in the case of **Tadic** decided that there was no ground for concluding that the requirement of corroboration was any part of customary international law. However, in the case in hand, in addition to direct evidence of P.W.09 the two other witnesses testified what they heard as to the principal fact in issue i.e the killing of victim Rangu Mia, particularly from the survived victim Bachchu Mia.

591. Another victim Bachchu Miah also saw the act of killing Rangu Miah and he disclosed it after getting release and P.W.07 and P.W.12 heard it from him. Hearsay testimony of P.W.07 and P.W12 in this regard gets corroboration from P.W.09 who, as it transpires saw accomplishing the act of his father's killing by gun shot at Dattabari canal.

592. Body of the victim Rangu Miah could not be traced as it was made floated in the canal. But merely for this reason it cannot be said that killing did not happen. Situation existing in 1971 obviously did not allow going for searching the dead body. Already it has been proved when how and by whom the victim Rangu Miah was gunned down to death. Thus, recovery of dead body is not required to prove the death which constituted the offence of murder as crime against humanity. In this regard we recall the observation made by the **ICTY** in the case of **Krnojelac** 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. [T]he fact of a victim's death can be inferred circumstantially from all of the evidence presented to the Trial Chamber

**[ICTY ,Krnjelac,(Trial Chamber), March  
15, 2002, para. 326]**

593. Bachchu Miah [now dead] was one of victims who eventually got survived in exchange of big amount of ransom money and on intervention of local chairman of the peace committee. P.W.12 heard the event and activities of the accused persons. Hearsay evidence of P.W.12 is thus not anonymous and may lawfully be taken into consideration if it gets corroboration from other evidence.

594. P.W.12 heard from Bachchu Miah, one of victims that on the following day he [Bachchu Miah] and Rangu Miah were taking towards Nasirnagar by two separate boats and at Dattabari canal Rangu Miah was shot to death and he[Bachchu Miah] was kept confined at unknown place wherfrom he later on got released and returned back home along with his father.

595. P.W.07 in addition to seeing the act of forcible capture, consistently testified the act of keeping the victims detained at Razakar camp and on the following day taking the detainees away towards Nasirnagar by boats kept anchored near the camp and he also heard the ultimate fate of the victims from Jummon Miah [P.W.09], the son of victim Rangu Miah and Bachchu Miah [now

dead], another victim who eventually could come back in exchange of big amount of ransom money.

596. Hearsay evidence of P.W.07 and P.W.12 seems to have been corroborated by P.W.09 so far as it relates to accomplishment of killing one victim Rangu Miah.

597. 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.

598. In the case in hand, it has been found proved beyond reasonable doubt that the accused Md. Liakat Ali and Aminul Islam @ K.M Aminul Haque @ Aminul Haque Talukder @ Rajab Ali, in exercise of their domination on *para militia* forces created to collaborate with the Pakistani occupation army knowingly, culpably and actively participated in all phases of the attack, by forming a gang formed only of members of auxiliary force and the gang conducted its mission led by the accused persons.

599. It is now settled that an accused can be considered to have participated in the commission of a crime enumerated in the Act of 1973 if he is found to be ‘concerned with the killing.’

600. What we see in the case in hand? Totality of evidence indisputably demonstrates that the accused persons consciously played the key and leading role in perpetrating unlawful capture of two pro-liberation civilians from Fandauk bazaar and they made them confined at Razakar camp set up at the community centre at Fandauk bazaar and facilitated causing brutal torture to them in captivity.

601. The attack did not come to an end here. On the following day, the accused persons and their cohorts presumably intending to accomplish their plan took the detainees away towards Nasirnagar by two boats through Dattabari canal. And it was intended to wipe out the victims, evidence presented impels it conclusively.

602. The acts of the accused persons, in the backdrop of the context already discussed are sufficiently linked to the systematic attack directed against the unarmed pro-liberation Bangalee civilians.

603. It stands proved too that accused Md. Liakat Ali gunned down the victim Rangu Miah to death when the boat arrived at Dattabari canal and the P.W.09 the elder son saw it as he was on move towards Nasirnagar on foot. Not only that, another victim Bachchu Mia who was on another boat could also see it and later on, he was brought back by his father as he got release and narrated what happened to them [victims] to others including the P.W.12.

604. Why the other detainee Bachchu Miah got release? It is found from evidence of P.W.12 that on returning back home Bachchu Miah disclosed that after killing Rangu Miah he was kept confined at an unknown place and later on, on his father's initiative in exchange of big amount of ransom money and on intervention of local potential peace committee chairman he got release.

605. Presumably, sensing the initiative on part of relatives to secure victim Bachchu Miah's release, in exchange of big amount of ransom money the gang kept him confined at unknown place, instead killing. But however, the accused persons did not keep them distanced in accomplishing their culpable plan and thus finally wiping out of another victim Rangu Miah happened.

606. The attack was systematic in nature and it was conducted in war time situation directing civilian population by a group formed of members of auxiliary forces created by the Pakistani occupation army. The offences of abduction, confinement, torture and murder were committed knowingly ‘as part of the attack’ and thus the offences qualify as ‘crimes against humanity’.

607. The attack eventually resulted in killing a single non-combatant pro-liberation civilian and causing torture another victim in captivity, violating customary international law and the laws of war. The attack was systematic and was launched by the group formed of members of auxiliary force led by accused persons. Acts and conduct of the accused persons at all phases of the event formed part of systematic attack and was directed against the civilian population.

608. The phrase ‘civilian population’ does not refer to entire population. Even causing death of a single civilian may constitute the offence of crime against humanity if it is found to be the upshot of the systematic attack. **ICTY Appeal Chamber** observed in the case of **Kordic and Cerkez** that,

“The civilian population comprises all persons who are civilians and the presence within the civilian population of individuals who do not

come within the definition of civilians does not deprive the population of its civilian character.

**[ICTY Appeal Chamber: Kordic and Cerkez, (Appeals Chamber), December 17, 2004, para. 50]**

609. The **ICTR Trial Chamber** also rendered similar observation in the case of **Bisengimana** which is as below:

“The term ‘population’ does not require that crimes against humanity be directed against the entire population of a geographical territory or area.

**[ICTR: Bisengimana (Trial Chamber), April 13, 2006, para. 50]**

610. The Tribunal recalls the settled proposition 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. In this regard the **ICTR Appeal Chamber** observed 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.”

**[ICTR Appeal Chamber, Nahimana, Barayagwiza and Ngeze, (Appeals Chamber), November 28, 2007, para. 924]**

611. Unlawful systematic attack directed against civilians or civilian objects must be shown to have caused deaths and/or serious bodily injuries or extensive damage. This settled proposition together with the facts unveiled in the case in hand suggests the conclusion that, the attack eventually not only caused killing of a single civilian and detaining another one. It rather caused grave mental harm and extreme anguish to the near ones of victims. The unlawful attack thus rather shattered the normal life of the relatives of victims. The damage the near ones of victims sustained is not subject to be compensated, in any way.

612. How the accused persons inflicted torture and upon whom? It is to be noted that causing torture is not confined in inflicting bodily injury only. It may be caused even by inflicting severe

mental harm. In this regard the **ICTY Trial Chamber** observed that -

.....The mental suffering caused to an individual who is forced to watch severe mistreatment inflicted on a relative would rise to the level of gravity required under the crime of torture. ....**[Kvocka et al.,(Trial Chamber), November 2, 2001, para. 149]**

613. In the case in hand, it is hard to deduce the level of mental harm the relatives of victims sustained. The deliberate criminal acts forming part of systematic attack were carried out within the sight of the sons and near relatives of victim Rangu Mia which inevitably caused grave mental harm to them. It constituted the offence of ‘torture’.

614. In the case in hand, one of the primary purposes of the event of attack which ended in killing was at the same time to spread terror among the pro-liberation civilian population as well. The accused persons with extreme notoriety and aggression had perpetrated the criminal activities in wiping out a potential pro-liberation civilian and detaining another one, in exercise of their potential position in Razakar Bahini and Al Badar Bahini.

However, such atrocious threats could not make the brave freedom fighters and pro-liberation civilians deterred in going ahead with the pledge of achieving independence-- history says it.

615. The above reasoned deliberation based on evidence tendered lead us to arrive at decision that the prosecution has been able to prove beyond reasonable doubt that in the first week of the Bengali month Bhadra of 1971 accused (1) Md. Liakat Ali and (2) Aminul Islam @ K.M Aminul Haque @ Md. Aminul Haque Talukder @ Rajab Ali participated and culpably facilitated to the actual perpetration of abduction of two civilians from Fandauk bazaar, inflicting torture keeping the victims confined at Fandauk bazaar Razakar camp and also in accomplishing killing one of detainees, by their notorious act and conduct forming part of systematic attack. Therefore, the accused (1) Md. Liakat Ali and (2) Aminul Islam @ K.M Aminul Haque @ Md. Aminul Haque Talukder @ Rajab Ali are found criminally liable under section 4(1) of the International Crimes (Tribunals) Actm,1973 for the offences of '**abduction**', '**confinement**', '**torture**' and '**murder**' as crimes against humanity as enumerated in section 3(2)(a)(g)(h) of the Act of 1973 which is punishable under section 20(2) read with section 3(1) of the Act of 1973.

## **Adjudication of Charge No. 06**

**[Murder, abduction, confinement and torture committed at 'mazar' situated at Savianagar bazaar and premises of Chowdhury Bari, both of village Savianagar under Ashtogram Police Station]**

616. That on 07.11.1971 at about 11.00 A.M. accused Md. Liakat Ali, commander of Razakar Bahini of Fandauk Union under Nasirnagar Police Station of the then Brahmanbaria Sub-Division [now district] and accused Aminul Islam alias Rajab Ali alias K.M. Aminul Haque alias Md. Aminul Haque Talukder, the then Al-Badar commander [previously Razakar ] of Ashtogram Police Station of the then Kishoreganj Sub-Division [now district] along with about 100 [one hundred] armed Razakar and Al-Badar members and a group of Pakistani occupation army having gone to Savianagar bazaar under Police Station Ashtogram of the then Kishoreganj Sub-Division [now district] killed Md. Dhanu Laskar alias Dhanu Fakir Khadem of a 'mazar' situated therein and Tarikul, a boy of 10/12 years, the supporters of the war of liberation.

In conjunction with the same attack, the accused persons and their said companions attacked Chowdhury Bari situated at the western side of Savianagar bazaar at about 12.00 P.M. and then the accused persons shot fire to Ilias Khan alias Darbesh Khan, Arzu Bhuiyan, Tara Bhuiyan, Khorshed Uddin Chowdhury, Md. Habibur Rahman Chowdhury alias Habi Chowdhury and Minu Chowdhury, all of said Chowdhury Bari who died on the spot

sustaining bullet hit injuries except victim Minu Chowdhury who luckily survived sustaining bullet hit injury. Thereafter, the accused persons accompanying with their accomplices having abducted Ramiz Uddin Chowdhury from the premises of Chowdhury Bari took him away to Khan Bari of Savianagar village at about 12.20 P.M. wherefrom the said victim however saved his life by fleeing away while the accused persons and their accomplices were killing Monir Khan of said Khan Bari. Thereafter the dead bodies of the victims were buried by the villagers at the family graveyard which was situated at the eastern side of Chowdhury Bari on the night of that day.

Thereby, accused (1) Md. Liakat Ali, and (2) Aminul Islam alias Rajab Ali alias K.M. Aminul Haque alias Md. Aminul Haque Talukder have been charged for participating, abetting, facilitating, contributing and complicity in the commission of offences of **murder, abduction, confinement and torture** as crimes against humanity as part of systematic attack directed against unarmed civilians as enumerated in section 3(2)(a)(g)(h) of the Act of 1973 which are punishable under section 20(2) of the said Act for which the accused persons have incurred liability under section 4(1) of the Act of 1973.

## **Evidence of witnesses Examined**

617. This count of charge involving killing of a number of unarmed civilians is chained to the event of killing numerous civilians arraigned in charge no.07. Prosecution relied upon five [05] witnesses aiming to substantiate these two counts of charges. Before we evaluate their evidence first let us see what they recounted in respect of the event arraigned in this count of charge [charge no.06].

618. P.W. 10 Ramiz Uddin Chowdhury [77] is a resident of crime site Chowdhury Bari at village-Savianagar. He is a survived victim and a direct witness to the act of killing civilians by the accused persons and their accomplices.

619. P.W.10 stated that on 07 November 1971 at about 10:30 A.M he and 4/5 others were standing on the bank of the pond, north to their house when they saw two gun boats coming towards Ashtogram and few minutes later they saw two gun boats anchoring at the cremation of village- Paon. Next, they saw one group formed of Pakistani occupation army and others moving towards village- Savianagar. On hearing gun firing all the male members of Chowdhury Bari got assembled on the bank of the pond of their house and started chanting slogan ‘Pakistan

Jindabad' when the gang arrived there and accused Liakat Ali, Rajab Ali, Luchu[now dead] told them—‘ you are the agents of India and enemies of Pakistan’.

620. What happened next? P.W.10 stated that they used to assist the freedom fighters. Accused Liakat Ali on signal of accused Rajab Ali killed his [P.W.10] **brother** Khurshid Uddin Chowdhury by gunshot, another Razakar shot his [P.W.10] cousin brother Arzu Bhuiyan to death, accused Rajab Ali himself killed Ilias Kha by gun shot. With this Tara Bhuiyan attempted to flee but accused Liakat Ali shot him to death too. In conjunction with the attack, accused Rajab Ali killed his [P.W.10] elder brother Habibur Rahman Chowdhury by gunshot, caused grave injury to his [P.W.10] cousin brother Minu Chowdhury by charging bayonet and Minu Chowdhury somehow managed to escape by running away and then on instruction of accused Rajab Ali accused Liakat Ali and his accomplice apprehended him [P.W.10] and the gang then moved towards Kha Bari taking him [P.W.10] with them.

621. In cross-examination, defence suggested P.W.10 that he did not know the accused persons; that the accused persons did not belong to any auxiliary force; that they were not involved with the event he testified; that Rajab Ali implicating whom he testified the

event was not the present accused Rajab Ali. P.W.10 blatantly denied all these defence suggestions. No effort is found to have been made on part of defence to cross-examine the P.W.10 indenting to controvert what he testified on material facts.

622. P.W. 11 Minu Chowdhury [63] is a resident of village Savianagar and happens to be the cousin brother of P.W.10 Ramiz Uddin Chowdhury. He is a survived victim and a direct witness to the act of killing civilians as it was carried out within his sight.

623. P.W.11 stated that on 17 Kartik in 1971 at about 10:00 A.M they had been standing on the bank of the pond, north to their house when he saw two gun boats coming through Dhaleswari river and 10/15 minutes later the gun boats anchored at the cremation of village- Paon and the gang formed of Pakistani occupation army and others being divided in two groups moved towards Paon village and village-Savianagar.

624. P.W.11 next stated that when a group formed of Pakistani occupation army and their accomplices were coming to Chowdhury Bari they , being feared, started chanting slogan ‘Pakistan Jindabad’ when Al Badar Rajab Ali told—‘ **you are agents of India, why are you chanting slogan Pakistan Jindabad’.** Then accused Liakat Ali on signal of accused Rajab Ali shot his[P.W.11] brother Khurshid Uddin Bachchu to death;

then accused Rajab Ali himself gunned down his [P.W.11] brother Ilias Kha @ Darbesh Kha and Habibur Rahman @ Habi Chowdhury to death, another Razakar shot Arzu Bhuiyan to death and then accused Rajab Ali charged bayonet to him[P.W.11] that resulted in injury to his left hand and then he somehow managed to go into hiding inside a bush near the pond wherfrom he saw accused Liakat Ali killing Tara Bhuiyan.

625. P.W.11 also stated that he saw the accused Liakat Ali and his accomplice attackers taking away his cousin brother Ramiz Uddin Chowdhury[P.W.10] towards Kha Bari[ the killing site of the event narrated in charge no.07].

626. In cross-examination in reply to defence question P.W.11 stated that the cremation was about 600 hands far from their house; that in 1971, 7/8 families had been residing at Chowdhury Bari; that his cousin Brother Ramiz Uddin's house was about 50 hands far from that of their own. P.W.11 denied defence suggestion that he did not know the accused persons; that they were not engaged in any of crimes he testified and that what he testified was untrue and tutored.

627. P.W.13 Md. Ishak Bhuiyan [66] is a resident of village-Savianagar under police station-Ashtogram of District [now]-

Kishoreganj. He saw the gang of perpetrators coming at the village Savianagar on the day of the event happened.

628. P.W.13 stated that on 07 November 1971 at about 10:00 A.M he had been standing in front of their Kha Bari [the killing site of the event narrated in charge no.07] when he saw two gun boats anchoring at the cremation of village -Paon and then saw a group of Pakistani occupation army and Razakars and Al Badars approaching to village-Savianagar and few minutes later he heard frequent gun firing from the end of Savianagar bazaar. At about 12:00-12:30 P.M he saw the gang approaching towards Kha Bari from Chowdhury Bari.

629. In respect of the event of killing carried out at Chowdhury Bari P.W.13 stated that he went to Chowdhury Bari after the gang had left the sites and found dead bodies of Ilias Kha, Arzu Bhuiyan, Tara Bhuiyan, Khurshid Uddin Chowdhury and Habibur Rahman Chowdhury. P.W.13 also stated that the residents of Chowdhury Bari were the followers of Awami League and thus they were targeted perceiving them organizers of the war of liberation.

630. P.W.13 in respect of reason of knowing the accused persons beforehand stated that accused Rajab Ali was a resident of their

neighbouring village-Ali Nagar and accused Liakat Ali used to continue study staying at village-Fandauk under police station-Nasirnagar of District- Brahmanbaria and accused Liakat Ali very often used to visit accused Rajab Ali in Ashtogram.

631. In cross-examination, in reply to defence question P.W.13 stated that prior to 1971 accused Rajab Ali studied in Bhairab College; that he had been in prison after independence. Defence, it appears, simply denied what the P.W.13 testified in respect of the event of attack.

632. P.W. 14 Md. Shah Alam Kha [63] a resident of crime site Kha Bari seems to have testified some facts materially related to the commission of killings occurred at Kha Bari.

633. P.W.14 stated that on 17 Ramadan in 1971 a gang formed of hundreds of Pakistani occupation army and Razakars arrived at the cremation of village-Paon by two gun boats. He saw it remaining stayed in front of their house. One group formed of about 40 attackers moved towards village-Savianagar and then he heard frequent gun firing from the end of Savianagar bazaar. Pakistani army, Razakars and Al Badars came to Kha Bari taking Ramiz Uddin Chowdhury [P.W.10] with them on forcible capture from Chowdhury Bari.

634. P.W.14 also stated that at Kha Bari, he saw the accused persons physically participating in accomplishing killing civilians of Kha Bari.P.W.14 finally stated that later on, he found 05 dead bodies lying at Chowdhury Bari, after the gang of attackers and left the sites.

635. In cross-examination, in reply to defence question P.W.14 stated that accused Rajab Ali had been in prison after independence; that village-Morakuri was the birth place of accused Liakat Ali but he used to stay in police station-Nasirnagar of District-[now] Brahmanbaria; and that they[victims] all were the followers of Awami League.

636. P.W.14 denied the defence suggestions that he did not know the accused persons; that the accused persons were not engaged in any criminal activities he testified and that what he testified was untrue and tutored. Defence however does not appear to have denied that the accused persons belonged to auxiliary force in 1971.

637. P.W.15 Md. Sabu Kha [57] is a resident of Savianagar Kha Bari, the killing site of the event arraigned in charge no.07. He chiefly testified the attack launched at their Kha Bari which happened next to carrying out attack at Chowdhury Bari, on the same day. In 1971 he was 11 years old.

638. P.W.15 stated that Chowdhury Bari was about 300/350 yards far from their house [Kha Bari]. He witnessed the gang accompanied by the accused persons killing his uncle Fazlu Kha, his father and Uncle Chunnu Kha and others , in conjunction with the attack at Kha Bari[ as arraigned in charge no.07].

639. In respect of charge no.06 which relates to killings civilians of Chowdhury Bari P.W.15 is a hearsay witness. P.W.15 stated that prior to attack launched at their house [Kha Bari] by the gang accompanied by the accused persons he heard gun firing from the end of Chowdhury Bari and later on heard that by carrying out attack the accused persons gunned down Ilias Kha @ Darbesh Kha, Arzu Mia, Tarab Mia, Bachchu Chowdhury, Habibur Rahman to death at Chowdhury Bari. He, after the gang had left the sites, went to Chowdhury Bari where he found dead bodies lying there.

640. In respect of reason of knowing the accused persons P.W.15 stated that accused Liakat Ali happened to be a friend of accused Rajab Ali and they used to move together around their locality and thus he knew them beforehand.

## **Finding with Reasoning on Evaluation of Evidence**

641. Mr. Rana Das Gupta the learned prosecutor in placing summing up submits that this charge rests upon testimony of 05 witnesses-- P.W.10, P.W.11, P.W.13, P.W.14 and P.W.15. Of them P.W.13, P.W. 14 and P.W.15 who chiefly testified the event arraigned in charge no.07 however recounted what they experienced, in conjunction with the attack and facts materially related to the event arraigned in charge no.,06. Two vital witnesses are P.W.10 and P.W.11 who are direct witness to the event of attack and the act of killings and they somehow got survived and as such they had natural opportunity of seeing the criminal activities carried out by the squad being accompanied by the accused persons at Chowdhury Bari. Defence could not refute their testimony made on material particulars.

642. The learned prosecutor also submits that P.W.10 and P.W.11 are survived victims and their testimony demonstrates that the criminal acts by the accused persons and their cohorts were carried out within their sight. The event of killing that took place at Chowdhury Bari remained unimpeached by the defence. Arrival of the gang of attackers accompanied by the accused persons, hearing gun firing and finding numerous dead bodies lying at Chowdhury Bari cumulatively lead to irresistible conclusion that the accused persons physically participated in accomplishing the

killings, being part of the criminal enterprise, the learned prosecutor added.

643. On contrary, Mr. Gaji M.H Tamim the learned stated defence counsel submits that the narrative made by the witnesses is impracticable and does not carry any credence; that P.W.15 was a tender aged boy in 1971 and thus it is not possible to recount what he testified and that the witnesses relied upon by the prosecution testified falsely implicating the accused persons.

644. Tribunal notes that this count of charge relates to killing numerous pro-liberation civilians of Chowdhury Bari of village-Savianagar under police station-Ashtogram of District [now] Kishoreganj. The attack was allegedly carried out in day time by the group formed of Pakistani occupation army, accused persons and their cohort Razakars.

645. Prosecution relies upon evidence of five witness's i.e P.W.10, P.W.11, P.W.13, P.W.14 and P.W.15. It is to be noted that these witnesses also testified the event of attack launched at Kha Bari adjacent to the Chowdhury Bari, on the same day. The killing conducted at Kha Bari happened just after conducting attack at Chowdhury Bari, charge no.07 arraigns. Both the events are chained together, although two separate charges have been

framed in respect of the event of killing happened at two adjacent sites.

646. It transpires that P.W.10 Md. Ramiz Uddin, a resident of village Savianagar is a direct witness to the attack launched at Chowdhury Bari. He saw the gang of attackers accompanied by the accused persons coming at their village by gunboats. At a stage of attack the gang arrived at Chowdhury Bari when the male inmates of Chowdhury Bari came out on the bank of the pond by chanting slogan ‘Pakistan Jindabad’. Presumably, readily they did it finding no other way to save own lives. But what happened next? Could all of them save their lives?

647. Evidence of P.W.10, a member of Chowdhury Bari demonstrates that accused Md. Liakat Ali, Aminul Islam @ K.M Aminul Haque @ Rajab Ali terming them ‘agents of India’ shot his[P.W.10] brother Khurshid Uddin Chowdhury to death. P.W.10 witnessed it. It has also been divulged from his evidence that the accused Rajab Ali gunned down his [P.W.10] cousin brother Elias Kha and another Razakar killed his cousin brother Arzu Bhuiyan.

648. It also appears that the gang apprehended him [P.W.10] and took him away with them when it moved to Kha Bari after accomplishing killing at Chowdhury Bari. What happened to

P.W.10 at Kha Bari? It transpires from evidence of P.W.10 that Razakars who kept him[P.W.10] hold carried out looting households at Kha Bari [the killing site of the event arraigned in charge no.07] which made him space to flee away.

649. Thus P.W.10 one of relatives of victims, the inmates of Chowdhury Bari saw the gang arriving at Savianagar by gun boats, the accused persons actively participating in perpetrating the killing of numerous civilians of Chowdhury Bari and looting household at Kha Bari as he was taken away there with the gang when it moved to Kha Bari.

650. Evidence of P.W. 11, another direct witness demonstrates that before the accused persons termed them as ‘agents of India and enemies of Pakistan’ before they started the act of killing the inmates of Chowdhury Bari. It indicates that the attack was premeditated and planned in execution of which systematic attack was launched first targeting Chowdhury Bari.

651. Brutal killing of brothers and relatives took place within sight of P.W.10 and P.W11. They, just before the accused and their cohorts started killing attempted to save their lives by chanting slogan ‘Pakistan Jindabad’. The victims thought that the gang would spare them seeing them chanting such slogan, we assume. But it could not save many of them.

652. Testimony of P.W.10 impels that the inmates of Chowdhury Bari used to assist the freedom-fighters. That is to say they had strong stance in favour of the war of liberation. We may safely assume that it was the reason of launching a planned attack directing non-combatant civilians which was intended to further policy and plan of Pakistani occupation army.

653. About the identity of accused Aminul Islam @ K.M Aminul Haque @ Rajab Ali in 1971 P.W.10 testified that Rajab Ali was a resident of their neighbouring village-Ali Nagar of their no.01 Deoghar Union. P.W.10 also stated that accused Rajab Ali was a class mate of his [P.W.10] brother's son Isha Kha.

654. The above pertinent version remained unshaken and does not appear to have been denied even by the defenec. Thus, knowing the accused Aminul Islam @ K.M Aminul Haque @ Md. Aminul Haque Talukder @ Rajab Ali beforehand as testified by P.W.10 was natural and believable, particularly in absence of anything contrary.

655. P.W.10 testified how the accused Liakat Ali physically participated in committing killing, the upshot of the attack. But he does not appear to have testified anything as to reason of knowing

the accused Liakat Ali beforehand. But defence, as it appears, did not cross-examine P.W.10 on this matter.

656. From the trend of cross-examination it does not appear that P.W.10 had no rational of recognizing accused Md. Liakat Ali. Besides, accused Md. Liakat Ali was a notorious and potential Razakar. Already it stands proved. His notoriety naturally made him notoriously known to the people of the localities, it may be justifiably inferred.

657. P.W.10 stated in reply to defence question put to him during cross-examination that accused Rajab Ali had been in jail after independence but he could not say where the other accused Liakat Ali remained stayed. Putting this question on part of defence itself indicates that P.W.10 was acquainted with the identity and status of accused Liakat Ali that they had in 1971.

658. The event of killing carried out at Chowdhury Bari and accused persons' active participation therewith has been corroborated by P.W.11 and P.W.13 as well. Defence could not controvert the reason of knowing the accused Liakat Ali as testified by P.W.11 and P.W.13. Their evidence also proves that the accused persons were with the gang at the killing site Chowdhury Bari.

659. Thus, mere omission of stating reason of knowing the accused Md. Liakat Ali does not diminish what the P.W.10 testified in respect of the act of killing that happened within his sight and accused persons' physical participation therewith.

660. Testimony of P.W.11, a direct witness demonstrates that the accused Liakat Ali and his accomplice attackers taking away his [P.W.11] cousin brother Ramiz Uddin Chowdhury [P.W.10] towards Kha Bari [killing site of the event narrated in charge no.07]. That is to say the squad first carried out its criminal mission at Chowdhury Bari and the accused persons were active part of the criminal mission.

661. P.W.11 is a member of Chowdhury Bari. He saw the accused persons killing the members of Chowdhury Bari. Not only that, accused Rajab Ali by charging bayonet caused injury on his [P.W.11] hand and then he somehow managed to go into hiding wherefrom he saw accused Liakat Ali killing Tara Bhuiyan.

662. Of 05 prosecution witnesses P.W.10 and P.W.11 are direct witnesses as they were the inmates of Chowdhury Bari. The three other witnesses i.e P.W.13, PW.14 and P.W.15 chiefly testified the event of killing conducted at Kha Bari[as arraigned in charge

no.07] and they also testified the crucial facts forming part of attack.

663. Arrival of the gang of attackers at Savianagar, hearing gun firing, moving of the gang towards Kha Bari from Chowdhury Bari and later on finding dead bodies there as testified by P.W.13 indisputably impels the conclusion that the gang first carried out its attack at Chowdhury Bari when it had brutally killed a number of members of Chowdhury Bari.

664. Seeing the gang bringing Ramiz Uddin Chowdhury [P.W.10] to Kha Bari on forcible capture from Chowdhury Bari as testified by P.W.14 proves that the first attack was carried out at Chowdhury Bari and it gets corroboration from the version made by P.W.10 and P.W.11.

665. Seeing the accused persons physically participating to the commission of killing civilians by gunning them down at Kha Bari [event narrated in charge no.07] as testified by P.W.14, a natural witness proves that the accused persons were also present at the killing site Chowdhury Bari. For the attacks conducted at both sites were chained together. Therefore, the fact of seeing 05 dead bodies lying at the Chowdhury Bari unerringly proves that

the accused persons substantially facilitated and participated in perpetrating the killings carried out there.

666. It has been divulged too from the evidence of P.W.15 that accused persons were present with the squad when it carried out killings at Kha Bari [as arraigned in charge no.07]. Thus, presence of accused persons at Kha Bari when the killing were perpetrated there together with the fact of hearing gun firing from the end of Chowdhury Bari, just prior to attack launched at Kha Bari and finally finding 05 dead bodies lying at Chowdhury Bari collectively leads to the unerring conclusion that the same squad being accompanied by the accused persons carried out attack that resulted in killing 05 civilians of Chowdhury Bari.

667. P.W.15 is a hearsay witness to the event of killing. But his hearsay version together with the fact of seeing 05 dead bodies lying at Chowdhury Bari, the killing site gets corroboration from the direct evidence of P.W.10 and P.W.11 and thus it carries credence and value.

668. Therefore, we find that P.W.13, PW.14 and P.W.15 consistently testified the arrival of the gang at the crime village on the day as arraigned in the charges framed, the gun firing they

heard and later on, upon visit of Chowdhury Bari, the killing site they found numerous dead bodies lying there.

669. The above facts materially related to the principal crimes could not be controverted in cross-examination in any manner. Rather, their testimony gets full validation from evidence of P.W.10 and P.W.11, the two survived direct witnesses and relatives of victims.

670. Chowdhury Bari and Kha Bari were the two sites where the event of killing as narrated in charge no 06 and charge no.07 respectively happened. Admittedly, both the sites were adjacent to each other. After concluding the killing mission at Chowdhury Bari consecutive killing was conducted at Kha Bari by the same gang of perpetrators. It stands proved.

671. It is true that P.W.15 was 11 years old in 1971. But we are not convinced with argument advanced by the learned defence counsel that merely for the reason of tender age his testimony is to be excluded from consideration. We are to see whether his testimony inspires credence. There has been no reason whatsoever to keep his testimony aside for consideration.

672. The arraignment brought in this count of charge is not rested solely on testimony of P.W.15 alone. It appears that his narrative gets corroboration from the evidence of direct witnesses as well.

673. Mostak Ahammad Khokon is a cited witness. He made statement to the IO, during investigation, in relation to the event narrated in this charge. But he could not come to Tribunal to depose due to his severe ailment. Thus an application was moved on part of prosecution seeking permission to receive his statement [page 48-49 of the volume of witnesses' statement made during investigation] in evidence. The tribunal permitted it under section 19(2) of the Act of 1973, considering the ground pressed.

674. Mostak Ahammad Khokon is a resident of Kha Bari. His statement made to the IO which has been received in evidence also lends corroboration that Kha Bari was located adjacent west to Savianagar Bazaar; that on the day of the event of attack at Chowdhury Bari at 12:00 noon accused Aminul Islam @ Rajab Ali, Md. Liakat Ali gunned down Ilias Kha @ Darbesh Kha, Arzu Bhuiyan, Bachchu Chowdhury, Habibur Rahman and Tara Bhuiyan to death. It also transpires from his statement that the gang next attacked Kha Bari taking Ramiz Uddin Chowdhury[P.W.10] there with them, on forcible capture from Chowdhury Bari.

675. The above statement of the witness Mostak Ahammad Khokon has been received in evidence as permitted by the Act of 1973. Defence could not cross-examine this witness, true. But success of prosecution in respect of the arraignment brought in charge no.s 06 and 07 does not rest solely on this statement. Thus, no prejudice has been caused to the defenec. The statement received in evidence gets corroboration from other evidence, already discussed. Being a resident of Kha Bari adjacent to Chowdhury Bari naturally this witness too had occasion of watching what happened in course of the attack launched. From this point of view the statement also adds assurance to the fact of launching attack that resulted in killing numerous members of Chowdhury Bari.

676. It has been found proved that the gang of perpetrators not only singled out a number of pro-liberation civilians of Chowdhury Bari. The gang by their criminal acts caused grave mental harm, serious injury to the survived members of Chowdhury Bari.

677. On totality of evidence it has been proved beyond reasonable doubt that the gang intended to wipe out the civilians who took stance in favour of the war of liberation. Such stance was linked to

provide assistance to the freedom fighters. The gang formed of Pakistani occupation army, accused persons and their cohorts thus opted and planned of accomplishing their annihilation by launching systematic attack at Chowdhury Bari.

678. Already we have rendered reasoned finding that accused Md. Liakat Ali was a potential Razakar and accused Aminul Islam @ K.M Aminul Haque @ Rajab Ali was commander of Al Badar Bahini and they maintained culpable nexus with the Pakistani occupation army stationed at Ashtogram police station. Therefore, we may safely infer that they were part of designed plan of the systematic attack and substantially facilitated in accomplishing the criminal mission, in addition to participating physically in perpetrating the killing of numerous pro-liberation civilians which constituted the offence of crimes against humanity.

679. Credible evidence of direct witnesses P.W.10 and P.W.11 proves extreme antagonistic mindset of the accused persons to the pro-liberation civilians and also their physical participation in accomplishing the killing. The attack that resulted in brutal and deliberate killing, causing torture to civilians keeping in coercive confinement would not have been possible without the substantial contribution and culpable enthusiasm on part of the accused persons who had potential position in Razakar Bahini and Al Badar Bahini.

680. In conjunction with the attack the accused persons forming part of the criminal squad took away the P.W.10 with them when it moved towards Kha Bari, the next killing site of the event narrated in charge no.07. P.W.11 was subjected to grave physical injury inflicted by bayonet blow. All these collectively created a coercive and horrific situation which resulted in serious mental trauma to the survivors. Defence could not refute all these upshots of criminal acts forming part of attack in any way.

681. In view of above, we are convinced in arriving at finding that the prohibited acts of the accused persons also committed the act of ‘torture’ by causing physical injury to the survived civilians keeping them confined under coercion which constituted the offence of crimes against humanity.

682. It is evinced that all the victims were non-combatant civilians. None of them had any involvement in hostilities. The armed gang accompanied by the accused persons by perpetrating their killing mission and committing prohibited acts directing civilians violated the international humanitarian law. It is to be noted that international humanitarian law is a set of rules which seek protection of persons who are not or are no longer participating in the hostilities.

683. Tribunal notes that in Resolution 2444 (1968), the General Assembly unanimously stated that “it is prohibited to launch attacks against the civilian populations as such” and that all governmental and other authorities responsible for action in armed conflicts are to observe this rule[**G.A. Res. 2444, UNGAOR, 23<sup>rd</sup> Session, Supp. No. 18 U.N. Doc. A/7218 (1968)**]. In 1970, the General Assembly re-affirmed this fundamental principle stating that “civilian populations as such should not be the object of military operations [**G.A. Res. 2675, UNGAOR, 25th Session, Supp. No. 28 U.N. Doc. A/8028 (1970)**]

684. Just before carrying out the killings by the accused persons and their cohorts the victims were termed as the ‘agents of India and enemies of Pakistan’. Such inciting utterance made by the accused persons had explicitly provided endorsement and ‘threatening urge’ in accomplishing the killings.

685. In the case in hand, it is evinced that the attack was unlawful and systematic as it was directed against non-combatant civilians intending to cause deaths, serious bodily and mental injuries and extensive damage to civilian objects. It stands proved that the accused persons in exercise of their potential affiliation in Razakar Bahini and Al Badar Bahini and being part of the criminal

enterprise deliberately and knowingly wiped out a number of unarmed civilians violating their right to protection.

686.Finally, on totality of evidence it has been proved beyond reasonable doubt that the accused Md. Liakat Ali and Aminul Islam @ K.M Aminul Haque @ Rajab Ali had active ‘participation’ in accomplishing killing civilians at Chowdhury Bari, by their act and conduct forming part of systematic attack. Such culpable act encompasses ‘abetment’ and ‘facilitation’ in committing the principal offence.

687. Therefore, accused Md. Liakat Ali and Aminul Islam @ K.M Aminul Haque @ Rajab Ali are found criminally liable under section 4(1) of the Act of 1973 for ‘participating’ and substantially abetting, facilitating and contributing in committing killing of numerous unarmed civilians constituting the offence of **‘confinement’, ‘torture’ and ‘murder’ as crimes against humanity**, specified in section 3(2) (a) (g)(h)of the International Crimes (Tribunals) Act, 1973 which are punishable under section 20(2) read with section 3(1)of the Act.

## **Adjudication of Charge No. 07**

**[Extermination and plundering committed at Khan Bari of village Savianagar under Ashtogram Police Station]**

688. That on 07.11.1971, after the commission of crimes against humanity at Chowdhury Bari of village Savianagar under Ashtogram Police Station of the then Kishoreganj Sub-Division [now district] from 11.00 A.M. to 12.20 P.M. as narrated in charge no. 06, accused Md. Liakat Ali, commander of Razakar Bahini of Fandauk Union under Nasirnagar Police Station of the then Brahmanbaria Sub-Division [now district] and accused Aminul Islam alias Rajab Ali alias K.M. Aminul Haque alias Md. Aminul Haque Talukder, the then Al-Badar commander [previously Razakar] of Ashtogram Police Station of the then Kishoreganj Sub-Division [now district] along with about 25/30 armed Razakar and Al-Badars and a group of Pakistani occupation army rushed to Khan Bari of village Savianagar under Ashtagram Police Station and having attacked the same Bari the accused persons and their said companions killed (1) Md. Monir Khan (2) Md. Sahar Khan alias Safar Ali Khan (3) Md. Azizur Rahman Khan (4) Md. Fazlu Khan (5) Md. Chunnu Khan (6) Md. Nazir Khan (7) Md. Ayub Khan alias Ayub Ali Khan (8) Md. Iskander Khan (9) Abdul Haque Khan (10) Md. Mortuz Khan alias Mortuz Ali Khan, all of said Kha Bari, and (11) Md. Isha Khan alias Mintu of the same village Savianagar.

In conjunction with the same attack, the accused persons and their said companions plundered the belongings of the said Khan Bari and thereafter at about 01.30 P.M. left the place of occurrence.

The dead bodies of the victims except victim Md. Isha Khan alias Mintu were buried at the family graveyard of Khan Bari by the villagers at night on the same day. The dead body of Md. Isha Khan alias Mintu was buried at the family graveyard of Chowdhury Bari.

Thereby, the accused (1) Md. Liakat Ali, and (2) Aminul Islam alias Rajab Ali alias K.M. Aminul Haque alias Md. Aminul Haque Talukder have been charged for participating, abetting, facilitating, contributing and complicity in the commission of offences of **extermination and other inhumane act** [plundering] as crimes against humanity as part of systematic attack directed against unarmed civilians as enumerated in section 3(2)(a)(g)(h) of the Act of 1973 which are punishable under section 20(2) of the said Act for which the accused persons have incurred liability under section 4(1) of the Act of 1973.

## **Evidence of Witnesses Examined**

689. This charge arraigns the event of attack at Kha Bari, in continuance of the event of killings carried out at Chowdhury Bari [as arraigned in charge no.06], on the same day and by the same group of attackers. Thus, the event arraigned in this charge is chained to the event of attack narrated in charge no.06.

690. Already we have found proved that the accused persons were liable for their criminal acts that resulted in killing of a number of civilians and for causing torture and confinement constituting the offences of crimes against humanity, in adjudicating charge no.06.

691. However, the arraignment brought in this charge rests upon testimony of P.W.10, P.W.11, P.W.13, P.W.14 and P.W.15 who have testified also in relation to the event narrated in charge no.06. Of them P.W.10, P.W.14 and P.W.15 are the residents of Savianagar Kha Bari, the killing site of the event arraigned in this charge. They in making sworn testimony recounted the facts materially related to the commission of the principal crimes, allegedly carried out at Kha Bari , in continuation of the killings happened at Chowdhury Bari, the killing site of the event narrated in charge no.06. However, before we assess the narrative they made first let us see what they have testified

692. P.W.10 Md. Ramiz Uddin Chowdhury [77], a survived victim is a resident of Chowdhury Bari of village-Savianagar. He stated that in conjunction with the attack launched at Chowdhury Bari he was forcibly captured on order of accused Rajab Ali and then the gang moved towards Kha Bari taking him with them.

693. P.W.10 next stated that the accused personas carried out looting at Kha Bari and he saw accused Rajab Ali gunning down Munir Kha of Kha Bari to death. He [P.W.10] also saw accused Liakat Ali killing Najir Kha by gunshot and at a stage, he managed to flee when the Razakars entered inside Kha Bari to carry out looting and then he heard frequent gun firing, remaining in hiding. The gang then moved back towards west leaving the site. He[P.W.10] then came out of hiding place and saw 11 dead bodies lying at Kha Bari including the dead body of his brother's son Mintu.

694. In cross-examination, defence simply denied what the P.W.10 testified in examination-in-chief. P.W.10 denied the defenec suggestion that he did not see or hear what he testified; that the accused persons did not belong to auxiliary force; that the accused persons were not involved with the event he testified; that Rajab Ali implicating whom he testified was not the accused Rajab Ali and that what he testified was untrue.

695. P.W.11 Minu Chowdhury, a resident of Chowdhury Bari of village- Savianagar chiefly testified the event of attack narrated in charge no. 06 that happened at Chowdhury Bari on the same day. In narrating that event he testified that he saw the accused persons accompanying the group of attackers when one accused Rajab Ali

inflicted injury to him by charging bayonet and then he managed to go into hiding inside a bush near the pond.

696. P.W.11 further stated that about one and half hour later he heard from his brother Ramiz Uddin Chowdhury [P.W.10] when he came back home that the accused Rajab Ali and Liakat Ali and their accomplices had gunned down 11 civilians including Monir Kha, Fazlu Kha, Chunnu Kha, Nazir Kha, Safar Kha, Ayub Kha, Sundar Kha, Iskanadar Kha, Abdul Haque Kha and his [P.W.11] brother's son Mintu to death at Kha Bari and also committed looting and then the gang moved back towards Deoghar.

697. In cross-examination, defence simply denied what the P.W.01 testified implicating the accused persons but the facts related to the principal crime as narrated by P.W.11 could not be shaken in any manner.

698. P.W.13 Md. Ishak a resident of village- Savianagar already stated that he experienced the event of attack carried out at Chowdhury Bari. In respect of the arraignment brought in charge no.7 P.W.13 stated that on the day of the event at about 12.30 P.M he saw the group formed of Pakistani occupation army, accused persons and their cohorts coming towards Kha Bari. At a stage, accused Rajab Ali taking him [PW.13] with them approached towards Kha Bari.

699. P.W.13 also stated that he saw the accused persons and their accomplices entering inside the Kha Bari where the accused persons gunned down 11 civilians to death. He also saw accused Rajab Ali and Liakat Ali killing Mantu alias Isha Kha who was brought there on forcibly capture from their houses. The accused persons then after carrying out looting households moved back towards Deoghar.

700. It appears that defence simply denied what has been testified by P.W. 13. The facts materially chained to the commission of principal crime and participation of the accused persons therewith, as testified by P.W.13 could not be controverted in any manner in cross-examination.

701. P.W.14 Md. Shah Alam Kha [63] is a member of Kha Bari of village Savianagar under police station- Ashtogram of District [now] Kishoreganj. In addition to the event arraigned in charge no.06 he testified what he watched in course of conducting the attack launched and killing happened at Kha Bari.

702. P.W.14 stated that the group formed of Pakistani occupation army, accused persons and their cohort Razakars and Al Badars attacked their house Kha Bari bringing Ramiz Uddin Chowdhury[P.W.10] with them on forcible capture from

Chowdhury Bari[the killing site of the event narrated in charge no.06].

703. What happened next? P.W.14 stated that he knew the accused Liakat Ali and Rajab Ali beforehand. They killed his [P.W.14] cousin brother Fazlu Kha, Chunnu Kha, Azizur Rahman by gun shots. Then the accused persons dragging out his uncle Safar Ali Kha from the dwelling hut gunned him down to death. The accused persons then killed Ayub Kha, Iskanadar Kha, Abdul Haque Kha, Mortuja Ali Kha of their family and Mintu Kha. Then the accused persons and their accomplices looted households and then the gang moved back towards Deoghar. P.W. 14 also stated that the accused persons and their accomplices selected the victims to wipe them out as they were the organizers of the war of liberation.

704. In cross-examination, in reply to defence question P.W.14 stated that their Kha Bari was about 200 yards far from Chowdhury Bari; that accused Rajab Ali had been in prison after independence; that village-Morakuri was the birth place of accused Liakat Ali. Defence suggested to P.W.14 that what he testified implicating the accused persons was untrue and tutored. P.W.14 denied it.

705. P.W.15 Md. Sabu Kha [58] is a resident of Kha Bari, the killing site. In 1971 he was 10/11 years old. He is a direct witness to the attack. He stated that on 17 Kartik in 1971 at about 12:30 P.M the gang formed of accused Liakat Ali, Rajab Ali,30/40 Razakars and Pakistani occupation army attacked their Kha Bari. He also heard gun firing from the east end to Kha Bari and learnt that his grand-father Monir Kha was gunned down to death.

706. P.W.15 next stated that the accused Rajab Ali shot his uncle Fazlu Kha to death when he came out to courtyard and at that time he [P.W.15] along with his mother were standing in the courtyard. Next, the accused persons shot his father and another Uncle Chunnu Kha to death, dragging them out to courtyard and then the accused and their accomplices entered into the Kha Bari and killed Ayub Ali Kha, Safar Kha, Abdul Haque Kha, Najir Kha, Iskandar Kha and Mortuja Kha of Kha Bari. Mintu Kha of Chowdhury Bari who took shelter at their house was also shot to death by accused Liakat Ali.

707. P.W.15 also stated that the members of Kha Bari who were killed used to provide assistance to freedom fighters taking stance in favour of the war of liberation. He heard many people of the locality chanting slogan ‘Pakistan Jindabad’ to save own lives. The gang then carried out looting and moved back to Deoghar.

708. In respect of reason of knowing the accused persons P.W.15 stated that accused Rajab Ali was a resident of their neighbouring locality Ali Nagar and he happened to be a friend of accused Liakat Ali and they used to move together around the locality and thus he knew them beforehand.

709. In cross-examination, P.W.15 in reply to defence question stated that he saw the accused persons moving together very often around the neighbouring localities since prior to the war of liberation ensued. P.W.15 denied defence suggestion that he did not see the event he testified; that the accused persons were not engaged with any auxiliary force and that what he testified was untrue and tutored.

### **Findings with Reasoning on Evaluation of Evidence**

710. Mr. Rana das Gupta the learned prosecutor in advancing argument on this charge submitted that the event of attack at Kha Bari that resulted in large scale killing of group of pro-liberation individuals constituted the offence of ‘extermination’. The arraignment brought in this charge has been proved by direct evidence and facts materially related to the principal crime which was chained to the event of killing carried out first by the same gang and on the same day.

711. The learned prosecutor submitted that evidence tendered consistently proved accused persons' active and culpable participation to the barbaric large scale killing of non-combatant pro-liberation civilians of Kha Bari of village Savianagar. Defence could not refute the commission of the principal crime. Accused persons' participation therewith could not be controverted in any manner by cross-examining the natural and competent witnesses. Without active and culpable assistance and participation it would not have been possible to locate the site and civilians to be targeted by the Pakistani occupation army. For the events of attacks were carried out in rural vicinities. The accused persons physically participated in perpetrating killings, looting and at the same time substantially contributed to materialize the plan of the criminal enterprise, the learned prosecutor added.

712. On contrary, Mr. Gaji M.H Tamim, the learned state defence counsel submitted that the complicity and involvement of the accused persons could not be proved beyond reasonable doubt by credible evidence; that the witnesses relied upon by the prosecution had no practicable reason of known and recognizing the accused persons; that delayed prosecution casts doubt as to accused persons' alleged involvement with the event of attacks and that the witnesses testified implicating the accused persons

falsely with the alleged event of killings, the learned state defence counsel added.

713. Tribunal notes that the event of attack that resulted in mass killing at Kha Bari allegedly carried was continuance of the attack that was conducted at Chowdhury Bari [as arraigned in charge no.06]. Charge no.07 arraigns that the same gang and just after committing killings at Chowdhury Bari had conducted attack at Kha Bari. That is to say, both the arraignments are chained together. To prove this charge 05 witnesses who testified the event arraigned in charge no.06 also made sworn testimony also in relation to this charge no.07.

714. We have rendered reasoned finding, in adjudicating charge no.06 that the accused persons physically participated in effecting killing of numerous pro-liberation civilians of Chowdhury Bari by launching deliberate systematic attack. Now, in absence of anything contrary it may safely be presumed that the accused persons did not remain distanced from the gang when it carried out attack at Kha Bari. For the attack at Kha Bari was continuance of the attack at Chowdhury Bari.

715. We find it from evidence of PW.10 Md. Ramiz Uddin Chowdhury, a direct witness to the event of attack conducted at

Chowdhury Bari that resulted in killing 11 pro-liberation civilians. This attack was followed by the deadly killing conducted at Chowdhury Bari. Based on the testimony presented in this regard we have already rendered decision on this arraignment and it has been proved too that both the accused persons physically participated in accomplishing the killings [as narrated in charge no.06].

716. His [P.W.10] testimony also demonstrates that the gang, after accomplishing its mission at Chowdhury Bari, approached towards Kha Bari taking him [P.W.10] with them forcibly. P.W.10 was kept guarded during carrying out attack at Kha Bari but at a stage, he managed to escape when the Razakars got engaged in carrying out devastating looting at Kha Bari. Thus, he had opportunity of seeing some crucial facts related to the attack at Kha Bari. It transpires from his evidence that killing of Najir Kha by accused Liakat Ali happened within his sight.

717. It is evinced that after the gang had left the site P.W.10 came out of hiding place and saw 11 dead bodies lying at Kha Bari including the dead body of his[P.W.10] brother's son Mintu. Defence does seem to have been able to bring anything to taint the fact of the killing carried out at Kha Bari. Besides, the event of mass killing happened at Kha Bari gets consistent corroboration

also from testimony of other witnesses including the inmates of Kha Bari and survived victims.

718. The facts the P.W.10 testified are crucially chained to the attack conducted also at Kha Bari and killing unarmed civilians there. This phase of event happened just after the gang had completed its criminal mission of killing at Chowdhury Bari, it stands proved.

719. That is to say, the same squad being accompanied by the accused persons had carried out the attack also at Kha Bari. Defence could not negate or refute this fact by cross-examining the P.W.10. Besides, it appears that the facts the P.W.10 narrated does not suffer from any degree of untruthfulness.

720. P.W.11 is one of victims of the event happened at Chowdhury Bari. He saw the squad arriving at village-Savianagar and in conjunction with the attack he witnessed the accused persons and their cohorts taking away his [P.W.11] cousin brother Ramiz Uddin Chowdhury [P.W.10] towards Kha Bari with them. It proves that after conducting attack at Chowdhury Bari the squad moved to Kha Bari, the next site it targeted where the event of mass killing was conducted. It gets corroboration from P.W.10, a survived victim

721. Tribunal notes that prosecution is not required to prove all the acts and conducts forming part of attack that resulted in actual commission of the killing arraigned. The horrific context prevailing in conjunction with the armed attack obviously did not permit the people of witnessing the entire criminal mission. Thus, we need to see whether the facts testified by the witnesses are materially related to the principal crime, the upshot of the attack.

722. It is also evinced from testimony of P.W.11 that the accused persons and their accomplices had perpetrated killing of 11 civilians of Kha Bari including his [P.W.11] relatives. Finding numerous dead bodies lying at Kha Bari as testified by P.W.10 lends corroboration to it. Besides, defence does not seem to have made any endeavor to controvert the event of killing 11 civilians of Kha Bari.

723. It transpires that P.W.11 in reply to defence question put to him stated that he could not say where the accused Liakat Ali used to stay after independence. Expressing such inability does not taint what the P.W.11 stated implicating this accused. Rather, putting such question on part of defence itself rather indicates that the P.W.11 knew the accused Liakat Ali and that is why defence questioned him where this accused used to stay after independence. Therefore, in absence of anything contrary it was

practicable of recognizing the accused Md. Liakat Ali as an active member of the killing squad that had carried out criminal activities by launching systematic attack.

724. Additionally, presence of both the accused persons with the gang at the crimes sites has already been found proved. We have made reasoned decision on it in adjudicating the arraignment in relation to the attack and killing at Chowdhury Bari [charge no.06] which was chained also to the attack at Kha Bari, already we got it.

725. Testimony of P.W.13 a direct witness provides consistent corroboration to what has been narrated by P.W.10 and P.W.11. It transpires from his unshaken testimony that on the day of the event of attack launched at village-Savianagar the armed squad approached towards Kha Bari forcibly taking him [P.W.13] with them and on arriving there he saw the accused persons and other Razakars gunning down the inmates of Kha Bari to death.

726. Defence could not refute the fact of taking him [P.W.13] away with the gang towards Kha Bari. Thus, naturally P.W.13 had fair opportunity of seeing the criminal activities carried out there by the accused persons and their cohorts.

727. It has also been divulged from testimony of P.W.13 that accused Rajab Ali physically participated in causing death of Mantu @ Isha Kha by gunshot and finally after carrying out looting the households the gang moved back to towards village-Paon through village-Savianagar.

728. Cumulative appraisal of evidence of P.W.10, P.W.11 and P.W.13 leads to the conclusion that by launching deliberate and systematic attack the squad had conducted the mass killing at Kha Bari. The accused persons had played extreme culpable and key role in perpetrating the killing 11 civilians and they physically participated in accomplishing the killing as well, to further common design and purpose.

729. P.W.14 Md. Shah Alam Kha is a member of Kha Bari, the killing site. Testimony of P.W.14, a direct witness also consistently provides corroboration to the fact of launching attack and committing killings at Kha Bari. Killing some of his [P.W.14] near ones was accomplished within his sight. Defence does not appear to have been able to refute that 11 including the members of Kha Bari were targeted and annihilated brutally, as testified by P.W.14. Bringing Ramiz Uddin Chowdhury [P.W.10] on forcible capture from Chowdhury Bari by the gang when it launched next

attack at Kha Bari also gets corroboration from the evidence of P.W.14.

730. Unshaken testimony of P.W.15 Md. Sabu Kha, a direct witness and a resident of Kha Bari. The horrific event of killings was carried out within his sight. His unshaken testimony proves it beyond doubt that the accused persons physically participated in perpetrating barbaric killing of inmates of Kha Bari which gets corroboration from other witnesses.

731. It is evinced also from testimony of P.W.14 and P.W.15 that the members of Kha Bari who were killed used to provide assistance to freedom fighters taking stance in favour of the war of liberation. Presumably, it was the reason of targeting Kha Bari and the attack would not have been at all possible without the active and culpable assistance of accused persons who were the potential men of two auxiliary forces and had regular movement around the localities. Being imbued by the policy and plan they with extreme antagonistic attitude participated in carrying out the attack that resulted in large scale killing of a group of pro-liberation civilians, we conclude irresistibly.

732. In the face of the attack many people of the locality started chanting slogan ‘Pakistan Jindabad’ to save own lives, P.W.15

stated. But it could not resist the gang in conducting its criminal mission. It transpires too that the gang finally carried out looting and then moved back to Deoghar.

733. Defence argued that P.W.15 was a tender aged boy in 1971 and that is why what he now narrated cannot be relied upon. We do not agree. Merely for the reason of tender age one's testimony cannot be kept aside, if it carries value and credence. Besides, this charge is not rested solely upon the testimony of this witness. The testimony of P.W.15 seems to have been well corroborated by evidence of other competent and direct witnesses.

734. Accused Aminul Islam @ K.M Aminul Haque @ Rajab Ali was a resident of P.W.15's neighbouring locality Ali Nagar and he happened to be a friend of accused Md. Liakat Ali and they used to move together around the locality very often and thus P.W.15 knew them beforehand—P.W.15 stated. It was quite practicable. Even in cross-examination it has been affirmed that P.W.15 saw the accused persons moving together around the neighbouring localities since prior to the war of liberation ensued. We do not find improbability of any degree in it.

735. Besides, the accused persons, for their notoriety were naturally known to the locals. Therefore, it was probable of

recognizing the accused persons accompanying the gang when it launched attack at Kha Bari.

736. The crimes committed were in violation of customary international law and the laws of war. In terms of 'perpetration', an international crime may be committed individually i.e by one person alone and directly, jointly with another person, or through another person. To commit such crime '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.

737. What we see in the case in hand? It stood proved from the facts and circumstances unveiled in evidence that the accused Md. Liakat Ali and Aminul Islam @ K.M Aminul Haque @ Md. Aminul Haque Talukder @ Rajab Ali agreeing to common plan and purpose of the gang of attackers remained engaged with it in carrying out criminal activities forming part of systematic attack. Act of killings perpetrated at Kha Bari was to further common design and goal to which the accused persons participated, assisted and substantially contributed, being part of the criminal enterprise.

738. This count of charge arraigns the act of killing of numerous pro-liberation civilians of Kha Bari which was a close vicinity of Chowdhury Bari, the killing site of the event narrated in charge no.06. It transpires from evidence of P.W.14 a survived inmate that Chowdhury Bari was about 200 yards far from their house [Kha Bari]. That is to say, the sites which the gang made target of their attack were nearer to each other—it stands proved.

739. It is now settled that in a case involving the offences of crimes against humanity and genocide corroboration of evidence is not necessarily required. Thus, this Tribunal meant to prosecute and try that nature of offences may rely even on a single witness' testimony as proof of a material fact. Additionally, the Tribunal in exercise of its discretion may admit hearsay evidence, even when it cannot be examined at its source and when it is not found to have been corroborated by direct evidence. But we have found that the event of killings and physical participation of accused persons therewith have been proved by more than one competent direct witnesses.

740. The accused persons have been indicted for the offence of 'extermination' and 'other inhumane act'. Extermination, by its very nature, is a crime that is directed against a group of individuals. In the case in hand, it is found that the criminal

mission was conducted directed against the group of individuals of Kha Bari for the reason of their affiliation with the freedom fighters and their stance in favour of the war of liberation. It is to be noted that not the other villagers but only the significant number of individuals of Kha Bari were made target and eventually 11 individuals were wiped out aggressively which constituted the offence of ‘extermination’ as crimes against humanity. It was a mass killing indeed directing a group of individuals. The **ICTR** in the case of **Zigiranyirazo** observed that—

“Extermination as a crime against humanity is.....distinguishable from murder as it requires that the killings occur on a mass scale.”

**[Zigiranyirazo, (Trial Chamber), December 18, 2008, para. 431]**

741. Tribunal notes too that any act which is inhumane in nature and character may constitute a crime against humanity provided the other elements are met. Looting and creating extreme coercion, in conjunction with the attack, as found proved constituting inhumane act obviously had a nexus between such acts and the great suffering or serious mental harm or trauma to the survivors.

742. In the case in hand, P.W.10 and P.W.11 are two survived victims. Brutal killings of near ones happened within their sight. Even some witnesses witnessed the act of carrying out looting at Kha Bari. All these covered third party mental suffering which constituted the offence of ‘other inhumane act’. The **ICTR Trial Chamber** in the case of **Kayishema and Ruzindana** observed that--

“The Chamber is in no doubt that a third party could suffer serious mental harm by witnessing acts committed against others, particularly against family or friends.”

**[Kayishema and Ruzindana, ICTR Trial Chamber, May 21, 1999, para. 153]**

743. Totality of evidence leads us to the unerring conclusion that the arraignment of attack brought in this count of charge[charge no.07] was continuance of the criminal activities forming part of attack conducted at Chowdhury Bari [as narrated in charge no.06]. Presumably, the armed gang formed of Pakistani occupation army, accused persons and their accomplices being persuaded by premeditated plan targeted the pro-liberation civilians of Chowdhury Bari and Kha Bari of village-Savianagar under police Station-Ashtogram of District [now] Kishoreganj.

744. The event of attack arraigned in charge no.07 was chained to the attack launched at Chowdhury Bari [as narrated in charge no.06], it stands proved. The accused persons have been indicted for the killings constituting the offence of ‘murder’ as crime against humanity and they have been already found liable for this crime conducted at Chowdhury Bari.

745. The accused persons have been indicted for the offence of ‘extermination’ as crime against humanity in this count of charge [charge no.07]. The attack at Kha Bari resulted in killing 11 civilians, the members of Kha Bari which is rather a ‘large scale killing’ than the extent or degree of killing happened at Chowdhury Bari. That is to say, effecting large number of casualties constituted the offence of ‘extermination’.

746. It has been found proved that combination of acts of the gang accompanied by the accused persons contributed to the killing of a group of large number of individuals. Pattern of attack and facts and circumstances suggest that the common goal of the gang was to wipe out the members of Kha Bari whose effect was to bring about a mass killing. The eleven victims collectively formed a group of individuals all of whom were the members of Kha Bari, the killing site.

747. It is evinced that the accused persons physically participated, sharing common intent, in accomplishing killing some of victims. It by itself formed part of the ‘mass killing’ for which accused persons incurred liability as participants. In this regard the observation made by **The ICTR Trial Chamber** of the case of **Kayishema and Ruzindana** seems to be relevant which is as below:

“It is important to note that an accused may be guilty of extermination . . . when sufficient evidence is produced that he or she killed a single person as long as this killing was a part of a mass killing event.”

**[Kayishema and Ruzindana, (Trial Chamber), May 21, 1999, n. 8. to para. 645]**

748. In view of deliberation based on evidence and settled legal preposition finally we arrive at unanimous decision that the prosecution has been able to prove beyond reasonable doubt that the accused (1) Md. Liakat Ali and (2) Aminul Islam @ K.M Aminul Haque @ Md. Aminul Haque Talukder @ Rajab Ali participated and substantially contributed to the commission of killing 11 civilians at Kha Bari of village Savianagar, in continuation of attack at Chowdhury Bari with intent to annihilate a group of individuals.

749. Therefore, the accused (1) Md. Liakat Ali, (2) Aminul Islam @ K.M Aminul Haque @ Md. Aminul Haque Talukder @ Rajab Ali are found criminally liable under section 4(1) of the Act of 1973 for participating, abetting, assisting, substantially contributing, by their act and conduct forming part of systematic attack, to the accomplishment of actual commission of the offence of '**extermination**' as crimes against humanity as enumerated in section 3(2)(a)(g)(h) of the International Crime (Tribunals) Act, 1973 which are punishable under section 20(2) of the said Act.

## **XII. Conclusion**

750. Section 3(1) provides jurisdiction of trying and punishing even any 'individual' or 'group of individuals' including any 'member of auxiliary force' who commits or has committed, in the territory of Bangladesh any of crimes mentioned in section 3(2) of the Act, apart from member of armed or defence forces.

751. We have already resolved in our foregoing deliberations based on evidence that accused Md. Liakat Ali was a potential Razakar and accused Aminul Islam @ K.M Aminul Haque @ Md. Aminul Haque Talukder @ Rajab Ali was Al Badar commander in 1971. They used to move together around the localities and had

vigorous nexus with the Pakistani occupation army stationed at Ashtogram which was nearer to the crime sites.

752. In the case in hand, the accused Md. Liakat Ali was a potential Razakar and accused Aminul Islam @ Aminul Haque @ Rajab Ali have been indicted for the offences of genocide and crimes against humanity committed in the localities under police station Lakhai of District [now] Habiganj, police station-Nasirnagar of District[now]-Brahmanbaria and police station-Ashtogram of District[now] Kishoreganj.

753. The offences for which the accused persons have been found criminally responsible were the fragment of horrendous atrocities against the non-combatant civilian population committed in context of the war of liberation in 1971 in the territory of Bangladesh, in collaboration with the Pakistani occupation army. The accused persons by virtue of their affiliation with auxiliary forces knowingly made them engaged in committing crimes, to further policy and plan of annihilating the Bengali nation by resisting in achieving its independence.

754. Out of seven charges framed first four charges involve the offence of genocide and last three charges involve the offences of murder and extermination as crimes against humanity.

755. It has been proved that accused Md. Liakat Ali was a potential Razakar and accused Aminul Islam @ Aminul Haque @ Rajab Ali @ Md. Aminul Haque Talukder was Al Badar commander in 1971. They used to move together around the localities and had vigorous nexus with the Pakistani occupation army stationed at Ashtogram which was nearer to the crime sites.

756. In view of reasoned finding made in adjudicating all the charges it has been found proved that target of the gang of perpetrators accompanied by the accused persons was the pro-liberation civilians and civilians belonging to Hindu religious group . The accused persons are found to have had culpable and physical participation to the commission of barbaric crimes which indisputably shock the humanity.

757. All the events of attacks happened in rural vicinities and in day time. Brutalities were carried out within sight of near and dear ones of victims. In accomplishing such appalling atrocities the accused persons knowingly and being part of the criminal enterprise actively collaborated with the Pakistani occupation army, sharing common intent and purpose, it has been found proved.

758. Testimony of P.W.s most of whom had fair occasion of experiencing the criminal acts including perpetration of killings

conducted in course of attacks directed against the population of Hindu dominated localities as arraigned in charge nos. 01,02,03 and 04. Their testimony does not appear to have been suffered from any material infirmity that may smash their credibility. Most of witnesses still have been carrying the trauma they sustained.

759. Active and visible association of accused Md. Liakat Ali and Aminul Islam @ K.M Aminul Haque @ Md. Aminul Haque Talukder @ Rajab Ali with the locally headquartered Pakistani occupation army is the reasonable telling of their high level of culpable mindset. Their conscious and culpable conduct and extreme antagonistic mindset towards the war of liberation and the people associated and sided with it , as have been found point to their unerring guilt which is well consistent with their 'participation' to the commission of the crimes proved.

760. As a result, we have already concluded by rendering reasoned finding that the accused Md. Liakat Ali and Aminul Islam @ K.M Aminul Haque @ Md. Aminul Haque Talukder @ Rajab Ali participated and also abetted, facilitated and substantially contributed to the commission of the horrific offences arraigned in all the 07 for which they have been indicted.

761. We have already found that the accused Md. Liakat Ali and Aminul Islam @ K.M Aminul Haque @ Md. Aminul Haque

Talukder @ Rajab Ali incurred liability under section 4(1) of the Act of 1973 and also under the doctrine of JCE [Basic Form] as they are found to have had shared common intent and purpose of the gang of attackers in committing the crimes already proved beyond reasonable doubt.

### **XIII. Verdict on Conviction**

762. Burden of establishing the guilt or responsibility of the accused persons squarely lies upon the prosecution. In the case in hand, in proving each count of seven charges brought against the accused persons, the standard has been found to be reasonably met as the accused (1) Md. Liakat Ali and (2) Aminul Islam @ Rajab Ali @ K.M Aminul Haque @ Md. Aminul Haque Talukder are found to have incurred liability for the horrendous crimes which have been proved beyond reasonable doubt.

763. Having cautious and judicial appraisal of all the evidences presented before us and arguments advanced by both parties and based upon settled and evolved jurisprudence, the Tribunal [ICT-1] **UNANIMOUSLY** finds the accused-

(1)Md. Liakat Ali and (2) Aminul Islam @ Rajab Ali @ K.M Aminul Haque @ Md. Aminul Haque Talukder--

**Charge No.01:GUILTY** of participating, abetting, assisting, substantially contributing, by their act and conduct forming part of systematic attack, to the accomplishment of devastating criminal activities and mass killing constituting the offences of '**genocide**' as enumerated in section 3(2)(c)(i)(ii)(g)(h) of the International Crimes(Tribunals) Act, 1973 and thus the accused persons incurred criminal liability under section 4(1) of the Act of 1973 and they be convicted and sentenced under section 20(2) of the said Act.

**Charge No.02:GUILTY** of participating, abetting, assisting, substantially contributing, by their act and conduct forming part of systematic attack, to the accomplishment of actual commission of the offence '**genocide**' as enumerated in section 3(2)(a)(c)(i)(ii)(g)(h) of the International Crimes(Tribunals) Act, 1973 and also for the offence of '**other inhumane act**' as crimes against humanity as enumerated in section 3(2)(a)(g)(h) of the Act of 1973 and they be convicted and sentenced under section 20(2) of the said Act.

**Charge No.03:GUILTY** of participating, abetting, assisting, substantially contributing, by their act and conduct forming part of systematic attack, to the accomplishment of actual commission of the offence of '**genocide**' as enumerated in section 3(2)(a)(c)(i)(ii)(g)(h) of the International Crimes (Tribunals) Act, 1973 and also for the offence of '**other inhumane act**' as crimes against humanity as enumerated in section 3(2)(a)(g)(h) of the Act of 1973 and they be convicted and sentenced under section 20(2) of the said Act.

**Charge No.04:GUILTY** participating, abetting, assisting, substantially contributing, by their act and conduct forming part of systematic attack, to the actual commission of the offence of '**genocide**' as enumerated in section 3(2)(a)(c)(g)(h) of the International Crimes(Tribunals) Act, 1973 and also for the offences of '**abduction**' and '**torture**' as crimes against humanity as enumerated in section 3(2)(a)(g)(h) of the Act of 1973 and they be convicted and sentenced under section 20(2) of the said Act.

**Charge No.05:GUILTY** of participating and culpably facilitating to the commission of offences of ‘**abduction**’, ‘**confinement**’, ‘**torture**’ and ‘**murder**’ as crimes against humanity as enumerated in section 3(2)(a)(g)(h) of the International Crimes(Tribunals) Act, 1973 and they be convicted and sentenced under section 20(2) of the said Act.

**Charge No.06:GUILTY** of ‘participating’ and substantially abetting, facilitating and contributing in committing killing of numerous unarmed civilians constituting the offence of ‘**confinement**’, ‘**torture**’ and ‘**murder**’ as **crimes against humanity**’, specified in section 3(2) (a) (g)(h)of the International Crimes (Tribunals) Act, 1973 and they be convicted and sentenced under section 20(2) of the said Act.

**Charge No.07: GUILTY** of participating, abetting, assisting, substantially contributing, by their act and conduct forming part of systematic attack, to the accomplishment of actual commission of the offence of ‘**extermination**’ as crimes against humanity as enumerated in section 3(2)(a)(g)(h) of the International Crime (Tribunals) Act, 1973 and they

be convicted and sentenced under section 20(2) of the said Act.

## **XIV. Verdict on Sentencing**

764. Mr. Rana Das Gupta the learned prosecutor concluded the summing up on placing justification on awarding highest punishment to the accused persons who have found guilty for the extremely barbaric act they had carried out in perpetrating genocide and crimes against humanity. The learned prosecutor drew attention to the barbarity the accused persons had shown by physical participation to the commission of all the crimes proved.

765. The learned prosecutor further submitted that both the accused persons, in exercise of their potential position in auxiliary force—Razakar Bahini and Al Badar Bahini physically participated in committing killing of a large number of civilians for the reason of their membership in Hindu religious group. Intent was to cripple or destroy the group, either whole or in part as arraigned in first four charges.

766. The learned prosecutor also submitted that last three charges also involve killing numerous pro-liberation civilians. All the events of deliberate attacks were carried out in day time. Number of victims, pattern and magnitude of the crimes proved together

deserve to be taken as aggravating factor in awarding just and highest punishment although it is not enough to reduce the pain and trauma of victims and relatives of victims, the learned prosecutor added.

767. On the other hand, Mr. Gaji M.H Tamim the learned state defence counsel submitted that since the prosecution could not prove the arraignments brought by credible evidence and one accused Md. Liakat Ali has been prosecuted simply out of political rivalry they deserve acquittal.

768. In the case in hand two accused persons who belonged to Razakar Bahini and Al Badar Bahini have been tried and found guilty for the dreadful crimes directing civilian population in 1971 during the war of liberation. The legislation known as the International Crimes (Tribunals) Act,1973 was enacted in our sovereign parliament to prosecute and try the offenders who carried out such horrific crimes.

769. The speech of the glorious architect of independent Bangladesh Bangabandhu Sheikh Mujibur Rahman reflected the intense urge of prosecuting the local perpetrators of atrocious acts committed in 1971 during the war of liberation. **Bangabandhu** in

his speech he made in Mymensingh on 05 April 1972 robustly expressed that ---

ଠୃୟ ଯେ ତାଙ୍କ ଗୁରୁ ମନ୍ଦିର ଗୁରୁତ୍ୱ ଏକ ଲୁହ ନତ୍ତୁତ୍ୱ /  
ତେବୁ ମୋହର ନତ୍ତୁତ୍ୱ / ମସମି ପ୍ରିଣ୍ଟି ନତ୍ତୁତ୍ୱ / ଆବାର  
ତକୁଳ ତାଙ୍କି ନି-ଏମ୍ପୋ ରମ୍ଭ ତା ପାତ୍ର ନତ୍ତୁତ୍ୱ ଚିନ୍ତି ଜି /  
..... ଚାନ୍ଦଗୁରୁ କତିତ୍ୱ, ଆରି ଗକ୍ଷି ଏବୁମ୍ଭ  
ଆରାକ୍ଷି, ଆରି ଏଇ ବିଂଗ ଚାନ୍ଦଗୁରୁତ୍ୱ ମସତମ ଥିଲମ୍ବିବ  
କତି ଆରାକ୍ଷି ଏବୁଜି ମିଶ୍ର ପାତ୍ରକ ନାରୀ କତିତ୍ୱ /  
ଆରାକ୍ଷି ଗତି କତିତ୍ୱ ଥି ଜାତି ଯଗ୍ର ନତେ / ବିଭାଗିତାର  
କତିତ୍ୱ କାନ୍ତିବ, ଆରାକ୍ଷି-ଆରି ଏଇ ହରି ଲ୍ୟ କତିତ୍ୱ  
ଜାତି ଯଗ୍ର ନତେବୁ / ଜାତି ମେଧି ନତେ / ବିଭାଗିତାର  
କତିତ୍ୱ କାନ୍ତିବ ଆରାକ୍ଷି / ଓରିମାତ୍ର ଓରି ବିଭାଗିତାର  
ବେବାର୍ପା ଫିଲ୍ୟି କାନ୍ତିବିକ୍ରୀ, କୋର୍-୭୦-୭୧, ହିନ୍ଦିନ୍  
ଚାନ୍ଦକବା, 2017]

770. But the Act of 1973 remained halted as no initiation was taken to form judicial forum under this Act after the brutal assassination of Bangabandhu Sheikh Mujibur Rahman the Farther of the Nation and his family inmates. Now, in coming out from the culture of impunity the nation must honour the firm and moral intent of the Father of the Nation reflected in his above speech.

771. It is now jurisprudentially settled that particular circumstances of the case, the form and degree of the participation of the accused in committing the crimes, the number of victims and length of time of the attack carried out together form ‘aggravating factor’ which is taken into consideration in the determination of the sentence to be awarded.

772. The Tribunal notes that the gravity of the offence, one of the key sentencing factors is to be considered as the starting point for consideration of an appropriate sentence. At the same time the sentence to be awarded should reflect the totality of criminal conduct of the convicted accused persons.

773. At the same time, in awarding sentence we must also eye on the untold trauma and harm sustained by the victims and their relatives. The harm they sustained is not subject to compensation, in any manner. But it also significantly deserves to be considered in weighing the gravity of offences.

774. **Charge nos. 01, 02, 03 and 04** involve the offence of ‘genocide’. The events of attacks arraigned in these four charges are chained together. It has been proved that the attacks at three adjacent vicinities—Krishnapur, Chandipur-Krishnapur and Godainagar-Krishnapur continued for daylong directing the Hindu

population that resulted in killing hundreds of Hindu civilians. It has been found proved to that in conjunction with the attack the gang unlawfully detained 10 Hindu civilians of Ganganagar of whom 08 were killed taking them to haor[**as arraigned in charge no.04**]. Thus, casualty occurred was extremely grave in nature.

775. It has been found proved that the accused persons physically participated in killings, being part of the designed criminal mission. The gang moved one place to another intending to wipe out Hindu civilians. The attack continued for hours together and within the sight of many of relatives of victims. The pattern of purposeful criminal actions were calculated to destruction of a significant part of the targeted group—Hindu religious group, by launching daunting attacks which is enough to establish genocide intent.

776. Genocide is a denial of the right of existence of human group and such denial shocks the conscience of humankind. Awarding just punishment for the crime of genocide is thus now indispensably the matter of the nations' concern. The settled jurisprudence affirms that genocide is a crime under international law which the civilized world condemns, and for the commission of which principals and accomplices—whether private individuals

or public officials, and whether the crime is committed on religious, racial, political or any other ground—are punishable.

777. It has been found proved too that all the criminal acts constituting the offence of ‘genocide’ intending to annihilate the religious group of the geographical area of crime sites as narrated in first four charges were perpetrated with the active and culpable assistance and participation of the accused persons who were the part of the criminal enterprise. The accused persons got engaged in committing such barbaric killings, in exercise of their nexus with the auxiliary force[s]. Tribunal rendered its finding based on evidence about the mode of their participation which aggravates their liability.

778. The last three charges i.e. **charge nos. 05, 06 and 07** involve the offence of deliberate killings of a number of pro-liberation defenceless civilians by launching systematic attack. All the victims of these three events were the organizers of the war of liberation and used to provide patronage to the freedom-fighters secretly, we have found it proved. These three events also took place in day time and as such naturally many of relatives and residents of the crime sites had occasion of watching the criminal activities carried out by the accused persons, in accomplishing its killing mission.

779. The proved event of indiscriminate killings of numerous pro-liberation civilians [as arraigned in charge nos.06 and 07] were chained together. The same gang being accompanied by the accused persons and on the same day had carried out the atrocious annihilation of a large number of civilians by launching attack first at Chowdhury Bari and next at Kha Bari of village-Savianagar. Some of survived relatives of victims came to narrate the events, carrying immense trauma.

780. In respect of **charge no.07** we have found it proved that a large number of defenceless civilians of Kha Bari were annihilated which constituted the offence of ‘extermination’. The successive attacks at Chowdhury Bari and Kha Bari, two adjacent vicinities continued for long.

781. In respect of **charge no.05** we unambiguously affirm that the offence of unlawfully detaining 02 civilians, keeping them in captivity at Razakar camp and then gunning down one to death and releasing another in exchange of ransom money committed by physical and active participation of the accused persons were of course gravely serious in nature as well.

782. Thus, in dealing with the arraignments brought against the accused persons it is found that commission of the offence of genocide, and crimes against humanity directing non-combatant civilians were barbaric in pattern to the commission of which the accused persons were active and culpable part.

783. The truth that has been unfolded through trial is a fragment of the horrific genocide carried out in Bangladesh in 1971 during the war of liberation. The victims of the brutality as found in this case form part of three millions martyrs. The nation is here and now going ahead just for the myriad sacrifice of three millions martyrs and hundreds of thousands of our mothers and sisters who laid their supreme worth for the cause of our independence and independent motherland—Bangladesh. The nation pays tribute and salute to them and they always deserve due recognition and honour.

784. Precisely on account of the intrinsic gravity the offences committed must be punished appropriately. Awarding sentence to convicted accused chiefly depends upon the magnitude of the crimes proved and the role the convicted had played in perpetrating the same.

785. In the case in hand, it has been proved that accused Md. Liakat Ali was a potential Razakar in 1971. Another accused Aminul Islam @ K.M Aminul Haque @ Md. Aminul Haque Talukder @ Rajab Ali is self-declared potential leader of Al Badar Bahini of Ashtogram of District-Kishoreganj [now]

786. It has been unveiled that before initiation of prosecution against accused Md. Liakat Ali for the crimes enumerated in the International Crimes (Tribunals) Act, 1973 committed in 1971 he was involved with politics of Awami League and was the president of Lakhai Thana Awami League since 2003 to 2013. Agitating this matter defence attempted to negate his involvement with any of auxiliary force in 1971. In this regard we have already rendered our reasoned finding that an act or status subsequent to the commission of offence an accused cannot be absolved of liability of the crimes for which he has been arraigned, if the same is found proved.

787. Subsequent act or sham allegiance to a pro-liberation political party intending to hide his horrendous deeds that he committed in 1971 during the war of liberation does not make him absolved of liability for committing the offences like genocide and crime against humanity, in exercise of potential position in

Razakar Bahini, particularly when he is found guilty for the offences.

788. Besides, why the accused Md. Liakat Ali remained absconded since inception of the case? Such act of absconding is considered to be relevant in proving the arraignments brought and also negates his alleged subsequent allegiance to the pro-liberation political ideology.

789. In the case in hand, the accused persons have been indicted in 07 charges. All the charges reflect extreme brutality of both the accused. Act and conduct that the accused persons remained consciously and culpably engaged in conducting criminal mission directing civilian population which was indeed loaded of extreme antagonistic mindset to the minorities and the pro-liberation civilians, being imbued by the policy and plan.

790. The attack at Krishnapur, Chandipur-Krishnapur and Godainagar-Krishnapur [**as narrated in charge nos. 01, 02 and 03**] continued for daylong. Prolonged nature of attack or criminal mission to which the accused persons were active part is considered as an aggravating factor.

791. The intrinsic gravity of the heinous crimes committed and their widespread, atrocious and systematic character is particularly gravely shocking to the human conscience. Zeal the accused persons had shown knowingly in committing the horrendous killings terming the victims as ‘agents of India and enemies of Pakistan’ [as arraigned in charge nos.06 and 07] can be an aggravating factor as it was sternly threatening, before the accused persons gunning down the defenceless civilians to death .

792. We reiterate that the sentence to be awarded must be appropriate and just considering the relative seriousness of the offences so that it can convey the degree of wrongdoing and not simply the commission of wrongdoings. The inherent nature and pattern of the violence and aggression conducted as found proved [as narrated in all the seven charges] indisputably makes the issue of awarding just punishment extremely imperative.

793. We reiterate that inappropriate lesser sentence causes injustice not only to the victims of crimes but sometimes to the whole society and the nation as well. Thus, Letters of law cannot remain non responsive to the victims and relatives of martyrs and the nation too who have been still carrying colossal and unspeakable trauma.

794. In view of deliberation as made above and considering the intrinsic gravity of the offences proved and also keeping the factors as focused above into account we are of the **UNANIMOUS** view that justice would be met if the convicted accused persons who have been found guilty beyond reasonable doubt for the horrendous crimes proved are condemned and sentenced as below, under the provision of section 20(2) of the Act of 1973:

Hence it is  
**ORDERED**

That the accused **(1) Md. Liakat Ali** son of late Md. Khelu Miah alias Khelu Miah and late Rezia Khatun of Village Morakuri, Police Station-Lakhai, District[now]- Habiganj and **(2) Aminul Islam @ Rajab Ali @ K.M. Aminul Haque @ Md. Aminul Haque Talukder** son of late Abdul Gani Munshi alias Abdul Gani Talukder alias K.H.M.A. Gani of Village- Ali Nagar, Police Station Ashtagram, District-[now] Kishoreganj are found **UNANIMOUSLY guilty** of the offences of ‘abduction’, ‘confinement’, ‘torture’, ‘other inhumane acts’, ‘murder’, ‘extermination’ as **crimes against humanity** and **‘genocide** enumerated in section 3(2) of the International Crimes (Tribunals) Act, 1973 in respect of all the seven charge.

Accordingly, they be **UNANIMOUSLY** convicted and condemned to the **sentence as below for these seven [07] charges**, under section 20(2) of the Act of 1973:

**'Sentence of death'** for the offence of '**genocide**' as listed in **charge no.01** and they be hanged by the neck till they are dead, under section 20(2) of the International Crimes (Tribunals) Act, 1973;

**'Sentence of death'** for the offence of '**genocide**' and '**other inhumane act**' as crime against humanity as listed in **charge no.02** and they be hanged by the neck till they are dead, under section 20(2) of the International Crimes (Tribunals) Act, 1973;

**'Sentence of death'** for the offence of '**genocide**' and '**other inhumane act**' as listed in **charge no.03** and they be hanged by the neck till they are dead, under section 20(2) of the International Crimes (Tribunals) Act, 1973;

**'Sentence of death'** for the offence of '**genocide**' and '**abduction**' and '**torture**' as crimes against humanity as listed in **charge no.04** and they be hanged by the neck till they are dead, under section

20(2) of the International Crimes (Tribunals) Act, 1973;

**'Sentence of death'** for the offences of **abduction**, **'confinement'**, **'torture'** and **'murder'** as crimes against humanity as listed in **charge no.05** and they be hanged by the neck till they are dead, under section 20(2) of the International Crimes (Tribunals) Act, 1973;

**'Sentence of death'** for the offence of **'confinement'**, **'torture'** and **'murder'** as crimes against humanity' as listed in **charge no.06** and they be hanged by the neck till they are dead, under section 20(2) of the International Crimes (Tribunals) Act, 1973;

**AND**

**'Sentence of death'** for the offence of **'extermination'** as listed in **charge no.07** and they be hanged by the neck till they are dead, under section 20(2) of the International Crimes (Tribunals) Act, 1973.

The ‘**sentences of death**’ as awarded above, in respect of all the seven **charges** will get merged.

Since the convicted accused persons have been absconding the ‘**sentence of death**’ as awarded above shall be executed after causing their arrest or when they surrender before the Tribunal, whichever is earlier.

The ‘**sentence of death**’ awarded as above under section 20(2) of the International Crimes (Tribunals) Act , 1973 [The Act No.XIX of 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.

Let conviction warrant be issued accordingly. Let a copy of the Judgment be transmitted together with the conviction warrant to (1) the Inspector General of Police, Bangladesh Police, Police Head Quarters, Dhaka and (2) the District Magistrate, Dhaka for information and necessary action and compliance.

Let certified copy of the judgment also be furnished to the prosecution at once.

**Justice Md. Shahinur Islam, Chairman**

**Justice Amir Hossain, Member**

**Justice Md. Abu Ahmed Jamadar, Member**