

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. 07 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) of the Act No. XIX of 1973]

Present:

Justice Md. Shahinur Islam, Chairman

Justice Amir Hossain, Member

Justice Md. Abu Ahmed Jamadar, Member

The Chief Prosecutor

Vs

(1) Sheikh Md. Abdul Majid alias Majit Moulana [absconded], (2) Md. Abdul Khalek Talukder [absconded], (3) Md. Kabir Khan [absconded], (4) Abdus Salam Beg [absconded] and (5) Md. Nur Uddin alias Raddin (absconded)

For the Prosecution:

Mr. Golam Arief Tipoo, Chief Prosecutor

Mr. Mokhlesur Rahman Badal, Prosecutor

Ms. Sabina Yesmin Khan, Prosecutor

Mr. Tapas Kanti Baul, Prosecutor

Ms. Rezia Sultana Begum, Prosecutor

For the defence

Mr. Gazi M.H Tamim, Advocate, Bangladesh Supreme Court:
State Defence Counsel: For all the five [05] absconding accused (1) Sheikh Md. Abdul Majid alias Majit Moulana, (2) Md. Abdul Khalek Talukder, (3) Md. Kabir Khan, (4) Abdus Salam Beg and (5) Md. Nur Uddin alias Raddin.

Date of delivery of Judgment: 28 March, 2019

JUDGMENT

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

I. Introductory Words

1. Six[06]accused(1) Sheikh Md. Abdul Majid alias Majit Moulana [absconded], (2) Md. Abdul Khalek Talukder [absconded], (3) Md. Kabir Khan [absconded] ,(4) Abdus Salam Beg [absconded], (5) Md. Nur Uddin alias Raddin[absconded] and (6) Md. Abdur Rahman[died during trial]have been indicted on seven counts for the atrocious prohibited criminal acts constituting the offences ‘murder’, ‘abduction’, ‘confinement’, ‘torture’, ‘rape’ and ‘other inhumane acts’ as crimes against humanity enumerated in the International Crimes(Tribunals) Act, 1973 committed in the localities under police station-Purbodhola of District [now] Netrokona in 1971, during the war of liberation of Bangladesh, as arraigned in the charges framed.

2. Prosecution alleges that in 1971 the accused (1) Sheikh Md. Abdul Majid alias Majit Moulana , (2) Md. Abdul Khalek Talukder , (3) Md. Kabir Khan ,(4) Abdus Salam Beg and (5) Md. Nur Uddin alias Raddin were actively affiliated with the locally formed Razakar Bahini. And they , in exercise of their dominant nexus with the auxiliary force participated and actively and culpably

collaborated with the Pakistani occupation armed force in carrying out hideous criminal activities aiming to annihilate the pro-liberation civilians, in furtherance of policy and plan of resisting the Bengali nation in achieving its self-determination and long cherished independence.

3. Out of six[06] accused only one[01] accused Md. Abdur Rahman had been in prison as he could be arrested in execution of warrant of arrest issued by the Tribunal at pre-trial stage. Accused Md. Abdur Rahman died during trial [at the stage of summing up] and as such proceeding so far as it relates to him stood abated. Tribunal rendered necessary order in this regard after bringing the matter to its notice.

4. The rest five [05] accused (1) Sheikh Md. Abdul Majid alias Majit Moulana , (2) Md. Abdul Khalek Talukder , (3) Md. Kabir Khan ,(4) Abdus Salam Beg and (5) Md. Nur Uddin alias Raddin could not 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, in compliance with necessary legal requirements directing them to surrender before the Tribunal within the time

stipulated therein. But none of those five accused responded. As a result, trial proceeded in the absence of those five[05] accused persons, treating them absconded.

5. Today, this unanimous Judgment is being rendered by this Tribunal [ICT-1] for the prosecution of persons belonging to auxiliary force allegedly responsible for the serious offences known as ‘system crimes’ as enumerated in the International Crimes (Tribunals) Act, 1973[hereinafter referred to as the ‘Act of 1973] committed in violation of international humanitarian law in the territory of Bangladesh in 1971, during the war of liberation.

6. 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

7. 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. Tribunal reiterates that 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.

8. We reiterate that the Act of 1973 has been enacted to prosecute, try and punish not only the 'armed forces' but also the perpetrator[s] belonging to 'auxiliary force[s]', or who committed the offence even in the capacity of an 'individual' or a 'group of individuals' or 'organization'. 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.

9. This Tribunal constituted under the Act of 1973 is absolutely a domestic judicial forum 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".

Already this Tribunal is known even to the global community as a domestic judicial forum meant to prosecute and try the internationally recognized crime happened in 1971, in war time situation.

III. Historical backdrop and Context

10. The offences for perpetration of which the accused persons have been indicted were not isolated crimes. Those are recognized as international crimes as happened in war time situation directing unarmed civilian population, to further specific policy and plan. The events narrated in the charges framed just form part of dreadful atrocities committed directing pro-liberation civilians which constituted the offences of crimes against humanity in 1971 in the territory of Bangladesh during the nine-month blood-spattered war of liberation.

11. We opt to pen our observation that the verdict of the Tribunal, a court of law is not only aimed to render its decision on the arraignment brought. The verdict rendered also mirrors the truth and the context behind the commission of horrific criminal acts and this truth shall create youth quake to go ahead with the spirit of the war of liberation and firm patriotism.

12. 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.

13. In portraying the historical background, in succinct, that ensued the war of liberation of the Bengali nation in 1971 it is necessary to 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.

14. In 1952 the Pakistani authorities attempted to impose 'Urdu' as the only State language of Pakistan ignoring Bangla, the language of the greater part of population of Pakistan. The people of the then East Pakistan started movement to get 'Bangla' recognized as a state language and eventually it led to movement for greater autonomy and self-determination and finally independence.

15. 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.

16. 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 recognized 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.

17. In the early hour of 26th March, following the onslaught of “Operation Search Light” by the Pakistani Military on 25th March 1971, Bangabandhu Sheikh Mujibur Rahman declared Bangladesh independent immediately before he was arrested by the Pakistani authorities.

18. 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 Jamaat 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.

19. Commission of systematic and widespread appalling atrocities directing unarmed 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.

20. 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.

21. History testifies that Pakistani army started its monstrous 'mayhem' since 25 March 1971 intending to liquidate the pro-liberation Bengali civilians, to resist their aspiration of self-determination. Local collaborators belonging to auxiliary force[s] got actively engaged in accomplishing the crimes directing civilian population, being imbued by the policy and plan of the Pakistani

occupation army on visible and active endorsement of Jamaat E Islami [JEI] a potential pro-Pakistan political party, the history says it.

22. 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.

23. Tribunal-2 has 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.

24. 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.

25. Enactment of International Crimes (Tribunals), Act ,1973 in our sovereign parliament in the end removed hurdles in prosecuting the perpetrators of crimes against humanity and genocide committed in 1971 in the territory of Bangladesh.

26. But the legislation enacted in 1973 remained dormant for decades together chiefly for the brutal assassination of Bangabandhu Sheikh Mujibur Rahman, the Father of the Nation 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 strapping stance with the Pakistani occupation army in 1971. With this the military regimes permitted the culture of impunity.

27. It is now historically settled that the members of Razakar Bahini, a para militia force 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.

28. The ‘aggression’ that resulted in untold violation of civilians’ rights and their indiscriminate killings in the territory of Bangladesh began with launching the ‘operation searchlight’ which

was in grave breaches of Geneva Convention 1949. After the ‘operation search light’ on the night of 26th 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.

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

30. 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

31. Tribunal considers it necessary to portray the brief account of the five accused persons, as found from the formal charge which

will essentially provide the ideology, status, identity and mindset they had in 1971 during the war of liberation:

(i) Sheikh Md. Abdul Majid alias Majit Moulana

Accused Sheikh Md. Abdul Majid alias Majit Moulana, son of late Miraj Ali and late Liazer Maa of Village Purbo Maudam, Police Station Purbodhola, District-Netrokona was born on 01.01.1949 [as per his National ID Card]. He passed Alim Examination from Lalbagh Kharizi Madrasa. Prior to 1971, he was connected with the politics of Nezam-e-Islami party. In 1971, during the war of liberation he joined local Thana Peace Committee and was also a potential member of locally formed Razakar Bahini and actively collaborated with the Pakistani occupation army in committing crimes directing civilians, prosecution alleges. Presently, he is a supporter of Jamaat-e-Islami [JEI].

(ii) Md. Abdul Khalek Talukder

Accused Md. Abdul Khalek Talukder, son of late Rustom Ali Talukder and late Sundarunesa of Village-Kharchail, Police Station-Purbodhola, District- Netrokona was born on 03.08.1948 [as per his National ID Card]. He passed S.S.C. Examination from Purbodhola Jagat Moni Pilot High School. He being a supporter of Muslim League played active role in the National Assembly Election held in 1970. In 1971, during the war of liberation he joined the Razakar Bahini of Purbodhola Thana and actively

collaborated with the Pakistani occupation army in committing heinous crimes, prosecution alleges. He joined Bangladesh Nationalist Party [BNP] in 1981. Thereafter, since 1983 to 1990 he was an active supporter of Jatyo Party. In 1991, he joined Jamaat-e-Islami [JEI]. In 1996, he joined the Awami League and he became a member of Purbodhola Thana Awami League Committee.

(iii) Md. Kabir Khan

Accused Md. Kabir Khan, son of late Sadar Khan and late Amena Khatun of Village-Nayapara [Thana Road], Police Station-Purbodhola, District-Netrokona was born on 15.06.1945 [as per his National ID Card]. Prior to 1971, he was involved in the politics of Muslim League. During the war of liberation in 1971 he joined the locally formed Razakar Bahini and committed the offences of crimes against humanity against the pro-liberation unarmed Bengali civilians and he also collaborated with the Pakistani occupation army in committing heinous crimes in 1971, prosecution alleges. Presently, he is a supporter of Bangladesh Nationalist Party [BNP].

(iv) Abdus Salam Beg

Accused Abdus Salam Beg, son of Akram Ali Beg and late Liazer Maa of Village-Purbo Moudam, Police Station-Purbodhola, District- Netrokona was born on 02.04.1955 [as per his National ID Card]. Prior to 1971 he was an active worker of Muslim League. In 1971, during the war of liberation he joined the local Razakar

Bahini and collaborated with the Pakistani occupation army in committing heinous crimes, prosecution alleges. At present he is involved with the politics of Bangladesh Nationalist Party [BNP].

(v) Md. Nur Uddin alias Raddin

Accused Md. Nur Uddin alias Raddin, son of late Rajab Ali alias Lengra Abon and late Mewajan of Village-Purbo Moudam, Police Station-Purbodhola, District-Netrokona was born on 05.02.1957 [as per his National ID Card]. Prior to 1971, he was a supporter of Nezam-e-Islami party. During the war of liberation in 1971, he joined the local Razakar Bahini and actively collaborated with the Pakistani occupation army in the committing crimes directing civilians, prosecution alleges. Presently, he is a supporter of Bangladesh Nationalist Party [BNP].

V. Procedural History

32. The investigation Agency of the Tribunal started investigation pursuant to information recorded as compliant register serial no.29 dated 11.02.2014, in respect of commission of offences enumerated in section 3(2) of the Act of 1973 allegedly perpetrated by the six accused persons.

33. Investigation Agency, on wrapping up of investigation recommended prosecution of in all six[06] accused i.e(1) Sheikh Md. Abdul Majid alias Majit Moulana , (2) Md. Abdul Khalek

Talukder , (3) Md. Kabir Khan ,(4) Abdus Salam Beg , (5) Md. Nur Uddin alias Raddin and (6) Md. Abdur Rahman [died during trial]by submitting its report on 22.03.2016.

34. Chief prosecutor on scrutiny of the report and documents submitted therewith submitted formal charge on 22.05.2016 against all the six accused. Tribunal took cognizance of offences on 12.06.2016. Out of six accused persons, 05[five] accused have been absconding and they neither could have been arrested nor did they surrender despite publication of notification in two daily news papers as required under law.

35. The Chief Prosecutor considering the nature, pattern of the alleged atrocious events and culpable participation and involvement of all the accused persons preferred to submit a single 'formal charge' with a view to prosecute them jointly.

36. Trial commenced against them on framing charges. But at a stage of trial [summing up stage] one accused Md. Abdur Rahman died on 05.09.2018. As a result proceedings so far as it relates to this accused stood abated and tribunal rendered necessary order in this regard on 25.10.2018.

37. Tribunal ordered for holding trial *in absentia* against the five accused by appointing Mr. Gazi M.H. Tamim, Advocate defending all them as State defence counsel. Hearing on charge framing matter took place on 08.12.2016 and the order on it was rendered on 19.04.2017 when the charges framed could be read and explained only to accused Md. Abdur Rahman who was present on dock as brought from prison.

38. All the six accused persons have been indicted for the offences of ‘crimes against humanity’ as enumerated in the International Crimes(Tribunals) Act, 1973 allegedly committed around the localities under Police Station-Purbodhola of District[now] Netrokona, in 1971 during the war of liberation.

39. Prosecution by placing its opening statement on 12.06.2017 started adducing and examining witnesses and it got concluded on 04.09.2018. Prosecution by filing an application on 04.09.2018 under section 19(2) of the Act of 1973 prayed for receiving the statement of three witnesses [as named therein] made to the Investigating Officer [IO] into evidence as they already died.

40. **Mr. Gazi M. H Tamim** the learned defence counsel opposing the contention made as above came up with an application on 10.09.2018 asserting that two of the above three witnesses died after submission of the formal charge but before commencement of

trial and as such their statement made to IO cannot be received in evidence under section 19(2) of the Act.

41. It appears from the papers relating to death of the above three witnesses submitted by the prosecution together with the application under section 19(2) of the Act that witnesses Md. Abdul Latif and Md. Kalachan Talukder died on 23.06.2016 and on 22.09.2016 respectively i.e. before commencement of trial with framing charges. Since trial commences on framing charges statement made by these two witnesses to the IO cannot be received in evidence. However, the third witness Most. Achhia Khatun, it appears, died on 09.03.2018 i.e. after commencement of trial on framing charges and thus only her statement made to the IO [relevant page no. 40 of the volume of statement of witnesses made to the IO] may be received in evidence as permitted under section 19(2) of the Act.

42. Prosecution started and concluded placing argument on 25.10.2018. It is to be noted that accused Md. Abdur Rahman who had been in prison died on 05.09.2018, at the stage of summing up of the case and taking it into notice as brought by the prosecution along with necessary papers the Tribunal passed necessary order on 25.10.2018 by which the proceeding so far as it relates to this accused stood abated.

43. The learned defence counsel by filing an application, at this stage, prayed to take photocopy of a document into account and then placed respective argument. It is to be noted that defence did not respond to directive made in the order framing charge in submitting list of witnesses and documents it relied upon. However, learned state defence counsel intended to submit document in support of defence case. Tribunal, for ends of justice allowed him and asked to submit document, if any within 15 days.

44. Summing up [argument] concluded on 28.01.2019 and the case was kept CAV i.e. for delivery and pronouncement of judgment.

VI. Applicable laws

45. 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.

46. 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)].

47. 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)]. But it is to be noted that in the judgment of *Abdul Quader Molla* it has been observed by the Appellate Division of Bangladesh Supreme Court 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]**.

48. 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]**.

49. On closure of examination of prosecution witnesses the Act of 1973 provides opportunity of examining witnesses and adducing documents by the defence according to list of witnesses and

documents if submitted in compliance with provision of section 9(5) of the Act of 1973 and within time stipulated in the order framing charges.

50. 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.

51. 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

52. **Mr. Mokhlesur Rahman Badal** the learned conducting prosecutor placed summing up, drawing attention chiefly to the evidence presented by the witnesses examined in Tribunal and the

materials relied upon in support of facts related to the arraignments brought.

53. In showing the affiliation of the accused persons with the auxiliary forces in 1971 it has been asserted by the learned prosecutor chiefly drew attention to oral testimony of witnesses the locals of the crime villages and their testimony in this regard could not be negated.

54. The learned prosecutor argued that the accused persons in exercise of their affiliation with locally formed Razakar Bahini made them engaged in carrying out atrocious activities around the localities under Purbodhola police station. Documentary evidence and oral testimony of witnesses, the residents of crime localities shall adequately demonstrate that the accused persons belonged to locally formed Razakar Bahini, the learned prosecutor added.

55. The learned prosecutor went on to submits that in addition to oral testimony the document **Exhibit-I** and **Exhibit-II** and also the other papers forming part of the prosecution documents volume are the firm proof of affiliation of accused persons with the locally formed Razakar Bahini.

56. Apart from focusing on identity and stance of the accused persons that they had in 1971 the learned prosecutor placed argument on factual aspects related to arraignments brought in each count of charge. In doing so he drew attention to the testimony of witnesses examined. He submitted that most of witnesses are direct witnesses, relatives of victims and survived victims and thus they had opportunity of experiencing the criminal activities leading to commission of the principal crimes.

57. To prove the arraignments brought prosecution examined in all 25 witnesses including the Investigation officer [IO]. Essence of testimony of witnesses examined could not be controverted by the defence, the learned prosecutor added. Apart from testimony of witnesses presented before the Tribunal statement of three witnesses made to the IO has been received in evidence under section 19(2) of the Act of 1973 as these three witnesses died on different dates after commencement of trial and the same also provides corroboration to the sworn testimony of witnesses,

58. The learned prosecutor also submits that the events of attacks narrated in all counts of charges framed happened in day time and thus the witnesses had fair occasion of seeing the gang carrying out the attacks. The accused persons were known around the localities for their notoriety and thus the witnesses could recognize them accompanying the gang of attackers.

59. The learned prosecutor further submitted that all the event of attack narrated in charge no. 07 relates to recurrent sexual violation that occurred in day time and with the culpable facilitation of the accused persons which constituted the offence of genocidal rape.

60. The attacks arraigned in other charges were calculated to annihilate the pro-liberation unarmed Bengali civilians. The accused persons consciously, actively and culpably participated in accomplishing the crimes of which they have been arraigned. The mode of their participation was extremely antagonistic and that they, in exercise of their affiliation in locally formed Razakar Bahini, knowingly were engaged 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

61. Mr. Gaji M.H Tamim the learned state defence counsel first submitted that prosecution documents Exhibit-I and Exhibit-II and other papers relied upon are not related to alleged affiliation of accused persons with Razakar Bahini. It has been further asserted that accused Abdul Khalek Talukder neither belonged to Razakar Bahini nor he had nexus with it in any manner. Drawing attention to a photocopy of a document brought to notice of Tribunal at

bleated stage the learned state defence counsel submitted that this accused has been falsely implicated in this case out of local political rivalry. Currently this accused Abdul Khalek Talukder is with the politics of local Awami League.

62. It has been also submitted by the learned state defence counsel that name of accused Abdul Khalek Talukder, Nur Uddin @ Raddin and Salam Beg do not find place in any of prosecution documents. Oral testimony relied by the prosecution on this matter is not consistent and credible as they had no reason of knowing and recognizing the accused persons.

63. 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 alleged facts they narrated and they testified falsely implicating the accused persons out of local rivalry.

64. 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 more than four decades. Delayed prosecution casts reasonable doubt as to involvement and complicity of accused persons with the commission of alleged offences. However, submission made by the learned state defence

counsel on factual aspects may be well addressed at the time of adjudication of the charges.

VIII. The way of adjudicating the charges

65. 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.

66. However, their testimony deserves to be weighed and assessed in search for the truth on the alleged diabolical 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 appropriately weighing value, significance and credibility of such testimonies.

67. At the same time their testimony requires to be examined whether the alleged facts they experienced constituted the offences alleged and mode of participation of the accused persons therewith,

in a most dispassionate manner and keeping in mind that the accused persons are presumed innocent, till they are found guilty.

68. The alleged horrific 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-indefinitum.”

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

69. 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.

70. 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 enumerated in the

Act of 1973 chiefly rests upon oral evidence presented by the prosecution and documentary evidence as well.

71. 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.

72. It is to be kept in mind that the 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.

73. The horrific context existed in 1971 naturally left little room for the people or civilians to witness all the phases of attack. Additionally, sometimes it happens that due to the nature and enormity 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 also need to be kept in mind in assessing the evidence presented.

74. 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 crimes against humanity and genocide corroboration is not a legal requirement for a finding to be rendered.

75. 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’.

76. 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]

77. 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 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.

78. However, according to universally recognized 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 crimes against humanity as enumerated in section 3(2) of the Act of 1973 for which they have been arraigned.

X. Did the accused persons belong to Razakar Bahini in 1971 and what was the objective of forming this auxiliary force?

79. The Act of 1973 permits to prosecute even an 'individual' for the commission of any of offences enumerated in section 3 of the Act. However, in the case in hand, all the five accused persons are

alleged to have had membership or affiliation in the locally formed Razakar Bahini.

80. Mr. Mokhlesur Rahman Badal the learned prosecutor drawing attention other documents which have been proved and marked as Exhibits and reports forming part of the Prosecution documents volume submits that all the accused persons were affiliated with the auxiliary force formed locally. Due to identical policy and plan all the auxiliary forces became synonym to each other and the accused persons actively participated in committing atrocities directing civilians and they had close nexus with the Razakar camp, a detention and torture center established at Purbodhola, the learned Prosecutor added .

81.Mr. Gaji M.H Tamim the learned State Defence Counsel asserts that none of the accused belonged to Razakar Bahini; that prosecution failed to prove it; that accused Md. Abdul Khalek Talukder has been falsely implicated in this case out of personal rivalry. Drawing attention to the photocopy of a document the learned State defence Counsel further submitted that accused Abdul Khalek Talukder is a member of local Awami League.

82.In respect of affiliation of accused Nur Uddin @ Raddin and Salam Beg the learned defence counsel submitted that prosecution could not prove it by adducing document.

83. We reiterate that 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 hide the nexus of those who were associated with the crimes committed in 1971.

84. Thus, naturally, in the case in hand, prosecution in addition to some documents and reports forming part of prosecution documents volume chiefly relied upon oral testimony in establishing this crucial issue.

85. However, aiming to resolve the issue i.e. affiliation of accused persons with the auxiliary force first let us eye on the documents Exhibited and the documents forming part of Prosecution Documents Volume.

86. It appears that **Material Exhibit-I** is a report containing information obtained from Purbodhola Upazila. The report [**Prosecution Documents Volume page nos. 3-8**] under signature of Deputy Commissioner, Netrokona demonstrates that accused

Abdul Majid Moulana was involved with locally formed peace committee and accused **Kabir Kha** belonged to auxiliary force.

87. Affiliation of accused **Abdul Majid** with locally formed auxiliary force gets corroboration also from the information contained in *ÓGKvÉti i wmwFj l mvgwi K cKvmb t dlvBj -2 : gy³hy hv`Nj* *KZR.msMpxZÓ* which has been proved and marked as **Material Exhibit-II [Prosecution Documents Volume: relevant page-66]**.

It has been depicted from Material Exhibit-II that accused Abdul Majid was a member of Purbodhola Thana Peace Committee. It is now historically settled that peace committee substantially contributed in forming Razakar Bahini to further alike policy and plan of Pakistani occupation army in 1971.

88. Another report communicated by a letter dated 30.03.2015 of Police Super, Netrokona [**Prosecution Documents Volume: relevant page-66**] states that accused **Abdul Majid Moulana** was engaged in activities carried out by auxiliary force in 1971.

89. A report dated 12.08.2015 under signature of Police Super, Netrokona [**Prosecution Documents Volume page nos. 44-49: Relevant page 46**] demonstrates too that accused **Kabir Kha** collaborated with the Pakistani occupation army and involved in anti-liberation ideology.

90. The above information presumably suggest that the accused Kabir Kha used to maintain culpable nexus with the Pakistani occupation army in exercise of his affiliation in locally formed auxiliary force. It also transpires from the information contained at page 48 of this document that the accused Kabir Kha had been detained in jail in 1972 although no case was initiated against him over offence as crime against humanity. Information contained in this report also speaks that this accused used to collaborate with the Pakistani occupation army by substantial contribution and facilitation in carrying out atrocities in 1971.

91. A report dated 12.08.2015 of Police Super, Netrokona **[Prosecution Documents Volume 51-61: Relevant page nos. 56 and 59]** states that accused **Md. Nur Uddin @ Raddin and Salam Beg** were the followers of Pro-Pakistan political, ideology and were involved in anti-liberation activities .This information itself is an *indicia* of their affiliation with locally formed auxiliary force to collaborate with the Pakistani occupation army, to further policy and plan.

92. A report dated 30.03.2014 under signature of Officer-in-Charge, Purbodhola Police Station of District- Netrokona **[Prosecution Documents Volume page nos.35-36]** is based on the list obtained through a letter dated 05.04.2010 of the Ministry of

Home Affairs. The report has been communicated to the Investigation Agency by a letter dated 06.04.2014 under signature of Police Super, Netrokona. The report [**Prosecution Documents Volume page nos.35-36**] goes to demonstrate that the accused Md. Abdul Khalek Talukder was engaged in committing the offences of murder, looting and arson. It together with the oral testimony indisputably proves his affiliation and nexus with the Pakistani occupation army and auxiliary force formed locally in carrying out atrocities.

93. Due to lapse of long passage of time the Investigation Agency could not collect sufficient materials and evidence in support of other prohibited acts constituting the offences. But merely for this reason the truthfulness of the reports and documents as have been highlighted above shall not be diminished.

94. The uncontroverted version made by the witnesses, the residents of crime localities leads to conclude that being the locals they had natural occasion of knowing about the formation of Razakar Bahini, setting up its camps at Purbodhola bazaar and active association of the accused persons therewith. On integrated evaluation of oral testimony of witnesses the residents of the crime localities it transpires that they had reason of knowing the accused persons beforehand. Defence could not refute it in any manner.

95. It appears that at the ending phase of summing up [argument] the learned state defence counsel filed photocopy of a document [application] dated 18.08.2015 signed by local 138 freedom-fighters intending to show that accused Md. Abdul Khalek Talukder is a local AI member and was engaged in campaign in support of AI candidate in general election of 2008 and thus a 'distance' between him and the top official of the Investigation Agency of the Tribunal was created. This is the reason of implicating him falsely in this case, the learned defence counsel, added.

96. It is to be noted that the Tribunal in its order dated 19.04.2017 framing charges directed the defence counsel to submit list of witnesses along with documents, if any, which the defence intends to rely upon, as required under section 9(5) of the Act of 1973 on or before the date fixed. But Defence did not respond to it. Long 01 year 05 months later, on 10.09.2018, at the closing phase of summing up the learned state defence counsel has come up with the application permitting him to submit photocopy of the alleged document.

97. Tribunal notes that probative value of the photocopy of alleged letter cannot be received in evidence unless correctness of its contents is first established by the mode of proof through examining any of its signatories.

98. Signatory or signatories of the alleged document should have been examined as defence witness[s] by the learned state defence counsel defending the absconding accused Md. Abdul Khalek Talukder to prove the correctness of its contents and only then the evidence of the signatory may be taken as substantive evidence to corroborate the defence case based on the said document.

99. However, it appears that the photocopy of the alleged document has been filed by the learned state defence counsel as supplied to him by the son of this absconding accused Md. Abdul Khalek Talukder at the stage of summing up of the case. But the son of the accused has not been adduced and examined although by filing the application the learned state defence counsel Mr. Gazi M.H Tamim prayed to take this document into account subject to examination of the son of the accused.

100. The learned state defence counsel chiefly on the basis of the photocopy of the above document attempted to argue that such 'distance' facilitated to implicate this accused in the case accusing him for the arraignments alleged.

101. We are not with the submission advanced by the learned state defence counsel. The document appears to have been filed at belated stage. Thus and in absence of any explanation as to source

of having the alleged document it cannot be acted upon in resolving the matter of this accused's identity and involvement with the alleged offences committed in 1971. The reasons are –

First, the above document has not been filed in compliance with the provision of section 9(5) of the Act of 1973;

Second, this absconding accused Md. Abdul Khalek Talukder remained fugitive and as such question comes to the fore as to how the said document could be obtained and by whom;

Third, none of freedom-fighters, the alleged signatories of the said document has been adduced and examined as witness to prove the content and the defence case agitated on its basis;

Fourth and finally, the alleged document does not negate the affiliation of this absconding accused with Pakistani occupation army stationed at Purbodhola, locally formed Razakar Bahini and its camp set up at Purbodhola.

102. Additionally, a person might have altered his political stance and ideology. The International Crimes (Tribunals) Act, 1973 is meant to prosecute try and punish the 'individuals' or member[s] of auxiliary force for the offences committed in 1971 during the war of liberation, as enumerated in the Act. Accused Md. Abdul Khalek Talukder has been brought to justice for his alleged criminal

activities constituting the offences as crimes against humanity committed in 1971 and not as an individual and thus his present political stance in favour of AL does not create a clog to prosecute and try him under the Act of 1973.

103. In the case in hand, we find no reason whatsoever to falsely terming this accused as a Razakar merely for the reason that now he is a member of local Awami League. 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 with pro-liberation political party does not diminish the anti-liberation role that he had played in 1971 during the war of liberation. Besides, there has been nothing to show that accused Md. Abdul Khalek Talukder took stance with the war of liberation in 1971.

104. We emphatically reiterate that in a case under the International crimes (Tribunals) Act of 1973 not the current political affiliation of an accused but his status, identity and affiliation that he had in 1971 shall be taken into account. Thus, solely the current affiliation

of accused Md. Abdul Khalek Talukder with pro-liberation political party does not negate his accountability for the crimes he allegedly committed, if the same are found to have been proved.

105. It has been strongly depicted from testimony of the witness examined that the accused persons were the residents of their neighboring localities and it remained unimpeached. Thus, naturally the locals and the witnesses who testified in Tribunal had practicable reason of knowing their identity, affiliation and activities of the accused persons. In 1971, in context of the war of liberation enduring notoriety of individuals having affiliation with an auxiliary force made them particularly known to the locals, we may presume it safely.

106. Pursuant to indictment the accused persons, in exercise of their membership in locally formed Razakar Bahini got engaged in carrying out atrocious activities around the localities under Purbodhola police station of District [now] Netrokona. They have been arraigned for committing alleged offences as local level perpetrators. Therefore, naturally, the witnesses the residents of crime localities had fair reason of knowing the accused persons and their affiliation with an auxiliary force. Terrifying and coercive context existing in 1971 perceptibly made the locals aware with the identity of accused persons, for the reason of their notoriety.

107. It also transpires from testimony made by witnesses the residents of crime localities in relation to the arraignments that the accused persons had a culpable nexus with the locally formed Razakar camp. It also suggests the conclusion that the accused persons obviously belonged to locally formed Razakar Bahini. Simple denial in this regard on part of the defence does not negate this fact.

108. It may be inferred that the accused Abdul Khalek Talukder who is on the run is aware about the alleged document stating his present political stance and affiliation. But this is an 'act or stance subsequent to the offences' of which he has been arraigned. It is now well settled that an accused cannot be absolved of responsibility of an offence for the reason of act subsequent to commission of the offence, if the same is found proved.

109. It appears that the learned state defence counsel suggested to some of P.W.s as defence case that this accused has been chosen for prosecution as he was engaged in campaigning in support of AL candidate in 2008 general election against whom the highest official of the Investigation Agency contested as an independent candidate.

110. It is not understood as to how the learned state defence counsel got instruction to put such specific defence case to the prosecution

witnesses particularly when the accused defended by him remained absconded.

111. Next, if really this accused had no association with the locally formed Razakar Bahini and complicity with the offences alleged why he is on the run? Why he did not opt to face the trial raising the defence plea as has been suggested by the learned state defence counsel?

112. In view of above, we may reasonably infer that the accused Md. Abdul Khalek Talukder even remaining absconding has made a futile effort to save own skin from responsibility of the offences of which he has been arraigned by showing him an active follower of AL. The photocopy of the alleged document which has been filed at belated stage is the upshot of such futile effort.

113. Defence, in cross-examination of prosecution witnesses simply denied that the accused persons did not belong to Razakar Bahini and the witnesses did not know them beforehand. But it does not appear to have made effort to negate, in any manner, the fact of affiliation of accused persons' in locally formed Razakar Bahini as consistently testified by the witnesses. There has been no reason of disbelieving the prosecution witnesses.

114. All the accused persons have been indicted to remain at the crime sites with the gang of attackers in launching attacks and the witnesses testified it too in narrating the events alleged. Their participation with the commission of alleged offences will be resolved on due and extensive evaluation of evidence presented. But oral testimony so far as it relates to their presence at crime sites together with the deliberation made above on the basis of documents and reports lends assurance that the accused persons were involved in locally formed peace committee and auxiliary force created to collaborate with the Pakistani occupation army.

115. Thus, mere failure in collecting more and more document to substantiate affiliation of three accused Nur Uddin @ Raddin, Salam Beg and Md. Abdul Khalek Talukder in locally formed auxiliary force does not *ipso facto* prove the negative defence assertion that they did not belong to Razakar Bahini, particularly when it has been proved from evidence presented by the witnesses that all the accused persons had close nexus with the locally set up Razakar camp at Purbodhola bazaar.

116. What was the object of creating the Razakar force in 1971? It is now settled that it was composed of mostly pro-Pakistani Bengalis on endorsement of followers of pro-Pakistan political parties including Jamaat E Islami [JEI]. Razakars were actively

associated with many of the atrocities committed by the Pakistan Army during the nine-month blood-soaked war of liberation in 1971. From totality of evidence tendered it stands proved that the accused persons despite being Bengali took stance with the Pakistani occupation army by getting engaged and enrolled in locally formed Razakar Bahini in the name of preserving solidarity of Pakistan.

117. Razakar force was formed with the aim of resisting the ‘miscreants’ and to wipe out the ‘anti state elements’ with the aid of army [Source: ‘**The Daily Dainik Pakistan**’, 16 May 1971]. Peace Committees were also formed with the identical plan. Ghulam Azam the then Amir of Jamaat E Islami and member of Central Peace Committee almost since the beginning of war of liberation started appealing the Pakistan government for arming the people who believed in solidarity of Pakistan and to combat the ‘miscreants’ [Source: **The Daily Sangram**, 21 June 1971, Press conference of Ghulam Azam; see also **The daily Sangram 20 June 1971**].

118. In the case in hand it emerges too that Razakar Bahini was formed in Purbodhola on substantial contribution and support of peace committee and its camp was set up at Purbodhola bazaar.

119. In 1971 Razakars, an auxiliary force was thus created to collaborate with the Pakistani occupation army to further the policy and plan of annihilating the Bengali nation—it is now well settled. Infamous Razakar Bahini was thus an ‘auxiliary force’ as defined in section 2 of the Act of 1973 as it had acted maintaining ‘static relation’ with the armed force for ‘operational’ purpose.

120. Pro-Pakistan political parties including Jamaat E Islami, Muslim League etc. had played key role in forming this auxiliary force and they symbolized the pro-liberation Bengali people as their ‘enemies’ and ‘miscreants’. In this way JEI thus had played a role of ‘criminal organization’.

121. We may take the information narrated in the book titled ‘**Muktijudhdhe Dhaka 1971**’ into judicial notice. It demonstrates that in 1971, Jamaat 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 -

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 chŚl mvgwi K RvŠ††K mg_Ø K†i | Zv†`i
 mnvqZvi Rb` Ab`vb` agvØ `j wbtq cŭgZ
 MVb K†i kwiŠKigwU| cieZx[©]mg†q mk`j
 ewnbx ivRvKvi I Ajje`i MVb K†i Ges

*mi Krix KZx Av`vq Kti | hytK aghy
 wntmte cPvi Yv Pwjj tq DMÖagxq DbW`bv mwpöi
 tPón Kti | Avi Gi Avortj mb`t`i
 mnvqZvq Pvj vq wbePrti bksm MYnZ`v, j y,
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[Source: **Muktijudhdhe Dhaka 1971:**
 edited by Mohitul Alam, Abu Md.
 Delowar Hossain, Bangladesh Asiatic
 Society , page 289]

122. Finally, we may therefore arrive at a safe and an unerring conclusion that all the five accused persons had acted as the members of Razakar Bahini, an ‘auxiliary force’ under control of Pakistani army for their operational and other purposes, around the localities under Police Station–Purbodhola of District[now]-Netrokona.

XI. Adjudication of charges framed

123. Total seven counts of charges have been framed. The attacks narrated therein were allegedly directed against civilians of the localities under police station-Purbodhola of District [now]-Netrokona. Intending to prove the arraignments brought prosecution adduced and examined survived residents of crime villages.

Adjudication of Charge No.01

[Offences of abduction, looting and murder of Dr. Hem Sundar Bagchi, Haridas Singh and Meghunath]

124. **Charge:** That on 01-05-1971 at about 11.00 A.M. a group formed of accused Razakars (1) Md. Abdur Rahman[died at summing up stage] (2) Sheikh Md. Abdul Majid alias Majit Moulana (3) Md. Abdul Khalek Talukder, and (4) Md. Kabir Khan accompanied by 15/20 accomplice Razakars and a number of Pakistani occupation army men by launching attack at the house of Dr. Hem Sundar Bagchi at village- Rajpara under Purbodhola Police Station of District[now]- Netrokona unlawfully detained Meghunath the male domestic aid of Dr. Hem Bagchi and took him away to the bank of a pond and shot him to death there. Then the accused persons and their accomplices forcibly captured Dr. Hem Sundar Bagchi and his relative Haridas Singh of village Ghagra and killed them there, looted households and then left the crime site.

Thereby, the accused (1) Md. Abdur Rahman[died at summing up stage] (2) Sheikh Md. Abdul Majid alias Majit Moulana (3) Md. Abdul Khalek Talukder, and (4) Md. Kabir Khan have been charged for participating, abetting, facilitating, contributing and complicity in the commission of offences of murder, abduction and other inhumane act [looting] 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 said Act.

Evidence of Witnesses Examined

125. Prosecution relies upon P.W.01, P.W.06, P.W.07, P.W.09 and P.W.10 in support of the arraignment brought in this charge. Of them some are direct witnesses to the facts materially related to the principal crime, the upshot of the attack. Now, let us first eye on what has been testified by these witnesses.

126. P.W.06 Ranjit Joarder [76] is a resident of village-Kaldoar under police station-Purbodhola of District-Netrokona. Before testifying the event of attack P.W.06 stated that Pakistani occupation army arrived at Purbodhola on 29 April in 1971 when they were welcomed and hailed by local peace committee chairman Basir Akanda[now dead], accused Md. Kabir Kha, Md. Abdul Khalek Talukder, Abdul Majid Moulana and others and the army men got stationed at Purbodhola CO Office and Dukbungalow.

127. Next, P.W.06 stated that the house of Dr. Hem Bagchi [victim] was about one-one and half hundred yards far from that of his own.

Family inmates of Hem Bagchi and other Hindu residents took shelter at village-Ghagra. He [P.W.06] however remained stayed at his house.

128. In respect of the event P.W.06 stated that on 01 May 1971 at about 11:00 A.M he went to Tahshil office, west to Hem Bagchi's house and during his staying there he saw Razakar Abdul Khalek Talukder, Kabir Khan, Abdul Majid @ Majit Moulana, Abdur Rahman [died during trial] being accompanied by 15/20 Razakars and Pakistani occupation army moving towards the house of Hem Bagchi and on the way they gunned down Meghunath, the domestic aid of Hem Bagchi to death.

129. What happened next, P.W.06 went on to stated that the Razakars and army men entered inside Hem Bagchi's house and he[P.W.06] remaining stayed at Tahshil office saw the army men gunning down Hem Bagchi and Hari Das to death taking them at the courtyard.

130. P.W.06 also stated that afterwards, the army men had left the site but the Razakars he named carried out looting household and took away the same to the house of Kabir Khan. The accused Razakars he named stayed for two days after the event of attack carried out and then they left the site. Then he and the locals on visiting the site found dead bodies of Hem Bagchi and Haridas

lying at his house and they dumped the same at a place, west to the house.

131. P.W.06 also stated that two days after the event occurred he , his family, family inmates of Hem Bagchi and many Hindu residents , being sacred, deported to India. On 09 December 1971 Purbodhola got liberated and he returned back and disclosed the event of killing to freedom-fighter commander Ayub Ali and recovered looted households from the house of Kabir Khan which were kept at Purbodhola police station.

132. As to reason of knowing the accused persons P.W.06 stated that accused Razakar Md. Abdul Khalek was his junior student of the same school, accused Md. Abdul Majid @ Majit Moulana was involved with politics of local Jamaat-e-Islami, accused Kabir Khan was a rickshaw puller of Doctor Hem Bagchi and accused Abdur Rahman [died during trial] had a shop at Purbodhola bazaar . They belonged to locally formed Razakar Bahini. Thus he knew them beforehand.

133. On cross-examination, in reply to defence question P.W.06 stated that he passed SSC 2/3 years prior to the war if liberation ensued; that he could not recall the name of 15/20 Razakars who accompanied the gang that launched the event of attack on 01 May, as testified by him. P.W.06 denied the defence suggestions that the

accused persons were not Razakars; that they were not involved with the alleged event and that what he testified implicating them was untrue and out of local political rivalry.

134. P.W.07 Prodip Chandra Singha [66] is a resident of village Ghagra under police station-Purbodhola of District-Netrokona. In 1971 he was 20 years old. He did not see the attack launched at the house of Hem Bagchi. He heard the event and later on found the dead bodies of victims.

135. P.W.07 stated that on 01 May, 1971 at about 01:00 P.M Siddiqur Rahman [now dead] the compounder of Doctor Hem Bagchi coming to his house informed Satya Bagchi the son of Doctor Hem Bagchi that Pakistani occupation army accompanied by accused Kabir Khan, Abdul Khalek Talukder, Md. Abdur Rahman [died during trial], Md. Abdul Majid @ Majit Moulana and their cohorts by launching attack at the house of Hem Bagchi gunned down Doctor Hem Bagchi, Haridas Singha and Meghunath to death. On hearing this he [P.W.07] then moved to Purbodhola Tahshil office along with Siddiqur Rahman, in evening. He found dead body of Meghunath lying on the bank of the pond, nearer to Hem Bagchi's house. He also found dead bodies of Hem Bagchi and Haridas Singha, lying at the courtyard. He saw the Razakars committing looting and being feared he then returned back home and in the night he , his family, son and inmates of Hem Bagchi's

family, inmates of Haridas's family and those who got sheltered at their house deported to India.

136. P.W.07 further stated that returning back to Purbodhola from India, after independence he heard from the locals that the looted households were recovered from the house of accused Kabir Khan under the leadership of freedom-fighter commander Ayub Ali and the same were made preserved local police station. Finally, P.W.07 stated that he knew the accused persons as they were the residents of the locality and used to move together.

137. On cross-examination, in reply to defence question P.W.07 stated that the accused persons were affiliated with the politics of Muslim League, Nejam-e-Islami and Jamaat-e-Islami. P.W.07 denied the defence suggestions that the accused persons were not Razakars and that what he testified implicating them with the alleged event was untrue and out of local political rivalry.

138. P.W.09 Mohammad Ali [62] is a resident of village Purbodhola Paschim para under police station-Purbodhola of District-Netrokona. In 1971 he was 15 years old. He testified facts materially related to the commission of the principal crime, the killing.

139. P.W.09 stated that the Pakistani occupation army coming to Purbodhola on 29 April, 1971 got stationed at CO Office and Dukbungalow at Purbodhola. On 01 May, 1971 at about 10:00/10:30 A.M he heard gun firing from the end of Hem Bagchi's house when he had been at the paddy field, north to Hem Bagchi's house, along with his father and then with this he and his father ran away towards adjacent village.

140. P.W.09 next stated that at about 02:00/02:30 P.M he returned back home. His father along with him went to Doctor Hem Bagchi's house in search of his [P.W.09] maternal grand-father Usan Kha [now dead], the care taker of Hem Bagchi's house when they saw bullet hit dead body of Meghunath lying on the bank of the pond. They then saw bullet hit dead bodied of Hem Bagchi and Haridas lying at the courtyard. They then returned back therefrom as the Razakars had even staying at the house of hem Bagchi. The Razakars had stayed there two days and committed looting households.

141. P.W.09 also stated that he heard from Ranjit Joarder [P.W.06] and other locals that accused Kabir Khan, Abdul Majid Moulana, Abdul Khalek Talukder, Abdur Rahman [died during trial] and their cohorts accompanied the Pakistani occupation army and they had killed Meghunath, Hem Bagchi and Haridas. He [P.W.09] saw

the accused persons he named taking away the looted household by cart to the house of accused Kabir Kha, two days later.

142. P.W.09 stated that their village Rajpara was Hindu dominated. After arrival of the Pakistani occupation army at Purbodhola on 29 April, 1971, the family inmates of Hem Bagchi took shelter at village Ghagra. Most of Hindu residents of Rajpara and family inmates of Hem Bagchi got deported to India after the event of killing happened at Hem Bagchi's house

143. In cross-examination it has been reaffirmed that the Pakistani occupation army remained stationed at the CO Office and Dukbungalow, about one kilometer far from the house of Hem Bagchi. In cross-examination, defence suggested P.W.09 that the accused were not Razakars; that he did not know them; that they were not engaged with the alleged event; that he did not hear the event he testified and that what he testified was untrue. P.W.09 denied all these suggestions blatantly.

144. P.W.10 Dipak Kumar Vaduri [57] is a resident of Purbodhola Rajpara under police station-Purbodhola of District-Netrokona. In 1971 he was 10 years old. He is a hearsay witnesses.

145. P.W.10 stated that on 01 May, 1971 at about 10:00 A.M Siddiqur Rahman the compounder of Dr, Hem Bagchi coming to village-Ghagra disclosed that Razakar Kabir Khan who was rickshaw puller of Hem Bagchi, Razakar Abdul Khalek Talukder, Razakar Abdul Majid Moulana, Razakar Abdur Rahman [died during trial], their cohort Razakars and Pakistani occupation army men had gunned down Dr. Hem Bagchi, his brother-in-law Haridas Singha and domestic aid Meghunath to death.

146. P.W.10 also stated that on hearing the event of killing his[P.W.10] uncle Prodip Singha along with Siddiqur Rahman moved to the crime site and found dead body lying on the pond, south to Hem Bagchi's house and they on moving nearer to the house also discovered bullet hit bodies of Hem Bagchi and Haridas Singha lying there. His [P.W.10] uncle and Prodip Singha returned back home as the Razakars at that time had been staying inside the house of Hem Bagchi. On the same night they all and the residents of village-Rajpara, the Hindu dominated locality deported to India. P.W.10 finally stated that he knew the accused persons as they used to move around the locality.

Finding with Reasoning on Evaluation of Evidence

147. Mr. Mokhlesur Rahman Badal the learned prosecutor drawing attention to the testimony of witnesses submits that the attack that

resulted in killing three Hindu civilians and looting at the house of Dr. Hem Bagchi could not be controverted. The evidence of witnesses examined consistently proves participation of accused persons. The accused were commonly known to the locals for the stance they had against the war of liberation and as such the witnesses had fair reason of recognizing the accused Sheikh Md. Abdul Majid alias Majit Moulana, Md. Abdul Khalek Talukder and Md. Kabir Khan when they accompanied the gang of attackers in accomplishing the killing.

148. All the accused persons started maintaining affiliation with the Pakistani occupation army since it got stationed at Purbodhola and later on they got associated with the locally formed Razakar Bahini, the learned Prosecutor added. It has been submitted too that recovery of looted household from the house of accused Kabir Kha after independence achieved as proved from evidence presented itself adds corroboration as to the act of launching attack and participation of accused persons therewith.

149. Mr. Gazi M.H Tamim the learned state defence counsel submits that according to prosecution case Pakistani occupation army got stationed at Purbodhola on 29 April 1971 and the alleged event happened just two days later i.e. on 01 May 1971 claiming that the accused persons in exercise of their affiliation in local

Razakar Bahini participated in accomplishing the attack. Nowhere in the territory of Bangladesh Razakar Bahini existed on 01 May 1971. Razakar Bahini first formed during the third part of May in Khulna.

150. The learned state defence counsel further asserts that testimony of witnesses tendered is not credible and the witnesses had no reason of knowing the accused persons beforehand. Inconsistent evidence creates doubt as to presence of accused persons at the crime site.

151. It appears that four accused (1) Md. Abdur Rahman (2) Sheikh Md. Abdul Majid alias Majit Moulana (3) Md. Abdul Khalek Talukder, and (4) Md. Kabir Khan have been indicted in this charge. They allegedly accompanied 15/20 accomplice Razakars and a number of Pakistani occupation army men in launching attack at the house of Dr. Hem Bagchi. Of these four accused Md. Abdur Rahman died at summing up stage and as such proceedings so far as it relates to him stood abated.

152. This charge relates to killing three [03] Hindu civilians by launching systematic attack at the house of Dr. Hem Bagchi who was a doctor by profession. Four accused have been arraigned in this charge one of whom died at summing up stage. The alleged

event happened in day time on 01 May, 1971. Prosecution, to substantiate this charge relies upon 05 witnesses i.e. P.W.01, P.W.06, P.W.07, P.W.09 and P.W.10. Of them excepting P.W.06 others are hearsay witnesses, particularly in relation to the commission of the killing. First, let us see what has been unveiled in testimony of P.W.06 Ranjit Joarder.

153. It transpires that **P.W.06 Ranjit Joarder** was a neighbor of Dr. Hem Bagchi, one of victims. He had opportunity of seeing the act of launching attack. His testimony depicts that inmates of Dr. Hem Bagchi and many Hindu families took refuge at village Ghagra quitting their homes, but he [P.W.06] remained stayed at his house.

154. It is found from the sworn narrative of P.W.06 that on 01 May in 1971 at about 11 A.M he went to Tahshil, office, west to Dr. Hem Bagchi's house and during his staying at that office he saw accused Md. Abdul Khalek Talukder, Kabir Khan, Abdul Majid @ Majit Moulana, Abdur Rahman [now dead] and their accomplices Razakars and Pakistani occupation army by launching attack unlawfully detained Meghunath, the domestic aid from the bank of the pond and shot him to death.

155. Thus, it stands proved that the gang just before entering the house of Hem Bagchi gunned down the domestic aid finding him on the bank of the pond. It was done intending to create horror that ended in killing three unarmed Hindu Civilian, we may justifiably presume.

156. We have found it proved too from testimony of P.W.06 that he could see even remaining stayed at Tahshil Office, the Pakistani army men gunning down Doctor Hem Bagchi and Haridas Singha at the courtyard of the house.

157. Thus, the killing was perpetrated by the Pakistani occupation army men and the accused persons accompanying the army men and by their conscious presence at the site presumably substantially aided them. It may be irresistibly inferred that the accused persons did it being imbued by the policy and plan of the Pakistani occupation army.

158. It also transpires from testimony of P.W.06 that after perpetration of brutal killing when the army men had left the site the accused persons and their cohort Razakars who accompanied the army men instead of leaving the site looted household of Hem Bagchi and they and their cohorts remained stayed for two days at the house of Hem Bagchi and when they and their accomplices

quitted the site only then the dead bodies were dumped near the pond.

159. P.W.06 could not say the name of other Razakars excepting the accused persons. But it by itself does not negate accused persons' culpable act, conduct and presence at the crime site forming part of attack. It appears that P. W.06 had reason of knowing the accused persons beforehand. Defence does not dispute the attack that resulted in killing three Hindu civilians including Dr. Hem Bagchi.

160. The accused persons did not physically participate in accomplishing the killing, true. But they knowingly accompanied the army men and thereby they substantially assisted the actual perpetrators, the army men. In addition to it, the accused persons looted households of victims Hem Bagchi by remaining stayed at his house for two days. This act of accused persons committed in war time situation was rather a grave aggression to civilian's property which is prohibited under international humanitarian law.

161. Defence could not refute the fact of launching attack, killing three [03] Hindu civilians, looting households. After the army men had left the site by effecting killing of three civilians the accused persons and their cohorts continued staying at the house of victim

Hem Bagchi. It was simply to accomplish the prohibited act of looting households, we may safely presume.

162. At the same time, it may also be inferred that the Pakistani occupation army men naturally had to take assistance of accused persons and their cohorts for locating the site and civilians to be targeted. The accused persons knowing the consequence provided such conscious assistance and culpable facilitation to the army men who just two days back got stationed at Purbodhola. In this way the accused persons aided and substantially contributed the principal perpetrators in accomplishing the killing, the upshot of the attack. The army men just after killing the civilians had left the site and did not opt to cause looting households. But the accused persons did it.

163. It also depicts from testimony of P.W.06 that after the horrific killing of three Hindu civilians P.W.06 and his family and many Hindu Families of the locality and the family of victim Hem Bagchi, being scared deported to India. After independence, returning to Bangladesh they found the house of Hem Bagchi empty and the household looted from the house of Hem Bagchi were kept at the house of accused Razakar Kabir Khan and the same were then taken at Purbodhola Thana, after recovery.

164. Thus, the attack also resulted in deportation of Hindu Civilians which was rather aggressive. Dreadful and coercive situation created through the attack in other words forced them to deport. The accused persons who consciously accompanied the gang, being part of the enterprise thus cannot absolve liability even of such prohibited act.

165. The killing of three Hindu civilians as arraigned in this charge remained uncontroverted. On 01 May 1971 at about 01:00 P.M Compounder Siddiqur Rahman [now dead] of doctor Hem Bagchi coming to the house of P.W.07 informed about the event that resulted in killing Hem Bagchi and two others, by carrying out attack at the house of Hem Bagchi.

166. P.W.07 then being accompanied by said Siddiqur Rahman moved to Tahshil office in evening and then moved to near Hem Bagchi's house when he found the dead body of Meghunath on the bank of the pond and saw dead bodies of Hem Bagchi and Haridas lying at the courtyard. With this he [P.W.07] became scared and returned home and on the same night he along with his family, the family of Hem Bagchi, Haridas' family inmates and the Hindus who took refuge at his [P.W.07] house deported to India.

167. P.W.07 Pradip Chandra Singha is a hearsay witness. But what facts he testified gets consistent corroboration from the sworn testimony of P.W.06, a direct witness to the facts materially related to the principal crimes. It was quite natural of hearing the horrific event from Siddiqur Rahman the compounder of victim doctor Hem Bagchi.

168. Seeing the bullet hit dead bodies of three victims lying at the site i.e. the house of Hem Bagchi as testified by P.W.07 gets corroboration from the evidence of P.W.06 and this fact itself proves it beyond doubt that the perpetrators carried out killing by launching attack at Hem Bagchi's house and the family of doctor Hem Bagchi and other Hindu civilians, being gravely scared, opted to deport to India..

169. It transpires from testimony of P.W.07 that accused Kabir Kha was the rickshaw puller of doctor Hem Bagchi and he [P.W.07] saw the accused Md. Abdul Khalek Talukder moving around the locality and accused Abdur Rahman had a shop of his own at Purbodhola bazaar and thus he knew them beforehand.

170. It has been found proved too from testimony of P.W.07 that the accused persons and local pro-Pakistan political leaders welcomed the Pakistani occupation army on 29 April 1971 when

they got stationed at Purbodhola by setting up camps at CO office and Dukbungalow. Defence could not refute this crucial fact in any manner. Be that as it may we may safely infer that the accused persons used to keep close nexus with the army men stationed at Purbodhola, being imbued by their policy and plan.

171. The accused persons acted as traitors by aiding the Pakistani occupation army in launching attack at Hem Bagchi's house. It would not have been possible in accomplishing the attack targeting Hem Bagchi without active assistance on part of the accused persons. And the accused persons being enthused accompanied the army men to the crime site in carrying out the attack.

172. It has been depicted from evidence of P.W.07 that after independence the looted household were recovered from the house of accused Kabir Khan and the same were then kept in local Thana. Defence does not dispute it.

173. Additionally, it also transpires from testimony of P.W.01 Md. Ayub Ali, a freedom-fighter and a resident of Purbodhola that accused persons got enrolled in Purbodhola Razakar Bahini after the Pakistani occupation army got stationed there in the month of May 1971 and he as a commander of freedom fighters came to know from sources that they started carrying out atrocious activates around the localities of Purbodhola.

174. P.W.01 is a hearsay witness to the event of killing as arraigned in charge no.01. He heard from Ranjit Joarder[P.W.06] a direct witness to the event happened that the gang formed of Pakistani occupation army, accused Md. Kabir Khan, Sheikh Abdul Majid, Abdul Khalek Talukder, Abdur Rahman [now dead] and their cohort Razakars by launching attack at the house of doctor Hem Bagchi gunned down doctor Hem Bagchi, Haridas Singha and domestic aid Meghunath and the accused persons carried out looting and burnt down the house and later on, after independence the looted goods were recovered from the house of accused Md. Kabir Khan.

175. The above hearsay evidence of P.W.01 carries probative value and the same is not anonymous. P.W.01 testified what he heard from a direct witness. Defence could not controvert what has been narrated by the P.W.01.

176. The fact of recovery of looted household from the house of accused Md. Kabir Khan, after independence as testified by P.W.01 rather indisputably proves that act of looting was carried out too at the house of Hem Bagchi, in conjunction with the attack and the accused persons were engaged in accomplishing such prohibited act formed part of systematic attack.

177. The canonic concept of *`actus reus nisi mens sit rea* , it is not the mere unlawful act that bears criminal responsibility, but it has been committed in a certain state of mind. The accused persons knew that the gang to which they were part was committing or about to commit the crime, by launching attack, to further policy and plan.

178. The accused persons were part of unitary killing scheme. Thus, each of accused indicted in this charge being party to a crime was responsible for his own contribution, although the army men were the actual perpetrators. They substantially aided and abetted the principals in accomplishing the killing, it stands proved.

179. It is now well settled that aiding and abetting lies in the fact that the aider and abettor is always an accessory to a crime perpetrated by another person, the principal. By act of aiding and abetting the accused persons consciously rendered accessory contributions to the commission of the killing three unarmed Hindu civilians by the army men, the principals.

180. It is now well settled that 'commission' in broader terms, as by accepting the mutual attribution of contributions for the accomplishment of the crime, not only the person who physically kills the victim, but also the members forming part of the gang of

attackers, sharing common intent who knowingly acted as the provider of substantial aid and assistance can be held liable as co-perpetrators. In the case in hand, the accused persons for their act and culpable conduct forming part of the attack are found responsible as co-perpetrators as well.

181. P.W.10 Dipak Kumar Vaduri too heard the event of attack from Siddiqur Rahman [now dead] the compounder of victim doctor Hem Bagchi. It may be lawfully inferred that being a compounder of victim doctor Hem Bagchi and a resident of the crime locality Siddiqur Rahman had reason of knowing the accused persons beforehand and thus hearing the event from him as testified by P.W.10 inspires credence.

182. It remained uncontroverted that the Pakistani occupation army came to Purbodhola on 29 April 1971 and got stationed at the CO Office and Dukbungalow of Purbodhola. The event happened just two days later. It was not practicable for the Pakistani occupation army to locate the site and target the population without active assistance of their local collaborators. It stands proved that the accused persons were affiliated with politics of pro-Pakistan political parties.

183. It has been found that P.W.06 saw the accused persons accompanying the gang of attackers and they remained stayed at the house of Hem Bagchi for two days in accomplishing the act of looting households, even after the killing happened. All these cumulatively lead to the conclusion that the accused persons were active part of the attack that resulted in killing three Hindu civilians.

184. Unshaken evidence of P.W.06 demonstrates that he saw the criminal activities carried out at the hose of Hem Bagchi that resulted in killing three Hindu civilians remaining stayed at Tahshil office, very closer to the house of Hem Bagchi. Defence could not controvert the version made in this regard by P.W.06.

185. Besides, the brutal killing of three Hindu civilians is not disputed. It was practicable of seeing the criminal activities carried out in conjunction with the attack from a closer distance and P.W.06 knew the accused persons beforehand. It remained unshaken that the accused persons were the residents from almost same localities. Thus, naturally the P.W.06 had fair reason of recognizing the accused persons accompanying the gang of attackers.

186. P.W.09 heard gun firing from the end of Hem Bagchi's house, at the relevant time. He later on found bullet hit bodies lying at the site and also heard about the attack and the presence of accused persons at the site with the gang of attackers from P.W.06. Testimony of P.W.09 gets corroboration from P.W.06, a direct witness.

187. It stands proved too from corroborative evidence of P.W.06, P.W.07 and P.W.09 that after the event the family inmates and most of Hindu residents of the locality departed to India, being scared. This fact had a nexus with the murderous mission of the gang. Causing devastating looting at the house of Dr. Hem Bagchi and together with the killing of near ones eventually forced not only the relatives of victims but other civilians belonging to Hindu religion to depart to India. All these collectively caused immense trauma and extreme coercion to Hindu civilians of the locality which constituted the offence of 'other inhumane act' as crime against humanity.

188. Testimony of P.W.10 depicts that after the event happened one Siddiqur Rahman the compounder of Dr. Hem Bagchi [victim] came to their house and disclosed the event of annihilation and on hearing this Prodip Singha moved to the crime site who discovered bullet hit bodies of three Hindu civilians including Dr. Hem Bagchi

and observed the Razakars staying at the house of Hem Bagchi. It was natural for P.W.10 of hearing the event when it was made narrated to his uncle Prodip Singha [P.W.07]. The hearsay version made by P.W.10 gets corroboration from P.W.07 and there has been no reason of disbelieving P.W.10.

189. On totality of evidence, we do not find any reason of keeping the hearsay testimony of P.W.01 and P.W.10 aside as the same gets sturdy corroboration from the evidence of P.W.06, a direct witness to facts materially related to the event of attack that resulted in killing and looting at the house of Dr. Hem Bagchi.

190. In addition to conscious and culpable act of accompanying the Pakistani occupation army to get their target located the accused persons at the same time intended to secure their personal gain by causing looting household of doctor Hem Bagchi and they did it which formed part of the attack as well.

191. We are not with the argument advanced by the learned state defence counsel that on 01 May 1971 nowhere in the territory of Bangladesh Razakar Bahini existed and thus participation of accused persons in committing the alleged crimes allegedly happened on 01 May 1971 is untrue.

192. Tribunal notes that Razakar Bahini was an armed auxiliary force formed in May 1971 on active backing of Jamaat-e-Islami [JEI], a pro-Pakistan political party which took stance against the war of liberation. Intention was to collaborate with the Pakistani occupation army, to further its policy and plan. It is now settled history.

193. The accused persons arraigned being imbued by the pro-Pakistan political ideology enthusiastically welcomed the Pakistani occupation army at Purbodhola – it stands proved. Formation of Razakar Bahini at Purbodhola in 1971 remained undisputed. We have already rendered reasoned finding that the accused persons belonged to locally formed Razakar Bahini.

194. Thus, their affiliation in locally formed Razakar Bahini subsequent to the event of attack happened on 01 May 1971 as narrated in charge no.01 made them known as Razakars and presumably this is the reason why the witnesses, the residents of the crime locality termed them Razakars when they testified the event occurred on 01 May 1971. Therefore, merely for the reason that on 01 May 1971 no Razakar Bahini was formed locally testimony of witnesses implicate the accused with the commission of the offences shall go on air particularly when the evidence presented leads to the conclusion that the accused persons being accompanied

by their cohorts Razakars and Pakistani occupation army had carried out the attack at the house of Dr. Hem Bagchi.

195. From the factual matrix unveiled it may be inferred indisputably that the accused persons with discriminatory intent participated in launching the attack and on their active and culpable assistance and aid the army men got their target, the Hindu civilian identified. Annihilation of unarmed Bengali people, people belonging to Hindu religion was the key policy of the Pakistani occupation army and they got it materialized on having visible and culpable aid and facilitation of the accused persons, the members of locally formed Razakar Bahini, an auxiliary force.

196. It is now settled jurisprudence that ‘committing’ is not limited to direct and physical perpetration and that other acts and conduct can constitute direct participation in the *actus reus* of the crime. Personal and actual participation in committing crime is one of mode of responsibility. It is not required to show that an accused forming part of the criminal enterprise personally committed the crime of which he is arraigned. This view finds support from the observation made by the **Appeal Chamber of ICTR** in the case of **Ntakirutimana and Ntakirutimana** which is as below:

“Murder as a crime against humanity under Article 3(a) does not require the Prosecution to establish that the accused personally committed the killing. Personal commission is only one of the modes of responsibility

[*Ntakirutimana and Ntakirutimana*, ICTR Appeals Chamber, December 13, 2004, para. 546]

197. What we see in the case in hand? The attack was carried out in context of war of liberation. The victims annihilated were unarmed civilians belonging to Hindu community. All these could not be controverted in any manner. The acts of the accused persons constituted part of the attack. Thus, the accused persons had conscious nexus with the intent of the attack. The offence of killing the upshot of the attack and ancillary act of looting households were not isolated crimes. The act of looting was committed in conjunction with the attack and by the accused persons and their cohort Razakars—it stands proved.

198. In the case in hand, we are to see whether (i) the accused persons took ‘*consenting part*’ in the commission of the crime(ii) the accused persons were ‘*connected*’ with plans or enterprise(iii) the accused persons belonged to the perpetrator organization or group.

199. Presence of accused persons at the crime site and their culpable act and conduct were sufficiently connected to the organized attack. Act and conduct of the accused forming part of such attack were not isolated, rather linked to systematic attack which constituted the offences of crimes against humanity.

200. The liability mode contained in section 4(1) of the Act of 1973 refers to 'collective criminality' which corresponds to 'JCE', we consider..The expression '*committed*' occurred in section 4(1) of the Act includes participation in JCE. Section 4(1) tends to cover the necessary elements of JCE, especially JCE category-I and III.

201. The event arraigned in this charge happened by a group formed of accused persons, their cohorts and Pakistani occupation army. Thus, in the case in hand, the concept of joint criminal enterprise comes forward as a number of persons including the accused persons and army men are found to have had joined in a common and shared purpose to commit the crime.

202. The Tribunal notes that notion of Joint Criminal Enterprise [JCE] is a form of co-perpetration that constitutes personal criminal liability. It has been evolved through judicial pronouncement in the case of *Tadic* [ICTY]. In fact section 4(1) of the Act of 1973 refers to JCE liability, although it has not been categorized in the Statute.

The expression ‘common purpose’, ‘awareness of foreseeable consequence’ of act or conduct, and ‘intent’ are the key factors involved with the notion of JCE liability.

203. In line with the recognized principles almost common to all legal systems, a person who takes ‘consenting part’ in accomplishing the crime in violation of laws of war and customary international law or who is found to have had ‘connection’ with the ‘enterprise’ incurs equal responsibility for the commission of crime together with the ‘principals’.

204. It has already been settled that the mode of liability need not involve the physical commission of a specific crime by all the members of JCE but may take the form of assistance in, or contribution to, the execution of the common purpose [**Stakic’ (IT-97-24-A), ICTY Appeals Chamber, 22 March 2006, para. 64]**

205. Additionally, ‘participation’ encompasses ‘approval’ or ‘instigation’ or ‘encouragement’ or ‘aiding’ or ‘abetment’. In the case in hand, it has been proved, that the accused (1) Sheikh Md. Abdul Majid alias Majit Moulana (2) Md. Abdul Khalek Talukder, and (3) Md. Kabir Khan by their explicit acts approved or instigated or abetted and substantially assisted the principal

perpetrators in committing the offence of murder of unarmed Hindu civilians.

206. The event under adjudication involves 'collective criminality'. It is now well settled that in cases of 'collective criminality' every member of the joint endeavor may be held equally responsible as a co-perpetrator, even if materially and causally remote from the actual commission of the crimes. But in the case in hand, we have found it proved that the accused (1) Sheikh Md. Abdul Majid alias Majit Moulana (2) Md. Abdul Khalek Talukder, and (3) Md. Kabir Khan , in all phases of the attack remained actively present with the group of perpetrators at the crime site. And in this way, in furtherance of common agreement and purpose they by their act and conduct forming part of systematic attack committed the act 'murder' constituting the offence of crimes against humanity.

207. All the three accused (1) Sheikh Md. Abdul Majid alias Majit Moulana (2) Md. Abdul Khalek Talukder, and (3) Md. Kabir Khan being part of 'collective criminality' and by accompanying the group of perpetrators thus rendered substantial contribution to the act of killings. In this way all of them aided and abetted the accomplishment of the act of killing, the principal offence.

208. On totality of evidence adduced we are of the view that the prosecution has been able to prove beyond reasonable doubt that the accused (1) Sheikh Md. Abdul Majid alias Majit Moulana (2) Md. Abdul Khalek Talukder, and (3) Md. Kabir Khan being part of collective criminality participated in and had complicity with the commission of criminal act of killing three Hindu civilians, pursuant to common design and plan. In this way they being part of the enterprise and by their act and conduct forming part of systematic attack in materializing the culpable mission were 'concerned', took 'participation' , 'aided' and 'substantially contributed' to the actual commission of the killing and causing trauma to the relatives of victims and thereby they are found **guilty** for the offences of '**murder**' and '**other inhumane act**' as crimes against humanity enumerated in section 3(2)(a)(g)(h) of the Act of 1973 and thus they incurred criminal liability under section 4(1) of the Act of 1973.

Adjudication of Charge No.02

[Abduction, confinement and torture of Abdul Gani Sarker alias Charu Miah of village Barha under Purbodhola Police Station]

209. **Charge:** That on 25-07-1971 at about 12.00 A.M. a group formed of accused Razakars (1) Md. Abdur Rahman (2) Sheikh Md. Abdul Majid alias Majit Moulana, and (3) Md. Abdul Khalek Talukder and their 15/20 armed Razakars detained Abdul Gani

Sarker alias Charu Miah son of late Moizuddin Sarker of village Barha under Police Station when he, on his way to Purbodhola bazaar, arrived at local rail line , western side of his house and then the accused persons and their accomplices took him away detainee was to the local Jaria bazaar Razakar camp where he was subjected to severe torture. Two days later the detainee got released from the said Razakar camp on intervention of the then local Chairman Shafi Muslem Uddin. Torture caused to the victim in captivity made him dumb and he died in 2005.

Thereby, the accused (1) Md. Abdur Rahman (2) Sheikh Md. Abdul Majid alias Majit Moulana, and (3) Md. Abdul Khalek Talukder have been charged for participating, abetting, facilitating, contributing and complicity in the commission of offences of '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 you the accused persons have incurred liability under section 4(1) of the said Act.

Evidence of Witnesses Examined

210. Intending to substantiate the arraignment brought in this charge prosecution adduced three witnesses who have been examined as P.W.08, P.W.11 and P.W.25. The charge involves the

offences of abduction, confinement and torture as enumerated in the Act of 1973. Of these three witnesses P.W.08 and P.W.25 happen to be the sister and brother respectively of the victim. They allegedly experienced the facts materially related to the attack. Now let us see what they have testified.

211. P.W.08 Most. Rahima Akter [63] is the sister of victim. She stated that on 20 July 1971 her brother Abdul Gani @ Charu Mia was forcibly captured by a group formed of Razakar Ahammad Ali[now dead], Abdul Majid Moulana, Khalek Talukder, Abdur Rahman [died during trial] and their cohort Razakars from the place west to their house adjacent to rail line when he was on the way to Purbodhola bazaar. Being aware of it she [P.W.08] came out of the house and moved to rail line and remaining in hiding inside a bush she saw the accused persons and their cohorts torturing her brother and taking him away to Jaria Razakar camp at Purbodhola.

212. P.W.08 next stated that she returned back home and disclosed the event she witnessed to her brothers Abdul Quddus and Abdul Razzak who then moved to local peace committee leader Shafi Muslem Uddin with an appeal for their brother's release. One day later her detained brother got release from captivity in exchange of ransom money. But her [P.W.08] brother became physically

disabled and his speech became impaired due to torture caused to him and eventually he died carrying such disability.

213. In respect of reason of knowing the accused persons P.W.08 stated that Miraj Ali Razakar[now dead] was their neighbour and the accused persons she named used to visit his house very often and accused Abdul Khalek was a notorious hooligan and thus she knew them beforehand.

214. In cross-examination, P.W.08 stated in reply to defence question that her brother Abdul Gani [victim] died in 2005. P.W.08 denied the defence suggestions that she did not know the accused persons; that the accused did not belong to Razakar Bahini and they were not involved with the event she testified.

215. P.W.11 Abdul Kader Talukder is the husband of P.W.08. He is a freedom fighter. He stated that on receiving training in India to join the war of liberation he came back to Bangladesh during the first part of June, 1971. He is a hearsay witness.

216. P.W.11 stated that he heard that on 25 July 1971 Razakar Khalek Talukder, Majid Moulana, Abdur Rahman [died during trial], their 15/20 cohort Razakars led by Razakar Ahmad Ali [now dead] took away his cousin brother Abdul Gani to Purbodhola

Razakar camp on forcible capture from the place west to their house when he was on the way to bazaar. Abdul Gani was subjected to severe torture in captivity. On intervention of local Muslim League leader Muslem Uddin detained victim got release in exchange of ransom money but he became physically disabled and his speech became impaired too.

217. In reply to defence question P.W.11 stated in cross-examination that after independence the accused persons had not been in the locality till 1975. P.W.11 denied the defence suggestion that he testified implicating the accused persons out of local political rivalry; that he did not hear the event he testified and that what he testified was untrue and tutored.

218. **P.W.25 Md. Abdur Razzak Sarker** is the younger brother of victim Abdul Gani @ Charu Mia. He stated that four days later, on 03rd day of Bangla month Sravan in 1971 Razakar Abdul Khalek Talukder, Razakar Abdur Rahman [died during trial], Razakar Majid Moulana and their 10/12 cohorts unlawfully and forcibly captured his brother Abdul Gani from the place adjacent to rail line, nearer to their house when he was on the way to bazaar and took him away to Razakar camp where he was subjected to severe torture. He [P.W.25] saw it staying near the rail line adjacent to their house.

219. P.W.25 further stated that the detainee got release on intervention of local UP Chairman Muslem Uddin but the victim became physically disabled. After this event happened he went to India for receiving training to join the war of liberation.

220. In cross-examination, defence simply suggested the P.W.25 that the accused persons were not Razakars; that they were not involved with the event he testified and that he testified being tutored by the political rivalry of accused persons. P.W.25 denied all these suggestions put to him by the defence

Finding with Reasoning on Evaluation of Evidence

221. **Mr. Mokhesur Rahman Badal** the learned Prosecutor drawing attention to evidence of three witnesses i.e P.W.08, P.W.11 and P.W.25 submitted that defence could not shake what they testified in respect of the event of attack . Two of these three witnesses had opportunity of seeing the accused persons and their cohorts forcibly taking away to Razakar camp where the detainee was subjected to stern torture that resulted in his physical and speech impairment, the learned prosecutor added.

222. On contrary **Mr. Gaji M.H Tamim** the learned state defence counsel argued that prosecution could not prove this arraignment by

consistent evidence ; that the witnesses relied upon in support of this charge had no reason of recognizing the accused persons.

223. This charge involves severe torture to one non-combatant civilian of village-Barha under police station-Purbodhola of District-Netrokona]. Three accused (1) Md. Abdur Rahman (2) Sheikh Md. Abdul Majid alias Majit Moulana, and (3) Md. Abdul Khalek Talukder have been indicted in for the offences arraigned in this charge. Of them accused Md. Abdur Rahman died at the stage of summing up and thus proceedings so far as it relates to him stood abated.

224. The victim was allegedly forcibly captured by a group of Razakars being accompanied by the accused persons. Reason of launching attack was intended of haunting freedom fighters, prosecution alleges. The victim was cousin brother of P.W.11 Md. Abdul Kadir Talukder who and his elder brother joined the war of liberation as freedom-fighters.

225. It transpires from testimony of P.W.11 that at the relevant time he had been in Haluaghat locality. Testimony of P.W.11 also depicts that he heard the event from his cousin brother Abu Chand when he too joined the war of liberation after the event occurred in August 1971. Hearsay testimony of P.W.11 is thus not anonymous. Now we are to see whether it gets corroboration from testimony of

two other witnesses i.e. P.W.08 and P.W.25, two direct witnesses to the attack.

226. It transpires from the narrative made by P.W.08 that on getting information about causing torture to her brother on forcible capture she rushed towards rail line and remaining in hiding inside a bush she could see the accused Abdul Majid Moulana, Khalek Talukder, Abdur Rahman [now dead] and their 15/20 accomplices causing torture to her detained brother and then the gang took him away towards Jaria Razakar camp.

227. Defence however does not seem to have made any effort to controvert the fact of forcible capture of the brother of P.W.08 and causing torture to him in captivity. Defence simply denied what the P.W.08 narrated in examination-in-chief. But Mere denial is not enough to negate the truthfulness of one's version made in examination-in-chief.

228. Thus, it stands proved beyond reasonable doubt from the evidence of P.W.08, the sister of victim that the accused persons and their cohorts were actively engaged in causing torture to her brother the victim on forcible capture. P.W.08 also saw the gang of perpetrators taking away her detained brother towards Jaria bazaar Razakar camp. Conscious participation of accused persons in

committing the criminal acts constituting the offence of abduction, torture and confinement are found proved from the unshaken version of P.W.08.

229. It is also evinced that the victim Abdul Gani got release one day later from captivity on intervention of local peace committee leader but he became physically challenged due to severe torture caused to him. The victim's speech even became impaired. It could not be impeached that the victim died in 2005 carrying such disability and speech impairment. That is to say, torture caused to the victim was of such nature which made the victim disabled forever. It indicates indisputably as to what extent of barbaric and beastly torture was caused to the victim in captivity.

230. P.W.11 is a freedom-fighter and the husband of P.W.08. Thus, it may reasonably be presumed that P.W.11 heard the event also from his wife [P.W.08] who had occasion of seeing the act of attack that resulted in taking away the victim on forcible capture. Thus, hearsay version made by P.W.11 carries probative value and it gets corroboration from the evidence of P.W.08.

231. In reply to defence question P.W.11 stated in cross-examination that after independence the accused persons had not been in the locality till 1975. This fact unveiled in cross-examination unerringly suggests the inference that the accused

persons could not continue staying in the locality till 1975 for their role they played and the stance they had in 1971 and also for the criminal activities they carried out directing civilian population of the localities.

232. It transpires too that P.W.25 Md. Abdur Razzak Sarker, the younger brother of victim Abdul Gani also saw the accused persons taking away the victim Abdul Gani to Razakar camp on forcible capture. It could not be shaken in cross-examination.

233. Testimony of P.W.08 and P.W.25 so far as it relates to the fact of taking away the victim Abdul Gani on forcible capture seems to be consistently corroborative to each other. They had occasion of seeing the attack. Defence could not refute it in any way. It could not be disputed that one day later the victim got release in exchange of ransom money. It stands proved that the victim became physically disabled due to severe torture caused to him in captivity.

234. The event of attack that resulted in unlawful detention of victim happened in day time. P.W.25 saw the accused persons and their cohorts taking away his brother the victim on forcible capture. In cross-examination of P.W.25, the younger brother of the victim it has not been denied specifically even that a group formed of accused persons and their cohort Razakars forcibly captured the victim Abdul Gani and took him away to Razakar camp and due to

brutal torture caused to him in captivity that resulted in his physical disability.

235. Act of forcible capture forming part of the systematic attack carried out by the gang of Razakars including the accused persons had nexus to the act of causing brutal torture to detainee in captivity. Even a single act or conduct of the accused, amid, prior or subsequent to the principal offence i.e. confinement and torture may form part of the 'attack' if it had substantial effect in perpetrating the offence. Thus, it is not required to adduce evidence to show accused persons' participation in committing torture in captivity. In this regard Tribunal notes that the settled jurisprudence now makes it clear that 'committing' is not limited to direct and physical perpetration and that other acts constitute direct participation in the *actus reus* of the crime, the upshot of the attack.

236. Besides, it was not practicable of seeing the activities carried out inside the Razakar camp which was rather a torture cell. Since the accused (1) Sheikh Md. Abdul Majid alias Majit Moulana and (2) Md. Abdul Khalek Talukder actively participated in unlawfully detaining the victim by launching attack they cannot evade the responsibility even of causing grave torture to the detainee that eventually resulted in victim's disability and speech impairment and the victim had to carry the torment and trauma he sustained till his death.

237. The Convention against Torture ('CAT') comprises the following constitutive elements for the offence of **'torture'**:

(i) The infliction, by act or omission, of severe pain or suffering, whether physical or mental;

(ii) The act or omission must be intentional; and

(iii) The act or omission must have occurred in order to obtain information or a confession, or to punish, intimidate or coerce the victim or a third person, or to discriminate, on any ground, against the victim or a third person."

238. It has been proved firmly that the act of torture caused to the victim was a crime against humanity as the same was intentionally and deliberately inflicted for prohibited purposes including: intimidating or coercing the victim and the residents of the crime locality on discriminatory grounds, namely: national and political grounds. It may be reasonably presumed that the victim was targeted as he was a member of a pro-liberation family some of members of which joined the war of liberation as freedom-fighters.

239. In the case in hand, it has been well proved that the victim was subjected to brutal torture in captivity that eventually resulted in his physical disability and speech impairment. Intention of such barbaric acts was to intimidate and coerce the pro-liberation

civilians of the locality. Totality of facts leads to the conclusion that the accused persons, in exercise of their affiliation with the locally formed Razakar Bahini, by their culpable act and culpable conduct intended to spread terror and coercion around the locality and they did it being enthused by the policy and plan of Pakistani occupation army. Their activities obviously formed part of systematic attack directing civilians.

240. P.W.25 Md. Abdur Razzak Sarker the younger brother of victim Abdul Gani @ Charu Mia and P.W.11 Abdul Kader Talukder the husband of P.W.08 were freedom fighters. This unchallenged fact itself indicates that the family of the victim had spontaneous stance in support of the war of liberation. Presumably, this was the reason of unlawfully detaining the victim. Accused persons and their cohort Razakars opted to do such unlawful and prohibited acts to further policy and plan of Pakistani occupation army. The victim was a non combatant civilian and did not have any direct hostility with the auxiliary force and thus was entitled to enjoy the safeguard ensured in international humanitarian law and the laws of war. But the accused persons did not care to such protection ensured to civilians.

241. On cumulative evaluation of sworn evidence presented before us, we conclude that it has been proved beyond reasonable doubt that by launching systematic attack an unarmed pro-liberation

civilian was apprehended unlawfully by the group of attackers formed of Razakars including the accused (1) Sheikh Md. Abdul Majid alias Majit Moulana and (2) Md. Abdul Khalek Talukder who participated and substantially facilitated in committing such prohibited act and also in taking away the detained victim to Jaria Razakar camp at Purbodhola bazaar where the victim was subjected to inhumane torture in captivity.

242. In this way, the accused (1) Sheikh Md. Abdul Majid alias Majit Moulana and (2) Md. Abdul Khalek Talukder participated, abetted and substantially contributed to the accomplishment of ‘abduction’, ‘confinement’ and ‘torture’ 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 and thus the accused persons incurred liability under section 4(1) of the Act for the above offences.

Adjudication of Charge No.03

[Offences of abduction, confinement, torture, looting, arson and murder of Abdul Khalek Talukder of village Barha under Purbodhola Police Station]

243. Charge: That on 21.08.1971 at about 01.00 P.M. the accused Razakars (1) Md. Abdur Rahman [died during trial] (2) Sheikh Md. Abdul Majid alias Majit Moulana, and (3) Md. Abdul Khalek Talukder along with other 15/20 armed Razakars attacked the house of freedom-fighter Abdul Kadir Talukder son of late Ansor Uddin

Talukder of village-Barha under Police Station Purbodhola of the then Netrokona Sub-Division to capture him, and having looted the households set the house on fire. On being failed to collect any information about freedom-fighter Abdul Kadir Talukder, the accused persons and their cohort Razakars abducted Abdul Khalek Talukder, brother of said freedom-fighter Abdul Kadir Talukder and took him away to Jaria bazaar Razakar camp under Purbodhola Police Station and having kept confined tortured him there.

Thereafter, on the following night of 21.08.1971 the accused persons and their cohort Razakars took the victim Abdul Khalek Talukder at the place in front of Jaria bazaar China CLY Project where he was shot to death and then his dead body was thrown into the river Kangsa. The dead body of the victim could not be recovered.

Thereby, the accused (1) Md. Abdur Rahman[died during trial] (2) Sheikh Md. Abdul Majid alias Majit Moulana, and (3) Md. Abdul Khalek Talukder have been charged for participating, abetting, facilitating, contributing and complicity in the commission of offences of 'abduction', 'confinement', 'torture', 'murder' and 'other inhumane acts' [looting and arson] 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 said Act.

Evidence of Witnesses presented

244. Three accused (1) Md. Abdur Rahman (2) Sheikh Md. Abdul Majid alias Majit Moulana, and (3) Md. Abdul Khalek Talukder have been indicted in this charge. Of them Md. Abdur Rahman died during trial and as such proceeding so far as it relates to him stood abated. Prosecution relies upon testimony of 06 witnesses who have been examined as P.W.01, P.W.8, P.W.11, P.W.12, P.W.14, and P.W.15. Some of them are relatives of victim and they had occasion of seeing the attack and facts materially related to it, prosecution claims. Now, let us eye on what they testified before the Tribunal.

245. P.W.08 Ms. Rahima Akter [63] is the cousin sister of the victim Abdul Khalek Talukder. She stated that her two cousin brothers Abdul Kader Talukder and Abdul Hekim Talukder [elder brothers of the victim] joined the war of liberation as freedom-fighters. She is a direct witness to the first phase of the attack.

246. In respect of the event of attack P.W.08 stated that on 21 August 1971 a group formed of Razakars Ahammad Ali [now dead], Abdul Majid Moulana, Khalek Talukder, Abdur Rahman [died during trial] and their cohort 15/20 Razakars by launching

attack at their house forcibly captured her cousin brother Abdul Khalek Talukder and took him away to Jaria Razakar camp as they did not find trace of his [victim]two brothers who were freedom-fighters. She [P.W.08] saw it remaining in hiding inside the room of her uncle. Before the gang had left the site they looted households and set the house of her uncle on fire.

247. P.W.08 next stated that later on they heard from Dudu Mia, a resident of their village and others that detainee Abdul Khalek Talukder was kept in captivity for one day at Razakar camp where he was subjected to torture and then the accused Razakars gunned him down to death and threw the body into the river Kangsa. His body could not be traced.

248. In respect of reason of knowing the accused persons beforehand P.W.08 stated that Accused Abdul Khalek Talukder was a notorious hooligan of their locality, Razakar Miraj Ali [now dead] was their neighbor and the accused persons used to visit his house very often and thus she knew them beforehand.

249. In cross-examination defence simply denied what the P.W.08 testified. P.W.08 also denied the defence suggestions that she did not know the accused persons; that they were not Razakars and they were not involved with the event she testified.

250. P.W.11 Md. Abdul Kadir Talukder [69], a freedom-fighter is the elder brother of victim Abdul Khalek Talukder. He is a hearsay witness. At the relevant time he was engaged in freedom-fight in the locality of Haluaghat.

251. P.W.11 testified that a group formed of Razakars of Purbodhola Razakar camp accompanied by Razakar Abdul Khalek, Majid Moulana, Abdur Rahman[died during trial] by launching attack at their house forcibly captured his brother Abdul Khalek Talukder, looted households and burnt down the house and then took away his detained brother to Jaria Razakar camp. The Razakars defied the appeal to make the detainee freed and in night they had killed his[P.W.11] brother Abdul Khalek Talukder by gunshot and threw his body to Kangsa river and the body could not be traced even. [P.W.11 burst into tears at this stage, on dock]. P.W.11 stated that he heard the event from his cousin brother Abu Chan when he joined the war of liberation in August, 1971. After independence he heard the event also from brother's wife Khorsheda [P.W.15], cousin sister Rahima [P.W.08] and the locals.

252. In cross-examination, P.W.11 stated in reply to defence question that he initiated a case against accused persons and others over the event in 1972 but he could not keep vigilance on it; that

the accused persons had not been in the locality after independence and they came back after 1975.

253. P.W.12 Md. Joynul Abedin [64] was a neighboring resident of the victim Abdul Khalek Talukder who was his uncle. He stated that on the 04th day of Bangla month Bhadra 1971 he saw a group of Razakars encircling his uncle's house when they inquired about whereabouts of two freedom-fighters Abdul Hekim and Abdul Kadir Talukder, the two elder brothers of his [P.W.12] uncle Abdul Khalek Talukder [victim]. Then the Razakars forcibly captured his uncle Abdul Khalek Talukder, tied him up and took him away to Jaria Bazaar Razakar camp.

254. What happened next? P.W.12 stated that in evening , on the same day he along with his cousin brother Fazlur Rahman moved to Razakar camp and appealed to Razakars Ahammad Ali[now dead], Abdul Khalek Talukder, Majid Moulana and Md. Abdur Rahman[died during trial] to set the detainee Abdul Khalek Talukder at liberty. But they defied it and then they returned back home,

255. P.W.12 further stated that on the following morning they again moved to Razakar camp when they heard from the locals that Razakars had gunned down his uncle [detainee] to death and threw his body to the river Kangsa.

256. In respect of reason of knowing the accused persons P.W.12 stated that the accused persons were the residents of their neighbouring localities and they used to move around local bazaar and thus he knew them since prior to the event.

257. In cross-examination defence simply denied what the P.W.12 testified. P.W.12 denied the defence suggestions that he did not know the accused persons; that they did not belong to Razakar Bahini and that what he testified was untrue and tutored.

258. P.W.14 Md. Abdul Khalek [62] was a neighbour and cousin brother of the victim. He stated that on the 04th day of Bangla month Bhadra 1971 he had had been sitting alongside the rail line adjacent to their house when he saw Razakars Majid Moulana. Abdul Khalek Talukder, Abdur Rahman[died during trial] and their cohorts entering into the house of Abdul Khalek Talukder and detained him and they interrogated him to extract information about his two brothers who were freedom-fighters. They then on failure of getting any information looted households, burnt down the house and took away the detainee Abdul Khalek Talukder to Jaria Razakar camp.

259. P.W.14 next stated that on the same day in afternoon Joynal Abedin [P.W.12] and Mofiz member of their village moved to

Razakar camp and attempted to secure release of the detainee by an appeal to Razakars. But they defying it asked to make the two freedom-fighter brothers of the detainee produced at the camp. On the following day they knew that on the preceding night the Razakars had gunned down the detainee Abdul Khalek Talukder to death and dumped the body into the river Kangsa. P.W.14 also stated that the Razakars he named were the residents of his neighbouring villages and thus he knew them beforehand.

260. In cross-examination, defence simply suggested the P.W.14 that he did not see and hear what he testified; that the accused persons were not Razakars and that what he testified was untrue and tutored out of local political rivalry. P.W.14 blatantly denied all these suggestions.

261. P.W.15 Khorsheda Akter is a resident of crime village-Barha. Her husband was the elder brother of Abdul Kadir Talukder and Abdul Hekim Talukder, the freedom fighters. Victim Abdul Khalek Talukder was another younger brother of her husband.

262. P.W.15 stated that Abdul Khalek Talukder used to stay in the house [in 1971]. On the 04th day of Bangla month Bhadra 1971 in afternoon Razakars came to her father-in-law's house when she had been staying there. The Razakars interrogated Abdul Khalek

Talukder to extract information about his two freedom-fighters brothers, tied him up, looted households and set the house on fire and then took the detained Abdul Khalek Talukder away to Jaria Razakar camp. The gang of Razakars formed of 15/20 Razakars and the Razakars Khalek Talukder, Majid Moulana, Ahammad [now dead] and Abdur Rahman [died during trial].

263. P.W.15 next stated that her husband's younger brother's son Joynal [P.W.12] and 4/5 others moved to Razakar camp and appealed to secure detainee Khalek Talukder's release. But the Razakars defied it.

264. P.W.15 also stated that on the following day her family inmates again moved to Razakar camp when they knew from the locals that Razakars had killed detainee Abdul Khalek Talukder by gunshot and dumped his body into the river Kangsa.

265. In respect of reason of knowing the accused persons P.W.15 stated that the accused persons were from their neighboring villages and before the war of liberation ensued they used to campaign for the candidate in support of the election symbol 'scale' and thus she knew them beforehand.

266. In cross-examination, defence simply suggested the P.W.15 that she did not know the accused persons; that no appeal was made to Razakars for securing detainee's release; that later on they did not hear that the detainee was wiped out by gunshot and his body was dumped into the river. P.W.15 denied all these defence suggestions.

Finding with Reasoning on Evaluation of Evidence

267. This charge involves brutal killing of a non combatant civilian taking him to Razakar camp on forcible capture. The attack was launched on 21 August 1971 in day time by a group formed entirely of 15/20 Razakars accompanied by accused Abdul Majid Moulana, Khalek Talukder, Abdur Rahman [died during trial] The event happened in day time.

268. Mr. Mokhlesur Rahman Badal the learned Prosecutor drawing attention to the sworn testimony of the witnesses relied upon in support of this charge argued that out of five witnesses P.W.08, P.W.12, P.W.14 and P.W.15 are direct witnesses to the facts substantially allied to the commission of the principal crime, the killing. They were family inmates of the victim and thus they had opportunity of experiencing how the victim was unlawfully detained and taken away by a gang of Razakars, the learned Prosecutor argued.

269. It has been further submitted on part of prosecution, at the stage of summing up, that the accused persons had close and culpable nexus with the Jaria Razakar camp where the victim was kept detained. The attack ended in killing the detained victim and thus the accused persons who actively participated in effecting forcible capture of the victim are liable also for the act of annihilation of the detainee. Being aware of the ultimate fate of the victim the accused persons knowingly and consciously participated in launching attack at the house of the victim that resulted in his unlawful detention, looting households and burning down the house, the learned prosecutor added.

270. On contrary, **Mr. Gaji M.H Tamim**, the learned state defence counsel submitted that prosecution could not bring lawful evidence to connect the accused persons with the alleged event; that the evidence of witnesses relied upon is not credible and that witnesses had no reason of knowing the accused persons.

271. In light of the arraignment brought in this charge prosecution require to prove that—

- (i) A deliberate and systematic attack was launched at the house of the victim Abdul Khalek Talukder;
- (ii) The attack was launched by a group formed of Razakars accompanied by the accused persons;

(iii) That the detained victim was taken away to Jaria Razakar camp at Purbodhola where he was kept confined;

(iv) That in conjunction with the attack the gang looted households and burnt down the house;

(v) That later on the detained victim was wiped out by gunshot and his body was dumped into river Kangsa;

(vi) That the accused persons being part of the criminal enterprise were knowingly engaged and participated in committing the crimes, being imbued by the aggressive attitude to the freedom-fighters and pro-liberation Bengali civilians ;

272. Testimony of P.W.08 Mst. Rahima Akhter depicts that two brothers of victim joined the war of liberation as freedom-fighters. She [P.W.08] had been staying at her another uncle's house when the attack was launched and therefrom, she saw the gang taking away Abdul Khalek Talukder, her cousin brother tying him up towards Jaria Razakar camp. In conjunction with the attack the squad looted households and burnt down the house.

273. The above criminal acts were carried out in course of the first phase of the attack and this phase was linked to the ending phase, the killing that happened after taking the victim at Jaria Razakar

camp. Defence, it transpires, could not controvert the act forcibly taking away the victim by launching attack. Being a relative P.W.08 had natural reason of witnessing the criminal acts conducted by the gang forming part of attack which was systematic indeed.

274. How the P.W.08 could recognize the accused persons accompanying the gang? It is quite patent from testimony of P.W.08 that accused Abdul Khalek Talukder was a notorious hooligan of the locality and the accused persons used to visit the house of one Miraj Ali [now dead], one of their[P.W.08] neighbours and thus she knew them beforehand.

275. In 1971 it was quite rational for the locals of knowing a person or persons involved with notorious activities around the locality. Thus, seeing the accused persons accompanying the gang of Razakars as testified by the P.W.08 inspires credence. Besides, since it has been found proved that the accused persons belonged to locally formed Razakar Bahini they accompanied the gang which was formed only of Razakars.

276. What happened next to forcible taking away the victim to Razakar camp? In 1971 during the war of liberation Razakar camp was formed to detain the pro-liberation civilians where they were

subjected to torture and finally wiped out. History says that Razakar Bahini was created as an auxiliary force to further policy and plan of Pakistani occupation army.

277. In the case in hand, it remained undisputed that two brothers of the victim were freedom-fighters. Presumably, this was the reason of carrying out forcible capture by attacking their house. The criminal acts done by the gang reflected extreme antagonistic attitude of the perpetrators the members of an auxiliary force to the pro-liberation civilians.

278. Naturally, P.W.08 did not have occasion of seeing what dealing the detained victim had to face and what destiny the victim had to embrace. But later on P.W.08 heard from others that the victim was subjected to torture in confinement at the Razakar camp for one day and later he was gunned down to death and his dead body was thrown into the river Kangsa and as such the dead body could not be traced even. Defence could not negate the fact that the detained victim was eventually gunned down to death after keeping him captivity at the Razakar camp. Victim's dead body could not be traced even. This fact itself is sufficient to place reliance upon hearsay evidence of P.W.08 she made in this regard.

279. Naturally, it was not practicable of seeing as to who actually participated in accomplishing the criminal acts committed upon the

victim which led to killing. But Tribunal notes that it is not necessary to show as to which accused and how he perpetrated the actual killing of the detained victim. Since it stands proved that the gang was accompanied by the accused persons while it took away the victim to the Jaria Razakar camp it may indisputably inferred that the accused persons had nexus with the camp and they knowing the consequence participated in accomplishing the act of abduction of the victim and this is sufficient to prove accused persons' liability even for the killing the upshot of the criminal mission, under the doctrine of JCE[Basic Form] which refers to section 4(1) of the Act of 1973.

280. In cross-examination of P.W.11 it has been unveiled that the accused persons had not been in the locality after independence and they came back after 1975. Besides, defence does not appear to have made attempt to refute what the P.W.11 heard and how his brother was captured, detained and killed. Even the crucial facts the P.W.11 testified remained undenied even, in cross-examination.

281. In a case involving the offence of crimes against humanity and genocide corroboration is not necessary. Testimony of even a single witness may be acted upon if it carries probative value and inspires credence. But in the case in hand, we see that the facts materially

related to the attack and the commission of the killing seem to have been corroborated by P.W.12, P.W.14 and P.W.15.

282. Victim is the uncle of P.W.12 Md. Joynal Abedin. He [P.W.12] too saw the gang of Razakars accompanied by accused Abdul Khalek Talukder, Majid Moulana and Abdur Rahman [died during trial] coming to his uncle's house and then they encircling it started grilling his [P.W.12] uncle to extract information about two of his brothers who were freedom-fighters and then they took his [P.W.12] uncle away to Jaria Razakar camp.

283. The above version remained uncontroverted in cross-examination and it provides compatible corroboration to what has been testified by P.W.08, a direct witness. It has been patently unveiled too from testimony of P.W.12 that on the same day in evening an attempt was made to get the detained victim released. But it was in vain. This piece of unimpeached evidence is fair indicia that the victim was taken away to Jaria Razakar camp where he was kept in captivity.

284. It appears that on the following morning P.W.12 and others again moved to Razakar camp when they heard from locals that his uncle the victim was gunned down to death taking on the bank of the river Kangsa and the body was thrown out to river. This piece

of hearsay version also seems to be corroborative to what has been narrated by P.W.08, in this regard.

285. Sworn narrative made by **P.W.14 Md. Abdul Khalek** a neighbor of the victim also corroborates the act of launching attack at the house of victim Abdul Khalek Talukder intending to extract information about victim's two other brothers, the freedom-fighters. P.W. 14 also saw the group formed of Razakars and accompanied by accused Majit Moulana, Abdul Khalek Talukder and Abdur Rahman [died during trial] taking the victim away to Razakar camp, on forcible capture. It stands corroborated too that the gang on failure of extracting information looted households and set the house on fire. Such prohibited criminal acts conducted in conjunction with the attack were thus full of aggression and intended to spread horror and coercion, we conclude.

286. It appears too from the version of P.W.14 that an effort made to secure victim Abdul Khalek Talukder's release, in evening on the same day was in vain as they imposed condition of making victims' two brothers, the freedom fighters surrendered at the camp. The gang accompanied by the accused persons thus being imbued by extreme aggressive and antagonistic mindset had kept the victim unlawfully detained in Razakar camp which was in fact a torture camp, we conclude.

287. It has been depicted from the testimony of P.W.14 that on following morning the relatives of victim came to know that the detainee Abdul Khalek Talukder was shot to death taking on the bank of the river Kangsa and the body was pitched into the river.

288. In cross-examination of P.W.14, the act of launching attack, accomplishing forcible capture of the victim Abdul Khalek Talukder, taking him away to Razakar camp and finally wiping him out as testified by the P.W.14 do not appear to have been denied even.

289. Victim Abdul Khalek Talukder was another younger brother of the husband of P.W.15 Khorsheda Akter. She also witnessed how the gang formed of 15/20 Razakars and the accused Razakars Khalek Talukder, Md. Abdul Mazid @ Majit Moulana, Ahammad [now dead] and Abdur Rahman [died during trial] forcibly captured the victim, tied him up, looted households and set the house on fire and then took the detained Abdul Khalek Talukder away to Jaria Razakar camp. Evidence of this direct witness, a relative of the victim too provides consistent corroboration to what has been narrated by other direct witnesses. There has been no reason of disbelieving this P.W.15.

290. Besides, in cross-examination of P.W.15 the fact of launching attack at victim's house, forcibly capturing the victim Abdul

Khalek Talukder after interrogating him to extract information about his two freedom-fighters brothers, carrying out devastating activities by looting and burning down the house do not seem to have been denied even.

291. P.W.08, P.W.12, P.W.14 and P.W.15 had opportunity of seeing the act of forcibly taking away the victim by the group of Razakars accompanied by the accused Abdul Majid Moulana, Abdul Khalek Talukder and Abdur Rahman [died during trial]. The victim was kept in captivity at Jaria Razakar camp—it also stands proved from their testimony. In conjunction with the attack the gang carried out looting household and burnt down the house they targeted. Aggression they had shown was extreme in nature.

292. All the above witnesses narrated the facts materially related to the commission of the principal crime consistently. They however had no opportunity of seeing the actual perpetration of killing, true. But naturally, they became aware of it later. These witnesses do not seem to have made any exaggeration. Their consistent testimony suggests concluding that the accused persons were active part of the criminal mission, knowing consequence of their act and conduct.

293. P.W.11 Abdul Kadir Talukder is a freedom-fighter and the brother of victim. At the time of the event happened he was

engaged in war of liberation in the locality of Haluaghat. He however in the month of August 1971 heard from his cousin brother Abu Chan when he too joined the war of liberation that his [P.W.11] brother Abdul Khalek Talukder was killed on the bank of the river Kangsa taking him away forcibly to Razakar camp by launching attack at their house by a group of Razakars accompanied by accused Abdul Majid Moulana, Abdul Khalek Talukder, Abdu Rahman [died during trial]. P.W. 11 also heard the event that ended in killing his brother from his cousin sister Rahima [P.W.08] , a direct witness to the act of attack and taking away the victim.

294. P.W.01 Md. Ayub Ali was a resident of village Purbodhola under police station Purbodhola of District-Netrokona. He was a freedom fighter. He heard from his co-freedom fighter Abdul Kadir [P.W.11], the brother of victim that a gang of Razakars accompanied by accused Abdul Majid Moulana, Abdul Khalek Talukder, Abdur Rahman [died during trial] by launching attack at their house looted household, burnt down the house and forcibly took away his brother Abdul, Khalek Talukder to Jaria Razakar camp and then was killed.

295. The above hearsay version is not anonymous. Besides, hearsay evidence is not inadmissible *per se*. P.W.01 heard the event from

his co-freedom-fighter, the brother of the victim. It was natural. There has been nothing before us which may lead to conclude that the victim was killed by some other people or in some other manner. The hearsay narrative made by P.W.01 gets corroboration from the evidence of the direct witnesses as discussed above.

296. What the phrase 'participation' denotes. The settled jurisprudence is that an individual accompanying the gang of perpetrators may be said to have had participation if his act and conduct forming part of the attack substantially contributed in accomplishing the principal crime. It is not necessary to show his actual or physical participation in committing the killing.

297. It is unerringly evinced from uncontroverted testimony of P.W.08, P.W.12, P.W.14 and P.W.15 that the accused Abdul Mazid Moulana @ Majit Moulana and Abdul Khalek Talukder were with the gang of attackers in accomplishing the act of forcible capture of the victim. Defence does not seem to have made effort to refute the reason of knowing the accused persons beforehand as testified by these witnesses and it remained even undenied.

298. The victim was kept detained and later on was gunned down to death. It remained undenied. The act of killing the upshot of the attack was connected with the act of forcible capture and taking

away the victim to Razakar camp. It is evinced beyond doubt that the accused persons participated in accomplishing the act of forcible capture and thus even in absence of any direct evidence as to commission of killing it may safely and lawfully be inferred that the accused persons were involved even with the commission of the killing.

299. The attack ended in killing of a single victim. It is now well settled that the offence of murder as crime against humanity need not be carried out against a multiplicity of victims. **The Appeal Chamber of ICTR** has observed in the case of *Nahimana, Barayagwiza and Ngeze*, that-

A crime need not be carried out against a multiplicity of victims in order to constitute a crime against humanity. Thus an act directed against a limited number of victims, or even against a single victim, can constitute a crime against humanity, provided it forms part of a 'widespread' or 'systematic' attack against a civilian population."

[The appeal Chamber of ICTR, *Nahimana, Barayagwiza and Ngeze*, November 28, 2007, para. 924]

300. In the case in hand, the offences constituted were not isolated ones, Rather, it has been proved that the criminal acts of accused persons formed part of 'systematic attack' as the same were carried

out in context of the war of liberation and directing unarmed civilian. Therefore, and in view of settled jurisprudence we are forced to conclude that although Abdul Khalek Talukder alone was the victim of the offence of killing, the related criminal acts facilitated in causing his deliberate death constituted the offence of 'murder' as crime against humanity.

301. It may be unerringly concluded that the accused persons and their cohort Razakars being imbued by the policy and plan of the Pakistani occupation army had launched a designed attack intending to get two freedom-fighters the brothers of the victim captured and on failure to find them there they deliberately detained the victim. Intention of such attack was to spread an intimidating message to the pro-liberation Bengali civilians and to create a coercive situation and horror.

302. On totality of evidence presented it transpires that the accused Abdul Majid Moulana, Abdul Khalek Talukder and Abdur Rahman [died during trial] accompanied the gang of Razakars, sharing common intent. And their intent was to extract information about the brothers of the victim for securing their detention. But on failure the gang detained the victim Abdul Khalek Talukder and took him away to Jaria Razakar camp. In conjunction with the attack the gang intending to create horror and panic looted

household and set the house on fire. The four witnesses i.e. P.W.08, P.W.12, P.W.14 and P.W.15 had opportunity of experiencing the event up to this phase.

303. It stand proved that the gang of attackers formed exclusively of Razakars. Presumably, the accused persons and their cohort Razakars made them engaged in atrocious activities directing civilian population even on the plan of their own and not on command and direction on part of the Pakistani occupation army stationed at Purbodhola. In this way, in 1971 during the war of liberation Razakars rather had acted as ‘destabilizing elements’ and members of ‘indiscipline force’. Quoting Rao Farman Ali, **B.Z Khasru** in his book titled ‘**Myths Facts Bangladesh Liberation War**’ narrates in this regard that-

Farman Ali [Major General Rao Farman Ali] said the army would leave fighting the guerrillas to the newly armed Bengali “Rasikars”[Razakars], numbering 60,000. The Rasikars, raised at village levels for guard duty with only ten days’ training, did not constitute a disciplined force. However, they were a destabilizing element—living off the land, able to make life-and death decisions by denouncing collaborators and openly pillaging and terrorizing villagers without restraint from the

army. [Myths Facts Bangladesh Liberation War ;*B.Z Khasru*; 2010, page295]

304. Accused Md. Abdul Khalek Talukder and Abdul Majid @ Majit Moulana and their cohort Razakars had acted as 'destabilizing elements'. Tribunal notes that the intentional act of looting household and destruction of houses by setting fire inescapably was an attack to right to live in bliss and normal livelihood of civilians. Such prohibited acts do not seem compatible with the humanity and it is considered as grave violation of international humanitarian law, as it happened during war time.

305. In the case in hand, deliberate devastating activities carried out by the gang of Razakars accompanied by the accused Md. Abdul Khalek Talukder and Abdul Majid @ Majit Moulana in conjunction with the attack indisputably caused immense trauma and panic to the relatives who had occasion of seeing it. The pattern of attack and context pregnant of horrific climate of course did not allow the relatives and neighbours of victim to resist or to make any counter effort to rescue the victim under attack despite the opportunity of seeing the accomplishing the criminal act by the perpetrators. Horrific situation did not permit it and thus they simply had to remain as mere spectators. Obviously it caused countless shock and pain to the relatives of victim which was indeed articulated great contempt for the unarmed civilians and their normal livelihood.

Such prohibited acts constituted the offence of ‘other inhumane act’ as crime against humanity.

306. It is immaterial to prove that the accused Abdul Khalek Talukder and Abdul Majid @ Majit Moulana physically participated to the criminal act of looting and arson. Their culpable presence with the group of attackers by itself amply suggests concluding that on their tacit endorsement, abetment and substantial contribution such destructive activities were carried out and thus they are equally accountable with the perpetrators who actually committed the act of looting and arson of civilians’ property.

307. The killing of the detained victim happened on the night taking him on the bank of the river Kangsa. None excepting the perpetrators had opportunity of being present at the killing site. Victim’s dead body was made floated in the river Kangsa which could not be traced even. Naturally, direct evidence cannot be expected in respect of this phase of criminal mission. But it may be justifiably and indisputably inferred that the accused persons who were engaged in effecting forcible capture and other criminal acts too were part of the ending phase of the attack. And thus, the accused persons incurred liability as aider and abettor also for the causing of brutal death of the victim by gunshot.

308. On cumulative evaluation of evidence presented and on rational analysis of facts unveiled it has been proved beyond reasonable doubt that the accused Abdul Khalek Talukder and Abdul Majid @ Majit Moulana participated, facilitated and substantially contributed by their conscious and culpable act and conduct forming part of systematic attack in accomplishing the offences of **‘abduction; confinement’ ‘murder’ and ‘other inhumane act’** 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 and thus the accused persons incurred liability under section 4(1) of the Act for the above offences.

Adjudication of Charge No.04

[Offences of abduction, confinement, torture and murder of Mohir Uddin of village Barha under Purbodhola Police Station]

309. Charge: That on being informed about the arrival of Abdul Mannan alias Dudu Miah, an organizer of freedom-fighters, at his house at village Barha under Police Station Purbodhola of the then Netrokona Sub-Division to meet with his father Mohir Uddin on the following night of 27.08.1971, the accused Razakars (1) Md. Abdur Rahman (2) Sheikh Md. Abdul Majid alias Majit Moulana (3) Md. Abdul Khalek Talukder (4) Abdus Salam Beg, and (5) Md. Nur Uddin alias Raddin along with other 15/20 armed Razakars besieging his house started searching and being failed to find out

Abdul Mannan alias Dudu Miah detained his father Mohir Uddin and tortured him there to extract information about the whereabouts of his said son. But on failure to get any information about his son the accused persons and their cohort Razakars took Mohir Uddin away on forcible capture to the Razakar camp set up in Jaria bazaar Dukbungalow where he was kept confined for 3[three] days.

Thereafter, on the following night of 30.08.1971 the accused persons and their cohort Razakars having taken the victim Mohir Uddin away to the Jaria bazaar China Clay Project under Purbodhola Police Station shot him to death there and threw his dead body in the Kangsa River. Later his dead body could not be traced.

Thereby, the accused (1) Md. Abdur Rahman (2) Sheikh Md. Abdul Majid alias Majit Moulana (3) Md. Abdul Khalek Talukder (4) Abdus Salam Beg, and (5) Md. Nur Uddin alias Raddin have been charged for participating, abetting, facilitating, contributing and complicity in the commission of offences of 'abduction', 'confinement', 'torture' and 'murder' 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 said Act.

Evidence of Witnesses Examined

310. Total five witnesses have been examined in Tribunal intending to substantiate the arraignment brought in this charge. Of five witnesses three i.e. P.W.12, P.W.13 and P.W.14 were the neighbouring residents of the victim and P.W.16 happened to be a relative of victim. P.W.01 is a hearsay witness. Prosecution claims that these witnesses observed facts materially related to the attack which ended in killing of victim detained by launching attack. Before weighing the value of testimony presented first let us see what the witnesses testified in Tribunal.

311. P.W.12 Md. Joynul Abedin [64] was a neighbour of victim Mohir Uddin. He watched the facts related to the attack launched. He stated that on the night of 10th day of Bangla month Bhadra 1971 Abdul Mannan @ Dudu Mia, a freedom-fighter of their village came to home to see his ailing father. On the following morning Razakar Abdul Khalek Talukder, Majid Moulana, Abdur Rahman [died during trial], Abdus Salam and Nur Uddin came to the house of Abdul Mannan @ Dudu Mia and took away Mohir Uddin the father of Abdul Mannan on forcible capture and he could see it remaining stood besides rail line. Their house was just two houses far from Abdul Mannan's house.

312. P.W.12 also stated that he heard from the locals Mohir Uddin was kept in captivity at Razakar camp for three days and later on he was shot to death. Finally, the P.W.12 stated that the accused persons were from their neighbouring localities and thus he knew them beforehand.

313. In cross-examination P.W.12 stated in reply to defence question that the rail line was west to their house. P.W.12 denied defence suggestions that he did not know the accused persons; that the accused persons did not belong to Razakar Bahini; that what he testified implicating the accused persons was untrue and tutored by the rival of the accused.

314. P.W.13 Md. Abdul Latif [65] was a neighbouring resident of the victim Mohir Uddin. He stated that on the 10th day of Bangla month Bhadra at about 07:00 A.M he, remaining stood besides the rail line adjacent to their house saw a group of Razakars accompanied by Razakar Nur Uddin, Abdul Majid, Abdul Khalek, Abdur Rahman [died during trial] entering inside the house of their neighbour Abdul Mannan where they carried out search and then took away his uncle Mohir Uddin tying him up, towards Razakar camp.

315. P.W.13 also stated that afterwards he along with Mofiz, Rahman of their village moved to Razakar camp and appealed for

his uncle's release. But defying it the Razakars asked to secure attendance of his freedom-fighter brother Abdul Mannan @ Dudu Mia, otherwise the detainee would not be released.

316. P.W.13 finally stated that on the 13th day of Bangla month Bhadra they again moved to the Razakar camp when they knew from the locals that detained Mohir Uddin was shot to death by the Razakars he named and the dead body could not be traced even.

317. P.W.14Md. Abdul Khalek [62] was a neighbour of the victim Mohir Uddin. In 1971 he was 15 years old. He testified that on the 10th day of Bangla month Bhadra at about 07:00 A.M he, while was sitting beside the rail line adjacent to their house, saw Razakar Majid Moulana, Salam, Nur Uddin, Abdul Khalek, Ahammad [now dead] Abdur Rahman [died during trial] and their accomplice Razakars entering into the house of freedom-fighter Abdul Mannan @ Dudu Mia and apprehended his father Mohir Uddin and the gang took him away towards Jaria Razakar camp.

318. P.W.14 next stated that on 13th day of Bhadra [three days later], he came to know that detained Mohir Uddin was shot to death taking him on the bank of the river Kangsa. He [P.W.14] knew the accused persons beforehand as they were the residents of their and neighbouring villages

319. In cross-examination, defence simply suggested the P.W.14 that he did not see what he testified; that he did not know the accused persons; that the accused were not Razakars and what he testified implicating them was untrue.

320. P.W.16 Mst. Shokhina Khatun [67] is the daughter-in-law of the victim Mohir Uddin. She is a direct witness to the facts related to the event of attack launched at her conjugal home that first resulted in forcible capture of Mohir Uddin.

321. P.W.16 stated that on the 10th day of Bangla month Bhadra in 1971 at about 07:00 A.M a group of Razakars coming to her conjugal home inquired about her freedom-fighter husband Abdul Mannan @ Dudu Mia and then accused Razakars Majid Moulana, Salam, Khalek, Abdur Rahman [died during trial], Nur Uddin, Ahammad [now dead] and their cohorts forcibly captured her father-in-law Mohir Uddin, tied him up and took him away to Jaria Razakar camp, through the rail line.

322. What happened next? P.W.16 also stated that Latif the younger brother of her husband accompanied by Mofiz Member and some villagers moved to Razakar camp and appealed for release of the victim. But the Razakars asked to make her freedom-fighter husband attended at the Razakar camp. Three days later the

locals of the place nearby the camp disclosed that Razakars gunned down detained Mohir Uddin to death and dumped his body in the river Kangsa. Finally, the P.W.16 stated that the accused persons were from her neighbouring localities and as such she knew them beforehand.

323. In cross-examination, P.W.16 stated in reply to defence question stated that she saw the accused persons moving around the villages; that she could not say the age of the accused persons in 1971. P.W.16 denied the defence suggestions that she did not know the accused persons; that the accused did not belong to Razakar Bahini; that she did not see the event and that the accused were not involved with the event she testified. Defence however does not appear to have made effort to controvert the event of attack that ended in killing of the detained victim.

324. P.W.01 Ayub Ali [67] is a hearsay witness. He is a freedom fighter. In the month of August 1971 he heard from his co-freedom-fighter Abdul Kadir [brother of victim of the event narrated in charge no.03] that accused Sheikh Md. Abdul Mazid Moulana, Md. Abdul Khalek Talukder, Md. Abdur Rahman[died during trial], Md. Abdul Salam Beg, Md. Nur Uddin and their cohort Razakars took away Mohir Uddin the father of freedom-fighter Abdul Mannan @ Dudu Mia to torture cell of Razakars and

Pakistani occupation army set up at Jaria Bazaar on forcible capture from his house where he was subjected to torture in captivity and later on was shot to death on the bank of river Kangsa. His dead body could not be traced.

325. In cross-examination defence suggested to P.W.01 that what he testified was untrue and tutored and that the accused persons did not belong to Razakar Bahini and were not involved with the alleged event. P.W.01 denied it. P.W.01 in reply to defence question stated that accused Abdul Khalek Talukder is currently affiliated with Thana Awami League committee and he was the chairman of BRDB and some of accused persons were engaged in election campaign for Awami League candidate in general election of 2008.

Finding with Reasoning on Evaluation of Evidence

326. The event arraigned in this charge involves the systematic attack that eventually ended in killing an unarmed civilian Mohir Uddin, the father of a freedom-fighter Abdul Mannan @ Dudu Mia of village-Barha under Police Station-Purbodhola of the then Netrokona Sub-Division. Five accused i.e. (1) Md. Abdur Rahman (2) Sheikh Abdul Majid @ Majit Moulana (3) Md. Abdul Khalek Talukder (4) Abdus Salam Beg and (5) Md. Nur Uddin have been indicted for accountability in respect of the arraignment brought in

this charge no.04. Accused Md. Abdur Rahman who had been in prison died during trial [at summing up stage]. The rest four [04] accused are on the run.

327. In advancing argument in respect of this charge **Mr. Mokhlesur Rahman Badal**, the learned prosecutor emphatically submits that the witnesses testified in support of this charge were direct witnesses to the facts crucially linked to the attack which was designed to annihilate unarmed pro-liberation civilian. The gang formed exclusively of local Razakars and accused persons actively participated in effecting forcible capture of victim by launching attack at his house and thus they were concerned also in wiping out the detained victim after taking him at the Razakar camp. Such attack was carried out intending to spread terror and intense intimidation amongst the pro-liberation civilian population, the learned prosecutor added.

328. Mr. Gaji M.H Tamim, on contrary, submits that the witnesses relied upon by the prosecution, in support of this charge are not credible and they had no reason of recognizing the accused persons at the time of launching alleged attack; that testimony of witnesses suffers from inconsistency and involvement and complicity of the accused persons with the alleged event could not

be proved beyond reasonable doubt and that they have been implicated in this case out of local political rivalry.

329. The charge arraigns that on 10 Bhadra 1971[corresponds to 27 August 1971][a group of Razakars accompanied by the accused persons by launching attack forcibly captured Mohir Uddin the father of freedom-fighter Abdul Mannan @ Dudu Mia and took him away to Razakar camp where he was kept in captivity and three days later he was gunned down to death.

330. The arraignment rests upon testimony of P.W.01, P.W.12, P.W.13, P.W.14 and P.W.16. Of them some had occasion of seeing the accused persons and their cohorts taking away the victim on forcible capture, prosecution alleges.

331. It transpires from sworn testimony of P.W.12 Md. Joynal Abedin, a neighbour of the victim that on 10 Bhadra 1971 freedom-fighter Abdul Mannan @ Dudu Mia of their village came to see his ailing father and on the following day he[P.W.12] had been staying alongside rail line nearer to their house when he saw the accused Razakars Sheikh Abdul Majid @ Majit Moulana, Md. Abdul Khalek Talukder, Abdus Salam Beg and Md. Nur Uddin taking away Mohir Uddin the father of Abdul Mannan to Razakar camp. In respect of reason of knowing the accused persons P.W.12

stated that he knew them beforehand as they were the residents of their neighbouring localities.

332. P.W.12 also testified that later on he heard from the locals that after keeping the victim in captivity for three days he was gunned down to death.

333. Defence, it transpires, simply denied what the P.W.12 testified implicating the accused persons. But the fact materially related to the event as testified by the P.W.12 could not be controverted in any manner.

334. It has been affirmed in cross-examination of P.W.12 that the house of P.W.12 was west to the rail line and he was almost next door neighbour of the victim. The event of attack that resulted in taking away the victim Mohir Uddin on forcible capture happened in day time. Thus, in absence of anything contrary it is convincing that the P.W.12 had natural occasion of seeing the first phase of attack to which the accused persons participated actively.

335. It could not be denied even by the defence in cross-examination of P.W.12 that on the preceding night freedom fighter Abdul Mannan @ Dudu Mia came to their house to see his ailing father Mohir Uddin, the victim. Thus, it may safely be concluded

that presence of freedom-fighter Abdul Mannan @ Dudu Mia got leaked and without making delay the accused persons being imbued by the policy and plan of the occupation army had attacked the house of victim Mohir Uddin chiefly to get his freedom-fighter son captured. But on failure they had shown extreme antagonistic and aggressive attitude by accomplishing abduction of Mohir Uddin on forcible capture.

336. Unimpeached evidence of P.W.12 suggest to infer that the reason of launching planned and designed attack was to cause capture of freedom-fighter Abdul Mannan @ Dudu Mia the son of victim who just one day back came to home to see his ailing father.

337. Naturally, none had occasion of seeing what happened to the victim after taking him away to Razakar camp. But the fact of killing the detained victim Mohir Uddin after keeping him in captivity for three days as testified by the P.W.12 is not found to have been denied even by the defence. Thus, the attack ended in killing the victim Mohir Uddin. It happened after keeping the detained in confinement at Razakar camp.

338. P.W.13 Md. Abdul Latif, neighbouring resident of victim also had natural occasion of seeing the gang formed of Razakars and the accused Razakar Nur Uddin, Abdul Majid, Abdul Khalek, Abdur Rahman [died during trial] entering inside the house of their

neighbour Abdul Mannan wherefrom they forcibly captured Mohir Uddin and took him away tying him up , towards Razakar camp. Defence could not impeach the fact of launching attack, detaining the victim and taking him away by the gang formed of accused persons and their cohort Razakars.

339. In his testimony P.W.13 has does not appear to have implicated the accused Salam beg with the event of attack. But it by itself does not negate his participation and presence at the crime site with the gang particularly when it stands proved from unimpeached evidence of P.W.12, P.W.14 and P.W.16 that accused Salam beg too accompanied the gang of attackers.

340. P.W.14 Md. Abdul Khalek was a neighbor of the victim Mohir Uddin. He also saw the accused persons and their cohorts taking away Mohir Uddin, on forcible capture from his house. P.W.14 three days later heard from locals that Mohir Uddin was liquidated and his body was thrown into the river. P.W.14 knew the accused persons beforehand as they were from neighbouring villages.

341. Defence could not shake the fact of seeing the act of taking away the victim as testified by P.W.14. Rather, testimony of P.W.14 gets consistent corroboration from what has been testified by P.W.12 and P.W.13. The act of attack was carried out in day

time and these witnesses had reason of knowing the accused persons and as such they had reasonable opportunity of seeing them in carrying out the act of attack at the house of the victim, the father of freedom-fighter Abdul Mannan @ Dudu Mia who was their neighbor.

342. P.W.16 Mst. Sokhina Khatun is a key witness. She was the daughter-in-law of victim Mohir Uddin. In 1971 she had been at her maternal home i.e. at the house of victim. Defence could not impeach it. Thus naturally she had quite fair opportunity of seeing the criminal acts carried out by the accused persons that resulted in forcible capture of her father-in-law Mohir Uddin. The accused persons were from neighbouring localities and as such she knew them beforehand, P.W.16 stated and it remained unshaken.

343. It transpire from the narrative made by P.W.16 that the accused persons and their cohorts entering their house interrogated her father-in-law about her husband Abdul Mannan and then on capture they tied up her father-in-law Mohir Uddin and took him away towards Razakar camp. This version seems to be consistently corroborative to what has been testified by three other witnesses, the neighbors of victim. This fact was materially related to the upshot of the event of attack.

344. P.W.16 stated that the accused persons were from her neighbouring localities. It could not be impeached. Rather it has been affirmed in cross-examination of P.W.16 that the accused persons moving around the villages. However, P.W.16 could not say the age of accused persons in 1971. But mere ignorance about age of the accused persons does not make the reason of knowing the accused persons as testified by P.W.16 tainted. Thus, it may be concluded that P.W.16 had fair reason of knowing the accused persons beforehand;

345. The learned state defence counsel argued that it is not practicable to recall the event long more than four decades after the alleged events occurred and thus their testimony cannot be relied upon.

346. In this regard the Tribunal reiterates that the facts the witnesses narrated involve 'episodic' in nature which retains in human memory for long. In recounting such 'episodic' event inconsistency or exaggeration may naturally occur. But despite this reality we are to eye at the core of the evidence presented on such 'traumatic episode' the witnesses experienced.

347. Thus, we are not agreed with the learned state defence counsel that the witnesses are not reliable merely for the reason that they coming on dock testified what happened long more than four

decades back. They are not found to have made any count of exaggeration. Defence could not bring any strong reason to discard what they have testified.

348. Hearsay evidence of P.W.01 a freedom-fighter as to the event gets corroboration from evidence of direct witnesses. The source of hearing of the event as testified by P.W.01 was his co-freedom fighter Abdul Kadir, the brother of victim of the event arraigned in charge no.03. We do not find any reason to keep his hearsay testimony aside. Defence could not controvert it.

349. It has been depicted in cross-examination of P.W.01 that accused Abdul Khalek Talukder is currently affiliated with local Thana Awami League and once he was the chairman of BRDB and some of accused were engaged in campaign for Awami League candidate in general election of 2008.

350. The learned state defence counsel attempted to argue that the accused persons have been implicated in this case out of political rivalry as they took stance for the Awami League candidate in 2008 general election when one official of the investigating agency too contested the election as an independent candidate from the same constituency.

351. We are not in agreement with the above submission. Merely for the reason as agitated it cannot be said that the accused persons have been falsely implicated in this case, particularly when their involvement and complicity with the atrocious acts are found to have been proved from evidence. Additionally, subsequent act or subsequent affiliation with Awami League does not readily negate his or their activities in 1971. Presumably, the accused persons might have changed their political stance intending to hide their criminal profile in 1971 to evade liability.

352. Evidence presented demonstrates that the killing of victim happened after he was kept confined at Jaria Razakar camp. It may be safely inferred that the victim was mistreated and was subjected to torture in captivity as he was so detained for extracting information about his freedom-fighter son Abdul Mannan @ Dudu Mia. Besides keeping person in unlawful captivity itself is an act of torture which was deliberately caused to victim.

353. It was not practicable of seeing what happened to the victim after taking him away at the Razakar camp. The fact of seeing the accused persons taking away the victim on forcible capture was inevitably chained to the eventual fate of the detained victim. Active participation of accused persons in causing forcible capture

of the victim itself was an unerring nexus of the accused persons even to the commission of the principal crime, the killing.

354. The accused had ‘participation’ to the act of abduction or forcible capture of victim Mohir Uddin and their act and conduct forming part of this phase attack indisputably leads to the conclusion that they were consciously ‘concerned’ to the whole transaction of the criminal acts which ended in killing victim.

355. According to settled jurisprudence ‘**Participation**’ includes both direct participation and indirect participation. It has been observed in the case of **Kvočka** that

“It is, in general, not necessary to prove the substantial or significant nature of the contribution of an accused to the joint criminal enterprise to establish his responsibility as a co-perpetrator: it is sufficient for the accused to have committed an act or an omission which contributes to the common criminal purpose.”[**Kvočka et al., (Appeals Chamber), February 28, 2005, para. 421]**

356. Tribunal notes that the offence of crimes against humanity is considered as ‘group crime’ and it is not perpetrated by a single individual. But however, an individual may participate to the actual

commission of the principal crime by his act or conduct, before or midst or after the crime committed.

357. Thus, presence of accused persons at the place wherefrom the victim was unlawfully captured or at the Razakar camp may reasonably offer their explicit approval, facilitation and encouragement to the accomplishment of the criminal act of confinement and torture leading to killing, the upshot of the attack. Conscious conduct and culpable act of the accused persons which have been convincingly proved are thus qualified to be the constituent of 'participation' too even to the actual accomplishment of the principal crime.

358. In the case in hand, the defence utterly failed to impeach the facts materially related to the participation of accused persons launch the attack leading to detention of victim Mohir Uddin at Jaria Razakar camp on forcible capture and the act of wiping out the victim later on . Defence merely denied in cross-examination that this accused persons were not with the gang of attackers. Such mere denial is not at all sufficient to tarnish the truthfulness of witnesses' sworn testimony, the object of cross-examination. In this regard we recall the observation made by the Appellate Division of Bangladesh Supreme Court in the Appeal 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. [Sayedee’s **Appeal Judgment, (AD) , page 138-139**]

359. Abduction and causing torture to victim Mohir Uddin in confinement and finally the act of killing him were perpetrated within context of systematic attack. It stands proved that the victim was so unlawfully detained for extracting information about his freedom-fighter son Abdul Mannan @ Dudu Mia. It impels that the accused persons being enthused by the policy and plan of Pakistani occupation army were extremely antagonistic to the pro-liberation civilian. Reasonable Trier of fact could have concluded beyond reasonable doubt that the killing of Mohir Uddin was the upshot attributable to the acts of accused persons.

360. We reiterate that participation in a joint criminal enterprise is more akin to direct perpetration or accomplice liability. In view of deliberation made above based in evidence tendered we are convinced to conclude that the accused persons being part of the criminal enterprise not only participated in effecting unlawful detention of the victim but they also played a key ‘co-ordinating

role', in exercise of their affiliation with the *para militia* force, even in perpetrating the principal crime, the killing.

361. In context of conflict or war even a single murder constitutes the offence of crime against humanity if it was the upshot of systematic or widespread attack and the victim belonged to civilian population. It is now settled too that the term 'population' does not require that crimes against humanity be directed against the entire population of a geographical territory or area.

362. Integrated evaluation of evidence adduced thus leads us to the conclusion that the prosecution has been able to prove it beyond reasonable doubt that the accused (1) Md. Abdul Khalek Talukder, (2) Md. Abdul Majid @ Majit Moulana, (3) Md. Nur Uddin and (4) Md. Abdul Salam Beg being accompanied by a group of cohort Razakars had carried out the systematic attack that resulted in abduction, confinement, torture and killing of an unarmed civilian. The accused person consciously acted in JCE, sharing common purpose and they incurred liability, for the crimes proved.

363. Therefore, the accused 1) Md. Abdul Khalek Talukder, (2) Md. Abdul Majid @ Majit Moulana, (3) Md. Nur Uddin and (4) Md. Abdul Salam Beg are found criminally liable for substantially abetting, participating, contributing, facilitating and for complicity

in 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 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 said Act.

Adjudication of Charge No. 05

[Offences of abduction, confinement, torture and murder committed between 12 and 16 November, 1971 at places under Police Station-Purbodhola]

364. Charge: That on 12.11.1971 at 12.00 A.M. while **Abdur Razzak** [now dead] son of late Ismail Hossain and **Abdul Motaleb**[now dead] son of late Abdul Aziz, both of Village- Purbo Moudam under Police Station-Purbodhola, District-Netrokona [previously sub-division] were cultivating their land at village Moudam, the accused Razakars (1) Sheikh Md. Abdul Majid alias Majit Moulana (2) Md. Nur Uddin alias Raddin (3) Abdus Salam Beg, and (4) Md. Abdur Rahman accompanied by 8/10 other armed Razakars having detained them from the field with two ploughing cows took them away to the camp of Pakistani occupation army set up at Purbodhola Thana Bhaban and kept them confined there, and in the evening the accused persons and their accomplice Razakars set them free, keeping those cows with them.

Thereafter, on the following day [13.11.1971] at about 03.00 P.M. while **Md. Joymat Ali [now dead]** son of late Asmat Talukder of Village- Purbo Moudam under Police Station-Purbodhola, District Netrokona [previously subdivision] went to Razakar camp set up at Purbodhola Station bazaar to bring those cows back, the accused Razakars (1) Sheikh Md. Abdul Majid @ Majit Moulana (2) Md. Abdul Khalek Talukder (3) Md. Kabir Khan (4) Md. Abdur Rahman[died during trial] (5) Abdus Salam Beg, and (6) Md. Nur Uddin @ Raddin along with other 10/12 armed Razakars having detained took him to C.O. Office army camp and Razakar camp situated at Purbodhola where he was kept confined and tortured for 3[three] days.

Thereafter, on 16.11.1971 at about 10.00 A.M the above mentioned accused persons along with their cohort Razakars s having gone to Moudam village under Purbodhola Police Station detained **Lalchand [now dead]** son of late Nur Hossain from his house and then took him away to the Razakar camp at Purbodhola Thana and kept him confined there. On the same day at about 04.00 P.M. the above mentioned accused persons and their accomplices having detained **Fazar Ali** son of late Ibrahim Haji of village Sagir and **Md. Imad Ali** son of late Doulet Sheikh of village-Padurkanda, both under Purbodhola Police Station from Mongolbaria bazaar and Mithai Mohal respectively took them away

to the Razakar camp situated at Purbodhola and kept them confined there. Thereafter, at late night the accused persons and their accomplices having taken away the victims **Md. Joymat Ali, Lalchand, Fazar Ali and Md. Imad Ali**, who were supporters of the liberation war, to under the Trimohoni bridge and shot them there with which victims **Fazar Ali and Md. Imad Ali died** on the spot sustaining bullet hit injury and the two other victims **Md. Joymat Ali and Lalchand** despite sustaining bullet hit injury however escaped jumping into the Lawari river. Thereafter, local doctor gave them medical treatment and 07[seven] days later these two survived victims returned back their home.

Thereby, the accused (1) Sheikh Md. Abdul Majid alias Majit Moulana (2) Md. Abdul Khalek Talukder (3) Md. Kabir Khan (4) Md. Abdur Rahman [died during trial] (5) Abdus Salam Beg, and (6) Md. Nur Uddin alias Raddin have been charged for participating, abetting, facilitating and complicity in the commission of offences of **‘abduction’, ‘confinement’, ‘torture’ and ‘murder’** 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 said Act.

Evidence of Witnesses Examined

365. This count of charge involves the attack that happened in phases which were chained together. Six accused persons have been arraigned for the offences committed directing civilian population. Of six accused one Md. Abdur Rahman died during trial [at the phase of summing up] and thus proceeding so far as it relates to him stood abated. However, prosecution intending to prove the alleged arraignment relies upon oral evidence of in all six witnesses who have been examined as P.W.01, P.W.17, P.W.18, P.W.19, P.W.20 and P.W.21. Before weighing what the witnesses testified let us eye on the sworn narrative made by them in Tribunal.

366. P.W.17 Md. Abdul Latif [63] is the son of victim Fajar Ali's brother. He is a hearsay witness. He stated that his uncle Fajar Ali [victim] was a follower of the war of liberation. His uncle used to assist their neighbouring Hindu civilians who took shelter at their house before they deported to India.

367. P.W.17 next stated that after knowing the fact of taking away his uncle Fajar Ali to Razakar camp on forcible capture that happened on the 29th day of Bangla month Kartik in 1971 from Purbodhola bazaar by a group of Razakars accompanied by Razakar Mazid Moulana, Salam Beg, Nur Uddin @ Raddin, Kabir

Kha, Abdul Khalek Talukder, Abdur Rahman [died during trial] his [P.W.17] father Jahur Ali [now dead] and relatives moved to peace committee member Basir Akanda for securing release of his uncle. But Fajar Ali could not be made freed although one detainee Tajjat Ali was set at liberty and he told that Fajar Ali, Imad Ali, Lal Mia, Joymat Ali were being tortured severely at the camp.

368. P.W.17 also stated that on the following morning they moved to the Razakar camp and knew from the locals that the detainees were shot to death in the preceding night taking them at the Trimohoni Bridge.

369. What happened next? P.W.17 stated that seven days later Joymat [one detainee] returned back home in injured condition and one day later another detainee Lal Mia too returned back home. The survived victims narrated that they could survive by jumping into the river when the Razakars fired gunshot to them and other detainees including his [P.W.17] uncle Fajar Ali and Imad Ali.

370. In respect of reason of knowing the accused persons P.W.17 stated that the accused persons were from neighboring localities and they used to move along with Razakar Mazid Moulana and as such he knew them beforehand.

371. Defence simply suggested to P.W.17 that he did not know the accused persons; that the accused were not Razakars and what he testified was untrue and tutored.P.W.17 denied it.

372. P.W.18 Halema Khatun [63] is the daughter of victim Imad Ali's brother. In 1971 she was 16 years old. She stated that her uncle Imad Ali [victim] was a follower of war of liberation and used to provide assistance to the freedom-fighters. She is a hearsay witness in respect of the event of forcible capture of her uncle and her cousin brother Suruj Ali.

373. P.W.18 stated that on the 29th day of Bangla month Kartik in 1971 her uncle [husband of father's sister] coming back from Purbodhola bazaar narrated that on that day at about 04:00 P.M a group of Razakars accompanied by Razakars Majid Moulana, Salam Beg, Nur Uddin @ Raddin, Kabir Kha, Abdul Khalek Talukder, Abdur Rahman [died during trial] took away her uncle Imad Ali and cousin brother Suruj Ali to Purbodhola Razakar camp on forcible capture.

374. P.W.18 also stated that on hearing the event her [P.W.18] father Samesh Ali, cousin brother Shahabuddin [husband of P.W.19], Nurul Amin approached to peace committee member

Basir Akanda for securing release of the detainees. With this Suruj Ali was set at liberty but her uncle Imad Ali was not released.

375. P.W.18 went on to state that on the following morning her father moved to Purbodhola bazaar when he heard from the locals that in the preceding night four detainees including her father were shot to death taking them at Trimohoni Bridge.

376. P.W.18 next stated that seven days later detainee Joymat Ali having bullet hit injuries came back home when they knew from him that the Razakars she named gunned down Imad Ali and Fajar Ali to death and he [Joymat Ali] and another detainee could however survive by jumping from the bridge. She [P.W.18] heard the event also from another survived detainee Lal Mia who returned back one day later.

377. Defence simply put suggestion to the P.W.18 that the accused were not Razakars; that they were not involved with the event she testified; that she did not hear the event and that what she testified was untrue and tutored.

378. P.W.19 Joydebunnesa [77] is the daughter- in-law of victim Imad Ali. She is a hearsay witness. She stated that her father-in-law

Imad Ali was a follower of war of liberation and she used to cook the meal for freedom-fighters while they used to visit their house.

379. P.W.19 stated that on 29th day of Bangla month Kartik her *Fufato* father-in-law[father-in-law's sister's husband] coming back home disclosed that Razakar Abdul Majid Moulana, Abdur Rahman[died during trial], Salam beg, Nur Uddin, Kabir Kha took away her[P.W.19] father-in-law Imad Ali and husband's younger brother Suruj Ali to Purbodhola Razakar camp on forcible capture from Purbodhola bazaar.

380. P.W.19 next stated that being aware of this fact her husband, son Nurul Amin and relative moved to peace committee member Basir Akanda on intervention of whom Suruj Ali got release but Imad Ali was kept detained at the Razakar camp where he was subjected to torture.

381. P.W.19 also stated that on the following day her husband and relatives again moved to Razakar camp and on arriving nearer to the camp knew from the locals that her father-in-law[Imad Ali] detainees Joymat Ali, Lal Mia and Fajar Ali were shot to death by the Razakars she [P.W.19] named taking at Trimohoni Bridge.

382. What the P.W.19 heard next and from whom? P.W.19 stated that seven days later detainee Joymat Ali returned back home in injured condition and then her [P.W.19] husband, son and relatives heard from Joymat Ali that Razakars fired gunshot to him and other detainees taking them at Trimohoni Bridge when he and Lal Mia could survive by jumping into water and the wiped out bodies of two detainees were dumped into the river.

383. In cross-examination, P.W.19 denied the defence suggestions that the accused were not Razakars and were not involved with the event she testified and that what she testified was untrue.

384. P.W.20 Md. Ayub Ali [63] is a direct witness to some crucial facts materially related to the attack. One of victims Lal Mia was his uncle. In 1971 he was 15 years old. P.W.20 stated that his uncle Lal Mia was a follower of the war of liberation and used to provide assistance to Hindu civilians by allowing them to get shelter at his house.

385. In respect of the attack launched P.W.20 stated that on the 29th day of Bangla month Kartik in 1971 at about 10:00 A.M he had been at home when a group formed of Razakar Abdul Mazid Moulana, Abdur Rahman [died during trial], Abdul Khalek, Salam Beg, Nur Uddin, Kabir Kha and their 10/12 cohorts by launching

attack at their house forcibly captured his uncle Lal Mia , tied him up, carried out looting households and took away detained Lal Mia to Razakar Mazid Moulana's house. Then attempt was made by them to secure release of Lal Mia but they were turned out by terming them agents of India. The Razakars then took away Lal Mia to Purbodhola Razakar camp. They also approached to local peace committee member Basir Akanda for release of Lal Mia but were in vain.

386. P.W.20 next stated that on the following morning they arriving nearer the Razakar camp came to know from the locals that on the preceding night his uncle and other detainees were shot to death taking them at Trimohoni Bridge. They could not have trace of his uncle's body.

387. P.W.20 further stated that one week later Joymat Ali who was also kept detained along with his[P.W.20] uncle returned back home and they knew from him that the Razakars gunned down Imad Mia and Fajar Ali to death at Trimohoni Bridge when he [Joymat Ali] and Lal Mia could however survive by jumping into the river. P.W.20 finally stated that one day later, his uncle Lal Mia too returned back home when they heard the event in detail from him.

388. In respect of reason of knowing the accused persons P.W.20 stated that they were from their neighbouring localities and he saw them moving around their village and surrounding vicinities and as such he knew them beforehand.

389. In cross-examination P.W.20 stated in reply to defence question that they did not initiate any case over the event [of Lal Chan's abduction and unlawful confinement]. P.W.20 denied the defence suggestions that he did not know the accused persons; that the accused did not belong to Razakar Bahini and that what he testified was untrue.

390. P.W.21 Shirin Akter [63] is the daughter of one survived victim Joymat Ali. She is a direct witness to the act of forcible capture of her two cousin brothers who later on got release. She also stated how her father was detained on the following day when he moved to Razakar camp for getting the cattles back which were taken away on the preceding day by Razakars.

391. P.W.21 stated that her father was a follower of the war of liberation and used to assist the pro-liberation people, provide shelter to Hindu civilians. On the 25th day of Bangla month Kartik in 1971 at about 12:00 A.M a group Razakars accompanied by Razakar Abdul Mazid Moulana, Abdur Rahman [died during trial],

Salam beg, Nur Uddin @ Raddin took away her two cousin brothers Motaleb and Abdur Razzak to Razakar camp set up at CO Office along with cattle on forcible capture from the place adjacent to their house. She [P.W.21] saw it. They started following the Razakars. Her detained brothers were subjected to torture and at the time of dusk they were set at liberty keeping the looted cattle in their possession and they returned back home.

392. P.W.21 next stated that on the following day her father [Joymat Ali] and brother Shahjahan moved to Razakar camp for getting the cattle back. But they were subjected to torture keeping in captivity. At the time of dusk her brother Shahjahan got release. On the following day arriving at the Razakar camp set up at CO Office they knew that her [P.W.21] father was taken away to Purbodhola Razakar camp where he was subjected to brutal torture for three days.

393. P.W.21 next stated that afterwards they knew from the locals that her father and other detainees were shot to death taking them at Trimohoni Bridge. Seven days later her father returned back in injured condition and heard from her father that the Razakars she[P.W.21] named detained Imad Ali and Fajar Ali were gunned down to death and her father [Joymat Ali] and detainee Lal Mia could however survive by jumping into the river.

394. In respect of reason of knowing the accused persons P.W.21 stated that accused Majid Moulana, Salam Beg and Nur Uddin were their neighbouring locals and accused Abdur Rahman [died during trial], Khalek Talukder and Kabir Kha were from neighbouring villages and as such she knew them beforehand.

395. In cross-examination, defence simply suggested that P.W.21 did not know the accused; that the accused were not involved with the alleged event and that what she testified was untrue. P.W.21 blatantly denied all these suggestions.

396. Witness Most. Achhia Khatun the wife of one victim Fajar Ali, it appears, died on 09.03.2018 i.e. after commencement of trial on framing charges and thus her statement made to the IO [relevant page no. 40 of the volume of statement of witnesses made to the IO] has been received in evidence as permitted under section 19(2) of the Act, considering the application initiated on part of prosecution. Statement of this witness relates to the event narrated in this charge no.05.

397. Witness Most. Achhia Khatun also narrated to the IO that on the day of the event her husband Fajar Ali and Tajjat Ali were forcibly captured from Purbodhola bazaar by a group of Razakars accompanied by the accused persons. She also stated that the detainees were subjected to torture keeping them in captivity at

Purbodhola Razakar camp. On intervention of local peace committee convener Basir Uddin Akanda one detainee Tajjat Ali could be brought back on release. Her husband was then kept detained at Thana Hajot [custody] along with other detainees.

398. Witness Most. Achhia Khatun also added to the account she made to the IO that on the following morning her relatives going to Purbodhola bazaar knew that her husband was shot to death in the preceding night taking him at Trimohoni Bridge. She also heard later on that the accused persons also fired gunshot to detainee Imad Ali, Joymat Ali and Lal Mia. But seven days later Joymat Ali and on the following day Lal Mia returned back home in injured condition and then she heard from them about the event of killing her husband.

Findings with Reasoning on Evaluation of Evidence

399. Mr. Mokhlesur Rahman Badal the learned prosecutor submitted that a group of armed Razakars and accused persons belonging to Razakar Bahini , para militia force conducted prohibited acts forming part of systematic and designed attack that resulted in forcible capture , detention, torture and killing of unarmed civilians . Witnesses who have been examined in support of this charge are natural and competent witnesses. Their testimony on facts materially related to the attack and upshot of the aggression

could not be refuted by the defence. Rather their consistent testimony has proved the commission of crimes and participation and complicity of the accused persons therewith.

400. Mr. Gazi M.H Tamim the learned state defence counsel, on contrary, submits that evidence upon which prosecution relies upon does not carry probative value; that the witnesses are not competent and natural witnesses and none of them had occasion of seeing the act of killing and its perpetrators and thus their evidence implicating the accused creates doubt which negates accused's complicity with the commission of the crimes.

401. Arraignment brought in this charge involves unlawful detention of four pro-liberation civilians at Razakar camp where they were subjected to torture and finally they were taken at Trimohoni Bridge in the night when by gunshots killing of two detainees was accomplished and two other detainees i.e. Joymat Ali and Lal Mia could however survive by jumping into the river.

402. Prosecution claims that the survived victims returned back home in injured condition and narrated the facts related to the event to their relatives. Some of relatives of survived victims came on dock and narrated what they heard. Some of witnesses relied upon in support of this charge testified facts crucially related to the

alleged event of attack that ended in killing the detainees. The group of attackers formed wholly of Razakars accompanied by accused persons.

403. Prosecuting requires proving –

- (i) That the gang of attackers formed of Razakars accompanied by accused persons;
- (ii) That the accused persons were antagonistic to pro-liberation civilians;
- (iii) That the accused persons actively participated in causing forcible capture of four civilians;
- (iv) That the accused persons had a close affiliation with the Razakar camp at Purbodhola bazaar;
- (v) That two detained victims were gunned down to death, after keeping them in captivity for couple of days;
- (vi) That two victims got survived being injured condition;
- (vii) That the accused persons being imbued by the policy and plan had carried out the attack in systematic manner which led to the killing of detained civilians.

404. At the outset Tribunal notes that hearsay evidence in a case involving the offences of crimes against humanity and internationally recognized crimes is not inadmissible per se. However truthfulness of the same is to be weighed and we are to see whether the same inspires credence and gets corroboration from other evidence and circumstances.

405. It has been unveiled from evidence of P.W.17 that his father Jahur Ali [now dead] and relatives moved to local peace committee member Basir Akanda for securing release of his uncle Fajar Ali [victim]. But Fajar Ali could not be made freed although one detainee Tajjat Ali was set at liberty and he told that Fajar Ali, Imad Ali, Lal Mia, Joymat Ali were being tortured severely at the camp.

406. The above pertinent piece of fact leads to the conclusion that Fajar Ali was unlawfully detained and naturally the P.W.17 had occasion of knowing from one released civilian Tajjat Ali that his[P.W.17] uncle along with three other civilians were kept detained at Razakar camp where they were subjected to torture.

407. It transpires that hearing the act of causing torture to detainees Fajar Ali, Imad Ali, Lal Mia, Joymat Ali at the Razakar camp from one released detainee Tajjat Ali as testified by the **P.W.17** could not be refuted in any manner in cross-examination.

408. Returning back of two victims seven days later in injured condition when they unfolded the fact that the Razakars gunned down two other detainees including his [P.W.17] uncle Fajar Ali and Imad Ali reflects unerringly that the victims were kept in captivity on forcible capture. It also stands proved that four

civilians including two survived victims were kept in captivity at Razakar camp at Purbodhola. Version made by P.W.17 in this regard remained unimpeached.

409. In cross-examination of P.W.17, the event of attack that eventually ended in killing two detainees does not appear to have been denied even. It remained undenied too that the P.W.17 learnt the event of forcible capture of victim Fajar Ali and afterwards the fact of his killing from two survived detainees.

410. P.W.18 Halema Khatun is the daughter of victim Imad Ali's brother. On hearing the event of taking away her uncle Imad Ali and cousin brother Suruj Ali to Purbodhola Razakar camp on forcible capture her [P.W.18] father Samesh Ali, cousin brother Shahabuddin [husband of P.W.19], Nurul Amin approached to local peace committee member Basir Akanda for securing release of the detainees. With this Suruj Ali was set at liberty but her uncle Imad Ali was not released.

411. The above piece of testimony remained uncontroverted. P.W.18 does not claim to have seen the attack that resulted in her uncle's unlawful detention. But what she testified seems to be materially related to the attack. Making approach by her [P.W.18] father and others to local peace committee member Basir Akanda

for securing release of the detainees and only Suruj Ali was set at liberty but her uncle Imad Ali was not released indisputably proves that Imad Ali was unlawfully detained by a gang formed of Razakars who took away the detained victim to Purbodhola Razakar camp.

412. Since the approach was made by the father of P.W.18 for securing detained Imad Ali's release it was natural for P.W.18 of knowing the facts related to the event of attack and thus her testimony in this regard inspires credence.

413. P.W.18 even later on knew from survived victims Joymat Ali and Lal Mia when they returned back home that the accused Razakars gunned down Imad Ali and Fajar Ali to death and they two could however survive by jumping from the bridge. Defence could not impeach it in any manner. Thus, it stands proved that four civilians were kept detained at Purbodhola Razakar camp. Detaining them unlawfully by the accused persons and their cohort Razakars was firmly linked to the act of killing, the principal crime.

414. P.W.19 Joydebunnesa is the daughter- in-law of victim Imad Ali. She also heard the event from her *Fufato* father-in-law [father-in-law's sister's husband]. Her testimony gets corroboration from P.W.18, another relative of victim Imad Ali. The facts related to the

attack and the principal offence as testified by the P.W.19 remained undisputed even. What these two witnesses testified seems to be materially chained to the event.

415. The act of forcible capture of Imad Ali and Suruj Ali was carried out at Purbodhola bazaar. Thus, the P.W.17, P.W.18 and P.W.19 the near relatives of victim did not have occasion of seeing the attack. It transpires that P.W.18 and P.W.19 consistently narrated that Abed Ali coming from Purbodhola bazaar disclosed the event of attack causing forcible capture of Imad Ali and Suruj Ali from Purbodhola bazaar. It remained uncontroverted. There has been no reason of disbelieving these two witnesses. Besides, defence does not seem to have been specifically denied it even in their cross-examination.

416. One of victims Lal Mia was the uncle of P.W.20 Md. Ayub Ali, a direct witness to the act of his uncle's unlawful detention. It transpires from his testimony that a group formed of Razakar Abdul Mazid Moulana, Abdur Rahman [died during trial], Abdul Khalek, Salam Beg, Nur Uddin, Kabir Kha and their 10/12 cohort Razakars by launching attack at their house forcibly captured his uncle Lal Mia, tied him up, carried out looting households and took away detained Lal Mia to Razakar Mazid Moulana's house.

417. Two detainees Joymat Ali and Lal Mia returned back home one week later when P.W.20 knew from them how they could survive and two other detainees were shot to death by Razakars. Defence however does not seem to have made effort in any manner to refute the facts materially related to the event and miraculous survival of two victims Joymat Ali and Lal Mia from the clutches of Razakars as testified by P.W.20.

418. P.W.21 testified first phase of attack and also the act of unlawful detention of her father Joymat Ali. It stands proved from her unimpeached testimony that at the first phase of attack involving forcible capture of her two cousin brothers Motaleb and Abdur Razzak and cattle by accused Abdul Mazid Moulana, Salam Beg, Nur Uddin and Abdur Rahman [died during trial] and their 10/12 cohort Razakars from the place nearer to their house .It happened in day time. She is a direct witness to the act of forcible capture of her two cousin brothers who later on got release from the Razakar camp where they were kept confined and tortured.

419. Detaining Joymat Ali the father of P.W.21 was linked to the event of forcible capture of two cousin brothers of P.W.21 which happened on the preceding day. It transpires from testimony of P.W.21 that her father and her brother Shahjahan moved to Razakar camp at CO office to get back the cattle the Razakars took away on the preceding day along with Motaleb and Abdur Razzak. But the

accused Mazid Moulana, Abdur Rahman [died during trial], Abdul Khalek, Salam Beg, Nur Uddin, Kabir Kha unlawfully detained her [P.W.21] father Joymat Ali and started torturing him. Her [P.W.21] brother was set at liberty at the time of dusk but her father was kept confined at the camp for three days.

420. The fact of returning back of the brother of P.W.21 who accompanied his father Joymat Ali to Razakar camp for getting back the looted cattle could not be impeached by the defence. Thus, it was natural to hear or know from him as to what happened to Joymat Ali when he arrived at the camp and how he was battered in captivity by the accused persons. Thus, the act of unlawfully detaining Joymat Ali by the accused persons and their cohort Razakars stands proved.

421. Hearing the fact of forcible capture of Imad Ali and Suruj Ali from Abed Ali , a near relative of P.W.18 and P.W.,19; approach made to local peace committee member Basir Akanda on intervention of whom one detainee Suruj Ali got release could not be refuted in any manner. Rather, testimony of P.W.18 and P.W.19 in this regard seems to be natural and devoid of any exaggeration.

422. In absence of anything contrary, heresy testimony of P.W.18 and P.W.19, two relatives of victim Imad Ali cannot be brushed

aside. The Trier of fact may safely act upon it as the same carries probative value and gets corroboration from other evidence.

423. Defence does not seem to have made any effort to refute the event of attack that started with forcible capture of Imad Ali and Suruj Ali and ended in killing two detainees including Imad Ali and Fajar Ali. Even the facts related to the principal offence as testified by the P.W.19 remained undisputed.

424. It has been proved that launching attack at Lal Mia's house, taking him away to Purbodhola Razakar camp on forcible capture as testified by P.W.20 as the same remained uncontroverted and the P.W.20 had fair occasion of seeing the attack that resulted in his uncle Lal Mia's forcible capture and carrying out looting households. Even defence does not appear to have denied it in cross-examination.

425. P.W.20 is a direct witness to the fact of forcible capture of victim Lal Mia that happened on launching attack at his house in day time when the P.W.20 had been at the house. There has been nothing to show that the P.W.20 had no reason of seeing the act of launching attack or that at the relevant time he had not been at home. In cross-examination it has not been denied even that the accused persons were from the neighbouring vicinities and thus P.W.20 knew them beforehand.

426. Defence however does not seem to have made attempt in any manner to refute the fact of forcible capture of Lal Mia by launching attack at his house, keeping him detained at Purbodhola Razakar camp and his miraculous survival from the vicious clutches of accused persons and their cohort Razakars, as testified by the P.W.20.

427. It stands proved that survived victim Lal Mia was uncle of P.W.20. Lal Mia and three other detainees i.e. Imad Ali, Fajar Ali and Joymat Ali were kept in captivity at Purbodhola Razakar camp and then taking them at Trimohoni Bridge the Razakars fired gunshot to them when two detainees Joymat Ali and Lal Mia could survive by jumping into the river. They returned back home seven days and eight days later respectively.

428. P.W.20 naturally heard the catastrophic event from his uncle Lal Mia, one survived victim. Defence could not refute it in any manner. Testimony of P.W.20 in this regard inspires credence and gets corroboration from other witnesses including the P.W.21, the daughter of another survived victim Joymat Ali who also testified that they heard the upshot of the event from two survived victims.

429. On cumulative evaluation of evidence discussed above it stands proved that the accused persons being imbued by the

antagonistic attitude to the pro-liberation civilians even in absence of any explicit participation of Pakistani occupation army stationed at Purbodhola actively participated in effecting forcible capture of four unarmed pro-liberation civilians Imad Ali, Lal Mia, Fajar Ali and Joymat Ali who were kept in captivity of couple of days at Purbodhola Razakar camp. The victims were targeted for the reason of their stance that they had in support of the war of liberation, it may be reasonably inferred from the facts unveiled.

430. The killing of detained victims took place at Trimohoni Bridge in the late night. Two survived victims Joymat Ali and Lal Mia had opportunity of experiencing the phase of killing that occurred at Trimohoni Bridge. Naturally, it was not practicable of seeing the act of killing happened in the night by other people. Some of witness are near relatives of those two survived victims who are now dead testified what they knew from them [survived victims].

431. Witness Most. Achhia Khatun is the wife of victim Fajar Ali. She died on 09.03.2018 i.e. after commencement of trial on framing charges and thus her statement made to the IO [relevant page no. 40 of the volume of statement of witnesses made to the IO] has been received in evidence as permitted under section 19(2) of the Act, considering the application initiated on part of prosecution. Her statement relates to the event narrated in this charge no.05.

432. It is to be noted that this charge is not rested solely upon this witness Most. Achhia Khatun, the wife of victim Fajar Ali. Already from evidence of other witnesses it stands proved beyond reasonable doubt that how the attack was lunched and ended in barbaric killing of two detainees. However, let us see what has been stated to the IO by Most. Achhia Khatun, the wife of victim Fajar Ali.

433. Witness Most. Achhia Khatun is the wife of victim Fajar Ali. Her statement made to the IO which has been received in evidence under section 19(2) of the Act of 1973 gets corroboration from other witnesses. She narrated to the IO what she heard from near ones about her husband's forcible capture, detention at Razakar camp and annihilation at Trimohoni bridge. She also heard the event of killing, the upshot of the attack from two survived victims Joymat Ali and Lal Mia.

434. The evidence of witnesses impels that the victims were the followers of the war of liberation and used to provide assistance to Hindu civilians by allowing them to get shelter at their house. Seemingly, this was the reason of targeting them. Being the members of locally formed Razakar Bahini the accused persons became aware of it and then conducted a designed aggression not

only to wipe them out but to extend a message of grave intimidation to the civilian population of the locality.

435. Now the question is how the accused persons participated in accomplishing the killing of the detained victims? Had they active part to it? Since the accused had close and culpable association with the Purbodhola Razakar camp and they actively participated in causing their detention at the said camp it may be fairly concluded that the accused persons facilitated and substantially contributed even to the commission of the principal crime, the killing being part of the criminal enterprise. The accused persons thus cannot absolve responsibility even of actual commission of killing the defenceless victims.

436. Since the act of killing the 02 detained civilians was the outcome of 'collective criminality' the accused persons being the members of the joint endeavor are held equally responsible as co-perpetrators. 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]

437. The factual matrix proved by the prosecution unerringly points that there is no escape from the conclusion that the principal crime was committed on substantial contribution, facilitation and assistance of the accused persons. Common design of all the accused persons was to cause death of a number of detained civilians and thus none of the group including the accused persons can evade the responsibility of the act of killing, we arrive at this unerring decision.

438. In respect of mode of participation’ **Tribunal-1[ICT-BD]** observed in the judgment rendered in the case of **Md. Amir Ahmed and three others** that—

Tribunal notes that mode of participation in carrying out ‘systematic attack’ directing civilian population includes- (i) accompanying the group of attackers knowing culpable intention,(ii) active role

played in participation at crime site; (iii) culpable association with the squad committing crime; (iv) member of a criminal enterprise with knowledge of acts of the group and (v) culpable presence at the crime site. **[Para 297 of the judgment: 13 March 2018]**

439. In the case in hand, it stands proved that all the five accused persons were part of the common plan and design to single out defenceless pro-liberation civilians of the locality under Purbodhola police station of the then Sub-Division Netrokona ; that all the six accused (1) Sheikh Md. Abdul Majid @ Majit Moulana (2) Md. Abdul Khalek Talukder (3) Md. Kabir Khan (4) Abdus Salam Beg, (5) Md. Nur Uddin @ Raddin and (6) Md. Abdur Rahman [died during trial] had conscious 'concern' with the 'killing mission, the upshot of the unlawful detention of victims , in exercise of their membership in locally formed auxiliary force.

440. We reiterate that the offence of murder as a crime against humanity does not require the prosecution to prove that the accused personally committed the killing. In the case in hand, the victims were kept in captivity at Razakar camp for couple of days. Victims were taken to the camp on forcible capture by a gang formed of accused persons and their accomplice Razakars. It fairly indicates that the accused persons had close nexus with the camp and thus

indisputably they were aware and conscious about the consequence of the act of detaining the victims there. It is sufficient to conclude that the accused persons too were involved in accomplishing the detainees' killing as well.

441. One can be held responsible for 'committing an offence as crime against humanity when it is found that he by his 'act' or 'conduct' participated individually or jointly with others. In this regard we recall the observation of ICTY Trial Chamber in the case of *Stakic* which is as below:

“A crime can be committed individually or jointly with others, that is, there can be several perpetrators in relation to the same crime where the conduct of each one of them fulfils the requisite elements of the definition of the substantive offence.” **[ICTY Trial Chamber, Judgment , July 31, 2003, para. 528]**

442. Proved act of accompanying the gang of perpetrators in launching attack and presence at the crime sites with the gang amply signify the conscious participation of accused persons in accomplishing the culpable designed attacks which eventually ended in wiping out two detained civilians, by sharing common intent.

443. Facts unveiled from evidence leads to the conclusion that the accused persons substantially contributed to the accomplishment of ‘group crime’ directing civilian population and their contribution was ‘*intentional*’ and their criminal acts were manifestly part of ‘group plan’

444. It is now well settled that the material element of a JCE [basic form] is the ‘common purpose’. The facts and circumstances unveiled forced us to irresistible conclusion that the accused persons, their accomplice Razakars carried out the criminal acts forming part of systematic attack, sharing common purpose.

445. Liability accrues when it is found that the accused had conscious and intentional presence, sharing intent, at the site or sites where unlawful and prohibited acts were carried out. It is sufficient to trigger his individual criminal responsibility as ‘participant’ under the doctrine of JCE-I [Basic Form]. In the case in hand, all the five accused persons thus incurred liability, being part of JCE for the perpetration of the killing.

446. It is to be noted that all the six accused persons are found to have incurred liability for the barbaric crimes proved. But of them one Md. Abdur Rahman died [during trial] and thus proceedings so far as it relates to him stood abated.

447. On rational and integrated evaluation of evidence and facts unveiled we arrive at decision that the prosecution has been able to prove it beyond reasonable doubt that the accused 1) Sheikh Md. Abdul Majid @ Majit Moulana (2) Md. Abdul Khalek Talukder (3) Md. Kabir Khan (4) Abdus Salam Beg, (5) Md. Nur Uddin @ Raddin by their culpable act and conduct forming part of systematic attacks participated, facilitated and substantially contributed to the actual perpetration of the offences of ‘**abduction**’, ‘**confinement**’, ‘**torture**’ and ‘**murder**’ of non-combatant civilians 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 and thus they incurred liability under section 4(1) of the Act for the above offences.

Adjudication of Charge No.06

[Offences of abduction, confinement, torture, looting, vandalizing and murder of Haji Siraj Mondol alias Chandu Haji of village Purbo Moudam under Purbodhola Police Station]

448. **Charge:** That on 20.11.1971 while Haji Siraj Mondol alias Chandu Haji son of late Nazir Ali Mondol of village-Purbo Moudam under Purbodhola Police Station of the then Netrokona Sub-Division had been catching fish with his son Sahed in the Rameswar canal, on that day at about 05.00 P.M. the accused Razakars (1) Md. Abdur Rahman[died during trial] (2) Sheikh Md.

Abdul Majid alias Majit Moulana (3) Md. Abdul Khalek Talukder (4) Md. Kabir Khan (5) Abdus Salam Beg, and (6) Md. Nur Uddin alias Raddin along with other 10/15 armed Razakars suddenly attacked him [Haji Siraj Mondol alias Chandu Haji] and detained him and then having gone to his house looted his households and then vandalized his house and then the victim was taken away to the Razakar camp set up at Purbodhola Thana where he was kept confined and subjected to torture.

Thereafter, on the next day [21.11.1971] in the morning the accused persons having taken the **victim Haji Siraj Mondol** alias Chandu Haji away from the said Razakar camp to the underneath of Purbodhola Railway Bridge killed him there **by gunshot** and threw his dead body in the Dholai River. Subsequently, his relatives could not trace his dead body.

Thereafter, on 23.11.1971 Md. Abul Hashim and Md. Kachhum Ali, son and nephew respectively of the victim Haji Siraj Mondol alias Chandu Haji went to Purbodhola bazaar, and on that day at about 03.00 P.M. the accused persons and their cohort Razakars abducted them from nearby Purbodhola railway station Jame Mosque and took them away to Purbodhola Thana Razakar camp where they were subjected to torture in captivity by the accused persons that resulted in hearing impairment of victim Md. Abul Hashim became deaf. Next day the relatives of the victims however

managed to get the victims released from the Razakar camp in exchange of money.

Thereby, the accused (1) Md. Abdur Rahman[died during trial] (2) Sheikh Md. Abdul Majid alias Majit Moulana (3) Md. Abdul Khalek Talukder (4) Md. Kabir Khan (5) Abdus Salam Beg, and (6) Md. Nur Uddin alias Raddin have been charged for participating, abetting, facilitating, contributing and complicity in the commission of offences of **‘abduction’, ‘confinement’, ‘torture’, ‘murder’ and ‘other inhumane acts’** 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 said Act

Evidence of Witnesses Examined

449. A gang formed of Razakars accompanied by the six [06] accused persons allegedly committed the crimes arraigned in this charge involving the offences of abduction, confinement, torture and murder. Of six accused persons one Md. Abdur Rahman had been in prison died during trial and as such proceeding so far as in related to him stood abated. The charge rests upon testimony of three witnesses of whom two have been examined as P.W.22 and

P.W.24 and P.W.23 has been tendered. Before we evaluate the evidence presented let us see what the witnesses have testified.

450. P.W.22 Md. Abdus Sobhan [65] is a son of victim. He is a direct witness to the facts related to the attack.P.W.22 stated that on the 03rd day of Bangla month Agrahyan 1971 at about 05:00 P.M he, his brother Sahed Ali[P.W.23] , cousin brother Kasum Ali [P.W.24] had been at the place nearer to the canal where his[P.W.22] father was catching fish. At that time Razakars Abdul Majid @ Majit Moulana, Abdur Rahman [died during trial], Nur Uddin @ Raddin, Salam Beg, Ahammad Ali [now dead] and their 10/15 cohorts arrived there and detained his father and then moved to their house taking his father with them, looted households, carried out devastating activities and then took away his detained father to the house of Razakar Abdul Majid @ Majid Moulana. They followed them and watched it secretly.

451. P.W.22 next stated that on the same day they along with some neighbors moved to Majid Moulana's house and made an appeal to set his farther at liberty. But he defied it by saying that his [P.W.22] father was engaged in providing assistance to the freedom-fighters and he was an agent of India and then they were turned out therefrom. But without coming back home they remained stayed near the house of Majid Moulana and at about 07:00 P.M they saw

the Razakars he named taking away his [P.W.22] father towards Purbodhola Razakar camp when they started following them secretly. On arriving near the Razakar camp they saw the Razakar Abdul Khalek Talukder of the camp beating and torturing his father. Then they approached local peace committee chairman Basir Uddin for securing his father's release. But instead of responding to it he told that his [P.W.22] father provided shelter to freedom-fighters and was an agent of India and as such he would not be released. Then they returned back home.

452. What happened next? P.W.22 stated that on the following day he along with this brother Abdul Hashim, cousin brother Kachom Ali and some villagers moved towards Purbodhola Razakar camp and when they arrived at Purbodhola bazaar some locals disclosed that Razakars Abdu Majid @ Majit Moulana , Abdul Khalek Talukder, Kabir Kha, Abdur Rahman[died during trial], Nur Uddin @ Raddin, Salam Beg and Ahammad Ali[now dead] had killed his detained father by gunshot taking him beneath the railway bridge over the river Dholai and dumped the body into the river. They could not trace the body.

453. In respect of another fact ancillary to the principal crime P.W.22 stated that three days later when he along with his two brothers Sahed Ali, Abul Hashim and cousin brother Kachom Ali arrived near the mosque of Purbodhola bazaar Razakars Abdul

Majid Moulana, Abdul Khalek Talukder, Kabir Kha, Abdur Rahman[died during trial], Nur Uddin @ Raddin, Salam Beg, Ahammad Ali[now dead] forcibly detained his brother Abdul Hashim and Kachom Ali and took them away to Purbodhola Razakar camp where they were subjected to severe torture that resulted in rupture of bones. He saw it remaining in hiding. Then their neighbouring resident Razakar Shahor Ali [now dead] arranged for release of his detained brothers in exchange of ransom money. Since then his brother Abdul Hashim became deaf and dumb. He [P.W.22] knew the accused persons as they were the residents of the locality about half mile far from their house.

454. In reply to defence question P.W.22 stated that accused Abdul Majid Moulana's house was about 400/500 yards far from that of their own; that accused Abdul Khalek Talukder was a resident of village- Kharchail, about one mile east-south to their house; that accused Kabir Kha was a resident of village Pukurikanda and accused Nur Uddin @ Raddin's house was about 500 yards far from that of their own.

455. In cross-examination, P.W.22 also stated in reply to defence question that the accused persons were on the run after independence and later on they returned back home. P.W.22 denied defence suggestions that the accused did not belong to Razakar Bahini; that they were not involved with the event he testified and

that what he testified implicating the accused persons was untrue and tutored out of local political rivalry

456. P.W.23 Md. Sahed Ali [63] is the brother of P.W.22 Md. Abdus Salam. He is a direct witness to both the phases of the attack as has been testified by P.W.22. Prosecution tendered him. Defence however cross-examined him when he stated that his brother Abdus Sobhan [P.W.22] is 2/3 years elder then him and Abdul Hashim is their eldest brother.

457. P.W.24 Kachom Ali [73] is the cousin brother of P.W.22 and P.W.23. He is also a direct witness to the facts materially related to the both phases of the attack.

458. P.W.24 stated that on the 03rd day of Bangla month Agrahyan, 1971 Razakars Majid Moulana, Abdur Rahman [died during trial], Ahammad Ali [now dead] and their 10/15 cohorts forcibly captured his uncle Chandu Haji when he was catching fish under the bridge over Rameswar canal. He [P.W.24] and his cousin brothers Sobhan [P.W.22] and Sahed Ali [P.W.23] could see it as they remained stood there. The gang then moved to their house taking his detained uncle with them and carried out looting and burnt down the house and then they moved to the house of Razakar Majid Moulana taking the detained victim with them and later on took him away to

Purbodhola Razakar camp. They appealed to Basir Akanda for release of his detained uncle. But he did not respond.

459. P.W.24 also stated that on the following day, they came to Purbodhola bazaar when they knew from the locals that on the preceding night Razakars had killed the detainee by gunshot taking him beneath the Purbodhola railway bridge.

460. In respect of next phase of the event arraigned P.W.24 stated that three days later he along with his cousin brothers Hashim , Sahed Ali, Sobhan went to Purbodhola bazaar wherefrom Razakars he named unlawfully detained him and his cousin brother Hashim and took them away to Razakar camp where they were subjected to brutal torture. Later on they got release from captivity on intervention of Razakar Shahor Ali [now dead] in exchange of money. The Razakars he named were the residents of their neighbouring localities and as such he knew them beforehand.

461. In cross-examination, P.W.24 denied the defence suggestions put to him that he did not know the accused persons; that the accused were not affiliated with Razakar Bahini; that they were not involved with the alleged event of attack and that what he testified implicating the accused persons was untrue and tutored out of local political rivalry. Defence however does not appear to have

controverted the facts materially related to the principal crimes, by cross-examining the P.W.24.

Findings with Reasoning on Evaluation of Evidence

462. Mr. Mokhlesur Rahman Badal the learned Prosecutor submitted that the accused persons and their accomplice Razakars targeted the victim, a pro-liberation civilian and thus by launching attack they detained him and he was subjected to torture by taking him away to Razakar camp, on forcible capture. Witnesses, the sons and relative of victim had occasion of seeing the act of attack that resulted in unlawful detention of victim. They also testified the attempt they had made to secure release of victim. Defence could not dispute the act of killing the victim. It simply denied complicity of accused persons with the event.

463. Defence could not impeach what the witnesses i.e. P.W.22 and P.W.24 testified in relation to the attack carried out by the accused (1) Sheikh Md. Abdul Majid alias Majit Moulana, (2) Md. Abdul Khalek Talukder, (3) Md. Kabir Khan, (4) Abdus Salam Beg and (5) Md. Nur Uddin alias Raddin and their cohort Razakars that ended in killing the victim and as such it stood proved that the accused persons actively and culpably participated in committing the offence of murder, the upshot of the attack. The witnesses

testified that they knew the accused persons beforehand as they were the residents of the locality, the learned prosecutor added.

464. On contrary, **Mr. Gaji M.H Tamim** the learned state defence counsel defending the absconding five accused persons submitted that the witnesses relied upon in support of this charge are not reliable; that they had no rational reason of knowing the accused persons; that their testimony suffers from inconsistencies and the witnesses have testified being tutored out of political rivalry. Prosecution failed to prove the accusation brought against these accused persons, the learned state defence counsel added.

465. The arraignment brought in this charge relates to the offences of abduction, confinement, torture, looting, vandalizing and murder of one unarmed pro-liberation civilian. By an ancillary attack that occurred three days later the gang accompanied by the accused persons forcibly captured son and nephew respectively of the victim Haji Siraj Mondol alias Chandu Haji from Purbodhola bazaar and causing torture keeping in confinement at Razakar camp who got release on the following day in exchange of ransom money, the charge framed arraigns.

466. Thus, first attack as arraigned in this charge relates to unlawful capture of the father of P.W.22 and P.W.23, keeping him confined at Purbodhola Razakar camp and finally causing his death by

gunshot. Next phase of attack happened three days later when the accused persons and their cohorts forcibly captured P.W.23 and his cousin brother P.W.24

467. Testimony of P.W.22 demonstrates that his father the victim Siraj Mondol alias Chandu Haji was forcibly captured by the group formed of accused Abdul Majid @ Majit Moulana, Abdur Rahman [died during trial], Nur Uddin @ Raddin, Salam Beg, Ahammad Ali [now dead] and their 10/15 cohorts from the place near a canal where he was catching fish. P.W.22 could see it as he had been at the site.

468. It also transpires from evidence of P.W.22 that the gang looted households, carried out devastating activities and then took away his detained father first to the house of Razakar Abdul Majid @ Majit Moulana.

469. The above crucial facts materially related and chained to the upshot of the attack could not be refuted by defence in any manner.

470. It appears that the P.W.22 knew the accused persons as they were the residents of the locality not too far from their house. Besides, in cross-examination it has been reaffirmed as P.W.22 in reply to defence question P.W.22 stated that accused Abdul Majid Moulana's house was about 400/500 yards far from that of their

own; that accused Abdul Khalek Talukder was a resident of village-Kharchail, about one mile east-south to their house; that accused Kabir Kha was a resident of village Pukurikanda and accused Nur Uddin @ Raddin's house was about 500 yards far from that of their own.

471. Taking the detained victim first to the house of accused Majid Moulana @ Majit Moulana indicates that this accused was the key architect of the attack. It gets assurance as the detainee was termed by this accused as an agent of India as he [victim] was engaged in providing assistance to the freedom-fighters, when this accused was approached for release of victim as testified by the P.W.22.

472. The above affirmed fact together with the presence of P.W.22 near the canal wherefrom the victim was unlawfully captured makes it reliable that the P.W.22 could recognize the accused accompanying the gang in launching attack.

473. What happened next? On the same day at about 07:00 P.M they saw the Razakars he named took away his [P.W.22] father to Purbodhola Razakar camp. On arriving near the Razakar camp secretly they saw the Razakar Abdul Khalek Talukder of the camp beating and torturing his father [victim].

474. The above piece of version relating to confinement of victim and inflicting torture to him in captivity could not be impeached. Besides, keeping an unarmed civilian at Razakar camp fairly leads to the inference that the detainee was subjected to torture.

475. It transpires too from evidence of P.W.22 that an approach they made to local peace committee chairman Basir Uddin for securing his father's release was in vain and the peace committee chairman too termed the victim as an agent of India .as he used to provide shelter to freedom-fighters.

476. On the following day P.W.22 and , his brother Abdul Hashim, cousin brother Kachom Ali[P.W.24] and some villagers moved towards Purbodhola Razakar camp and when they arrived at Purbodhola bazaar some locals disclosed that Razakars Abdul Majid @ Majit Moulana , Abdul Khalek Talukder, Kabir Kha, Abdur Rahman[died during trial], Nur Uddin @ Raddin, Salam Beg and Ahammad Ali[now dead] had killed the detained victim[father of P.W.22] by gunshot taking him beneath the railway bridge over the river Dholai and dumped the body into the river. They could not trace the body.

477. Naturally, it was not practicable for the relatives of victim of seeing the event of killing, the upshot of the attack. It remained

undisputed that the detained victim was shot to death and his body could not be traced even. Had really the local people opportunity of knowing or seeing the accused persons participating in perpetrating the killing the victim taking him beneath the railway bridge over the river Dholai?

478. Defence questioned credibility of hearsay testimony as to the act of killing the victim. Well, if we keep the version as to hearing the act of killing the victim from the locals as testified by P.W.22 aside is there any lawful room to find accused persons' participation to the commission of wiping out the victim?

479. On this matter we are convinced to express the view that since it has been found proved that the accused persons, in furtherance of common purpose and design remained actively engaged till keeping the captured victim detained at Razakar camp it may safely be presumed that they were concerned even to the accomplishment of the act of killing. Besides, defence does not seem to have made any attempt to refute that the P.W.22 and his relatives on the following day heard from the people of Purbodhola bazaar that the victim was gunned down to death taking him beneath the railway bridge over the river Dholai .

480. In cross-examination, P.W.22 also stated in reply to defence question that the accused persons were on the run after independence and later on they returned back home. It also adds to notoriety and culpability of accused persons with the commission of atrocious activities around the localities in 1971 during the war of liberation.

481. P.W.23 Md. Sahed Ali is another son of the victim. He too watched how his father the victim was taken away on forcible capture as testified by his brother P.W.22 Md. Abdus Sobhan. Prosecution however tendered him. In reply to defence question P.W.23 stated that he is 2/3 years younger than his brother Abdus Sobhan [P.W.22] and Abul Hashim is his elder brother.

482. P.W.24 Kachom Ali happens to be the cousin brother of P.W.22 and P.W.23. He is a direct witness to the facts materially related to the alleged attack. He along with P.W.22 had been at the place near the canal wherefrom the gang forcibly captured the victim. P.W.24 appears to have made the account in respect of the event of attack which is consistently corroborative with what has been testified by the P.W.22.

483. P.W.24 further stated that on the following day they heard from locals at Purbodhola bazaar that in the preceding night the

Razakars he named had killed his [P.W.124] uncle taking him under the railway bridge at Purbodhola and threw his body into river.

484. P.W.22 and P.W.24, two direct witnesses consistently testified how the victim father of P.W.22 was forcibly captured and was taken away first at the house of accused Mazid Moulana @ Majit Moulana who defied the appeal to set the detained victim at liberty terming him an agent of India.

485. Making approach to accused Abdul Mazid Moulana @ Majit Moulana for securing release of detained victim itself proves that this accused was a level of member of locally formed Razakar Bahini who could act effectively and positively in releasing a detained civilian. That is to say, accused Abdul Mazid Moulana @ Majit Moulana was a potential Razakar at Purbodhola who had effective guidance on his cohort Razakars.

486. It stands proved too that the detainee was next shifted to Purbodhola Razakar camp and the accused persons endorsed victim's unlawful confinement at the camp. Therefore, accused (1) Sheikh Md. Abdul Majid alias Majit Moulana, (2) Md. Abdul Khalek Talukder, (3) Md. Kabir Khan, (4) Abdus Salam Beg and (5) Md. Nur Uddin alias Raddin cannot evade responsibility of

causing inhumane treatment to victim and also of accomplishing his annihilation.

487. P.W.24 is the cousin brother of P.W.22 and P.W.23, the sons of the victim. Testimony of P.W.24 also demonstrates that the accused (1) Sheikh Md. Abdul Majid alias Majit Moulana, (2) Md. Abdul Khalek Talukder, (3) Md. Kabir Khan, (4) Abdus Salam Beg and (5) Md. Nur Uddin alias Raddin were with the gang of attackers when it secured forcible capture of victim from the place nearer to his house. Defence by cross-examining P.W.24 could not impeach this crucial criminal act leading to victim's killing after keeping him confined at Razakar camp.

488. It stands proved from evidence of P.W.22 the son of victim that on the same day after dusk on arriving near the Razakar camp P.W.22 and his relatives saw the accused Razakar Abdul Khalek Talukder of the camp beating and torturing his father. Defence could not impeach it in cross-examination. This piece of version proves this accused's close affiliation with and potential domination over the Razakar camp. At the same time it had an inevitable causal link to the commission of killing.

489. It has been asserted on part of defence that there has been no evidence to show that the accused persons indicted in this charge participated in committing killing of detainee victim.

490. We are not agreed with the above argument. True, none had opportunity of seeing the phase of killing. But this phase was linked to the phase of attack in effecting victim's forcible capture and keeping him confined at Razakar camp and it stands proved that the accused (1) Sheikh Md. Abdul Majid alias Majit Moulana, (2) Md. Abdul Khalek Talukder, (3) Md. Kabir Khan, (4) Abdus Salam Beg and (5) Md. Nur Uddin alias Raddin participated in perpetrating these criminal acts forming part of designed and planned attack. Thus, indisputably they were 'concerned' even with the phase of killing the victim, sharing common purpose and culpable design.

491. On totality of evidence we arrive at decision that it has been proved beyond reasonable doubt that the accused (1) Sheikh Md. Abdul Majid alias Majit Moulana, (2) Md. Abdul Khalek Talukder, (3) Md. Kabir Khan, (4) Abdus Salam Beg and (5) Md. Nur Uddin alias Raddin had acted as perpetrators at all phases of attacks. Acts of abduction and confinement of victim had causal link to the act of killing the victim Siraj Mondol alias Chandu Haji.

492. For the reason of context existing in 1971 naturally none had opportunity deliberate act of accused persons forming part of attack leads to the unerring conclusion that they, being part of the enterprise, were concerned with the event of killing too. Therefore, they incurred same level of responsibility as co-perpetrators, being part of 'collective criminality', with common design and purpose.

493. It has been further unveiled from evidence that the accused persons and their cohorts did not keep their culpable design halted. Three days later the accused persons and their accomplices unlawfully detained the P.W.22 and his brother when they were on move to Purbodhola bazaar and they were kept in captivity at Razakar camp where they were subjected to severe torture that resulted in hearing impairment of one of victims.

494. In respect of another fact ancillary to the principal crime P.W.22 stated that three days later a group formed of accused Razakars Abdul Majid Moulana, Md. Abdul Khalek Talukder, Kabir Khan, Abdur Rahman [died during trial], Nur Uddin @ Raddin, Salam Beg, Ahammad Ali [now dead] and their cohorts forcibly detained his [P.W.22] brother Abdul Hashim and Kasum Ali [P.W.24] from the place nearer to the mosque of Purbodhola bazaar.

495. The detainees of this subsequent phase of attack were subjected to torture at Purbodhola Razakar camp. P.W.22 saw it remaining in hiding. Later on the detainees got release in exchange of ransom money, P.W.22 testified. The narrative made by P.W.22 gets consistent corroboration from what has been testified by one victim P.W.24

496. It transpires too from account of P.W.24, one victim of this phase of event that P.W.24 and his cousin brother Hashim were subjected to grave torture in captivity at Purbodhola Razakar camp and later on got release from captivity on intervention of Razakar Shahor Ali [now dead] in exchange of money. Abdul Hashim the brother of P.W.22 became deaf and dumb due to torture inflicted to him in captivity, P.W.22 testified.

497. Victim Abdul Hashim, the brother of P.W.22 and the son of victim of the first phase of attack sustained speech and hearing impairment due to barbaric torture caused to him in captivity. It remained unimpeached. It proves blatantly as to the nature and extent of physical torture caused to him keeping him in unlawful confinement at Razakar camp with which the accused persons had close and culpable association.

498. It has been proved that the accused (1) Sheikh Md. Abdul Majid alias Majit Moulana, (2) Md. Abdul Khalek Talukder, (3) Md. Kabir Khan, (4) Abdus Salam Beg and (5) Md. Nur Uddin physically and actively participated in effecting forcible capture of P.W.24 and Abdul Hashim who were kept confined at Purbodhola Razakar camp. It together with the fact of releasing them from Purbodhola Razakar camp unerringly proves that the accused persons having affiliation with the camp were actively concerned with extreme aggression also in accomplishing inhumane torture to the detainees in captivity.

499. Now a question naturally comes forward as to why the accused persons and their cohorts targeted the son and relative of the victim of the first phase of attack that resulted in brutal killing of an unarmed civilian, by inflicting torture to them in captivity at Razakar camp on forcible capture?

500. Entirety of facts unfolded in evidence presented impels that intention was to keep the relatives and residents of the locality in enduring intimidation and terror so that none could initiate resistance against such atrocities and prohibited criminal acts, occurred three days back, in conjunction with the principal phase of attack. Razakar Bahini an auxiliary force was created to collaborate with the Pakistani occupation army in 1971. The

accused persons were notorious members of locally formed Razakar Bahini. It thus may be safely inferred that the attack upon the P.W.24 and Abdul Hashim the brother of P.W.22 was deliberately carried out by the accused persons with intent to extend frightening message to pro-liberation civilians about the policy and plan of Pakistani occupation army.

501. It is now settled jurisprudence that criminal liability does not attach solely to individuals who physically commit a crime but may also extend to those who participate in and contribute to a crime in various ways, when such participation is sufficiently connected to the crime.

502. The victim Haji Siraj Mondol alias Chandu Haji was a non-combatant civilian. The act of his forcible capture, confinement and killing formed part of 'systematic attack' directing against 'civilian population' and 'population' does not mean the entire population. The victim at the time when he became prey of the attack was non-combatant. The attack directing him was not for any lawful purpose or necessity. Rather, the act of attack upon the victim was conducted treating him opponent and it was obviously prohibited in customary international law.

503. Causal relationship between the act of forcible capture of victim Haji Siraj Mondol alias Chandu Haji, keeping him detained at Razakar camp and finally perpetration of the principal crime, the killing demonstrates unerringly that the accused (1) Sheikh Md. Abdul Majid alias Majit Moulana, (2) Md. Abdul Khalek Talukder, (3) Md. Kabir Khan, (4) Abdus Salam Beg and (5) Md. Nur Uddin had participation and concern also to the upshot of the attack.

504. Common design of all the accused persons was to cause death of the detained pro-liberation civilian and thus none of the group including the accused persons can evade the responsibility of the act of killing, we arrive at this unerring decision.

505. Since the act of killing the detained victim was the outcome of 'collective criminality' the accused persons being the members of the joint endeavor are held equally responsible as co-perpetrators. In this regard, we may recall the observation of the **ICTY Trial Chamber**, in the case of *Tadic* that-

“..... 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*]

506. The evidence tendered and the facts chained together indisputably demonstrate that the accused persons and their cohort Razakars forming a group was concerned and engaged in taking the detainee to the Razakar camp and therefrom to the killing spot. All the acts and conducts of accused persons forming part of systematic attack together unerringly suggest that the accused persons being part of 'collective criminality' consciously participated, facilitated and substantially contributed to and had 'complicity' with the commission of criminal act of gunning the detained victims down to death, pursuant to common design and plan.

507. It has been proved beyond reasonable doubt that in this way all the five accused (1) Sheikh Md. Abdul Majid alias Majit Moulana, (2) Md. Abdul Khalek Talukder, (3) Md. Kabir Khan, (4) Abdus Salam Beg and (5) Md. Nur Uddin are found criminally liable for substantially abetting, participating, contributing, facilitating and

for complicity in the commission of offences of ‘**abduction**’, ‘**confinement**’, ‘**torture**’ and ‘**murder**’ as crimes against humanity enumerated in section 3(2)(a)(g)(h) of the Act of 1973 and thus they incurred criminal liability under section 4(1) of the Act of 1973.

Adjudication of Charge No. 07

[Offence of rape committed upon Jamila Khatun alias Nayeber Maa of village Purbobudi under Purbodhola Police Station]

508. Charge: That on 25.11.1971 at about 03.00 P.M a group formed of accused (1) Sheikh Md. Abdul Majid alias Majit Moulana (2) Md. Abdul Khalek, and (3) Md. Kabir Khan, and (4) Md. Abdur Rahman[died during trial] and their neighbour Ason Ali [now dead] and of Pakistani occupation army men launched attack at the house of Jamila Khatun alias Nayeber Maa of village-Purbobudi under Purbodhola Police Station of the then Netrokona Sub-Division and then 3[three] Pakistani occupation army men forcibly raped her in her house, and at one stage she lost her sense.

Victim Jamila Khatun alias Nayeber Maa went under treatment secretly and she remained sick for a long time. In fear of social ostracism she with her two kids went to her father's house at village Kakoirgora.

Thereby, the accused (1) Sheikh Md. Abdul Majid alias Majit Moulana (2) Md. Abdul Khalek, (3) Md. Kabir Khan and (4) Md. Abdur Rahman[died during trial] have been charged for participating, abetting, facilitating, aiding, contributing and complicity in the commission of offence of ‘**rape**’ as crime 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 is punishable under section 20(2) of the said Act for which the accused persons have incurred liability under section 4(1) of the said Act.

Evidence of witnesses Examined

509. Arraignment brought in this charge rests upon testimony of four [04] witnesses. Of them one is victim of the alleged barbaric act of sexual ravishment and two witnesses, inmates of the victim’s family had occasion of experiencing the attack, prosecution alleges. Before we evaluate the evidence presented let us first see what the witnesses testified in relation to the event of attack narrated in this charge.

510. P.W.02 Jomila Khatun @ Naeber Ma [68] is the ill-fated victim. In 1971 she was 22/23 years old and she got married three and half years before the war of liberation ensued. At the relevant time she had been at her conjugal home along with other inmates.

511. In respect of the event of attack victim P.W.02 Jomila Khatun @ Naeber Ma stated that in the first part of Bangla month Agrahyan, in afternoon she had been at her conjugal home when five Razakars and three Pakistani army men came to their house when they went into hiding under cot inside the room. Then one Razakar dragged her [P.W.02] out and forced her mother-in-law to quit the room taking her [P.W.02] 21 days old kid with her. Then the Pakistani army men committed recurrent '**appalling deed**' and eventually she lost her conscious. At that time Hamida and Dulal the daughter and son of her [P.W.02] husband's elder brother remained in hiding inside another cot of the room.

512. P.W.02 further stated that she saw her mother-in-law, husband's brother's wife pouring water on her head when she gained conscious. Her husband arranged her treatment by a doctor. Three days later her husband sent her to her paternal home to keep her aloof from social ostracism and in fear of disclosure of the event around the village.

513. Finally the P.W.02 stated that she knew the Razakars who accompanied the Pakistani army men as they used to visit her neighbour Ason Rzakar's [now dead] house. Later on, she heard from locals that four other Razakars were Khalek, Kabir Kha,

Rahman [died during trial] and Majid. She had occasion of seeing those four Razakars even after independence as they used to visit Ason Razakar's house.

514. In cross-examination P.W.02 denied the defence suggestion that being tutored by the political rival of accused persons she testified falsely implicating the accused persons. But the act of sexual ravishment committed upon the victim by launching attack as testified by P.W.02 remained undenied.

515. P.W.03 Hamida Khatun [59] is the daughter of victim's husband's elder brother. She had been at the house under attack, the conjugal home of the victim, at the relevant time. She is a direct witness to the attack. In 1971 she was 12/13 years old.

516. P.W.03 stated that in the first part of Bangla month Agrahyan, in afternoon on seeing Pakistani army men and Razakars moving towards their house her mother and her auntie Tarar Ma ran out from house and she, her younger brother, Auntie Jomila Khatun [victim] and her grand-mother got sheltered inside the room. Her [P.W.03] auntie Jomila Khatun went into hiding under a cot inside the room taking her 21 days' old kid with her. Razakars and army men entered inside the room and Razakars dragged out her [P.W.03] auntie Jomila Khatun and made her undressed when

Jomila started crying. Then the Razakars had left the room and three Pakistani army men raped her auntie [Jomila Khatun] recurrently for one hour when her auntie was howling and shouting. The army men then after having washed in the pond in front of their house had left the site.

517. In respect of identity of the accused persons P.W.03 stated that Ason Razakar, the 'Bhagina' [sister's son] of victim Jomila Khatun was with the Razakars accompanying the Pakistani army men. Later on, she [P.W.03] heard from locals that the other Razakars were Khalek, Kabir, Majid, Rahman [died during trial]. P.W.03 also stated that the house of Ason Razakar was to the east to the pond of their house and those Razakars used to visit Ason Razakar's house through the road besides the pond and thus she knew them beforehand.

518. P.W.03 finally testified that the freedom-fighters used to take shelter at their house and thus the Razakars along with Pakistani army men had carried out the crime at their house. She [P.W.03] found her auntie Jomila Khatun unconscious and in bleeding condition and on nursing she gained sense and was treated by village doctor Nagendra. Three days later, in fear of social ostracism she[victim] was sent to her parental home.

519. In reply to question put to her by the defence P.W.03 stated that the accused Razakars had been at the localities, after independence; that Ason Razakar died three years back and that she could not say whether any case was initiated over the event she narrated. Defence suggested P.W.03 that the accused persons were not Razakars; that the event she testified did not happen; that she did not know the accused persons. P.W.03 denied all these suggestion blatantly.

520. P.W.04 Nurunnahar @ Tarar Ma [80] is the wife of victim's husband's brother. She was one of inmates of the conjugal home of the victim, the crime site. She watched what happened at their house at the relevant time.

521. P.W.04 testified that in one afternoon, in the first part of Bangla month Agrahyan in 1971 five Razakars and three Pakistani army men attacked their house when she ran out and other inmates went into hiding inside the room. Then Razakars and army men entered inside the room and forced the mother-in-law of victim to quit the room taking 21 days old kid of victim with her. Then the army men committed 'unusual incident' through 'misdeed' upon Jomila Khatun @ Naeber Ma [P.W.02]. Afterwards, the Pakistani army men had left the site after having bathed in the pond.

522. What happened next to the event occurred? P.W.04 stated that after the Razakars and army men had left the site the daughter of her[P.W.04] husband's elder brother came out and started shouting and then they brought out Jomila Khatun from the room and started pouring water on her head and changed her wearing apparels. Victim got treatment by local doctor. Three days later Jomila Khatun was sent to her paternal home in fear of social ostracism. Defence could not refute it.

523. P.W.04 finally stated that she could recognize Razakars Ason [now dead], Majid, Khalek, and Rahman [died during trial] who accompanied the Pakistani army men. Razakar Ason was the son of her father's daughter and he was their neighbouring resident.

524. P.W.05 Md. Asaduzzaman [70] is the brother of victim's husband. He heard the event from his mother. He stated that one day after dusk, in the first part of Bangla month Agrahyan in 1971 returning from Purbodhola bazaar he heard from his mother [mother-in-law of the victim] that Razakar Abdul Khalek Talukder, Razakar Kabir Kha, Razakar Abdul Majid Moulana, Razakar Abdur Rahman [died during trial], Razakar Ason [now dead] along with three Pakistani army came to their house when his brother's wife Naeber Ma went into hiding under a cot inside the room along with her kid. But Razakars dragged her out and forced his [P.W.05]

mother to quit the room taking the kid with her. Then the Razakars quitted the room when the Pakistani army men recurrently raped Naeber Ma. The Pakistani army men had left the site after having wash in the pond in front of their house.

525. P.W.05 also stated that Naeber Ma regained sense after ready nursing and then she was treated by a village doctor. Two days later Naeber Ma was sent to her paternal home in fear of social ostracism.

526. P.W.05 also stated that after the war of liberation ensued the freedom-fighters used to come to their house for taking meal and thus the Razakars in collaboration with the Pakistani army committed the crime attacking their house. The accused used to move through the road besides their house and Ason Razakar's [now dead] house was adjacent to their house.

527. In cross-examination P.W.05 denied the suggestion put to him by the defence that he did not hear the event from his mother; that the accused persons were not Razakars; that being influenced by local political rival of the accused persons he testified falsely implicating them. P.W.05 denied all the suggestions. Defence however does not seem to have made effort to controvert what has

been testified by P.W.05 in relation to the event of attack that resulted in brutal sexual ravishment.

Finding with Reasoning on Evaluation of Evidence

528. The learned Prosecutor **Mr. Mokhlesur Rahman Badal** argued that an offence particularly relating to sexual violence committed during war time cannot be expected to have taken place in presence of witness. In the case in hand, the victim herself is the key witness. Besides, the three other witnesses of whom two had occasion of experiencing the acts forming attack also adds consistent corroboration to the testimony of victim. Their evidence cumulatively proves that accused persons knowingly and actively assisted, aided and contributed to the actual offenders in committing the offence of rape upon a defenceless woman, an inmate of the house under attack.

529. The learned Prosecutor further submits that the event happened at the active assistance and facilitation on part of the accused persons as they were with the group and had made space, by act of culpable assistance, of committing the crime after handing over the victim to the army men by dragging her out from under the cot inside the dwelling shed.

530. The unlawful entrance to the dwelling place of the victim took place in day time by the group forming three army men and accused persons and one Ason Razakar, a relative of victim. This fact together with other relevant and material facts as stated by the witnesses unambiguously goes to prove that on active facilitation and assistance of the accused persons the three army men committed the beastly sexual violation upon the victim, the learned Prosecutor added.

531. On contrary, **Mr. Gaji M.H Tamim** the learned state defence counsel submits that the version made by the witnesses implicating the accused persons is untrue; that the witnesses relied upon did not know the accused persons beforehand and that prosecution failed to prove participation or complicity of any of accused persons to the commission of the alleged event of rape, in any manner.

532. This charge involves a deliberate attack that resulted in grave sexual violence upon a defenceless woman, keeping the inmates of the house attacked under horrific fear and coercion. The event happened in day time when the male inmates had not been in the house.

533. It has been arraigned that the accused (1) Sheikh Md. Abdul Majid alias Majit Moulana (2) Md. Abdul Khalek, (3) Md. Kabir Khan, and (4) Md. Abdur Rahman [died during trial] persons

knowingly and being aware of the forceable consequence accompanied the Pakistani occupation army to the crime site and substantially contributed and facilitated the commission of the act of sexual violence upon a defenceless woman.

534. Prosecution requires proving that –

(i) The house of the victim's conjugal home was attacked by a group formed of three Pakistani army men and the accused persons and their accomplice Ason Razakar [now dead];

(ii) Victim Jomila Khatun @ Naeber Ma was sexually violated keeping the inmates under fear and coercion;

(iii) The accused persons substantially contributed and facilitated the army men in committing the brutal and prohibited act constituting the offence of rape;

(iv) The perpetrators of the crime used the act they committed as 'weapon of war' to terrorize and coerce the civilian population.

535. At the outset we reiterate that due to social ostracism, victim of sexual ravishment might not have intended to speak about the trauma she sustained. Act of rape imprints an unending and life-long horror and scar that continues to attack victim's cerebral entity. But however, in the case in hand, out of four witnesses victim Jomila Khatun @ Naeber Ma carrying immense trauma she

sustained came on witness dock and testified as P.W.02 how she was ravished.

536. Defence could not controvert the desperate and vicious criminal act done to victim. Three Pakistani occupation army men were the actual perpetrators. But substantial assistance and facilitation were provided to them by the accused persons who belonged to Razakar Bahini. It stands proved that Ason Razakar, a relative of victim was also with the gang. It remained unshaken. That is to say, the army men were accompanied by a number of Razakars including accused persons.

537. Accused persons used to visit victim's relative and neighbor Ason Rzakar's house and thus naturally they were known to the victim [P.W.02] although she was not aware of their name. Knowing their name later on was not impracticable. Additionally, there has been no reason whatsoever to term the testimony of victim P.W.02 tainted with falsehood.

538. Tribunal notes that a woman is not believed to portray an untrue account of bulldozing self worth. She will never opt to invite social stigma and dishonour by narrating fallacious account of ravishing self worth implicating a person who was not involved with the commission of offence. In this regard we recall the

observation made by the **Tribunal-1[ICT-BD]**in the case of **Md. Esahaque Shikder and four others** which is as below:

“Our social pattern does not allow a woman to prefer bringing a false accusation of yellowing her supreme honour as it stamps stigma on her life, and makes her social and family life devastated. Thus, we find no rationale to doubt the testimony of victims.” [**ICT-1 Judgment 13 August 2018; Md. Esahaque Shikder and four others para-388**]

539. We got it proved from corroborative evidence of victim P.W.02, P.W.03 and P.W.04 that the mother-in-law of the victim was forced to quit the dwelling room taking 21 days old kid of victim with her. That is to say, the victim was sexually ravished just 21 days after she gave birth of a baby. The accused persons and the army men had acted jointly as ‘pack of beasts’ and their act must shock the humanity.

540. Defence does not appear to have controverted or denied the fact of attack that resulted in sexual violence as testified by P.W.04. It simply suggested the P.W.04 that she did not know the accused persons; that the accused persons were not Razakars and that they were not involved with the event she testified. P.W.04 denied it.

541. It has been depicted from testimony of P.W.02 and P.W.04 that Razakar Ason [now dead] was their relative and neighbouring resident. It stands proved too that said Ason Razakar was with the army men when it launched the attack. All the accused belonged to locally formed Razakar Bahini, already we have rendered reasoned finding on this issue. Thus, their frequent visit at the house of Ason Razakar as has been testified by P.W.02 and P.W.03 leads to the conclusion that the witnesses had occasion of knowing and seeing them since prior to the event, although they later on, after the event occurred knew their name. In absence of any exaggeration testimony on this matter inspires credence.

542. It depicts from the sworn account of P.W.03 that sensing arrival of the gang at their house they along with the victim instantly went into hiding under a cot inside the dwelling room along with the victim and then the victim was dragged out and then Razakars had quitted the room and three Pakistani army men committed grave sexual violation upon the victim, the auntie of P.W.03. This piece of version gets corroboration from the victim P.W.02 which proves that Razakars facilitated actively in locating the victim and thereby they substantially contributed to the commission of sexual ravishment upon the victim, by handing over the victim to the army men.

543. Naturally, in horrific situation P.W.03 could not readily recognize the Razakars accompanying the army men who entered inside the room. But later on, P.W.03 heard that the accused persons were with the army men. It was natural.

544. In reply to defence question P.W.03 stated that the accused Razakars had been at the localities, after independence. This version itself does not readily negate the complicity and involvement of accused persons with the event of attack. Even non initiation of any case over the event as admitted by P.W.03 is not a bar to prosecute the accused persons for the event that resulted in grave sexual ravishment.

545. P.W.04 the wife of victim's husband's brother saw the gang accompanied by accused persons coming to their house when she ran out. She did not remain in hiding under a cot inside the dwelling room where the barbaric sexual violation was carried out. Thus, naturally she could see the Razakars accompanying the army men just before it entered inside the dwelling room.

546. P.W.05 is a hearsay witness. At the time of the attack carried out he had not been at house. Coming back to home, he heard the event from his mother i.e. mother-in-law of the victim. The mother-in-law of victim is a key witness to facts materially related to the commission of the offence of rape. It stands proved from evidence

of P.W.02 and P.W.03 that she[. mother-in-law of the victim]was forced to quit the dwelling shed taking 21 days old kid of the victim with her. Thus, hearing the event from mother as testified by P.W.05 inspires firm credence.

547. P.W.05 is male inmate of the house under attack. It has been unveiled from his testimony that after the war of liberation ensued, the freedom-fighters used to come to their house for taking meal. Defence could not refute it. This unimpeached fact offers unerring inference that this was the reason of launching attack at the house of the victim intending to materialize a designed vicious attempt to intimidate the civilians of the locality, using the act of 'rape' as a 'tactic' and 'weapon'.

548. It has been proved that Pakistani occupation army men were the actual perpetrators of the offence of rape committed upon the victim. But the facts and circumstance divulged from the evidence presented impel the conclusion that such barbaric act could not be perpetrated without the active assistance, encouragement, endorsement and contribution of their collaborators, the accused persons and their cohort Razakars.

549. It stands proved that the grave wrong grabbing the supreme honour of victim woman was done in war time situation by launching an organized and systematic attack by the Pakistani

occupation army being substantially endorsed, aided and abetted by the accused persons, their collaborators belonging to Razakar Bahini.

550. Tribunal reiterates that the act of accompanying the group of Pakistani army men the principal perpetrators, knowing forceable consequence unerringly suggests that encouragement, assistance and culpable contribution the accused persons provided to the army men was intended to accomplish the devastating sexual ravishment upon a woman, the victim under force and coercion, sharing common intent. Thus, accused (1) Sheikh Md. Abdul Majid alias Majit Moulana, (2) Md. Abdul Khalek Talukder and (3) Md. Kabir Khan incurred liability even for the actual commission of crime for which they have been arraigned in charge no.07. This view finds support from the observation made by the **ICTR** in the case of **Rutaganda** which is as below:

“[T]he Accused may . . . be held criminally [responsible] for criminal acts committed by others if, for example, he planned such acts, instigated another to commit them, ordered that they be committed or aided and abetted another in the commission of such acts.”
[Rutaganda, (Trial Chamber), December 6, 1999, para. 35

551. In view of above we are convinced to conclude that the accused persons too, as ‘participants’ were involved in ‘committing’ the act of ‘rape’ , by launching an organized attack, sharing common intent of the scheme. 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 Appeal Judgment, para. 196*]

552. In a case involving the offence under section 3(2) of the Act of 1973 hearsay evidence is admissible, if the same is found to have been corroborated by other evidence. It transpires that P.W.05 heard the event from his mother [mother-in-law of victim], one of inmates of victim’s family. Testimony of P.W.05 gets corroboration from the narrative made by other witnesses to the facts materially

related to the commission of the principal crime that the victim became unconscious due to beastly violence caused to her and just after the event she was treated by a local village doctor. It remained unshaken. This fact mirrors the extent of brutality caused upon the victim.

553. Victim P.W.02 who is a ‘war heroine’ indeed without paying heed to the social ostracism came to Tribunal to narrate the trauma she sustained and what she had to sacrifice to the gang of beasts. The wound and scar she sustained shall never heal.

554. In this regard we reiterate the observation rendered in the case of **Esahaque Shikder and four others** that—

“The effects of rape as a weapon of war do not cease, once the rape is over, or once the physical wounds are healed. The wounds of rape never heal, and they leave permanent scar on victims, their families, communities, nations and even the humanity too.”[**ICT-1 Judgment 13 August 2018; Md. Esahaque Shikder and four others para-387**]

555. The event happened in day time and when the male inmates of the family remained outside. The context pregnant of horrific climate of course did not allow the female inmates of the house under attack to resist or to make any counter effort to rescue the

victim despite the opportunity of seeing the army men and accused Razakars in accomplishing the prohibited criminal acts by launching attack at their house.

556. It is now well settled legal proposition that both positive acts and omissions may constitute instigation. Instigating entails 'prompting another to commit an offence'. It is to be noted that aiding and abetting may assume a variety of forms of assistance including even mere presence at the crime scene which encouraged the perpetrators or provides them support.

557. But the accused persons who belonged to locally formed Razakar Bahini, a para militia auxiliary force were with the gang at the crime site not as mere spectators. It has been found patently proved that the accused persons by their act directly intended to provoke and facilitate the commission of the crime. Their act and conduct explicitly aided and abetted the actual offenders the army men in committing rape upon a defenceless woman.

558. Additionally, it may be safely concluded too that such crime would not have occurred in the way happened without the active and substantial assistance and support the accused persons contributed directly and knowingly to the actual perpetrators. Mere putting suggestion which has been denied by the P.W.s that the accused were not Razakars and were not involved in committing

the event of attack does not go with the object of cross-examination. Thus, and in absence of any earthly reason mere denial of what has been testified by the witnesses does not diminish its value and credence

559. The Tribunal is satisfied that the accused persons carried out acts that consisted of practical assistance, encouragement or moral support to the army men the principal offenders of the crime, and that they did such culpable acts in their capacity as members of the Razakar Bahini, an auxiliary force created to collaborate with the Pakistani occupation army, to further its policy and plan.

560. Thus, act of accused persons formed part of attack that eventually resulted in causing forcible capture and mass sexual violation upon the victim at her own dwelling house. The accused persons despite being Bengali men drastically prompted and facilitated the principal offenders the army men to the accomplishment of the offence of mass sexual ravishment upon a vulnerable woman who just 21 days back gave birth of a baby.

561. War time sexual violence is often perpetrated by a group of attackers. Act of rape imprints an unending and life-long horror that continues to attack victim's cerebral entity. In the case in hand, it has been proved that on active and culpable contribution and facilitation of accused persons three army men committed rape

upon the victim P.W.02 and such monstrous prohibited deed was committed in day time by launching attack at victim's house.

562. The accused (1) Sheikh Md. Abdul Majid alias Majit Maulana (2) Md. Abdul Khalek Talukder and (3) Md. Kabir Khan in assisting and aiding the actual perpetrators the army men did not care to the prohibition against attacking civilians which stems from fundamental principle of distinction, which obliges warring parties to distinguish *at all times* between the civilian population and combatants, between civilian objects and military objectives.

563. Article 27 of the Fourth Geneva Convention holds that-- "women shall be specially protected against any attack on their honour, in particular against rape, enforced prostitution, or any form of indecent assault". In the case in hand, the gang of attackers formed of army men and accused persons who belonged to locally formed Razakar Bahini intentionally violating such prohibition deliberately carried out the attack when the act of rape was used as a 'weapon' and 'tactic'.

564. It is immaterial to argue that the accused persons did not take part physically in committing the offence of rape. Prosecution is not required to prove it. In order to prove an individual's liability in committing the offence of 'mass rape' as crime against humanity, it is sufficient to show that he was knowingly part of the culpable

scheme of the group of offenders and consciously assisted and abetted and aided them in perpetrating the actual offence. In the case in hand, 'substantial assistance' the accused persons, the members of the criminal enterprise provided to the army men in accomplishing the crime of grave sexual violation justifiably renders them equally responsible.

565. On totality of evidence as discussed above it has been found proved beyond reasonable doubt that the act of the accused (1) Sheikh Md. Abdul Majid alias Majit Moulana (2) Md. Abdul Khalek Talukder and (3) Md. Kabir Khan forming part of the 'attack' eventually resulted in committing the offence of 'mass rape' upon the victim Jomila Khatun @ Naeber Ma. It was indeed graver than a murder commission of which was substantially facilitated, aided and abetted by the accused persons.

566. Therefore, the accused (1) Sheikh Md. Abdul Majid alias Majit Moulana, (2) Md. Abdul Khalek Talukder and (3) Md. Kabir Khan are found criminally liable for participating, abetting, facilitating, aiding, contributing and complicity in the commission of offence of '**rape**' as '**crime against humanity**' as specified in section 3(2) of the Act of 1973 for which they are found to have incurred liability under section 4(1) of the Act of 1973.

X. Conclusion

567. The seven charges framed arose from some particular events occurred in the rural locality under Police Station-Purbodhola of the then Netrokona Sub-Division, in context of the War of Liberation in 1971. Out of six accused one Md. Abdur Rahman who had been in prison died at the stage of summing up and thus proceedings so far as it relates to him stood abated. The rest five accused have been absconding till inception and none of them could be arrested in execution of warrant and thus trial took place in absentee after compliance of settled procedure required under law, by appointing state defence counsel to defend them, at the cost of government.

568. 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.

569. We have already rendered reasoned find in the preceding deliberation that conscious and culpable act and conduct of accused persons---antecedent, contemporaneous and subsequent, as have been found---all point to their guilt and are well consistent with their 'complicity' and 'participation' in the commission of the crimes proved.

570. Through adjudication of indictment framed the accused persons have been found to have had conscious and culpable participation, substantial contribution and complicity in accomplishing the alleged crimes, by their acts and conduct forming part of systematic attack, in exercise of their potential membership in locally formed Razakar Bahini. Of five accused persons accused Sheikh Md. Abdul Majid @ Majit Moulana and Md. Abdul Khalek Talukder were the key architect of events of designed attacks arraigned in all the charges. Their social and educational profile and strong explicit stance with the pro-Pakistan political ideology in 1971 lead to this conclusion.

571. It is now undisputed fact of common knowledge that by forming Razakar Bahini an auxiliary squad was created in 1971 to collaborate with the Pakistani occupation army in perpetrating the criminal acts by launching systematic attack throughout the territory of Bangladesh directing civilian population and pro-liberation civilians, Hindu civilians in 1971.

572. But in the case in hand, it stands proved that excepting the events as arraigned in charge nos.01 and 07 the other events of attacks as arraigned in five other charges were designed and carried out by the group formed exclusively of Razakars belonging to locally formed Razakar Bahini and accused Sheikh Md. Abdul Majid @ Majit Moulana and Md. Abdul Khalek Talukder and their

cohort Razakar including the three other accused persons got culpably engaged in perpetrating the crimes arraigned in all those five charges, in addition to charge nos.01 and 07.

573. The accused persons and their cohort Razakars carried out such atrocious activities with objective of liquidating the pro-liberation civilians, freedom-fighters and Hindu civilians terming them 'agents of India', it has been found proved. Besides, this was the key purpose of forming such auxiliary squad of pro-Pakistan people.

574. In the case in hand it stands proved too that all the events of attacks as narrated in the charges framed happened in day time. Presumably, in the name of encountering the pro-liberation civilians and their stance in favour of 'freedom-fighters' the accused persons deliberately designed plan to attack, being imbued by the policy and plan of Pakistani occupation army and the atrocities they carried out around the localities under Purbodhola police station eventually ended in killing numerous unarmed civilians.

575. It is undisputed history that the Razakar Bahini , a para-militia force actively collaborated the occupation armed forces in accomplishing their barbaric atrocities directed against the unarmed Bengali civilians in the territory of Bangladesh in 1971. It stands

proved that the accused persons belonged to locally formed Razakar Bahini and had close affiliation with the Pakistani occupation army stationed at Purbodhola.

576. In the case in hand, all the offences proved were diabolical in nature for which the accused persons arraigned are found to have had contribution, complicity and participation. The prohibited acts constituting the offences as crimes against humanity proved were fraction of total portrayal of atrocities but not divisible from the horrendous atrocities committed in the territory of Bangladesh in 1971 during the war of liberation. It has now become an undisputed history.

577. The Tribunal already rendered its reasoned decision, on adjudication of all the 07 charges, holding all the five accused persons criminally liable under the doctrine of JCE [Basic Form] which corresponds to section 4(1) of the Act of 1973 for the commission of offences of crimes against humanity of which they have been arraigned and therefore they be convicted accordingly.

XI. VERDICT ON CONVICTION

578. For the reasoned findings based on rational evaluation of evidence rendered in our Judgment and having considered argument advanced, we **UNANIMOUSLY** find—

Three [03] accused (1) Sheikh Md. Abdul Majid alias Majit Moulana,(2) Md. Abdul Khalek Talukder and (3) Md. Kabir Khan-

Charge No.1:GUILTY of participating’ , ‘aiding’, ‘substantially contributing’ to the actual commission of the killing and causing trauma to the relatives of victims constituting the offences of ‘**murder**’ and ‘**other inhumane act**’ as crimes against humanity enumerated in section 3(2)(a)(g)(h) of the Act of 1973 and thus they 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.

Two [02] accused (1) Sheikh Md. Abdul Majid alias Majit Moulana, and (2) Md. Abdul Khalek Talukder-

Charge No.02: GUILTY of ‘participating’, ‘abetting’ and ‘substantially contributing’ to the accomplishment of ‘**abduction**’, ‘**confinement**’ and ‘**torture**’ as crimes against humanity as enumerated in section 3(2)(a)(g)(h) of the Act of 1973 and thus they 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.

Two[02] accused (1) Sheikh Md. Abdul Majid alias Majit Moulana, and (2) Md. Abdul Khalek Talukder-

Charge No.03:GUILTY of participating, ‘aiding’ and ‘substantially contributing by their conscious and culpable act and conduct forming part of systematic attack in accomplishing the offences of ‘**abduction; confinement**’ ‘**murder**’ and ‘**other inhumane act**’ as crimes against humanity as enumerated in section

3(2)(a)(g)(h) of the Act of 1973 and thus they 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.

Four [04] accused (1) Sheikh Md. Abdul Majid alias Majit Moulana (2) Md. Abdul Khalek Talukder (3) Abdus Salam Beg and (4) Md. Nur Uddin alias Raddin-

Charge No.04:GUILTY of substantially abetting, participating, contributing, facilitating and for complicity in 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 Act of 1973 and thus they 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.

Five [05] accused (1) Sheikh Md. Abdul Majid @ Majit Moulana (2) Md. Abdul Khalek Talukder ,(3) Md. Kabir Khan (4) Abdus Salam Beg, and (5) Md. Nur Uddin @ Raddin-

Charge No.05:GUILTY of substantially abetting, participating, contributing, facilitating and for complicity in 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 Act of 1973 and thus they 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.

Five [05] accused (1) Sheikh Md. Abdul Majid @ Majit Moulana (2) Md. Abdul Khalek Talukder ,(3) Md. Kabir Khan (4) Abdus Salam Beg, and (5) Md. Nur Uddin @ Raddin-

Charge No.06:GUILTY of substantially abetting, participating, contributing, facilitating and for complicity in 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 Act of 1973 and thus they 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.

AND

Three [03] accused (1) Sheikh Md. Abdul Majid alias Majit Moulana , (2) Md. Abdul Khalek, and (3) Md. Kabir Khan-

Charge No.07:GUILTY of participating, abetting, facilitating, aiding, contributing and complicity in the commission of offence of ‘**rape**’ as crime 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 and thus they 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

XII. Verdict on Sentencing

579. Mr. Mokhlesur Rahman Badal, the learned prosecutor submitted that the crimes committed in the locality under police station-Purbodhola of District [now]-Netrokona in 1971 during the war of liberation were of the gravest nature, in terms of the extent of harm and torment the victims sustained. The accused persons should face the highest sentence, as they are proved to have abetted,

facilitated and participated to the commission of barbaric criminal acts constituting the offence of crimes against humanity.

580. The learned Prosecutor also submits that overall magnitude of the crimes proved leaves no room to award sentence other than the maximum punishment. The horrific pattern and extent of the crimes and mode of deliberate participation of accused persons therewith deserve to be taken into account as aggravating factors in awarding sentence and only the highest sentence would be just and appropriate to punish those for which the accused persons have been found guilty beyond reasonable doubt.

581. Conversely, the learned state defence counsel defending all the five absconding accused **Mr. Gaji M.H Tamim** submitted that the accused persons have been prosecuted out of local political rivalry and none of them was engaged in committing any of offences of which they have been arraigned and since prosecution failed to establish the charges brought they deserve acquittal.

582. At the outset we reiterate that the goal of awarding sentencing is to ensure that the sentence to be awarded must reflect the inherent gravity of the accused's criminal conduct. The sentence to be awarded must be proportionate to the seriousness of the offence and mode of participation of the offenders who have been found guilty. In assessing the gravity of the crime we are to eye on facts

relevant to its commission, the harm and injury inflicted to the victims, the public abhorrence of the crime and society's cry for justice.

583. We reiterate that commission of offences as specified in the Act of 1973 itself portrays enormity, gravity and diabolical nature of the crimes. It has been found too that accused persons were the men of extreme notoriety around the localities of the Purbodhola Thana and they were consciously engaged in carrying out atrocious activities in violation of international humanitarian law.

584. In awarding sentence, the Tribunal, must eye on the nature, seriousness and extent of the offences committed, their scale, the role the convicted accused had played and mode of his participation to the perpetration of the crimes proved. What factors need to be considered in awarding sentence? In this regard the Appellate Division of Bangladesh Supreme Court in the Criminal Review Petition No. 62 of 2015 [**Ali Ahsan Muhammad Mujahid case**]observed that Lord Justice Denning, Master of the Rolls of the Court of Appeal in England, appearing before the British Royal Commission on Capital Punishment, stated his views on this point as under:

“Punishment is the way in which society expresses its denunciation of wrong- doing; and in order to maintain respect for law; it is

essential that the punishment inflicted for grave crimes should adequately reflect the revulsion felt by the great majority of citizens for them. It is a mistake to consider the objects of punishment as being deterrent or reformatory or preventive and nothing else-----The truth is that some crimes are so outrageous that society insists on adequate punishment, because the wrong doer deserves it, irrespective of whether it is a deterrent or not". [**Appellate Division, Criminal Review Petition No.62, Judgment, 18 November 2015, page- 21]**

585. The key point for the consideration of sentence to be awarded is thus the gravity and magnitude of the offences proved. In the case in hand, the accused persons have been convicted of numerous offences as 'crimes against humanity' which are indisputably barbaric in nature. The crimes proved were not isolated crimes. These were 'system crimes' or 'group crimes' which were committed in 1971 during the war of liberation directing non-combatant civilians, in violation of international humanitarian law and laws of war.

586. Thus, awarding sentence must commensurate to severity and level of barbarity of crimes proved to which the convicted accused persons consciously participated, aided, abetted and substantially contributed. In this regard we recall the observation made by the

Appellate Division of Bangladesh Supreme Court in the **Nizami Appeal Judgment** which is as below:

“It is the solemn duty of the courts to award proper sentence commensurate with the gravity of the crimes. In appropriate lesser sentence causes injustice not only to the victims of crimes but sometimes to the whole society” [**Nizami Appeal Judgment, p.152**]

587. It appears that out of seven events of attack arraigned five were carried out by the gang formed exclusively of Razakars including the accused persons belonging to locally formed Razakar Bahini. In committing the crimes arraigned in charge nos. 01 and 07 the convicted accused persons and their cohorts accompanied the Pakistani occupation army stationed at Purbodhola.

588. It may be legitimately inferred that policy and plan of the Pakistani occupation army made the local Razakars and the accused persons affiliated with locally formed Razakar Bahini extremely aggressive which imbued them in carrying out systematic and designed attacks directing pro-liberation civilians around the localities under police station-Purbodhola of District [now]-Netrokona even without any explicit direction on part of the Pakistani occupation army.

589. The above is the apparent portrayal of intense notoriety of Razakar Bahini directing the civilians in 1971 during the war of liberation. Despite being Bengali the accused persons opted to remain engaged with barbaric and monstrous acts, in exercise of their membership in said *para militia* auxiliary force.

590. All the five convicted accused persons have been found equally responsible for the offences proved of which they have been tried. The facts, circumstances and pattern of the attack, as found proved lead to infer it lawfully that all the convicted accused persons got themselves consciously engaged being agreed to carry out the criminal acts to further common purpose and they did it pursuant to designed and deliberate plan of the criminal scheme.

591. It has been proved that just two days after the army men got stationed at Purbodhola the three convicted accused (1) Sheikh Md. Abdul Majid alias Majit Moulana, (2) Md. Abdul Khalek Talukder, (3) Md. Kabir Khan accompanied a group of army men in launching attack that ended in killing three [03] Hindu civilians including Dr. Hem Bagchi and looting households at his house [**as arraigned in charge no.01**].

592. The event [**as arraigned in charge no.01**] created horror and coercion which forced the relatives of victims and numerous Hindu civilians of the crime locality to deport to India. The accused

persons knowing consequence accompanied the gang at the crime site. Intention was to facilitate the principal perpetrators in accomplishing annihilation of the targeted Hindu civilians. Thus, the convicted accused persons incurred liability of facilitating, aiding and contributing to the commission of the killing, the upshot of the attack although they did not physically participate in committing the crime.

593. The arraignment brought in **charge no.02** involved unlawful capture of a pro-liberation civilian and causing inhumane torture in captivity at Jaria bazaar Razakar camp at Purbodhola. It has been proved that a group formed of local Razakars and the two convicted accused (1) Sheikh Md. Abdul Majid alias Majit Moulana and (2) Md. Abdul Khalek Talukder had carried out the attack. Participation of accused persons in accomplishing forcible capture of the victim Abdul Gani has been proved. Intention was to spread terror and coercion amongst the pro-liberation civilians. The convicted accused persons' act and nexus with the Razakar camp indisputably proves that they substantially facilitated and aided the act of inflicting brutal torture to the detained victim which was gravely detrimental to recognized human rights.

594. The offence arraigned in **charge no.03** involves the unlawful detention of the younger brother of two freedom-fighters. Intending to extract information about the freedom-fighters the convicted

accused persons and their accomplices inflicted brutal torture to victim in captivity at Purbodhola Razakar camp, it has been proved. The two convicted accused (1) Sheikh Md. Abdul Majid alias Majit Moulana (2) Md. Abdul Khalek Talukder are found to have had participation to the criminal acts forming part of attack. The attack was designed by the local Razakars including the convicted accused persons. The attack resulted in killing of single individual, true. But the pattern of attack and aggression indisputably enhanced magnitude of the crimes committed by the accused persons convicted in this charge.

595. Four convicted accused are found to have had participation, facilitation and substantial contribution to the commission of killing of a non-combatant civilian the father of a freedom-fighter after taking him away to Razakar camp on forcible capture[**as arraigned in charge no.04**]. The attack was the reflection of intense antagonism which deserves to be taken into account as an aggravating factor.

596. The events of attack as arraigned in **charge nos. 05** also involves the unlawful detention of four pro-liberation civilians of whom two were brutally gunned down to death after keeping them in captivity at Purbodhola Razakar camp and two other detainees somehow got survived . All the five convicted accused and their

cohorts are found to have participated in carrying out criminal acts at all phases of the systematic attack.

597. All the five accused persons pursuant to premeditated design and plan wipe out one pro-liberation civilian after taking him to Razakar camp on forcible capture[**as arraigned in charge no.06**]. An appeal to secure victim's release was blatantly defied terming the detainee an agent of India. Not only that three days later son and relative of victim too were forcibly captured and were subjected to brutal torture in captivity that resulted in hearing and speech impairment of one victim.

598. All the victims of the events [**as arraigned in charge nos. 03, 04, 05 and 06**] were the followers of the war of liberation and used to provide patronage to the freedom-fighters secretly, we have found it proved. The convicted accused persons engaged in committing the crime of murder of numerous civilians, as listed in these charges indisputably contravened the basic rule of international humanitarian law. They committed the crimes in a depraved manner by forcibly capturing and subjecting the victims to deliberate and systematic infliction of severe pain, before they were brutally wiped out.

599. The convicted accused persons had acted collectively as a 'pack of wolves' with vicious aggression in perpetrating these

crimes [as arraigned in charge nos. 03, 04,05 and 06]. The relatives of the victims endured extremely tragic experience. The entirety of the event of attacks as listed in these four charges was the upshot of grave aggressive attitude of convicted accused persons to the pro-liberation civilians which aggravates the magnitude of the crimes proved.

600. **Charge no.07** relates to commission of 'rape'. War time sexual violence is often perpetrated by a group of attackers. In the case in hand, it has been proved that the Pakistani occupation army men were the actual perpetrators. The three convicted accused 1) Sheikh Md. Abdul Majid alias Majit Moulana (2) Md. Abdul Khalek Talukder and (3) Md. Kabir Khan substantially facilitated and contributed to the commission of such grave harm to the supreme worth of a defenceless woman. Such monstrous prohibited deed was committed in day time by launching attack at victim's house.

601. Sexual violation committed upon the victim was used as a way and weapon to instill grave fear not only to victim but to her community or the population of the crime locality as well. The extremely tragic experience the victim and her relatives testified before the Tribunal indisputably increases the gravity of the barbaric offence committed as listed in charge no.07

602. Tribunal notes that rape committed in war time is rather a tactic of war to dehumanize and instill terror in civilians and also intends to destabilize the community. Rape thus not only devastates victim's supreme worth but it stamps extreme trauma and stigma to victim which she carries till rest of her life. It shocks the humankind too. When rape is used as a weapon instead of a bullet, the weapon continues to exert its effect beyond the primary victim and it eventually outrages the civility.

603. The convicted accused persons, being part of the criminal enterprise knowingly and consciously contributed and assisted the army men in accomplishing the offence of rape. Victim's sacrifice added a lot to the war of liberation and thus she deserves appropriate recognition and honour which may reduce her trauma and pain.

604. It is now settled that 'rape' committed in war time is rather a tactic of war to dehumanize and instill terror and intimidation in civilians and also intends to destabilize the community. Rape not only destroys victim's supreme worth but it stamps extreme trauma and stigma to victim which she carries till rest of her life. Thus, the horrific criminal act done to victim P.W.02 constituting the offence of rape was graver than 'murder'. The three convicted accused (1) Sheikh Md. Abdul Majid alias Majit Moulana (2) Md. Abdul

Khalek Talukder and (3) Md. Kabir Khan must deserve just and just punishment for their horrific criminal acts proved.

605. The victims of the vicious atrocities constituting the offences as crimes against humanity as found proved in this case form fraction of three millions martyrs. The nation is 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 glowing tribute and salute to them for the sacrifice they laid, particularly in this historic month of March and they always deserve due gratitude and honour.

606. It appears that the convicted accused (1) Sheikh Md. Abdul Majid alias Majit Moulana (2) Md. Abdul Khalek Talukder, in exercise of their significant *de facto* dominance over the locally formed Razakar Bahini and forming gang of their cohort Razakars carried out criminal acts directing civilian population with conscious knowledge about the consequences thereof.

607. All the convicted accused persons have been absconding since initiation of the trial. They could not be arrested in execution of warrant issued by Tribunal and they even did not opt to surrender in response to the notification published as required under law, to face the accusation. Presumably, they are on the run to evade

responsibility of offences perpetrated by them and such conduct increases their culpability. In this regard **Tribunal-2[ICT-2]** in the case of **Moulana Abul Kalam Azad @ Abul Kalam Azad @ Bachchu** observed that--

“[I]t is abundantly clear that the accused absconded to evade the process of justice. Had the accused was not involved in the crime he would have certainly prepared to face the trial.The accused cannot be considered merely as an absentee accused. He is an absconded accused. Evading trial for the offences of which he has been charged with signifies his culpability too. The accused deliberately waived his right to be present at trial. This conduct adds further to his culpability.”[**Azad Judgment, ICT-2, p.330**]

608. Thus, trial in absentia does not create any new mode of criminal responsibility, true. But however, the act of absconding does have an effect in aggravating the liability of accused persons for committing the crimes charged and enumerated in the Act of 1973.

609. Additionally, such act of absconding is considered to be relevant even in proving the arraignments brought and also negates alleged subsequent allegiance of any of accused persons to the pro-liberation political ideology, if any. Besides, subsequent act or

facade allegiance to a pro-liberation political party, if any is rather intended to hide liability of committing horrendous deeds in 1971 during the war of liberation and it does not make an accused absolved of liability.

610. 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. 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.

611. In view of reasoned discussion made herein above and considering the nature and proportion to the gravity of offences and also keeping the factors as discussed 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 crimes proved is condemned and sentenced as below, under the provision of section 20(2) of the Act of 1973:

**Hence it is
ORDERED**

That the three[03] accused—(1) Sheikh Md. Abdul Majid alias Majit Moulana , son of late Miraj Ali and late Liazer Maa of

Village Purbo Maudam, Police Station Purbodhola, District-Netrokona, (2) Md. Abdul Khalek Talukder, son of late Rustom Ali Talukder and late Sundarunesa of Village-Kharchail, Police Station-Purbodhola, District- Netrokona and (3) Md. Kabir Khan, son of late Sadar Khan and late Amena Khatun of Village-Nayapara [Thana Road], Police Station-Purbodhola, District-Netrokona are held guilty of offences of **‘murder’** and **‘other inhumane act’** as crimes against humanity **as listed in charge No. 01** as enumerated in section 3(2)(a)(g)(h) of the International Crimes (Tribunals) Act, 1973 and they be convicted accordingly and sentenced there under to suffer **‘imprisonment for life till normal death’** under section 20(2) of the said Act.

Two [02] accused (1) Sheikh Md. Abdul Majid alias Majit Moulana, and (2) Md. Abdul Khalek Talukder are found guilty of the offences of ‘abduction’, **‘confinement’** and **‘torture’** **as listed in charge No. 02** as crime against humanity as enumerated in section 3(2)(a)(g)(h) of the International Crimes (Tribunals) Act, **and they** be convicted accordingly and sentenced there under to suffer **‘imprisonment for ten[10] years’**.

Two[02] accused (1) Sheikh Md. Abdul Majid alias Majit Moulana and (2) Md. Abdul Khalek Talukder are found guilty of the offences of **‘abduction; confinement’** **‘murder’** and **‘other inhumane act’** **as listed in charge No. 03** as enumerated in section

3(2)(a)(g)(h) of the International Crimes (Tribunals) Act, 1973 and they be convicted and **‘sentenced to death’** and accordingly they be hanged by the neck till they are dead, under section 20(2) of the International Crimes (Tribunals) Act, 1973.

Four [04] accused (1) Sheikh Md. Abdul Majid alias Majit Moulana (2) Md. Abdul Khalek Talukder (3) Abdus Salam Beg, son of Akram Ali Beg and late Liazer Maa of Village-Purbo Moudam, Police Station-Purbodhola, District- Netrokona and (4) Md. Nur Uddin alias Raddin, son of late Rajab Ali alias Lengra Abon and late Mewajan of Village-Purbo Moudam, Police Station-Purbodhola, District-Netrokona are found guilty of the offences of **‘abduction’, ‘confinement’, ‘torture’ and ‘murder’ as listed in charge No. 04** as enumerated in section 3(2)(a)(g)(h) of the International Crimes (Tribunals) Act, 1973 and they be convicted and **‘sentenced to death’** and accordingly they be hanged by the neck till they are dead, under section 20(2) of the International Crimes (Tribunals) Act, 1973.

Five [05] accused (1) Sheikh Md. Abdul Majid @ Majit Moulana (2) Md. Abdul Khalek Talukder (3) Md. Kabir Khan (4) Abdus Salam Beg, and (5) Md. Nur Uddin @ Raddin are found guilty of the offences of **‘abduction’, ‘confinement’, ‘torture’ and ‘murder’ as listed in charge No. 05** as enumerated in section 3(2)(a)(g)(h) of the International Crimes (Tribunals) Act, 1973 and

they be convicted and **‘sentenced to death’** and accordingly they be hanged by the neck till they are dead, under section 20(2) of the International Crimes (Tribunals) Act, 1973.

Five [05] accused (1) Sheikh Md. Abdul Majid @ Majit Moulana (2) Md. Abdul Khalek Talukder ,(3) Md. Kabir Khan (4) Abdus Salam Beg and (5) Md. Nur Uddin @ Raddin are found guilty of the offences of **‘abduction’, ‘confinement’, ‘torture’** and **‘murder’ as listed in charge No. 06** as enumerated in section 3(2)(a)(g)(h) of the International Crimes (Tribunals) Act, 1973 and they be convicted and **‘sentenced to death’** and accordingly they be hanged by the neck till they are dead, under section 20(2) of the International Crimes (Tribunals) Act, 1973.**AND**

Three[03] accused (1) Sheikh Md. Abdul Majid alias Majit Moulana , (2) Md. Abdul Khalek, and (3) Md. Kabir Khan are found guilty of the offences of **‘rape’ as listed in charge No. 07** as enumerated in section 3(2)(a)(g)(h) of the International Crimes (Tribunals) Act, 1973 and they be convicted and **‘sentenced to death’** and accordingly they be hanged by the neck till they are dead, under section 20(2) of the International Crimes (Tribunals) Act, 1973.

However, as the convict accused persons have been condemned to **‘sentences of death’**, as above, the **‘sentence of imprisonment for life’** awarded in respect of **charge no. 1** and sentence of **‘imprisonment for ten [10] years’** awarded in respect of **charge no.02** will get merged into the **‘sentences of death’** as awarded above. The **‘sentence of imprisonment for life’** awarded as above in respect of **charge no.01** and sentence of **‘imprisonment for ten [10] years’** in respect of **charge no.02** shall be carried out under section 20(3) of the Act of 1973.

The sentence of imprisonment for life awarded shall commence from the date of this judgment as required under Rule 46(2) of the Rules of Procedure, 2010(ROP) of the Tribunal-1[ICT-1].

Since the five [05] 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.

The convicts are at liberty to prefer appeal before the Appellate Division of the Supreme Court of Bangladesh against their conviction and sentence within 30 [thirty] days of the date of order of conviction and sentence as per provisions of section 21 of the International Crimes (Tribunals) Act, 1973.

Issue conviction warrant against the convicted accused **(1) Sheikh Md. Abdul Majid @ Majit Moulana [absconding]** **(2) Md. Abdul Khalek Talukder[absconding]**, **(3) Md. Kabir Khan[absconding]** , **(4) Abdus Salam Beg[absconding]** and **(5) Md. Nur Uddin @ Raddin[absconding]**.

The Secretary, Ministry of Home Affairs and the Inspector General of Police [IGP] are hereby directed to initiate effective and appropriate measure for ensuring the apprehension of the convict absconding accused persons.

Let certified copy of this judgment be provided to the prosecution.

If the absconding convict accused persons are arrested or surrender within 30[thirty] days of the date of order of conviction and sentence they will be provided with certified copy of this judgment free of cost.

Let a copy of this judgment together with the conviction warrant of the convicted accused persons be sent to the **District Magistrate, Dhaka** for information and necessary action.

Justice Md. Shahinur Islam, Chairman

Justice Amir Hossain, Member

Justice Md. Abu Ahmed Jamadar, Member