

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

**ICT-BD Case No.02 OF 2014**

[Charges:- Crimes against Humanity, genocide, abetment and complicity in committing such crimes as specified in section 3(2)(a)(c)(g)(h) read with section 4(1) of the Act No. XIX of 1973]

**The Chief Prosecutor  
Versus  
Syed Md. Hachhan alias Syed Md. Hasan alias Hachhen Ali**

**Present:**

**Mr. Justice M. Enayetur Rahim, Chairman  
Mr. Justice Jahangir Hossain, Member  
Mr. Justice Anwarul Haque, Member**

**Date of delivery of Judgment on 09 June,2015.**

**Prosecutors:**

Mr. Golam Arief Tipoo, Chief Prosecutor

Mr. Mohammad Ali

Mr. Abul Kalam

Mr. Md. Mukhlesur Rahman

Mr. Altaf Uddin Ahmed

Mr. Abdur Rahman Howlader

Mr. Syed Saydul Haque

Mr. Sheikh Mosfeq Kabir

**State Defence counsel:**

Mr. Md. Abdus Shukur Khan

**Judgment**

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

**I. Introductory Words**

01. Accused Syed Md. Hachhen alias Syed Md. Hasan alias Hachhen Ali, son of late Syed Muslehuddin and late Syeda Fatima Banu of village Machhahata (Peer Bari), Police Station and District Brahmanbaria has been put on trial before this Tribunal in absentia at the instance of the Chief Prosecutor to answer charges under section 3(2)(a)(c)(g)(h) read with section 4(1) of the International Crimes (Tribunals) Act, 1973.

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

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

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

*"(1) A Tribunal shall have the power to try and punish any individual or group of individuals, or organisation or any member of any armed, defence or auxiliary forces, irrespective of his nationality, who commits or has committed, in the territory of Bangladesh , whether before or after the commencement of this Act, any of the crimes mentioned in sub-section(2).*

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

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

- (b) *Crimes against Peace: namely, planning, preparation, initiation or waging of a war of aggression or a war in violation of international treaties, agreements or assurances;*
- (c) *Genocide: meaning and including any of the following acts committed with intent to destroy, in whole or in part, a national, ethnic, racial, religious or political group, such as:*
- (i) *killing members of the group;*
  - (ii) *causing serious bodily or mental harm to members of the group;*
  - (iii) *deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;*
  - (iv) *imposing measures intended to prevent births within the group;*
  - (v) *forcibly transferring children of the group to another group;*
- (d) *War Crimes: namely, violation of laws or customs of war which include but are not limited to murder, ill-treatment or deportation to slave labour or for any other purpose of civilian population in the territory of Bangladesh; murder or ill-treatment of prisoners of war or persons on the seas, killing of hostages and detenues, plunder of public or private property, wanton destruction of cities, towns or villages, or devastation not justified by military necessity;*
- (e) *violation of any humanitarian rules applicable in armed conflicts laid down in the Geneva Conventions of 1949;*

- (f) *any other crimes under international law;*
- (g) *attempt, abetment or conspiracy to commit any such crimes;*
- (h) *complicity in or failure to prevent commission of any such crimes."*

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

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

### **III. Consistency of the Act of 1973 with other Statutes on international crimes**

05. We have already quoted section 3 of International Crimes (Tribunals) Act, 1973 where jurisdictions of the Tribunal and crimes have been stated. Now let us see the jurisdiction of the other International Tribunals and definition of crimes against Humanity provided in other statutes on International crimes.

#### **Article-7 of the Rome Statute**

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

- (a) Murder; (b) Extermination; (c) Enslavement; (d) Deportation or forcible transfer of population; (e) Imprisonment or other severe

deprivation of physical liberty in violation of fundamental rules of international law; (f) Torture; (g) Rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, or any other form of sexual violence of comparable gravity; (h) Persecution against any identifiable group or collectivity on political, racial, national, ethnic, cultural, religious, gender as defined in paragraph 3, or other grounds that are universally recognized as impermissible under international law, in connection with any act referred to in this paragraph or any crime within the jurisdiction of the Court; (i) Enforced disappearance of persons; (j) The crime of apartheid; (k) Other inhumane acts of a similar character intentionally causing great suffering, or serious injury to body or to mental or physical health.

### **Article 3 of the ICTR**

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

### **Article 5 of the ICTY**

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

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

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

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

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

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

11. In view of the above observation of the Appellate Division it is now well settled that in our jurisdiction for constituting the offence of crimes against

Humanity the element 'the attack must be widespread and systematic against civilian population' is not at all necessary or mandatory.

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

13. As per section 3(2) of the ICT Act of 1973 to constitute an offence of crimes of humanity the element of attack directed against any civilian population is required. The "*population*" element is intended to imply crimes of a collective nature and thus exclude single or isolated acts. Thus, the emphasis is not on the individual victim but rather on the collective, the individual being victimized not because of his individual attributes but rather because of his membership of a targeted civilian population. This has been interpreted to mean that the acts must occur on a large scale basis [widespread] or, that there must be some form of a governmental, organizational or group policy to commit these acts [systematic, targeted] and that the perpetrator must know the context within which his actions are taken [knowledge and intent], and finally that attack must be committed on discriminatory grounds in case of persecution.

14. The attack must be directed against any civilian population. The term "*civilian population*" must be interpreted broadly and refers to a population that is predominantly civilian in nature. A population may qualify as "*civilian*" even if non-civilians are among it, as long as it is predominantly

civilian. The presence within a population of members of armed resistance groups, or former combatants, who have laid down their arms, does not as such alter its civilian nature.

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

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

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

it as per rule-34(3) of the ROP of 2010. The Tribunal may, as and when necessary, direct the concerned authorities of the Government to ensure protection, privacy, and well-being of the witnesses and victims as per rule 58 A of the ROP of 2010.

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

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

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

20. Before going into discussion and evaluation of the evidence on record, it is needed to be mentioned here that the Tribunal has already resolved

some common legal issues agitated by the defence in the following cases of the Chief Prosecutor vs. Delwar Hossain Sayeedi [ICT-BD Case No. 01/2011], The Chief Prosecutor Vs. Professor Ghulam Azam [ICT-BD case No. 06/2011], the Chief Prosecutor Vs. Salauddin Quader Chowdhury [ICT-BD Case No. 02/2011] and the Chief Prosecutor Vs. Motiur Rahman Nizami [ICT-BD Case No.03 of 2011]. Apart from this, the Appellate Division of our Supreme Court in the cases of Abdul Quader Mollah Vs Government of Bangladesh and Bangladesh Vs Abdul Quader Mollah has also decided the legal issues involved in the cases under the Act of 1973.

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

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

challenge to be void or unlawful or even to have become void or unlawful in view of the provisions of Article 47(3) of our Constitution;

- viii. the clemency given to the admitted prisoners of War, pursuant to the tripartite agreement of 1974, in no way, either match the Act of 1973 or any of its provisions ineffective, invalid or void;
- ix. mere failure of the successive governments to act in accordance with the Act of 1973 for last more than forty years, in no way, gave any right to the accused to be exonerated from being tried for the commission of crimes against Humanity as mentioned in section 3(2) of the Act;
- x. in the Act of 1973, no limitation has been prescribed for initiating proceedings against any individual or group of individual or organization or any member of any armed, defence or auxiliary forces irrespective of his nationality for the commission of crimes mentioned in section 3(2) of the Act of 1973;
- xi. the Collaborators Order 1972 was a different legislation aiming to prosecute the persons for the offences punishable under the Penal Code, were scheduled in the Collaborators order 1972, while the Act of 1973 has been enacted to prosecute and try the persons for crimes against Humanity, genocide and other crimes committed in violation of customary international law [CIL] and as such there is no scope to characterize the offences indulging in the Collaborators Order 1972 to be the same offences as specified in the Act of 1973;
- xii. the Act of 1973 is a codified law, thus, it is not needed to travel to seek assistance from other trials held or being held by the tribunals/ courts either under the charter of agreements of the nations or under other arrangements under the mandate of United Nations or other International body, such as Nuremburg trial and the Balkan trials.

## **VI. Historical Backdrop and Context**

21. In August, 1947 the partition of British India based on two-nation theory, gave birth to two new states, one a secular state named India and the

other the Islamic Republic of Pakistan of which the western zone was eventually named as West Pakistan and the eastern zone as East Pakistan, which is now Bangladesh.

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

23. In the general election of 1970, the Awami League under the leadership of Bangabandhu Sheikh Mujibur Rahman became the majority party of Pakistan. Despite this overwhelming majority, Pakistan government did not hand over power to the leader of the majority party as democratic norms required. As a result, movement started in this part of Pakistan and Bangabandhu Sheikh Mujibur Rahman in his historic speech of 7 March, 1971, called on the Bangalee people of the eastern zone to strive for independence if people's verdict would not be respected and power was not handed over to the leader of the majority party. On 26 March, 1971 following the onslaught of "**Operation Search Light**" by the Pakistani Military on 25 March, Bangabandhu Sheikh Mujibur Rahman declared Bangladesh independent immediately before he was arrested by the Pakistani army.

24. In the War of Liberation that ensued, all people of East Pakistan wholeheartedly supported and participated in the call to free Bangladesh but a small number of Bangalees, Biharis, other pro-Pakistanis, as well as members of a number of different religion-based political parties joined and/or collaborated with the Pakistan military to actively oppose the creation of independent Bangladesh and most of them committed and facilitated the commission of atrocities in the territory of Bangladesh. As a result, 3 million [thirty lakh] people were killed, more than [two lakh] women raped, about 10

million [one crore] people deported to India as refugees and million others were internally displaced. It also experienced unprecedented destruction of properties all over Bangladesh.

25. The Pakistan government and the military with the help of some pro-Pakistani leaders set up a number of auxiliary forces such as the Razakar Bahini, the Al-Badr Bahini, the Al-Shams, the Peace Committee etc, essentially to collaborate with the military in identifying and eliminating all those who were perceived to be sympathized with the liberation of Bangladesh, individuals belonging to minority religious groups especially the Hindus, political groups belonging to Awami League and other pro-Independence political parties, Bangalee intellectuals and civilian population of Bangladesh. Undeniably the road to freedom for the people of Bangladesh was arduous and torturous, smeared with blood, toil and sacrifices. In the contemporary world history, perhaps no nation paid as dearly as the Bangalees did for their emancipation.

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

## **VII. Brief Account of accused Syed Md. Hachhan alias Syed Md. Hasan alias Hachhen Ali**

27. Accused Syed Md. Hachhan alias Syed Md. Hasan alias Hachhen Ali, son of late Syed Muslehuddin and late Syeda Fatima Banu of village Machhahata [Peer Bari], Police Station and District Brahmanbaria was born on 18.08.1947. His father late Syed Muslehuddin was the Vice-President of Pakistan Democratic Party [PDP] and also the Chairman of Peace committee of the then Kishoreganj Sub-Division in 1971 during the Liberation War. Father of the accused Syed Muslehuddin having established a 'Madrasa' at Kishoreganj long before the Liberation War became its principal and he resided at Kishoreganj with his family members. During the Liberation War in 1971 the accused joined the Razakar Bahini, an auxiliary force of Pakistani occupation army, and he introduced himself as the Tarail Thana commander of Razakar Bahini and 'Daroga' [Police Officer] and being a potential member of Razakar Bahini committed the offences of genocide and crimes against Humanity in 1971 in different areas under the Tarail Police Station.

## **VIII. Procedural History**

28. Upon hearing an application filed by the learned Chief Prosecutor, the Tribunal by its order dated 03.04.2014 issued warrant of arrest against accused Syed Md. Hachhen alias Syed Md. Hasan alias Hachhen Ali. But the law enforcing agencies have failed to secure his arrest. In the meantime the learned Chief Prosecutor submitted formal charges under section 9(1) of the Act of 1973 in the Tribunal on 24.08.2014 on the basis of investigation report of the Investigation Agency. It has been alleged in the formal charges that during the War of Liberation in 1971, the accused as a local leader of Razakars committed crimes against Humanity, genocide including abetting, aiding, participating and providing moral support to commit such crimes in different places of Tarail Police Station under the then Kishoregonj Sub-

Division. The Tribunal on 24.08.2014 on perusal of formal charges, statement of witnesses and the documents submitted by the prosecution, took cognizance of offences as specified in section 3(2) read with section 4(1) of the Act against the accused. The Tribunal by the same order directed the Registrar of the Tribunal to take necessary measures as per provision of Rule 31 of the Rules of Procedure, 2010. Accordingly, it was complied with as it appears from order No.2 dated 15.09.2014. As the accused did not turn up after publication of its proclamation of arrest in the two daily national news papers, the Tribunal by its order dated 15.09.2014 appointed Mr. Md. Abdus Shukur Khan, an Advocate of Bangladesh Supreme Court as State defence counsel to defend absconding accused Syed Md. Hachhan alias Syed Md. Hasan alias Hachhen Ali and fixed on 22.10.2014 for hearing on charges matter.

29. The prosecuton was then directed to furnish copies of formal charges and documents submitted therewith which it intends to rely upon for supplying the same to the learned State defence lawyer for preparation of the defence.

30. Mr. Mohammad Ali, Mr. Md. Moklesur Rahman and Mr. Abul Kalam, the learned prosecutors have made submissions in support of framing charges against the accused in the light of the formal charges together with statements of witnesses and documents submitted therewith. While Mr. Md. Abdus Shukur Khan, the learned State defence counsel by filing an application for discharge of the accused, made submissions in support of discharging the accused from the charges brought against him.

31. The Tribunal having rejected the application for discharge by its order dated 11.11.2014 framed as many as 06[six] charges against accused Syed Md. Hachhan alias Syed Md. Hasan @ Hachhen Ali.

**IX. Witnesses adduced by the parties**

32. The prosecution submitted a list of 40[forty] witnesses along with formal charges and documents. But at the time of the trial, the prosecution has examined in all 26 [twenty six] witnesses including the investigation officer. The prosecution has also adduced some documentary evidence which were duly marked as exhibit nos.1-6.

33. The learned State defence counsel has cross-examined all the prosecution witnesses but did not adduce any defence witness.

**X. Defence Case**

34. It is the defence case that accused Syed Md. Hachhan alias Syed Md. Hasan alias Hachhen Ali was neither a Razakar nor the commander of Tarail Thana Razakar Bahini in 1971 during the Liberation War. He never aided, abetted, facilitated or participated in any offence of crimes against Humanity or genocide as listed in the charges. The accused was/ is not an inhabitant of Tarail area or Kishoreganj district; but he is an inhabitant of different area that is of village Machhihata, Police Station and District under Brahmanbaria. The accused is a '*peer*' [saint], but he has been falsely implicated in the case by some interested quarters for victimization.

**XI. Burden of the Prosecution**

35. The prosecution, in the light of the charges framed, is burdened to prove (a) the commission of crimes narrated in charges, (b) mode of participation of the accused in committing the crimes for which he has been charged, (c) what was the status and role of the accused at the relevant time and how he had maintained association with the Pakistani occupation army and (d) the context of carrying out of alleged atrocious crimes directed against civilian population and a particular group of population. In determining culpability of the accused prosecution is to establish too that (1) the perpetrator must know of the broader context in which the act

committed and (2) the act must not have been carried out for purely personal motives of the perpetrator.

## **XII. Points to be determined**

36. In determining culpability of the accused for the perpetration of offences with which he has been charged we are to adjudicate the fundamental issues such as:

- (i) whether the accused was a potential leader of Razakar Bahini of Tarail Police Station in 1971 during the Liberation War;
- (ii) whether the accused was substantially associated with Pakistani army and his activities were for facilitating the commission of offences;
- (iii) whether the accused physically participated in the commission of crimes as alleged; and
- (iv) whether the allegations against the accused constitute a serious case of 'crimes against Humanity' and 'genocide'.

## **XIII. Whether the accused can be prosecuted without prosecuting his accomplices**

37. According to the charges it is revealed that some armed Razakars and co-perpetrators along with Pakistani army accompanied the accused at the crime scene in committing the crimes. Excepting the accused, none of his accomplices has been brought to justice, it is true, but that by itself does not make the horrendous episode of atrocities directing attack on the civilian population constituting crimes against Humanity and genocide untrue or give any immunity to the accused. If the accused is found guilty and criminally liable beyond reasonable doubt for his culpable acts, inaction in prosecuting his accomplices cannot be the reason for holding the former innocent or relieved from liability. In this regard we may recall the provision as contained in section 4(1) of the Act of 1973 which states that when any crime as specified in section 3 of the said Act is committed by several persons each of such person is liable for that crime in the same manner as if it were done by him alone.

## **XIV. Summing up of the prosecution case**

38. Mr. Mohammad Ali assisted by Mr. Abul Kalam, the learned prosecutor referring to the evidence on record has submitted that the prosecution has proved all the 6[six] charges brought against accused Syed Md. Hachhan alias Syed Md. Hasan alias Hachhen Ali beyond all reasonable doubt by adducing both oral and documentary evidence examining 26 live witnesses including the investigation officer [P.W-26]. Most of the live witnesses are not only the eye witnesses of various atrocious acts of the accused but they are also the members of the victim families and some of them are also victims of the occurrences. As such their credible, corroborative and unimpeachable evidence sufficiently have proved that accused Syed Md. Hachhan alias Syed Md. Hasan alias Hachhen Ali being the leader of Tarail Thana Razakar Bahini, accompanied by his accomplices Razakar and Pakistani occupation army men, physically participated, conspired, aided and facilitated in killing of unarmed civilian people particularly the members of Hindu community, plundering, setting fire to the houses, during the Liberation War in 1971. The atrocious acts of the accused and his accomplices were part of **'systematic attack directed against civilian population'**, which qualify the offences of murder and other inhumane acts [plundering, arson and mental harm] as crimes against Humanity as specified in section 3(2) (a) (g) and (h) of the Act of 1973.

39. Mr. Mohammad Ali, the learned prosecutor has further submitted that the prosecution has also proved beyond reasonable doubt that the accused along with his accomplices also committed offence of genocide as they committed such atrocious acts with discriminatory intent on religious ground to annihilate the Hindu religious people treating them as the enemy of Pakistan.

40. Mr. Ali, has also argued that it has been well proved from the testimonies of the witnesses that the accused had directly participated in the commission of crimes as listed in charges and he guided and aided the

Razakars and Pakistani occupation forces at Tarail area to commit atrocious acts and thus the accused is also liable for those crimes committed in the then Kishoreganj sub-division in the same manner as if those were done by him alone in view of the provision of section 4(1) of the Act of 1973. Thus, accused Syed Md. Hachhan alias Syed Md. Hasan alias Hachhen Ali deserves highest punishment under section 20(2) of the Act of 1973.

#### **XV. Summing up of the defence case**

41. State defence counsel Mr. Abdus Shukur Khan reiterating the defence case has submitted that the prosecution has failed to prove that accused Syed Md. Hachhan alias Syed Md. Hasan alias Hachhen Ali was the commander of Razakar Bahini of Tarail thana and he formed the Razakar Bahini in Tarail area to collaborate the Pakistani army and it is an absurd story that the accused had performed the job of Police Officer [Daroga] of Tarail Thana in 1971 during the Liberation War. Mr. Khan showing many discrepancies, as claimed by him, from the evidence of prosecution witnesses has submitted that such contradictions and discrepancies in the evidence of the witnesses have made the prosecution case doubtful and shaky and as such the accused can not be convicted on the basis of such unworthy and unreliable evidence. Mr. Khan has also submitted that most of the witnesses are interested and partisan and as such their evidence bears no evidentiary value and thus, in absence of any credible evidence the accused is liable to be acquitted from the charges brought against him.

#### **XVI. The role and status of the accused in committing horrific atrocious acts during the Liberation War in 1971.**

42. In every new State there are some struggling endeavours given by the independence seekers behind its Liberation. Bangladesh has a lot of political, social, economical and racial backgrounds which subsequently gave birth to a new independent state after a long journey. In its birth history many events took place besides a sea of blood. There were many

political parties in this country that played a different role during the Liberation War in 1971. As a result many events became a fact of common knowledge in the mind of the people at large. Therefore, it does not need to show the documentary evidence to prove any of the events of common knowledge at the time when it is required.

43. Everyone knows that Pakistani invading force made an attack on Bangalee people in this territory by getting assistance from the people who did not want a new State like Bangladesh since the Pakistani invading force were not acquainted with the land of this country. During the Liberation War in 1971 some auxiliary forces popularly known as Razakar Bahini, Al-Badr Bahini, Al-Shams and Peace Committee for the purpose of their [Pakistani invading force] operational support in executing its atrocious activities in furtherance of common plan and design to succeed their mission, were constituted.

44. In the present case prosecution has claimed that the accused was the commander of Razakar Bahini of Tarail police station during the Liberation War in 1971 and being the commander of Tarail thana unit he [accused] committed several offences like genocide, murder, deportation, confinement as crime against Humanity. Per contra, defence claim is that, he was neither a Razakar nor a commander of Razakar Bahini and was not involved with the atrocious acts as alleged by the prosecution.

45. In the assessment of the evidence adduced by the prosecution it appears that the accused was a son of Moulana Musleuddin who belonged to a political party named Pakistan Democratic Party [PDP] which was against the independence of Bangladesh. The ideology of his father he embraced as he lived with him at that time. It is further evident that P.Ws-01-14, 19-21 and 23 have categorically stated in their depositions that the accused was the commander of Razakar Bahini of Tarail thana unit and he had not only direct participation in the commission of offences but also directed his

accomplice Razakars to commit the same. During commission of such offences he introduced himself as Hasan Ali Daroga of Tarail police station which has been supported and corroborated by prosecution document exhibit 01 wherein it was revealed that his name as Razakar Daroga Hachen Ali son of Moulana Muslehuddin of Kishoreganj had been included in serial no. 08 in Tarail police station case no. 08 dated 26.03.1972. The position of his leadership as Razakar commander containing in serial no. 07 of page 38 of prosecution book '**promanpatra**' has also been supported by exhibit no. 04, a list of collaborators, Razakars, Al-badr and Al-shams of Kishoregonj Sadar prepared by Upazila Social Welfare Officer on 04.12.2013 and Acting commander of Kishoregonj Sadar Upazila, Bangladesh Muktiyudda Sangsad which was also counter-signed by Upazila Nirbahi Officer, Kishoregonj. During atrocities he [accused] along with his accomplices used two things namely brown clothes [khaki posak], and white cap [sada tupi] as disclosed by the prosecution evidence. The accused was also identified by the witnesses as he had pointy beard at the relevant time and his subsequent action in the killing of Hindu civilian and pro-liberation people proves that he played a significant role in the heinous offences like genocide and crimes against Humanity.

46. In view of the facts and circumstances as mentioned above, we are inclined to hold that the prosecution has undoubtedly proved the role and status of the accused as a leader of Razakar Bahini of Tarail thana and an influential person of Razakar Bahini an auxiliary force of Pakistan army as specified in section 2(a) of the Act of 1973 at the time of commission of offences for which the accused has been indicted. Nevertheless, in the capacity of an individual or 'a member of group of individuals' the accused is liable to be prosecuted under section 3(1) of the Act if he is found to have committed the offences as specified under section 3(2) of the Act of 1973.

## **XVII. Adjudication of Charges**

### **Adjudication of charge no. 01**

#### **[Plundering and arson at Sachail Purbopara village under Tarail police station on 27 April, 1971]**

47. **Summary charge:** On 27 April , 1971 at about 11.00 A.M. accused Syed Hachhan alias Syed Md. Hasan alias Hachhen Ali, a local leader of Razakars, accompanied by other Razakars and Pakistani army, having surrounded the house of Hasan Ahmed alias Hachu Bepari of village Sachail Purbopara under Tarail Police Station, presently District-Kishoreganj plundered six houses of said Hasan Ahmed alias Hachu Bepari and one house of Sadot Ali alias Kontu Miah and then set them on fire by gun-powerder. Thus, the accused has been charged for abetting, contributing, facilitating and complicity in the commission of offences of plundering and arson [ other inhumane acts] as crimes against Humanity as specified in section 3(2)(a)(g) and (h) read with section 4(1) of the Act of 1973 which are punishable under section 20(2) of the said Act.

#### **Discussion and evaluation of evidence and findings:**

48. To prove charge no. 01, the prosecution has examined as many as three live witnesses [P.Ws. 05, 06 and 22].

49. **P.W. 05 Md. Nurul Haque alias Lal Miah** has deposed that on 27 April , 1971 at about 11.00 A.M. under the leadership of accused Hasan Ali Razakars having attacked their [P.W. 05] houses plundered and then set them on fire, and out of said arson their six houses and their neighbour Kendu Miah's one house were burnt to ashes. At the time of said occurrence they were not in their houses, but having heard the occurrence he [P.W. 05] and his two brothers after 2/3 days of the occurrence came to their house, and saw the poles and furniture of their house burning. He has further deposed that after said occurrence he along with 10/12 youths of local Chhatra League and supporters of the Liberation War went to India to

participate in the Liberation War. After having completed training he came back to Chhatak of District Sylhet to participate in the Liberation War and came to know that his cousin [Mimja iC] , who was the Settlement Officer of Natore, had been killed by Pakistani army. Thereafter, in the month of June, 1971 he came to Tarail from Chhatak and knew that Mowlana Mosleh Uddin had become the president of the then Kishoreganj Sub-Division Peace Committee while his son accused Syed Md. Hasan Ali had become the commander of Tarail Thana Razakar Bahini.

50. In cross-examination he has stated that in 1971 he was the president of Tarail Thana Chhatra League, and now he is a retired teacher of Govt. Primary School. He knew Gazu and Safir among the Razakars of their village. He has further stated that he knew accused Hasan Ali since the election of 1970, but he [P.W. 05] has no idea where and upto what class the accused studied. He has denied the defence suggestions that he did not know the accused and he [accused] was not a Razakar nor did he ever go to the place of occurrence.

51. **P.W. 06 Rahima alias Abuni** has stated that during the Liberation War, 1971 her age was about 16 years and at that time she was unmarried and stayed at her father's house. On 27 April, 1971 at about 11.00 A.M. accused Hasan Daroga along with Pakistani army and Razakars attacked Hachu Bepari's house of their village, as said Hachu Bepari was involved with the politics of the Awami League. Having not found Hachu Bepari, they plundered his houses and then set them on fire, and at that time six houses of Hachu Bepari and one house of Kontu Miah were burnt to ashes due to arson, and then they went towards the police station. She has further stated that their house and Hachu Bepari's house were situated side by side and she herself saw the said occurrence. At the time of said occurrence there were three cows, tied with ropes, in the cow-shed of Hachu Bepari, and those cows were saved from fire when she cut off their ropes with a 'bauti' [a sharp

cutting instrument]. She has also stated that she told the said occurrence to Hachu Bepari when he came back to his house after the Liberation.

52. In course of cross-examination, she has stated that when the houses of Hachu Bepari were set on fire, no member of his family was present in their house. At the time of said occurrence she and her one ailing brother were present in their house and her father had died before the occurrence. She has further stated that their house was situated 150/200 yards away from Tarail police station, and there was no Razakar in their village.

53. **P.W. 22 Suraiya alias Fasila** has testified that after start of the Liberation War, Pakistani army came to Tarail Thana headquarter and set up a camp there. All their family members were the supporters of the Awami League and the Liberation War, and being afraid of Pakistani army she along with her husband and daughter went to her father's house situated at Raituti after arrival of Pakistani army there, and other inhabitants of their house fled away to different places. She has further testified that after 2/3 days she came to know that Pakistani army and under the leadership of Razakar commander Hasan Ali, Razakars having plundered their house [her husband's house] set that house on fire. Three days after hearing of the said incident she along with her husband came back to their house and found their house still burning and then their adjacent neighbour Abuni [P.W. 06] narrated them the said incident which took place on 27 April, 1971 and Abuni herself witnessed the occurrence. Abuni also narrated that at the time of said incident there were three cows, tied with ropes, in their [P.W. 22] cow-shed and she [Abuni] cut off those ropes in order to save the cows.

54. She has stated in cross-examination that the distance between their house and Tarail thana is about 200 cubits. She heard that Pakistani army having attacked Tarail thana bazar torched different shops and shot one Nihar Ranjan Paul to death.

55. On a careful scrutiny of the testimonies of the aforesaid live witnesses, it appears that P.W. 06 has claimed herself as an eye –witness of the alleged occurrence i.e. the occurrence of plundering and arson committed by accused Razakar Sayed Md. Hachhan along with other Razakars and Pakistani army on 27 April, 1971 at about 11.00 A.M. at the house of Hasan Ahmed alias Hachu Bepari and Sadot Ali alias Kontu Miah of village Sachail Purbopara. She [P.W. 06] has stated that she narrated the said occurrence to said Hachu Bepari when he came back to his house after the Liberation. It is evident that said Hachu Bepari is now dead. P.W.05 [son of said Hachu Bepari] has stated that at the time of said occurrence they were not in their house, but having heard the occurrence he [P.W.05] and his two brothers after 2/3 days of the occurrence came to their house i.e. the place of occurrence, and saw the poles and furniture of their house burning. But P.W. 06 has not stated that she told P.W. 05 about the occurrence when he came back to their house nor P.W. 05 has stated that he heard the occurrence from P.W. 06. According to P.W. 06, their house and Hachu Bepari's house were situated side by side and at the time of occurrence she was in their house and saw the occurrence. If so, it is not understood why P.W.06 having not told the occurrence to P.W.05 who came to their [P.W.05] house after 2/3 days of the occurrence, told the occurrence to Hachu Bepari [father of P.W.05] who came to his house after the Liberation i.e. a long time after the alleged occurrence.

56. P.W.06 has claimed that during the Liberation War, 1971 her age was 16 [sixteen] years and at that time she was unmarried. She has stated in cross-examination that their house was situated 150/200 yards away from Tarail thana. P.W. 22 has stated that after start of the Liberation War, Pakistani army came to Tarail thana headquarter and set up a camp there. In the context of the Liberation War, 1971, where the house of P.W. 06 was situated only 150/200 yards away from Tarail thana and an army camp was

set up at the said thana headquarter, it is not easy to believe that P.W. 06 being a young unmarried woman aged about 16 [sixteen] years had been present in their house and saw the alleged occurrence. It does not appear from the evidence on record that P.W. 06 and accused Syed Hachhan hailed from the same village / area. It has not been disclosed by P.W. 06 in her testimony how did she know the accused at the time of alleged occurrence. P.W. 22 is a hearsay-witness who has stated that she heard the occurrence from their neighbour Abuni [P.W. 06], but P.W. 06 has not stated that she told P.W. 22 about the occurrence. P.W. 05 and P.W. 06 hailed from the same village i.e. Sachail Purbopara under Tarail police station. P.W. 05 has stated that he knew Gazu and Safir among the Razakars of their village. According to him, during the Liberation War there were Rajakars in their village. But P.W. 06 has stated in cross-examination that there was no Razakar in their village. So, this is a contradiction in a material point between the testimonies of P.Ws. 05 and 06.

57. Proof of charge must depend upon judicial evaluation of totality of evidence, oral and circumstantial, and not by an isolated scrutiny. On consideration of the entire evidence and the materials on record as discussed above, it appears to us that the prosecution has examined in all three witnesses [P.Ws. 05, 06 and 22] to prove charge no 01 of whom P.Ws. 05 and 22 are hearsay witnesses and P.W.06 is only eye -witness from whose evidence the involvement of the accused with the commission of the offences as specified in the instant charge appears to be doubtful for the reasons stated hereinbefore, and as such, the benefit of doubt must be given to the accused. Consequently, we are inclined to hold that the prosecution has failed to prove the instant charge beyond reasonable doubt that accused Syed Hachhan alias Syed Md. Hasan alias Hachhen Ali by his act or conduct abetted, contributed, facilitated and/or had complicity in the commission of offences of plundering and arson [other inhumane acts] as crimes against

Humanity as specified in section 3(2)(a)(g) and (h) read with section 4(1) of the Act of 1973.

### **Adjudication of charge no. 02**

#### **[Murder, abduction, confinement, torture, and plundering at Konavawal village under Tarail police station on 23 August, 1971]**

58. **Summary charge:** On 23 August, 1971 at about 2.00/2.30 A.M. accused Syed Hachhan alias Syed Md. Hasan alias Hachhen Ali, a local leader of Razakars, accompanied by other Razakars and Pakistani army, having surrounded the house of Tofazzol Hossain Bhuiyan alias Lalu Bhuiyan, situated at Konavawal village under Tarail police station, confined him along with Abdul Zahid Bhuiyan and his wife Quamrunnessa and plundered their houses. At that time the accused tortured said Abdul Zahid Bhuiyan on his forehead by a rifle –butt. At one stage while Tofazzal Hossain Bhuiyan alias Lalu Bhuiyan was trying to flee away towards north of his house, the accused having chased him fired shots at him and then he being injured by sustaining shots got down into their pond and then the accused shot him to death in the pond. Thereafter, the accused and his accomplices having taken other confined persons to the army camp, situated in the Dak Bungalow [rest house] of Kishoreganj, confined and interrogated them therein and eventually released them. Thus, the accused has been charged for abetting, contributing, facilitating and complicity in the commission of offences of murder, abduction, confinement, torture, and plundering [other inhumane act] as crimes against Humanity as specified in section 3(2)(a)(g) and (h) of the Act of 1973 read with section 4(1) of the Act of 1973 which are punishable under section 20(2) of the said Act.

#### **Discussion and evaluation of evidence and findings:**

59. To prove charge no. 02, the prosecution has examined as many as four live witnesses [P.Ws. 07, 08, 21 and 23].

60. **P.W.07 Md. Emdad Hossain Bhuiyan** has deposed that his elder brother Shahjahan Bhuiyan had been working in the police department since before the Liberation War, 1971. During the Liberation War his said brother along with 15/20 youths went to India for participating in the Liberation War. His [P.W.07] father Tofazzal Hossain Bhuiyan was an 'Ansar commander' during the British regime who after the speech of 7<sup>th</sup> April, 1971 of Bangabandhu used to give training to local youths for participating in the Liberation War. He has further deposed that on 23 August, 1971 at about 2.00/2.30 A.M. Pakistani army and Razakar commander Hasan Ali Daroga along with 30/35 Razakars attacked their house while he himself, his father Tofazzal Hossain Bhuiyan and mother were staying in their house. Then the accused asked them to open the door of their rooms and kicked the door and also said that if the door was not opened the same would be broken down by firing shots. His mother being afraid of opened the door and then the accused Hasan Ali Daroga and Ali Mortuza along with 4/5 Razakars having entered into their rooms the accused asked his father, 'where is your son Shahjahan Bhuiyan?' The accused also said, ' your son Shahjahan worked in the police department, you sent him to India for participating in the Liberation War and you yourself also give training to local youths for participating in the Liberation War, and if you do not produce your son Shahjahan at this moment you would be killed by firing shots.' In reply his father said, 'I do not know the whereabouts of my son Shahjahan.' Having heard the reply of his father the accused pulled down him on the floor from the bed, and seeing the said scene he [P.W.07] having caught the legs of the accused requested him not to do any harm to his father, and then the accused slapped him down and Razakar Ali Mortuza also kicked him. Thereafter, the accused and other Razakars dragged his father out of the room, and then he [P.W. 07] saw that another group of Razakars having caught hold of his grand-father [ father's uncle] Abdul Zahid Bhuiyan and

grand-mother Quamrunnessa brought them near to his father and hurt Abdul Zahid Bhuiyan on his head and waist with a rifle. Having seen that scene he [P.W. 07] went into hiding in a nearby bush wherefrom he saw that his father Tofazzal Hossain Bhuiyan tried to run away to save his life from the hands of the Razakars, and then the accused shot him from behind the back and his father sustaining bullet injuries fell down on the ground and thereafter he running away jumped into the nearby pond, and then the accused and other Razakars having gone to the bank of the pond started firing shots at random aiming at his father in the torch light . He has also stated that thereafter the Razakars again came to their house and having plundered their house burnt the papers and documents kept therein. Thereafter, the Razakars having taken his said grand-father and grand-mother with them went towards Tarail thana, and at the time of their departure they told his mother that if she did not produce her son Shahjahan and brother-in-law Quamruzzaman [son of Abdul Zahid Bhuiyan] before them, they would kill Abdul Zahid Bhuiyan and his wife Quamrunnessa who were under confinement . He has further stated that he saw the said incidents from inside the bush in the light of the torches lying with the hands of Razakars. On the following morning he and the villagers recovered the dead body of his father sustaining bullet injuries from the pond and on that day they buried the dead body in front of the mosque situated near their house. On the next day, his grand-mother Quamrunnessa came back to their house and told them that the Razakars along with accused Hasan Ali took her and her husband to Kishoreganj Dak Banglow army camp from Tarail and told them that if their son Quamruzzaman was not produced before them within five days, both of them would be killed. Then they sent their villager Duder Bap to India who brought Quamruzzaman back to their house from India within four days, and thereafter, local Peace Committee members Abul Hossain B.Sc. and

Lokku Miah taking Quamruzzaman with them went to Kishoreganj Dak banglow army camp, and then one Pakistani Major Iftekhar examining the body of his uncle Quamruzzaman including his elbows and knees became sure that he did not take any training. Thereafter, his grand-father Abdul Zahid Bhuiyan and uncle Quamruzzaman were released and they came back to their house, and when his said grand-father and grand-mother were in the army camp accused Hasan Ali Daroga and Razakar Ali Mortuza tortured them physically therein. He has also deposed that they heard the incidents from his said grand-father and uncle when they came back to their house. His elder brother Shahjahan Bhuiyan, who went to India for participating in the Liberation War, came back to their village just one day after the Liberation and they narrated all the incidents to him.

61. In cross-examination, he has stated that when their houses were attacked, the number of Pakistani army men and Razakars was 5/6 and 30/35 respectively. His brother Shahjahan Bhuiyan having received training participated in the Liberation War. Accused Syed Hasan Ali Daroga used to live at Haibotnagar of Kishoreganj, but he does not know where did he study. He has again stated that accused Hasan Ali Daroga killed his father. He has denied the defence suggestions that the accused did not go to their house on the date of occurrence nor did he kill his father. He has also denied the defence suggestions that he did not see the accused in the place of occurrence and he has deposed falsely.

62. **Md. Shahjahan Bhuiyan as P.W. 08** has testified that he was a police man working in Razarbagh Police Lines till the start of the Liberation War. On 25 March, 1971 at about mid night Pakistani army attacked Razarbagh Police Lines, and as such, he along with other police men took shelter in the Chamelibagh Mosque to save their lives and after 3/4 days he came to his house. Having stayed in his house for 20/25 days, he came to know that training was being given to freedom-fighters in India. Being informed about

said training he along with his uncle Quamruzzaman and some other youths of his village went to India to participate in the Liberation War, and he came back to his village home 1/ 2 days after 16 December, 1971. He has also testified that after having come back to his village home he heard from his mother, younger brother Emdad Bhuiyan, grand-father Abdul Zahid Bhuiyan, grand-mother Quamrunnessa and other villagers that accused Razakar Hasan Ali Daroga and other Razakars on 23 August, 1971 at night had attacked their house and accused Hasan Ali having identified himself as Razakar commander entered into their room and asked his father 'where is your son Shahjahan Bhuiyan [P.W. 08]?'. In reply, his father said he did not know the whereabouts of his son. Having heard the reply of his father the accused and other Razakars dragged him out of the room and tortured him. In the meantime other Razakars also dragged his grand-father Zahid Bhuiyan and grand-mother Quamrunnessa out of their room. At one stage his father tried to run away, and then accused Hasan Ali shot him from behind the back and his father sustaining bullet injuries fell down on the ground, but thereafter in order to save his life, he running away jumped into the nearby pond, and the accused and other Razakars chasing him went to the bank of that pond and started firing shots aiming at his father. At one stage the accused and other Razakars became sure that his [P.W.08] father had died, and then they again came to their house and having plundered their house burnt papers and documents kept therein. He has also stated that thereafter the accused and his accomplices having taken his said grand-father and grand-mother with them went to Tarail thana first and then took them to army camp situated at Kishoreganj Sadar and having confined tortured them therein. They told his grand-mother that if her son Quamruzzaman was not produced before them, they would be killed, and then sent her back to their house to produce her said son before them. Her grand-mother came back and informed them the matters. Then they sent a

person to India for bringing Quamruzzaman back who brought him back to their house from India. Thereafter, his uncle Quamruzzaman was sent to Kishoreganj army camp through local Peace Committee members Abul Hossain B.Sc. and Lokku Miah, and then Major Iftekhar after examining his hands and legs became sure that Quamruzzaman did not take any training and then they released his grand-father and said Quamruzzaman who thereafter came back to their house.

63. In course of cross-examination, he has stated that he studied upto class IX and joined the police department perhaps on 30/31 December, 1965. He has denied the defence suggestions that he did not hear the incidents which he has narrated in his testimonies, and he has deposed falsely.

64. **P.W.21 Md. Hadis** has stated that on 23 August, 1971 at about 2.00/2.30 A.M. Pakistani army and Razakars attacked their Konovawal village. They heard sound of firing shots, and hue and cry coming from the house of Bhuiyan of their village. Hearing the sound of firing shots he along with his parents, brothers and sisters and other members of their family took shelter in a low-land outside their house and they also heard sound of firing shots therefrom. On the following dawn they along with other villagers went to the house of Bhuiyan and then Lalu Bhuiyan's son Emdad Bhuiyan [P.W.07] informed them that in the last night at about 2.30 some persons having come to their house asked to open the door and one of them identifying himself as Hasan Ali Daroga also asked to open the door. Emdad Bhuiyan also informed them that at one stage they opened the door and the Razakars detained his father Lalu Bhuiyan. At one stage when Lalu Bhuiyan tried to flee away, then accused Hasan Ali Daroga fired shot aiming at him. Lalu Bhuiyan in order to save his life jumped into their nearby pond where the accused also fired shots aiming at him. He has also stated that on the following morning he along with other youths of their village recovered the

dead body of Lalu Bhuiyan sustaining bullet injuries from that pond and buried the same beside their village mosque. He also heard that the Razakars having abducted Lalu Bhuiyan's uncle Zahid Bhuiyan and his [Zahid Bhuiyan] wife took them to Kishoreganj city. On the next day the wife of Zahid Bhuiyan having come back to their village informed them that they were kept confined in Kishoreganj Dak Banglow and the Razakars released her from the Dakbanglow on condition that she would bring back her son who had been participating in the Liberation War, and she having sent one Gedar Bap of their village to the border brought her son Quamruzzaman back who was eventually sent to Kishoreganj Dak Banglow through an agent where the Razakars having examined him found no proof that he took any training for participating in the Liberation War and then they released him along with his father Zahid Bhuiyan from said Dak banglow . He has also stated that they also heard the said incidents from Zahid Bhuiyan and his son Quamruzzaman.

65. In cross-examination , he has stated that Tarail thana headquarter is three miles away towards east from their village Konavawal and Pakistani army set up a camp at Tarail thana headquarter. Pakistani army and Razakars came to their village only once. Their house is about two hundred feet away towards south-west from the house of Bhuiyan. He has denied the defence suggestions that he has not narrated the incidents in his examination-in-chief what he actually heard of and he has deposed falsely.

66. **Mahfuja Akter** is the daughter of a victim Abdul Zahid Bhuiyan. As **P.W. 23** she has deposed that during the Liberation War, 1971 her age was about fifteen years and she was a student of class VIII. After the start of the Liberation War in 1971 her cousin [Q;Qja i;C] Tofazzal Hossain alias Lalu Bhuiyan's son Shahjahan and her [P.W. 23] brother Quamruzzaman went to India for participating in the Liberation War. Local Razakar commander Hasan Ali being informed about the said fact through his agent, he along

with a group of Razakars on 23 August, 1971 at night at about 2.30/3.00 attacked their house and firstly they having detained her cousin Lalu Bhuiyan from inside his room hurt him, and thereafter they tried to break the door open of their room by kicking. At this stage her elder sister Masuda Alam [now dead] opened the door and then 15/20 armed Razakars entered into the room and tied herself and her two sisters including their parents, and thereafter they dragged their parents out of their room. After sometime, having heard sound of firing shots they guessed that the Razakars might have killed their parents by gun-shots. Thereafter, the Razakars plundered their house and burnt the documents and papers of their lands. She has also deposed that about 4.00/ 4.30 at dawn Lalu Bhuiyan's son Emdad [P.W. 07] having come to their house said by crying that Razakar Hasan Ali Daroga had killed his father Lalu Bhuiyan by gun-shots in the pond situated behind their house , and he [P.W. 07] himself saw that incident. Lalu Bhuiyan's wife Monowara Begum [now dead] also narrated the said incident to them. Thereafter, they including Hadis [P.W. 21] recovered the dead body of his father Lalu Bhuiyan from the said pond and buried the same beside their village mosque. On the next day at about 11.00 A.M. her mother returned back to their house and informed them that the Razakars having caught hold of took them first to Tarail thana and thereafter to Kishoreganj army camp, and the Razakars told them if her [P.W. 23] brother Quamruzzaman was not produced before them they would not release her father. She has further stated that on the following day her mother having sent Duder Bap, a boatman of their village, to Moheshkhali of India brought her brother Quamruzzaman back to their house, and thereafter Quamruzzaman was sent to Kishoreganj army camp through 2/3 agents of their village. One army officer of that camp examined the body of Quamruzzaman and having found no sign on his body that he received training for participating in the Liberation War, released her father Abdul

Zahid Bhuiyan and brother Quamruzzaman who then came back to their house. She saw marks of torture on different parts of her father's body and her father told them that accused Hasan Ali Razakar had tortured him and those were the marks of that torture.

67. In cross-examination, she has stated that her brother Quamruzzaman was the eldest among their brothers and sisters and her said brother is now dead. They had been sleeping when the Razakars attacked their house. Among the agents through whom her brother was sent to Kishoreganj army camp, one was Abu Miah B.Sc. [now dead] and she does not know the name of the other one. Duder Bap is now dead. The house of Hadis is situated 20/25 yards away towards west from their house. She has denied the defence suggestions that accused Syed Md. Hasan did not go to their village on the date of occurrence nor he was involved with the occurrence. She has also denied the defence suggestion that she has deposed falsely.

68. Upon scrutiny of the testimonies of the aforesaid four prosecution witnesses, it transpires that two of them [P.Ws. 07 and 23] are eye-witnesses and the other two [P.W. 08 and 21] are hearsay witnesses of the occurrence relating to charge in hand. Besides, out of said four witnesses P.Ws. 07, 08, and 23 are the members of the victim families. P.W. 07 Md. Emdad Hossain Bhuiyan and P.W. 08 Md. Shahjahan Bhuiyan are the sons of martyr Tofazzal Hossain Bhuiyan alias Lalu Bhuiyan. P.W. 07 has stated that during the Liberation War, 1971 his elder brother Shahjahan Bhuiyan along with 15/20 youths went to India for participating in the Liberation War. His father was an 'Ansar commander' who used to give training to local youths for participating in the Liberation War. On 23 August, 1971 at about 2.00/ 2.30 A.M. Pakistani army and accused Razakar commander Hasan Ali Daroga along with 30/35 Razakars attacked their house. The accused and Ali Mortuza along with 4/5 Razakars having entered into their room the accused pulled down his father on the floor from the bed and thereafter they

dragged him out of the room, and then another group of Razakars having caught hold of his grand-father [father's uncle] Abdul Zahid Bhuiyan and grand-mother Quamrunnessa brought them to his father and hurt his said grand-father on his head and waist. P.W. 07 has further stated that at one stage his father tried to run away to save his life from the hands of the Razakars, and then the accused shot him from behind the back and his father sustaining bullet injuries fell down on the ground and thereafter he running away jumped into the nearby pond, and then the accused and other Razakars having gone to the bank of the pond started firing shots aiming at his father. He has further stated that he himself saw the said incidents. On the following morning he and the villagers recovered the dead body of his father sustaining bullet injuries from the pond and buried the same in front of the mosque situated near their house. P.W.08 Md. Shahjahan Bhuiyan has deposed corroborating the evidence of his brother P.W. 07. P.W. 08 has also stated that he along with his uncle Quamruzzaman and some other youths went to India to participate in the Liberation War and he came back to his village home 1 /2 days after 16 December, 1971 and he heard from his mother , younger brother Emdad Bhuiyan [P.W. 07], grand-father Abdul Zahid Bhuiyan , grand-mother Quamrunnessa and other villagers that accused Hasan Ali and other Razakars on 23 August , 1971 at night had attacked their house and thereafter having entered into their room dragged his father out of the room and tortured him. At one stage his father tried to run away and then the accused himself shot him from behind the back and his father sustaining bullet injuries fell down on the ground, but thereafter in order to save his life, he running away jumped into the nearby pond, and then the accused and other Razakars chasing him went to the bank of that pond and started firing shots aiming at his father, and then they became sure that his father died. P.W. 21 Md. Hadis has also corroborated the evidence of P.Ws. 07 and 08 in respect of the killing of Tofazzal Hossain

Bhuiyan alias Lalu Bhuiyan by the accused and other Razakars on 23 August, 1971 at about 2.00/2.30 A.M. P.W. 21 has stated that on 23 August, 1971 at about 2.00/ 2.30 A.M. Pakistani army and Razakars attacked their Konavawal village, and at that time they heard the sound of firing shots, and hue and cry coming from the house of Bhuiyan of their village. He has further stated that on the following dawn they along with other villagers went to the house of Bhuiyan and then Emdad Bhuiyan [P.W. 07] informed them about the killing of his father by the accused and other Razakars as narrated by P.Ws. 07 and 08 hereinbefore. P.W. 23 Mahfuja Akter is an eye-witness of a part of the incidents of the instant charge. She has stated that after the start of the Liberation War in 1971, her cousin [Q;Qja i;C] Tofazzal Hossain alias Lalu Bhuiyan's son Shahjahan and her [P.W. 23] brother Quamruzzaman went to India for participating in the Liberation War. Local Razakar commander Hasan Ali being informed about the said fact he along with a group of Razakars on 23 August, 1971 at night at about 2.30/3.00 attacked their house, and firstly they having detained her said cousin from inside his room hurt him. She has further stated that about 4.00/4.30 at dawn, Emdad Bhuiyan [P.W. 07] having come to their house informed them that the accused had killed his father Lalu Bhuiyan by gun-shots in the pond situated behind their house, and he [P.W. 07] himself saw that incident.

69. In the instant charge, in addition to murder of Tofazzal Hossain Bhuiyan alias Lalu Bhuiyan, the allegations of abduction, confinement, torture and plundering have been brought against the accused. P.W.07 has stated that when his father was dragged out of his room, at that time he saw that another group of Razakars having caught hold of his grand-father [father's uncle] Abdul Zahid Bhuiyan and grand-mother Quamrunnessa brought them to his father and hurt his said grand-father on his head and waist with a rifle . After the killing of his father the Razakars again came to

their house and plundered their house. Thereafter, he saw that the Razakars having taken his said grand-father and grand-mother with them went towards Tarail thana. According to him, he saw the abduction of his grand-father and grand-mother and the said plundering and torture by the accused and his accomplice Razakars. P.W. 07 has further stated that on the next day, his grand-mother Quamrunnessa came back to their house and informed them that the accused along with other Razakars took her and her husband to Kishoreganj Dak bungalow army camp and told them that if their son Quamruzzaman was not produced before them within five days, both of them would be killed. After the production of Quamruzzaman before the Razakars in the army camp Pakistani Major Iftekhar having examined the body of Quamruzzaman he became sure that he did not take any training and then Quamruzzaman and his father Abdul Zahid Bhuiyan were released from the army camp and thereafter both of them came back to their house and informed him [P.W. 07] and others that when they were confined in the army camp the accused and Razakar Ali Mortuza tortured them physically. P.W. 08 has stated that the accused and other Razakars tortured his father Tofazzal Hossain Bhuiyan alias Lalu Bhuiyan before they killed him. At the time of said occurrence, other Razakars also dragged his grand-father Zahid Bhuiyan and grand-mother Quamrunnessa out of their room. After the killing of his father the accused and his accomplice Razakars again came to their house and plundered the same. He has further stated that thereafter the accused and his accomplices took his grand-father and grand-mother to Kishoreganj army camp and having confined tortured them there. P.W. 21 Md. Idris has stated that he heard that at the time of killing of Lalu Bhuiyan, the accused and his accomplices having abducted Lalu Bhuiyan's uncle Zahid Bhuiyan and his wife took them to Kishoreganj city. On the next day the wife of Zahid Bhuiyan having come to their village informed them that she and her husband were kept confined in Kishoreganj Dak bungalow. P.W.

23 Mahfuja Akter is the daughter of said Zahid Bhuiyan and Quamrunnessa. She corroborating the evidence of P.Ws. 07,08 and 21 has stated that on 23 August, 1971 at about 2.30/ 3.00 A.M. the accused and Razakars attacked their house and having entered into their room tied herself and her two sisters including their parents , and thereafter they dragged their parents out of their room. Thereafter, the Razakars plundered their house. On the next day at about 11.00 A.M. her mother returned to their house and informed them that the Razakars having caught hold of took them to Kishoreganj army camp and confined them there. After some days her father being released from the army camp came back to their house and then she [P.W. 23] saw marks of torture on different parts of her father's body and her father told them that accused Hasan Ali Razakar had tortured him and those were the marks of that torture.

70. Upon evaluation of the above mentioned evidence of the prosecution witnesses [P.Ws. 07, 08, 21 and 23] it reveals that on 23 August, 1971 at about 2.00 / 2.30 A.M. accused Razakar Syed Md. Hasan along with other Razakars and Pakistani army having dragged Tofazzal Hossain Bhuiyan alias Lalu Bhuiyan out of his house, situated at Konavawal village, hurt him first and then killed him by gun-shots. It also reveals that after the said incident the accused and his accomplices having plundered their house abducted Abdul Zahid Bhuiyan and his wife Quamrunnessa from their house and took them to Kishoreganj Dak bungalow army camp and having confined tortured them there. All these four prosecution witnesses have directly implicated the accused with the offences as narrated in the instant charge.

71. Of course during scanning of the evidence, we find some minor inconsistencies and contradictions among the evidence adduced by the prosecution witnesses, but an assessment is to be made on the basis of the totality of the evidence presented in the case. The Tribunal, however, is not obliged to address insignificant inconsistencies, if occur in witnesses'

testimonies. In this context we may refer to the decision of **ICTR Appeals Chamber held in the case of Muhimana as under:**

*“The Appeals Chamber reiterates that a trial chamber does not need to individually address alleged inconsistencies and contradictions and does not need to set out in detail why it accepted or rejected a particular testimony. ”*

72. It is argued by the State defence counsel that admittedly P.Ws. 08 and 21 are hearsay witnesses, and as such, their evidence is inadmissible and the Tribunal cannot rely on it. It is already found that the evidence of these two hearsay witnesses have been corroborated by the evidence of two eye witnesses [P.Ws. 07 and 23]. If the evidence of two hearsay witnesses carries probative value, it cannot be brushed away. The hearsay evidence is to be considered together with the circumstances and relevant material facts depicted. Hearsay evidence is admissible and the court can rely on it in arriving at a decision on fact in issue, provided it carries reasonable probative value [**Rule 56(2) of the Rules of Procedure, 2010**]. This view finds support from the principle enunciated in the case of **Muvunyi** which is quoted as below:

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

**[Muvunyi, ICTY Trial Chamber, September 12, 2006, para-12]**

73. According to settled jurisprudence of International Law ‘hearsay evidence’ is not inadmissible *per se*, even when it is not corroborated by direct evidence. The Tribunal may safely act on ‘anonymous hearsay’ evidence even without any corroboration. This view finds support from **the**

case of Lubanga [Lubanga – ICC Pre-Trial Chamber, January 29, 2007, para-106].

74. The Hon'ble Appellate Division of the Supreme Court of Bangladesh very recently also observed in the **Muhammad Kamaruzzaman's Criminal Review Petition No. 8 of 2015** that 'hearsay evidence' is admissible without further ado. The relevant portion of the said observation is quoted as below:

*"Mr. Khandakar's contention that hearsay evidence needs corroboration is unworthy of consideration in the light of the explicit provision in the Act making hearsay evidence admissible without further ado. We made it abundantly clear in Abdul Quader Mollah case, supra, that international law provisions are not applicable. Anyway, as the learned Attorney General submitted, they have been sufficiently corroborated by each other's testimony as well as by circumstantial evidence."*

75. In the case in hand, the accused is being tried long after four decades after the atrocities were committed. Naturally direct witness may not be available. Thus, even anonymous hearsay evidence alone may be relied upon to prove a material fact, considering the reality and the context prevailing in the country in 1971. This view finds support from a recent decision given in the case of **Ruto of the ICC [Ruto, ICC Pre-Trial Chamber, January 23, 2013, paras- 126-130, 148-150, 187-191 and 194-195]**.

76. For the sake of argument, if we brush away the evidence of the hearsay witnesses [P.Ws. 08 and 21], the evidence of eye-witnesses [P.W.07 and 23] remain unshaken though they were cross-examined by the State defence and the evidence of these two eye-witnesses are very much corroborative to each other and they have directly implicated the accused with the offences as narrated in the instant charge. The Tribunal may arrive at a decision even on the basis of single testimony and, 'corroboration' is

simply one of the factors to be considered in assessing witness's credibility.

It has been held by the **ICTR Trial Chamber that:**

*"There is no requirement that convictions be made only on the evidence of two or more witnesses ..... Corroboration is simply one of potential factors in the Chamber's assessment of a witness's credibility. If the Chamber finds a witness credible, that witness's testimony may be accepted even if not corroborated. "*

**[Nyiramasuhuko, ICTR Trial Chamber, 24 June 2011, para-174]**

77. At the time of summing up the case by way of argument, the learned State defence counsel Mr. Abdus Shukur contended that the allegations brought against accused Md. Hasan in the instant charge is that the accused accompanied by other Razakars and Pakistani army jointly committed the offences of murder, abduction, confinement, torture and plundering as crimes against Humanity, but it is not specifically stated in the charge that the accused himself alone perpetrated those offences nor it is stated that he directly participated in the commission of those offences. In reply to the said contention of the learned State defence counsel, Mr. Mohammad Ali, the learned prosecutor argued that in the instant charge, the accused has been charged for abetting, contributing, facilitating and complicity in the commission of the above mentioned offences as specified in section 3(2)(a)(g) and (h) read with section 4(1) of the Act of 1973, and as such, specific overt act (s) or direct participation of the accused in the commission of those offences is not necessary, though the accused had specific overt acts and direct participation in the commission of those offences.

78. **The ICTR Trial Chamber in the Case of Prosecutor vs. Kamubanda [Case No. ICTR-95-54A-T, January 22, 2004, para-588]** observed that criminal responsibility for any crime is incurred not only by individuals who

physically commit that crime, but also by individuals who participate in and contribute to the commission of a crime. The said observation is quoted as under:

*" Article 6(1) reflects the principle that criminal responsibility for any crime in the Statute is incurred not only by individuals who physically commit that crime, but also by individuals who participate in and contribute to the commission of a crime in other ways, ranging from its initial planning to its execution, as specified in the five categories of acts in this Article: planning, instigating, ordering, committing, or aiding and abetting. "*

79. Similar observation as quoted above was also made by the **ICTR Trial Chamber in the cases of Prosecutor v. Bisengimana [Case No. ICTR-OO-60-T, April 13, 2006, para-31] and Prosecutor v. Kajelijeli [Case No. ICTR 98-44A-T, December 1, 2003, para-757].**

80. In respect of responsibility for acts committed by others the **ICTR Trial Chamber in the case of Prosecutor v. Rutaganda [Case No. ICTR-96-3, December 6, 1999, para -35] also observed that-**

*"The 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 he committed or aided and abetted another in the commission of such acts. "*

81. **The ICTY Appeals Chamber in the case of Prosecutor v. Vasiljevic [Case No. IT-98-32-A, February 25, 2004] set out the actus reas and mens rea of aiding and abetting which is as follows:**

*" (i) The aider and abettor carries out acts specifically directed to assist, encourage or lend moral support to the perpetration of certain specific crime ( murder, extermination, rape, torture, wanton destruction of civilian property, etc.), and this support has*

*a substantial effect upon the perpetration of the crime. [.....]"*

*(ii) In the case of aiding and abetting, the requisite mental element is knowledge that the acts performed by the aider and abettor assist [in] the commission of the specific crime of the principal. [.....]"*

82. According to the above observations, 'aiding and abetting' is an act of rendering practical assistance, encouragement or moral support, which has substantial effect on the perpetration of certain crime. **The ICTY Trial Chamber in the case of Prosecutor v. Strugar [Case No. IT-01-42-T, January 31, 2005 , para -349] observed as under-**

*"Aiding and abetting has been defined in the case-law of the Tribunal as the act of rendering practical assistance, encouragement or moral support, which has substantial effect on the perpetration of a crime, before , during or after the commission of the crime, and irrespective of whether these acts took place at a location other than that of the principal crime. "*

83. The Joint Criminal Responsibility or commonly known as, Joint Criminal Enterprise [**JCE**] is a widely used liability doctrine that has been playing a central role in the allocation of guilt in International Criminal Tribunals. Section 4 of the Act of 1973 incorporates the **JCE** doctrine into our legislation. Section 4(1) of the Act reads as:

*"when any crime as specified in section 3 is committed by several persons, each of such person is liable for that crime in the same manner as if it were done by him alone."*

84. There are three forms of **JCE**: Basic, Systemic and Extended. The Basic Mode of **JCE** liability arises when all participants shared the common intent to the concerned crime although only some of them may have *physically perpetrated* the crime. The Systemic Mode of **JCE** liability is

concerned with crimes committed by members of military or administrative units on the basis of common criminal plan or purpose. The Extended Mode of **JCE** liability arises where some extra crimes have been committed beyond the common plan or purpose, but the extra criminal act was nonetheless a *natural and foreseeable consequence* to the perpetrator of the common plan.

85. According to settled jurisprudence, the required *actus reus* for each form of Joint Criminal Enterprise [**JCE**] comprises three elements. First, a plurality of persons is required. They need not be organized in a military, political or administrative structure. Second, the existence of a common purpose which amounts to or involves the commission of a crime provided for in the Statute is required. There is no necessity for this purpose to have been previously arranged or formulated. It may materialize extemporaneously and be inferred from the facts. Third, the participation of the accused in the common purpose is required, which involves the perpetration of one of the crimes provided for in the Statute. This participation need not involve commission of a specific crime under one of the provisions [for example, murder, extermination, torture or rape], but may take the form of assistance in, or contribution to, the execution of the common purpose.

86. In the instant charge [charge no. 2], it is alleged that on 23 August, 1971 at about 2.00/ 2.30 A.M. the accused Razakar Syed Md. Hasan along with other Razakars and Pakistani army, having surrounded the house of Tofazzol Hossain Bhuiyan alias Lalu Bhuiyan confined him along with Abdul Zahid Bhuiyan and his wife Quamrunnessa and plundered their houses. At that time the accused hit said Abdul Zahid Bhuiyan on his forehead by a rifle-butt. At one stage the accused killed said Tofazzal Hossain Bhuiyan alias Lalu Bhuiyan and thereafter, the accused and his accomplices took other two confined persons to Kishoreganj Dak bungalow army camp and eventually released them. In support of this charge almost

all the prosecution witnesses including two eye witnesses as mentioned earlier have deposed in the Tribunal. Of them P.Ws. 07 [eye witnesses] and 08 are the sons of martyr Tofazzal Hossain Bhuiyan alias Lalu Bhuiyan. P.W. 23 [eye witness] is the daughter of victims, Abdul Zahid Bhuiyan [now dead] and Quamrunnessa [now dead]. The prosecution witnesses have directly implicated the accused with the aforesaid offences. It is also evident from their evidence that while Abdul Zahid Bhuiyan and his wife Quamrunnessa were in Kishoreganj Dak bungalow army camp the accused and another Razakar Ali Mortuza tortured them physically therein. The learned State defence counsel has cross-examined them, but could not shake their evidence, and as such, there is no reason to disbelieve their evidence. The acts of the accused, as it appears from the evidence of the witnesses, had substantial effects upon the perpetration of the said crimes of murder, abduction, confinement, torture and plundering [other inhumane act] as crimes against Humanity. This is a common knowledge of fact that during the Liberation War in 1971, the principal perpetrators i.e. Pakistani army men possessed the requisite criminal intent to destroy the members of Hindu religious group, freedom-fighters, pro-liberation people and the supporters of Awami League who were infavour of the Liberation. The accused was aware of the said criminal intent of the principal perpetrators whom he along with his accomplice Razakars assisted or encouraged. As such the accused who contributed substantially to the commission of the aforesaid offences as listed in the instant charge by the Pakistani army men and local Razakars, and who shared above mentioned intent of the principal perpetrators, is criminally responsible both as an aider and abettor and as a co-perpetrator through participating in the Joint Criminal Enterprise [JCE].

87. Considering all the facts, circumstances, the evidence on record and the legal aspects as discussed above, we are led to arrive at a decision that the prosecution has been able to prove the instant charge [charge no. 02]

against the accused beyond reasonable doubt. Thus, the accused Syed Md. Hachhan alias Syed Md. Hasan alias Hachhen Ali is criminally liable under section 4(1) of the Act of 1973 and found him guilty for abetting, contributing, facilitating and complicity in the commission of offences of murder, abduction, confinement, torture, and plundering [other inhumane act] as crimes against Humanity as specified in section 3(2)(a)(g) and (h) of the Act of 1973 which are punishable under section 20(2) of the said Act.

### **Adjudication of charge no. 03**

**[Genocide, murder and other inhumane acts (plundering and arson) at Paul Para (Purba Para) of Shemulhati village under Tarail police station, Kishoregonj.]**

88. **Summary charge:** On 9 September, 1971 around 01:00 PM under the leadership of accused Syed Md. Hachhan alias Syed Md. Hasan alias Hachhen Ali, a local leader of Razakar Bahini along with 15-20 armed Razakars attacked Purba Para known as Paul Para of Shemulhati village under Tarail police station of the then Kishoregonj Sub-Division now Kishoregonj district. Having raided the house to house in the village the accused along with his accomplices apprehended one Okroor Chandra Paul and ten others. Thereafter, among them Okroor Chandra Paul and Sharot Chandra Paul were killed by gun shots near the house of Jogadish Paul and ten others lined up in a queue being tied near Mir Bari, were also shot by accused with intent to destroy, in whole or in part, the Hindu religious group and consequently nine of them died on the spot. Only victim Surendra Chandra Paul attempted to flee away and hid himself in the jute field but he was killed in the hiding place by gun shot. Razakars plundered many houses of that Purba Para and set fire to those houses. After that, accused along with his cohorts moved towards Tarail from the scene around 03:30 PM and

later, locals floated all dead bodies into the water of a bill at Verontola beside west of the village.

89. Thus, the accused has been charged with abetting and facilitating the commission of offences of genocide, murder, abduction and other inhumane acts [pillage and arson] as crimes against Humanity as specified in section 3(2)(a)(c)(g)(h) read with section 4(1) of the International Crimes (Tribunals) Act 1973.

#### **Discussion and evaluation of evidence and findings:**

90. Prosecution, in order to prove the event narrated in this indictment relies upon P.Ws 01, 02, 03, 04 and 26, the investigating officer of the case, who have been thoroughly cross-examined by the state defence counsel in favour of the fugitive accused and also a list of martyrs marked as exhibit 06.

91. **Renu Chandra Paul as P.W. 01** has testified that he was 17/18 year old during the Liberation War in 1971. On 9 September, 1971 he was walking around their house from where, he could see that two boats reached their village. One boat was anchored at the Ghat of the house of Mothura Bhowmik Das and another one was anchored at the Ghat of the house of Dr. Nitish. Around 8/10 people wearing khaki dresses came out of the boat. One of them wore white cap on head telling loudly to 'catch malawon [Hindus] and finish'. Soon after, he [P.W 01] entered the house intimating all to take shelter in the safe place and accordingly they took shelter in a nearby jungle of the house. But his father was apprehended and tied with napkin [gamcha] while attempting to take shelter. At the same time he could see that having apprehended Razakars brought two other persons there and took them towards west of their house. Besides, having apprehended Razakars took some people from west towards east. After a while he could hear the sound

of two gun shots. Thereafter, Razakars went towards western side along with apprehended ten people but two other apprehended men named Okroor Paul and Sharot Paul could not be seen any more. Ten people were lined up in a queue near western side of Mir house by Razakars. His father Sumesh Paul was on the northern side while Dharoni Paul was on southern side in the queue.

92. In the queue remaining victims were Upendra Paul, Sochindra Paul, Jugendra Paul, Denish Paul, Sotindra Paul, Rakhal Paul, Bosonta Paul and Suruj Ali. The person who wearing cap on the head started firing towards the standing ten people lined up in a queue. Except his father nine others had died on the spot. Having run his father took shelter in a jute field after removing his ties with both the hands. None of the Hindus [Malawon] would be survived from his hand telling that his name was Hasan Daroga using cap on his head at the moment. Thereafter, having gone to the jute field other Razakars along with cap wearing man caught hold of his father and killed him by gun shots. Thereafter, having plundered they set fire to the houses of the village. He saw the killing of nine others along with his father from the hiding place at jungle. He saw his father's dead body in the jute field having come out of the jungle and went to nearby Meshgaon where he stayed over the night. He met Aboni Paul and Sumendra Paul on the way to their house the following day at about 7/8 AM. He then told Aboni about the killing of his [Aboni] father and grand-father Dharoni by the Razakars. Surendra Paul also told him that he saw the killing of Upendra Paul by Razakars. In response he told that he had seen too.

93. Thereafter, they three went to the place where nine dead bodies were lying. Sunil Paul son of Okroor Paul, Khogesh Paul son of Sharot Paul and some Muslims from the area came there. All dead bodies were floated in the water of nearby Veron Bill having been taken decision by all of them present

at the scene. Among the locals Rahmat Ali Mir and Ahmed Mir used to talk each other that killing event took place under the leadership of cap wearing man whose name was Hasan Razakar. Since then they could know the name of Hasan Razakar. They went to India after floating all dead bodies in the river that very night.

94. In cross-examination he has said it is true that Razakars cordoned off their locality getting down from the two boats. It is true that he heard from Ahmed Ali Mir and Rahmat Ali Mir the name of Hasan Daroga amongst others, who had a cap on head but he did not hear where his house was situated. He has denied the suggestions that accused Hasan Ali was studying at a Madrasha of Chawkbazar in Dhaka during the Liberation War in 1971.

95. **Sumendra Chandra Paul as P.W. 02** has testified that on 09 September, 1971 at about 01:00 PM two boats came from south-east direction and one boat anchored at the Ghat of the house of Mothura Bhowmik and another one anchored at the Ghat of the house of Dr. Nitish. He was nearby the Ghat of the house of Mothura Bhowmik at that time. From the anchored boat around 8/10 people wearing khaki clothes and rifles in hands came out through jumping at the Ghat of the house of Mothura Bhowmik at that time. A pointy bearded man with a cap on head was among them who started to say loudly 'catch malawon [Hindus], finish them'. To save lives villagers started to run hither and thither shouting to flee away as Razakars made an attack on them. He then took shelter in a jungle on the bank of a pond towards northern side of their house. From the hiding place he could see that Razakars brought twelve locals of the village from different areas and lined them up on the yard of nearby eastern side of Mir house. After a while he could hear the sound of shouting, two rounds of bullet and ablaze.

96. Thereafter, he could see Razakars excepting Okroor Pual and Sharot Paul took ten other people towards west from east. They lined up ten people standing towards south direction on the yard of Mir house at east. In the row Dharoni Paul was at the south while his father Upendra Chandra Paul was behind him and last man at the north was Suresh Chandra Paul. Thereafter, he could see cap wearing man having rifle in hand fired at them standing in the row. Nine people succumbed to bullet injuries on the spot except Suresh Paul who by removing his tie with the hands started running and went into hiding in a jute field. At that time cap wearing man started telling, 'none would be spared from my hand and hold him to finish' and thereafter he [accused] went to the jute field and killed Suresh Paul by gun shots. Those who were standing in a queue killed by Razakars, were Dharoni Paul, his [P.W 02] father Upendra Paul, Shocindra Paul, Jugendra Paul, Dinesh Paul, Jotindra Paul, Bosonta Paul and Suruj Ali.

97. Entire area became soundless sometimes after the occurrence took place. Before evening he went to Meshgoan where he took shelter in fear of Razakars. He met Aboni Paul and Renu Paul on the way to his house the following day in the morning. They came to the place where the nine dead bodies were laid on the ground. At the moment Sunil Paul, son of Okroor Paul and Khogesh Paul, son of Sharot Paul came there. Thereafter, they all went to the place where dead body of Suresh Paul was found abandoned. From there they went to nearby the house of Jagodish Paul where they could see the dead bodies of Okroor Paul and Sharot Paul. At that time some villagers assembled at the scene where they exchanged views with each other how to complete religious cremation of the dead bodies. In fear of the Razakars they were unable to cremate the dead bodies in accordance with religious rules and they took decision to float the dead bodies at the Verentola Bill.

98. Thereafter, he along with others came in front of the house of Rahmat Ali Mir where Rahmat Ali Mir and Ahmed Mir along with others present there talking that Hasan Razakar executed the killing mission and damaged a lot of Tarail. They further told that Razakars departed the area at about 03:00/03:30PM through two boats after executing killing mission. With the help of Samed of Meshgoan he and Renu along with other family members were deported to India through boat and they took shelter at Baghmara refugee camp in India. They had returned to Bangladesh after independence.

99. In cross-examination he has replied that the boat which was anchored at the Ghat of the house of Mothura Bhowmik from where 8/10 Razakars came down and about 7/8 Razakars came down from the boat which was anchored at the Ghat of the house of Bosonta Paul. Getting none in the house of Mothura, Razakars set fire on his house. Razakars tied some of them with napkin and some of them with rope. He cannot say who were tied with napkin and who were tied with rope but his father was tied with napkin [gamcha]. He has denied the suggestion that accused Hasan Razakar was not involved with the incident.

100. **P.W. 03 Sunil Chandra Paul** has deposed that he was about 22/23 year old during the Liberation War in 1971. His house was on the eastern part of Shemulhati village. On 9 September 1971 at 01:00 PM he was at home. At the time having forwarded himself towards beside southern part of their house he could see two boats coming towards their Paul Para. One boat went towards west and another one anchored at the Ghat of the house of Mothura Bhowmik. Wearing Khaki dresses having rifles in hands 7/8 Razakars came towards their Paul Para. Among them one had a pointy beard with white cap on head who shouted loudly telling that to hold Malawon [Hindus] who would not be spared. Seeing such incident he entered the house asking all to flee away and none would be spared as Razakars had

come. Informing this he took shelter in jungle on the northern side of the house from there he could see that Razakars came to their house and tied his father Okroor Paul and Uncle Sharot Paul and took them towards west.

101. Having being afraid of seeing this occurrence he went to the deep jungle towards west. After a while he could see that Razakars took his father and uncle towards east near the house of Jagodish Paul. Thereafter, that cap wearing man killed his father Okroor Paul and Uncle Sharot Paul at the place by gun shots. Then, they went towards west along with apprehended people. 15/20 minutes later he got sound of fire arms from western side. 2/4 minutes later he heard that cap wearing man said, his name was Hasan Daroga, none of Malawon [Hindus] would be spared from his hand. He also got sound of gun shots from jute field around five minutes later. From jungle he could see that few houses of their Para were burning. He went to Meshgaon nearby north of their village at about 4.00/5.00 PM and he stayed over the night at the house of Gudu Sheikh. He had returned to his village next morning. On the way to return home he got meeting of his cousin Khogesh Paul who told him that he saw the killing of both of their fathers by Razakars, then he told that he also saw the incident.

102. Locals used to tell each other when he came to his locality that Razakars killed nine more people. Hearing such fact they went to nearby Mir house towards west and could see their nine dead bodies lying on the ground. The dead bodies were of Upendra Paul, Shocindra Paul, Dharoni Paul, Jugendra Paul, Dinesh Paul, Jotindra Paul, Rakhal Paul, Bosonta Paul and Suruj Ali. He had seen Renu Paul, Aboni Paul and Sumendra Paul of his Para weeping beside the dead bodies. Then Renu Paul told him that Razakars killed his father by gun shots in the jute field. Thereafter, they all went to the jute field seeing Suresh Paul's dead body, father of Renu Paul. Then he came back to the dead bodies of his father and uncle. Locals

present in the area took decision to float the dead bodies in the water as there was no atmosphere to cremate them as per ritual.

103. As per decision of the locals all twelve dead bodies were floated in the water of Verontola Bill near eastern side of their house. After doing so he could see that the houses of Chondi Charon Talukder and Mothura Mohan Bhowmik along with others were burned to ashes. Then they left the place towards western side of Mir house. Ahmed Ali Mir and Rahmat Ali Mir along with others present there telling each other that the killing incident took place by Razakar commander Hasan Daroga. Thereafter, they went to Meshgoan from where they left for India through boat and took shelter at Baghmara refugee camp.

104. In cross-examination he has replied, it is true that around 18/20 people came by two boats. He has denied the suggestions that accused Hasan Ali did not go to their village or he was not involved with the killing incident. In reply he has told that Rahmat Ali Mir, Ahmed Mir and Hossain Ali of their village are now dead.

105. **Khogesh Chandra Paul as P.W 04** has testified that on 09 September, 1971 at 1.00 PM he was walking in the house. At that time he saw two boats coming from south direction. One boat was anchored at the Ghat of Mothura Bhowmik of their Para and another one went towards west direction. Having wore khaki dress with rifle in hands 8/10 people came down from the boat anchored at the Ghat of Muthura Bhowmik. Among them one had a white cap on his head, who used to say that 'catch Malawon, finish'. In this situation he went into hiding in jungle behind the house from where he could see that khaki dressed men caught hold of his father sharot Paul and Uncle Okroor Paul and tied them, and took them towards west. After a while he could see that some others were also apprehended along with his father and uncle who all were taken towards east of their Para. Later, his father

and uncle Okroor Paul were killed by gun shots in the yard of the house of Jagodish Paul and the khaki dressed men again began to go to the west.

106. After sometimes, he got sound of many gun shots from west. After a little while he got sound of one more gun shot from jute field beside their house. Thereafter khaki dressed men departed the scene setting fire to several houses of their Para. In the evening he went to Meshgaon and took shelter thereof. When he was coming back to his own area on the way he had met with Sunil of their Para who told him that his father and uncle had been killed. Then he also told him [Sunil] that his father and uncle had also been killed. Thereafter, having come there he could see the dead bodies of his father and uncle. Locals present there telling each other that nine more dead bodies were lying on the eastern side of Mir house. There were dead bodies of Upendra Chandra Paul, Shocindra Chandra Paul, Dharoni Chandra Paul, Jogendra Chandra Paul, Dinesh Chandra Paul, Jotindra Chandra Paul, Rakhal Chandra Paul, Basonta Chandra Paul and Suruj Ali.

107. From there he went to jute land where he could find dead body of Suresh Chandra Paul lying. He came to know from Ahmed Mir, Rahmat Mir and Hossain Ali that the person who wore white cap on head was Hasan Daroga and twelve persons including his father had been killed under his leadership. Having no scope of cremation of the dead bodies they floated them in the water at the verontola Bill taking them by boat. Thereafter, he went to the Meshgaon village and requested the locals of the village to send them to India. Locals had arranged to send them to India through boat. They took shelter at Baghmara refugee camp after going to India and stayed there till independence of Bangladesh. The name of khaki dressed man with white cap on head was Hasan Daroga.

108. In cross-examination he has replied that the name of the Bill of their village at east is Verontola. Except northern side of their Para three other

sides were under water at the time of occurrence because of rainy season. The members of his family went into hiding towards north. It is not true that he did not see the killing of his father and uncle. Cap wearing man killed his father and uncle by gun shots. It is not true that on the day of occurrence accused Hasan Ali did not go to their Para nor he was involved with the alleged incident.

109. **P.W- 26, the investigation officer**, has exhibited the list of martyrs as exhibit 06. He has stated that in serial nos. 36 Suruj Ali, 37 Bosonta Chandra Paul, 38 Dinesh Chandra Paul, 39 Jitendra Chandra Paul, 40 Rakhal Chandra Paul, 41 Jogendra Chandra Paul, 42 Dharoni Chandra Paul, 43 Shocin Chandra Paul, 44 Upendra Chandra Paul, 45 Suresh Chandra Paul, 46 Sharot Chandra Paul the martyr have been included in the martyrs' list and they were all killed by accused Syed Hasan Ali along with his accomplice Razakars on 09.09.1971 at the Paul Para of Shemulhati village under Tarail police station and Razakars also set fire to many houses after plundering.

110. Upon scrutiny of the evidence presented by the aforesaid five live witnesses in support of the prosecution case it has revealed that all the five witnesses excluding P.W. 26 were quite capable being mature at the time of occurrence. Therefore, there is no little bit ambiguity in their understanding of any event happened at the crimes site during the Liberation War in 1971. P.Ws. 01, 02, 03 and 04 are the sons of martyrs Suresh Chandra Paul, Upendra Chandra Paul, Okroor Chandra Paul and Sharot Chandra Paul respectively. All of them have been thoroughly cross-examined by the state defence counsel in favour of the fugitive accused to ascertain their [witnesses] veracity and credibility.

111. Now the question is before us whether the prosecution has been able to prove the instant charge beyond reasonable doubt. From the evidence of

P.W. 01 it has revealed that on the day of occurrence around 01:00 PM he was walking around their house from where he could see that two boats reached their village. One boat anchored at the Ghat of the house of Mothura Bhowmik Das and another one anchored at the Ghat of the house of Dr. Nitish. About 8/10 people wearing khaki dresses came out of the boat. One of them wore white cap on the head telling loudly to 'catch Malawon and finish'. Soon after, this witness entered the house intimating all members of the house to take shelter in a safe place. Accordingly, they took shelter in a nearby jungle of the house but his father was caught hold of and tied with napkin while attempting to flee away. At the same time he could see Razakars bringing ten other persons there and taking them towards west of their house. Having apprehended Razakars also took some people from west towards east. After a while he could hear the sound of gun shots.

112. Thereafter, Razakars went towards western side along with apprehended ten people but two other men named Okroor Paul and Shorat Paul could not be seen any more. The other ten persons were lined up in a queue nearby west of Mir house by Razakars. His father Suresh Paul was on the northern side while Dharoni Paul was on the southern side in the queue. The person who wearing cap on head started firing towards the standing ten people assembled in a queue who were Upendra Paul, Shocindra Paul, Jugendra Paul, Dinesh Paul, Sotindra Paul, Rakhal Paul, Bosonta Paul and Suruj Ali. Except his father Suresh Paul, nine others died on the spot sustaining bullet injuries. Having run his father went into hiding in a jute field removing his ties with both the hands. None of the Hindus [Malawon] would survive from his hands telling that his name was Hasan Daroga who had a cap on his head at the moment.

113. Thereafter, having gone to the jute field other Razakars along with cap wearing man apprehended his father and killed him by gun shots. This

witness saw the liquidation of nine others along with his father from the hiding place. He saw his father's dead body in the jute field having come out of the jungle and went to nearby Meshgoan where he stayed over the night. The following day in the morning on the way to his return home he met Aboni Paul and Sumendra Paul who narrated the crime story to him and he also told them which he had seen.

114. This witness has further disclosed that P.W.03 son of Okroor Paul, P.W. 04 son of Sharot Chandra Paul and he along with some other Muslims by taking instant decision floated all the dead bodies in the water at nearby Verontola Bill as there was no favourable atmosphere to cremate them at the relevant time. The villagers namely Rahmat Ali Mir and Ahmed Ali Mir told them the exact identification of the accused who himself recognized him as Razakar Hasan Ali Daroga as appeared in the evidence of this witness. This witness along with other survivors had to leave the country for taking shelter as refugee in India. In the cross-examination it has evident by confirming that Ahmed Ali Mir and Rahmat Ali Mir told this witness about the name of Hasan Daroga among others who had a cap on head.

115. Corroborating the above evidence, P.W. 02 has narrated that 09 September, 1971 at about 01:00 PM some people wearing khaki clothes with rifles in hands came to the place of occurrence. Among them one was a pointy bearded man who had a cap on head played a vital role like as group leader to apprehend Malawon [Hindus] and he directly killed Okroor Paul and Sharot Paul by gun shots. Thereafter, ten other Hindus including a Muslim assembled in a queue were gun shot by him. As a result nine of the victims succumbed to bullet injuries on the spot but Suresh Paul by removing his tie with hands started running and went into hiding in a jute field but he could not escape firing from the hands of cap wearing man. This witness has also mentioned the names of all the victims like P.W. 01. It is

also evident by this witness that his father Upendra Chandra Paul was one of the victims and he saw the whole incident from a nearby hiding place. This witness along with other villagers assembled at the scene the following day of the incident and floated all the dead bodies into the river having no other option available in their hands at the relevant time. The identification of the accused has also been supported by the villagers named Rahmat Ali Mir and Ahmed Mir who are now dead. Deportation to India took place by them because of such killing incident which also stated by P.W 01.

116. Defence has tried to discard the evidence of P.W 02 to some extent that the accused was totally innocent and not involved with the incident but in cross-examination this witness has disclosed that the perpetrators 7/8 in number got down from the boat which was anchored at the Ghat of the house of Bosonta Paul. Rather than discarding such evidence this witness has confirmed one of the two boats anchored at the above place and perpetrators got down from the boat to commit atrocious acts at the place of occurrence. The perpetrators including the accused killed eleven Hindu religious persons along with a Muslim by gun shots. The event of killing eleven Hindu un-armed civilians by launching attack on them appears to have been clearly corroborated by this witness and such version of his evidence in this regard could not be impeached in any way by the defence counsel. This witness observed the incident from the hiding place as an eye witness. Here, it finds no contradictory statement he has given with the evidence of P.W.01 rather his evidence has strongly corroborated former's version of evidence in the same manner.

117. P.W 03 has also narrated about the arrival of the perpetrators in a same tune which the former P.Ws described. The role and atrocious acts done by the perpetrators have corroborated the evidence of them in toto. This witness saw the incident how the eleven Hindu religious persons along

with a Muslim were killed by gun shots. It appears from the evidence of this witness that accused Hasan Daroga played a significant role in the killing of the aforesaid innocent civilians whose names have been narrated specifically by this witness as disclosed in the evidence of other witnesses. From jungle in which he had hidden himself could see burning of few houses of their Para. This witness participated in the disposal of dead bodies into the river with the help of locals the following day of the incident. The accused was not only identified by this witness alone but also by locals including Ahmed Ali Mir and Rahmat Ali Mir as Razakar Commander Hasan Daroga. This witness has also disclosed by corroborating the evidence of the above two witnesses that they left for India through boat and took shelter at Baghmara refugee camp. The suggestion of the defence has been denied by this witness that accused Hasan Ali did not go to their village or he was not involved with the killing incident. Rather it has been supported by his evidence that Rahmat Ali Mir, Ahmed Mir, Hossain Ali and other villagers helped them in the disposal of dead bodies as well as identification of the accused.

118. From the evidence of P.W. 04 it appears that the date, time and place of occurrence have been found correct with the evidence of former three witnesses. It is also found from his evidence how the perpetrators including the accused arrived at the scene by two boats. Apprehension of the victims from the respective places has also been evident as disclosed by him. This witness is also one of the members of victim family who had seen the incident from a nearby hiding place how his father along with eleven others was liquidated by the accused and his cohorts. From his evidence it is also found that the dead bodies were floated into the water at Verontola Bill as there was no prevailing situation for cremation of the dead bodies at the relevant time after incident took place.

119. Deportation of this witness along with others has also been emerged in the evidence that they went to India taking shelter at Baghmara refugee camp and stayed there till independence of the country. This witness has clearly replied in cross-examination that the cap wearing man killed his father and uncle by gun shots. Such evidence has made sure of the evidence of other witnesses correct to come to a conclusion that the perpetrators committed such offences at the relevant time and date of occurrence as alleged by the prosecution. Such atrocious acts i.e. killing a number of Hindus by the perpetrators including the accused was a barbaric and heinous crime.

120. It appears from evidence that the victims were not high profile people rather they were seemed to be very simple and innocent unarmed persons. There was no feud or enmity between the victims and the perpetrators so that they [perpetrators] could oust them forever. It is highly unbearable thing from the part of the human dignity that without having any reasonable cause a number of people being belief in Hindu religious ideology, had been killed by the perpetrators on the day as alleged by the prosecution during the Liberation War in 1971. No provocative speech or any whispering word on the part of the victims was made so that perpetrators could be prompted to kill the persons as stated in the indictment rather the victims ran hither and thither when the perpetrators came to the place of occurrence.

121. It is found in the evidence that Rahmat Ali Mir and Ahmed Ali Mir being peers of the village played a role in getting the decision to float the dead bodies in the water or the river and in the identification of the accused. For which they [Rahmat Ali Mir and Ahmed Ali Mir] might have been the witnesses in proving the event but both of them died earlier as disclosed by P.W 03 in his reply during cross-examination. Similarly one of the victims survived luckily who had narrated the facts of the incident to the witnesses

before he died in an injured condition after two or three months of the incident. So there is no scope to say that the prosecution has failed to place the aforesaid persons before the Tribunal for getting their evidence to corroborate with the other evidence as deposed.

122. It is also found in the evidence that a Muslim named Suruj Ali was killed along with eleven Hindu people but no evidence is found why he had been killed along with them. For his liquidation nothing will hamper or struck down the charge of genocide because the perpetrators at the time of occurrence looked for only Hindu religious people that mean intention of the perpetrators was to destroy, in whole or in part, the Hindu religious group. Therefore, it can be said that it was a clear design and policy of the accused with intent to destroy in whole or in part against a particular religious group or Hindu community in committing the offence of killing eleven Hindu religious persons. Thus, targeting part of the community qualifies as substantial for the reason of inferring the 'genocide intent'. The pattern of the crime adequately indicates that the intent of the perpetrators was not 'destroy a group' as it has been established that the destruction was related to a significant section of Hindu group. It was held in the case of **Jelusic**, [Trial chamber: ICTY], December 14, 1999, Para, 83 that,

*"It is accepted that genocide may be perpetrated in a limited geographic zone. The geographical zone in which an attempt to eliminate the group is made may be limited to the size of a region or.....a municipality."*

123. In this regard, it finds more support through the observations made by **ICTR** in the following three cases that,

*"[T]he perpetrator must act with the intent to destroy at least a substantial part of the group." [Bagosora,, Kabiligi, Ntabakuze and*

*Nsengiyumva, (Trial Chamber), December 18, 2008, Para 2115]*

*“At the very least, it must be shown that the intent of the perpetrator was to destroy a substantial part of the group, regardless of the number of victims actually involved.”[Muvunyi, (Trial Chamber), September 12, 2006, Para. 483]*

*“[I]n part’ required the intention to destroy to considerable of individuals who are part of the group.”[Kayishema and Ruzindana, (Trial Chamber), May 21, 1999, Para. 97]*

124. It was a painful and pathetic event that survivors along with locals were unable to cremate the dead bodies according to ritual as there was no prevailing atmosphere in the locality after incident. As a result, they had to compel themselves to float the dead bodies into the water at Verontola Bill having no other option in their hands.

125. Razakars as well as perpetrators who were brown dressed with white caps on heads had rifle in their hands which mean that they were being well equipped to commit such atrocious acts. It has come into evidence that perpetrators as well as Razakars used brown clothes [khaki posak], white cap [sada tupi], and one Razakar had pointy beared [khocha khocha dari]. These are the symbol of their identification as disclosed by the P.Ws in their evidence. One of the perpetrators repeatedly pronounced ‘Malawon’ that means Hindu people and he identified himself as Razakar Hasan Daroga. Using such hating word he inspired his cohorts for apprehending Hindu people to kill them forever. So there is no ambiguity in the identification of the accused as evident by the P.Ws and under his leadership the Hindu people were targeted to destroy or finish forever.

126. It has emerged from the evidence that the accused perpetrator was so annoyed with the members of Hindu community. Now the question may

arise why such annoyance took place without any iota of provocation before occurrence took place. It has become a common knowledge in the history of independence of Bangladesh that in the general election held in 1970 cent percent members of Hindu community came forward to support and cast their votes in favour of Awami league. As a result, the then Pakistani ruler became upset and felt embarrassed under unbalanced position to rule the country especially the east part of Pakistan. When the war was started in this part of Pakistan, military junta and their collaborators including accused perpetrator targeted the aforesaid Hindu religious people to destroy them in whole or in part. The occurrence took place as stated in the instant indictment, is one of the instances.

127. It is here to note that all the four live witnesses categorically have mentioned the names of the killing persons in their examination-in-chief which have been corroborated and supported by the evidence of P.W 26, the investigating officer of the case, who has exhibited the list of martyrs as exhibit no. 06 in which from serial nos. 36 to 47 are the victims of the instant charge, were killed by the accused along with his cohorts as disclosed in his evidence.

128. Although the occurrence took place in 1971 long after about 43 years ago but all the four witnesses have specified the date, time and place of the occurrence as well as names of the victims in their given evidence while the defence has failed to discard the evidence of any events. According to the evidence adduced by the aforesaid witnesses it has emerged that the accused had clear intention to vanish a Hindu religious group in whole, or in part. Even then, it is not necessary to have criminal intent within the vicinity of the accused in committing an offence of 'genocide'. This view finds supports from the principle enunciated by the **ICTR** in the case of **Muvunyi** which is as follows:

*"[A]n accused can be found guilty of committing genocide even if his personal motivation went beyond the criminal intent to commit genocide." [Muvunyi, (Trial Chamber), September 12, 2006, Para. 479]*

129. It was also observed by **ICTR** in the case of **Rutaganda** that,

*"The Appeals Chamber stresses that, in general, committing crimes as part of a widespread or systematic attack against a civilian population does not imply that such crimes, or others, were not committed with the intent of destroying, in whole or in part, a group referred to under Article 2 of the statute."*

130. It is a very rare case to get direct evidence in toto after 43 years of the incident against an accused from all the witnesses examined by the prosecution in proving the charge. The case it hand it finds material evidence from all the witnesses without having any minor contradiction from each other. More so, direct involvement of the accused in the killing with his rifle has also been found present in the evidence of all witnesses in addition to the instruction to his accomplices in apprehending the victims, plundering and setting fire to the houses of the village.

131. Defence has raised a question by giving specific suggestion to the witnesses regarding absence of the accused within the vicinity of the occurrence that he was not staying there rather he was studying at a madrasha in Dhaka during the Liberation War in 1971 but that has been vehemently denied by all the witnesses saying that he [accused] used to stay at the crime site at the relevant time.

132. It is now a settled proposition of law that when an accused takes a plea of alibi denying that he was not in a position to commit the crime with which he has been indicted, particularly, that he was elsewhere then at the scene of the crime and at the time of its commission. In proving such event,

the onus does not lessen for the reason of success or failure to prove the plea of alibi. It was observed by the **ICTR** Appeals Chamber that,

*“The only purpose of an alibi is to cast reasonable doubt on the Prosecutor’s allegations, which must be proven beyond reasonable doubt. In alleging an alibi, the accused rarely obliges the Prosecution to demonstrate that there is no reasonable likelihood that the alibi is true”[Nahimana, Barayagwiza and Ngeze, (Appeals Chamber), November 28, 2007, Para 417]*

133. Conversely the defence has failed to show anything as claimed about his [accused] stay in Dhaka during the Liberation War in 1971. So the prosecution’s claim about his presence at the vicinity of the crimes site has been established.

134. It has also emerged from the evidence that the perpetrators went to the place of occurrence with heavy arms and ammunitions to execute their plan. They did not even give any scope to the victims to say anything before firing gun shots to them which meant that the victims knew nothing about the attack on them for their causalities. Nevertheless, corroborating each other all the five witnesses have testified that the perpetrators after killing twelve persons plundered and set fire to various houses of the village under instruction of the accused.

135. It has been evident that the accused directly abetted and facilitated the commission of offences of looting and arson and he had direct participation in the killing of the victims. Now the question arises whether this killing would be within the preview of genocide or murder as crimes against Humanity as specified in section 3(2)(c) or 3(2)(a) of the Act of 1973 respectively. The prosecution has argued that since the eleven deceased persons were from a particular religious group targeted by the perpetrators

that constitutes a clear case of 'genocide'. It appears from testimonies that the attack was a systematic one on a particular group of religious persons other than the acts of plundering and arson. The acts done on the part of the accused are not found to be isolated. Although, it needs no elaborate discussions over the event as claimed by the prosecution but 'genocide' being a large scale crime it has special meaning which can be shown later part of it. As per section 3(2)(c) of the Act of 1973 'genocide' is the deliberate and systematic destruction of a national, ethnic, racial, religious or political group. The extermination of individuals because of their membership to distinct national, ethnic, racial, religious or political group has been perpetrated during the Liberation War in 1971 within the territory of Bangladesh. It is the history of common knowledge and need not be proved through evidence as per provisions of the Act of 1973.

136. The relevant provisions of section 3(2)(c) of the Act of 1973 are as follows:

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

- **Killing members of the group**
- **Causing serious bodily or mental harm to members of the group;**
- **Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;**
- **Imposing measures intended to prevent births within the group;**
- **Forcibly transferring children of the group to another group."**

137. No doubt 'genocide' is the gravest crime by finding its meaning from the aforesaid provision of law as it exceeds all ingredients of the crime of

murder. This type of offence also includes the murder crime as well. Such crime never gives impunity and the perpetrators will have to face justice in accordance with legislation.

138. Accused Hasan Daroga has been charged with the offence of genocide as he allegedly acted and participated in the commission of 'killing member of the Hindu religious group' with intent to destroy it 'in whole or in part'. The meaning of 'genocide' as laid down in the Act of 1973 seems to be in conformity with the Article 6 of the Rome Statute. In the present charge, it may find more support and help for the determination of culpability of the accused from the following two observations made by the ICTR in the cases of **Seromban and Muhimana**

*"To establish specific genocidal intent, it is not necessary to prove that the perpetrator intended to achieve the complete annihilation of a group throughout the world....." [Seromba, (Trial Chamber), December 13,2006, Para 319]*

*"In proving the intent to destroy 'in whole or in part,' it is not necessary for the prosecution to establish that the perpetrator intended to achieve the complete annihilation of a group." [Muhimana, (Trial Chamber), April 28, 2005, Para. 498]*

139. As per evidence of all the witnesses in the case it has invited us to hold that the accused Hasan had direct participation as Razakar Commander of Tarail police station under the then Kishoregonj Sub-Division or a member of group of individuals in committing the offences of killing, plundering and arson with the help of his accomplice Razakars. It is true that during conflict situation leadership does not act or remain effective and disciplined following organizational hierarchy. On cumulative evaluation of testimonies produced and adduced by the prosecution witnesses it has inferred that accused had a close, active and culpable affiliation with his accomplice perpetrators by

virtue of his position. The position of his leadership has also been supported by exhibit no. 04 a list of collaborators, Razakars, Al-Badr and Al-Shams of Kishoregonj Sadar prepared by Upazila Social Welfare Officer dated 04.12.2013 and Acting Commander of Kishoregonj Sadar Upazila Command, Bangladesh Muktijodhya Songsad which was also counter-signed by Upazila Nirbahi Office, Kishoregonj. This exhibit contains the name of the accused as Razakar commander in serial no. 07 of page 38 of prosecution book **'promanpatra'**.

140. Upon scrutiny of evidence both oral and documentary presented by aforesaid witnesses, it is well established that the accused was a leader and influential person of the then Kishoregonj Sadar Razakar Bahini during the Liberation War in 1971. This being the status that the accused was holding the relevant time, his presence at the crime site as an active offender inevitably prompts us to infer that in addition to his direct participation in the killing at the time of commission of offence, he substantially provided practical assistance, encouragement and moral support to his co-perpetrators in perpetration of the offence of genocide that resulted in the killing of eleven persons belonging to Hindu community which is a distinct religious group and thereby he incurs criminal liability under section 4(1) of the Act which has already been quoted hereinbefore.

141. If it is a crime done by several persons staying in a group then the liability has to be assessed separately as if the crime were done by him individually. Crime may be done by a group of offenders but punishment should be imposed upon each of the persons separately.

142. Considering all aspects along with the views and circumstances as narrated above we, finally conclude that the accused Hasan actively and directly participated in the aforesaid atrocious activities to destroy a Hindu religious group. It may be mentioned here that though the charge of

deportation has not been framed with the other charges as depicted earlier but the evidence has revealed that the accused had also committed the offence of deportation. As per rule 39A of ROP 2010 there is no bar to convict the accused for commission of the offence of deportation for which he was not indicted at the time of framing charge. Therefore, the above mentioned evidence is enough to hold that the prosecution has successfully been able to prove the instant charge beyond reasonable doubt, and found him guilty for substantially participating, abetting, aiding and facilitating and actual commission of the offences of genocide, deportation and other inhumane act [plundering and arson] as crimes against Humanity as specified in section 3(2)(a)(c)(g) and (h) read with section 4(1) of the Act of 1973 which are punishable under section 20(2) of the Act.

#### **Adjudication of charge no. 04**

**[Offences of genocide, murder, abduction, confinement and other inhumane act (plundering) at Borgaon village under Tarail police station, Kishoregonj.]**

143. **Summary charge:** On 27 September, 1971 around 08:00 PM when some Hindu religious people including eight male and 4/5 female members along with some infants reached Markan Bill located at Borgaon under Tarail police station of the then Kishoregonj Sub-Division by a rented boat from Paikura village of Kendua police station under the then Netrokona Sub-Division with a view to go to India as refugees, then accused Syed Md. Hachhan alias Syed Md. Hasan alias Hachhen Ali along with his accomplice Razakars cordoned them off there and forcefully dragged them into his [accused] boat and took them onto Balongka road under Tarail police station. In the meantime helmsmen of the boat plunged themselves into the water to save their lives. Thereafter, being enraged the accused applied force

to Satish Chandra, Suresh Chandra Ghosh and Jogadish Chandra Ghosh to get down from the boat and stood them up in a queue and shot them from behind with intent to destroy, in whole or in part, the Hindu religious group, who died on the spot. At the instruction of the accused other accomplices killed rest five male members one after another by gun shots on the road and snatched away ornaments and money in cash from the female members and took them by their rented boat and confined them along with infants at Tarail police station. The female members along with infants got release from Tarail police station after four days with the help of Paikura union parishad chairman Abdur Rahman Bhuiyan.

144. Thus, the accused has been charged with abetting and facilitating the commission of offences of genocide, murder, abduction, confinement and other inhumane act [plundering] as crimes against Humanity as specified in sections 3(2)(a)(c)(g)(h) and 4(1) of the International Crimes (Tribunals) Act 1973.

**Discussion and evaluation of evidence and findings:**

145. To prove the instant charge prosecution has examined as many as five live witnesses [P.Ws. 15, 16, 17, 18 and 26, the investigating officer of the case].

146. **Alhaj Md. Shamsul Alam as P.W. 15** has testified that he was about 17/18 year old during the Liberation War in 1971. One month after commencing Liberation War in 1971 Pakistani army men came to Tarail Sadar police station and left the place after one day stay. Two days after, they again came to Tarail police station and established a camp in Tarail High School. Accused Md. Hasan, eldest son of Moulana Musleh uddin of Kishoregonj who recognized himself as Razakar Commander of Tarail police station also came along with Pakistani occupation force.

147. He has further stated that he along with his business partners went to Chouganga Bazar on 27 September, 1971 in order to purchase jute. On the way to return home when they reached Kurerpar then they could see three middle size boats coming towards them. About thirty people were in those boats who dressed with khaki clothes, caps on heads and arms in hands. In reply to a question put to them, they said there was no Hindu in their boat. Some of them rode onto their boat in order to search but they released their boat as found no Hindu people. They further made query whether they [witness and others] had seen any boat in the Markan Bill. In reply they said 'no'. But Razakars took them when they saw a boat at the Markan Bill in which around 17/18 people including female, male and infants were Hindus who, for their safety, started going towards India. Lastly their boat was anchored at the road side of west of Balongka village. Then male Hindu members got out of the boat on their [Razakars] instruction and Razakars tied their hands.

148. Thereafter, he could see that one of the khaki dressed men with a cap on head directed others to take the male members onto the road and three of them getting down from boat were put in a queue. Thereafter, they fired at them who fell on the ground as per his [accused] instruction. Then that man came to see them by torch light and confirmed their death firing once again. A boy aged about 9/10 year old entered into the boat seeing the killing incident and thereafter, he was also killed taking him out of the boat by accomplices of the order giver and subsequently he died falling into water. Later, they killed remaining four male members one by one. He had seen the incident from his boat. After a while on hearing sound of firing from the side of Tarail police station they [Razakars] directed them to depart the place. Then they came back to their village. They were members of Razakar Bahini who boarded on those boats with khaki dresses.

149. They had narrated the incident and described the details of the order giver to the peers [Guardians] of the village the following day in the morning. Then the peers of the village told them that the person who had been described by them was Razakar Hasan Ali Daroga, son of Moulana Musleh Uddin. Seeing three persons, who had been killed, of whom one was Satish Chandra Ghosh. Peers of the village further told them that Razakars had taken the female members and infants to the Tarail police station. They came to know later that local union parishad chairman Abdur Rahman Bhuiyan took the female members along with infants to their own village releasing them from Tarail police station after two days of the incident. Thereafter, he came to know that one of the bullet injured persons did not die and other dead bodies were floated into the river as per instruction of local chairman and injured person was rushed to his village home. Later that man succumbed to his bullet injury whose name was Nurendra Ghosh. He [P.W-] will recognize the order giver if he can see him but he is not present in the dock of the Tribunal.

150. In cross-examination he has denied the suggestions that as per him no incident took place or he did not see the occurrence and he has given false evidence to undermine the image of the accused.

151. **P.W. 16 Sonjubala Ghosh** has stated in examination-in-chief that she was about 24/25 year old during the Liberation War in 1971. She along with other members started to go to India by a rented boat one Sunday night. Their boat was anchored in Borgoan area on Monday 10<sup>th</sup> Arshin at about 10/11 AM. Helmsmen of the boat informed that it was not safe to go to India in the day light rather it would be safe to go in the night and that was why they stopped journey anchoring the boat in the Markan Bill at noon. After a while in the evening Razakars cordoned off their boat coming by four boats. In that situation helmsmen dived into the river. Some Razakars rode onto

their boat. They wore khaki [Brown] dresses with white caps on heads. One of them having pointy beard with rifle in hands recognized himself as Razakar commander Hasan Ali of Tarail police station who asked them whether they were going to India. Razakar commander Hasan Ali Daroga further told them that none would be spared from his hand. He asked to know the name of her husband and took eight male members with her out of the boat. Razakars thereafter anchored the boat near the Balongka road running the boat by their drive.

152. Thereafter, Razakar Hasan Ali Daroga directed other accomplice Razakars to take all of the male members onto the road and brought them to stand on the road where he told them to be Muslims if they wanted to survive but her husband and brother-in-law were stayed silent. In the situation accused Hasan Ali Daroga killed the three persons including her husband by gun shots and other accomplice Razakars under his instruction killed remaining five others by gun shots. She observed the incident standing on the boat from 5/7 cubits distance. Besides, her husband there was her brother-in-law Jogodish, Suresh, Krishno Das, Rohini Chandra Ghosh, Sukumar and Nani of their nearby house. Immediately after this incident, the sound of firing was coming from a far cry. Getting such sound they all female members entered into the boat while Razakars lying on the ground. Accused Hasan Ali Daroga again came to their boat sometimes later when the firing was stopped telling that 'your husband had been killed, you were to be Muslims and be married with Muslim man'. Thereafter, they snatched away about twenty 'Bhories' of gold ornaments and taka twenty five thousand in cash from them and took their boat along with them to Tarail police station. Thereafter, accused Razakar Hasan Ali confined them in a room and told them that he was Daroga of Tarail police station. In this manner they were kept confined for three days and thereafter they let the

name of union parishad chairman Rahman Bhuiyan on query by Razakars. Rahman Bhuiyan came to the police station and rushed them to their village home after release.

153. Two or three days after return they could know that Narendra did not die sustaining bullet injury at the time of incident who narrated the incident story before all of them including the union parishad chairman. He [Narendra] further informed them that all dead bodies including her husband and brother-in-law were floated in the river with the help of union parishad chairman. About two or three months later Narendra died in an injured condition. She cannot identify the accused as he is not present in the dock of the Tribunal.

154. In cross-examination she has replied that on Sunday night at about 11/12 PM they started journey in order to go to India. It is true that union parishad chairman Abdur Rahman brought them to their village home from Tarail police station. She has denied the suggestions that accused Syed Md. Hasan never recognized himself as Daroga nor he did not go to the place of occurrence nor he was involved with the occurrence. It is not true that she has given false evidence as tutored by others against accused Syed Md. Hasan.

155. **Nani Gopal Ghosh as P.W-17** has deposed that he was about 26/27 year old during the Liberation War in 1971 and was a student of degree class in Kishoregonj Gurudayal College.

156. In the month of Sraban in 1971 he along with his family members were taken from their house to maternal grand-father house by his maternal uncle at Gouripur police station under Mymensingh district because of unstable situation in their locality. Thereafter, they got message of plundering their house by local Razakars. His uncles by taking decision

started journey towards India in the night the following day of the said incident. At about 10/11 AM their boat reached Borgaon. When they reached Borgaon Bill the helmsmen stopped the boat telling his uncle Satish Chandra and others that it was not safe to proceed at the time and they suggested to proceed after evening towards India. Helmsmen went to the Markan Bill driving the boat. At that time helmsmen observed four boats coming towards them. When they came near his uncle's boat the helmsmen dived into the river. From those boats 5/7 Razakars came out and entered into his uncle's boat. One pointy bearded Razakar wearing khaki [Brown] dress with white cap on head and rifle in hand told all of them staying in the boat to be Muslims if they wanted to survive. That Razakar recognized himself as Razakar commander Hasan Ali of Tarail thana. He told again that he would kill all of them, if not become Muslim.

157. Thereafter, the boat was taken to Balongka near the road by others. Razakars under instruction of accused Hasan Ali Daroga and having taken the male members get off the boat tied their hands. Then, having put his paternal uncle Satish Chandra, Suresh Chandra and Jagdish Chandra in a queue on the road and accused Hasan Ali Daroga by his own hand killed them by gun shots. In the same way other Razakars killed remaining five male members at the instruction of Razakar commander Hasan Ali. Immediately after this incident, Razakars laid down on the ground when firing sound was aired from a long distance and female members took shelter in the boat. Hasan Ali Daroga got ride onto the boat when firing sound was stopped and he snatched away 20 'Bhories' of gold ornaments and taka twenty five thousand in cash from his paternal aunts forcibly. Thereafter, they had dragged the boat to Tarail police station. Female members along with infants were kept confined in a room of Tarail thana.

158. On the third day of the occurrence accused Hasan Ali Daroga asked to know the name of local union parishad chairman from his aunt who told about Chairman Abdur Rahman Bhuiyan. Next day having come to the police station chairman Abdur Rahman Bhuiyan took them to Paikura village. One week after the killing incident he went to his own village Paikura from his maternal grand-father's house and heard the incident in details from his aunts Sonjubala Ghosh and Arunbala Ghosh. He also came to know the fact of the occurrence from injured Narendra who was rescued by union parishad chairman on being injured and later he was sent to their village. Narendra told them that locals floated the dead bodies in the river. Narendra died 2/3 months later in an injured condition.

159. In cross-examination he has replied that the boat of his paternal uncle was reached Markan Bill from Borgaon before evening. It is not true that he has not given evidence before the Tribunal as his aunt described the incident to him. It is not true that accused Syed Md. Hasan is not involved with the alleged incident and he has given evidence before the Tribunal falsely.

160. **P.W. 18 Mina Rani Sarker** has deposed that she was 2/2½ year old in 1971. Having being grown up she asked her mother to know the reasons of death of her father and paternal uncles. Her mother replied that Razakars killed her father and uncle during the Liberation War in 1971.

161. She heard from her mother that in the first week of Ashwin, 1971 one day local Razakars came to their home to find her father and uncle. Failing to get them Razakars told her mother and aunt that her father and uncles were to be Muslim, otherwise they would be in danger. On the same day Razakars also plundered their house. This incident of previous day was intimated to her father and uncles when they came back home. Getting such information they took decision to go to India and a day after in the night all family members including her father and uncles by a rented boat started

journey towards India. They reached Bargoan next day i.e Monday on 27 September at about 10/11 AM. Thereafter, helmsmen of the boat intimated that it was not safe to proceed in the day light rather in the night would be favourable to start journey. After noon helmsmen went to Markan Bill with the boat. Helmsmen of the boat dived into the river when they could see four boats coming towards their boat after evening.

162. From those boats some Razakars came to their boat. One of the Razakars asked to know that whether Malawon were going to India? He identified himself as Hasan Ali Daroga, Razakar commander of Tarail police station who had a pointy beared with khaki dress, white cap on head and rifle on shoulder which she heard from her mother. Getting instruction from accused Hasan Ali Daroga, other Razakars took eight male members including her father and uncles onto the road from the boat and lined them up in a queue. Thereafter, accused Hasan Ali killed her father Satish Chandra Ghosh and Jagadish Chandra Ghosh by gun shots and other Razakars killed rest five male persons by gun shots under instruction of accused Hasan Ali Daroga. Immediately after this incident, Razakars had lain on the ground as firing sounds were coming from a far cry and her mother and aunts entered the boat from outside. When the sounds of firing were stopped then Hasan Ali Daroga and other Razakars came to nearby boat and told her mother and aunts to be Muslims and be married with Muslim man. Accused Hasan Ali Daroga forcefully robbed 20 'Bhories' of gold and take 25 thousand in cash from her mother and aunts.

163. Thereafter, other Razakars dragged the boats along with her mother and aunts to Tarail police station under instruction of accused Hasan Ali Daroga and kept them confined in a room thereof. Two or three days later, accused Hasan Ali Daroga wanted to know the name of union parishad chairman from her mother and she told the name of union parishad

chairman Abdur Rahman who prompted her mother and aunts along with others to take to Paikura village. After some days her mother came to know that bullet injured Narendra did not die and he was rescued by union parishad chairman when he was lying on the Balongka road in an injured condition and chairman sent Narendra to their Paikura village and other dead bodies were floated in the water, 2/3 months later Narendra succumbed to bullet injuries. She has sought justice for killing her father and uncles.

164. In cross-examination she has replied that she has only one brother. Her younger brother is a rickshaw puller. They went to maternal grandfather's house at Jhajira village under Purbadhala thana after independence and grew up there. It is not true that she never heard from her mother the facts of the incident which she has narrated before the Tribunal. She has denied the suggestion that she has given evidence falsely as tutored by others against accused Syed Md. Hasan.

165. **P.W. 26 the investigating officer** has deposed that in exhibit no. 5 at running page 60 of prosecution book 'promanpatra' which contains the names of the victims from serial nos. 05 to 12 who were killed by accused Syed Hasan Ali and his accomplice Razakars on 27.09.1971 in Balongka area under Tarail police station.

166. On a careful scrutiny of the evidence adduced by the aforesaid witnesses it finds that P.Ws. 15 and 16 are eye witnesses while P.Ws 17 and 18 are hearsay witnesses and P.W 26 is the investigating officer of the case. It appears from the evidence of P.W 15 that he was a trader of jute materials. On 17 September, 1971 at the eve of evening he was asked by Razakars to know whether there was a Hindu people in his boat at Markan Bill. His answer was in the negative but they verified on searching the boat. After a while Razakars found a boat in which around 17/18 Hindu people including

female, male and infants were boarded to go to India. Upon the directive of a Razakar who identified himself as Hasan Ali Daroga wearing khaki dress and white cap on head, other Razakars took the male members onto the road from the boat. Three of them after getting down from boat were put in a queue. Then, under instruction of the accused, other accomplices fired at them who fell on the ground. Thereafter, they killed remaining five male members including a boy of 9/10 year old by gun shots one after another. This witness has further disclosed that after a while on hearing sound of firing from the side of Tarail police station they left the place for their home on the directive of the perpetrators who were the members of Razakar Bahini, boarded on their boats wearing khaki dresses.

167. This witness narrated the incident to the peers of the village the following day in the morning who also told him that one of the perpetrators was Razakar Hasan Ali Daroga, son of Moulana Musleh Uddin, who confined female members and infants in a room of Tarail police station from where union parishad chairman Abdur Rahman Bhuiyan took them to their own village after two days of the incident and dead bodies of the Hindu people were floated into the river. One of the victims luckily survived sustaining bullet injury but few days later he succumbed to his bullet injury whose name was Narendra Ghosh. Before his death he elaborately described the incident to P.W 16 and others how he was attacked along with others by the perpetrators at the crime site.

168. Defence has not been able to discard the evidence of this witness to be suspect in disproving the prosecution case. Defence suggestion is that no incident took place as per his [P.W 15] evidence and he has given false evidence to undermine the image of the accused. Now the question is before us why this witness without having any interest does give false evidence. There is no single evidence in hand in the case that this witness obtained

some undue gain or advantage from any interested quarter to give the false evidence against the accused. It is evident that this witness suddenly observed the incident on the way to his home by boat from market. Furthermore, he is neither a relative nor a member of victim families rather he is a Muslim inhabitant of the village. So, his evidence cannot be brushed away from the truthfulness of the incident.

169. P.W 16 is the wife of martyr Satish Chandra Ghosh and sister-in-law of martyr Jogadish. At the time of occurrence she was along with her husband and brother-in-law. Corroborating and supporting the evidence of P.W 15 she has stated that she along with her husband and others started going towards India by a rented boat on the day of occurrence but helmsmen of the boat by anchoring in Borgaon area disagreed to proceed as it was not safe to go in the daylight. After a while in the evening Razakars cordoned off their boat coming by four boats. At that time boatmen plunged into the river in fear of the Razakars. One of the Razakars having pointy beared and rifle in hand recognized himself as Razakar commander Hasan Ali of Tarail police station and asked them whether they were going to India or elsewhere.

170. Thereafter Razakars took eight male members out of the boat and brought them to stand on the road. At one point of time Razakar Hasan Ali Daroga asked them to be Muslim if they wanted to survive but her husband and brother-in-law were kept silent. In this situation accused Hasan Ali Daroga killed three persons including her husband by gun shots and his other accomplice Razakars under his instruction killed remaining five others. Thereafter, they were taken to Tarail police station along with the boat and accused Hasan Ali confined them in a room stating that he was a Daroga of Tarail police station. Three days after, with the help of local union council chairman Rahman Bhuiyan they got release from the cell of the accused and two or three days after they came back home and could know that Narendra

did not die getting bullet injury at the time of incident who described the entire history of the incident to all of them including the union parishad chairman and dead bodies of others were floated in the river. Confirming such evidence this witness [P.W-16] has described their launching of journey to India and their release from Tarail police station with the help of union parishad chairman during cross-examination by the defence. The above evidence which have revealed in her deposition as well as cross-examination do not contradict the evidence of P.W 15 rather the evidence of both the witnesses corroborated each other without having no conflict scenario. It appears from both the witnesses that the accused had directly participated in the killing of three Hindu religious persons and other accomplice Razakars by getting directive from him killed remaining four male members of the boat which indicates that they had intent to destroy in whole or in part the Hindu religious group.

171. P.W-17 heard the incident from his aunts Sonjubala Ghosh and Arunbala Ghosh who were confined at police station after killing incident. His two uncles were liquidated by accused and his cohorts on 27 September, 1971. At the time of occurrence this witness was in the house of maternal grand-father at Gouripur police station under Mymensingh district because of unstable situation in their own area occurred by the Razakars during the Liberation War in 1971. He was then student of degree class in Kishoregonj Gurudoyal College. One week after the incident his aunts narrated whole story of the incident before him how Razakars cordoned off their boat and killed their husbands along with others and what role the helmsmen played when their boat was captured by the accused along with his accomplice Razakars. Identification of the accused as Hasan Ali Daroga was also intimated to him by his aunts and subsequent confinement of his aunts along with infants in a room of Tarail police station has also been disclosed

to him. In respect of their release from the police station and recovery of victim Narendra with the help of local chairman was also disclosed to him by eye witness, P.W 16 and others. Disposal of the dead bodies floated in the river and victim Narendra's practical experience in the occurrence before his death have come into light in the hearing of this witness.

172. It appears from the evidence of P.W 18 that at the time of occurrence she was only 2/2½ year old though she was with her family members in the boat captured by the Razakars while they were going to India for getting shelter because of unstable atmosphere in their locality. When she became quite mature to understand anything she asked to know the reasons of her father and uncles' killing during the Liberation War in 1971. Her mother Sonjubala Ghosh described the event wholly before her how their boat while going towards India was captured by the accused along with his cohorts and how her father and uncles were killed. This witness has described the whole incident in a same tune like other witnesses. There is no iota of different version from her hearing as disclosed by other witnesses in the evidence. It appears from both the above hearsay evidence that they have deposed in their examination in chief by supporting and corroborating the evidence of P.Ws 15 and 16. Although both of them are hearsay witnesses but their evidence should be envisaged with the circumstances, relevant material facts and direct evidence depicted. Hearsay evidence is admissible in law and the court can act on it in arriving at a decision on fact in issue, provided it carries reasonable probative value [**Rule 56(2) of the ROP, 2010**]. This view finds support from the principle enunciated in the case of **Muvunyi [ICTY, Trial Chamber]** which is quoted at time of discussion of charge no. 02.

173. When hearsay evidence supports substantive views of the eye witness it becomes more effective to take decision on a particular event. In the case in hand it finds the evidence of two important eye witnesses

together with hearsay evidence of two other witnesses more effective to evaluate the whole event as well. The names of the victims that had been killed by the perpetrators have been found corroborating each other in the instant charge. Not a single name of the victims has been found contradictory in the evidence of eye and hearsay witnesses to be disbelieved in any way.

174. It is not needed to be discussed in the present charge regarding genocide intent as it has been elaborately depicted earlier in charge no. 03 but it is found in the evidence that some of the victims were not killed by the perpetrators including the accused though they were women and infants of the Hindu religious community. Question may arise to some extent that all members of Hindu community were not liquidated in the action of the perpetrators at the crime site to have attracted 'genocide intent' in the instant charge. To establish specific intent it is not necessary to show annihilation of all members of the group by the perpetrators. It finds support from the principle laid down in the case of **Muhimana**, [ICTY, Trial Chamber], April 28, 2005, Para. 498 which are already quoted at the time of discussion of charge no- 03.

175. The present charge not only includes genocide it includes crimes against Humanity i.e. murder, abduction, confinement and other inhumane act. The prosecution has also produced evidence through the aforesaid witnesses to establish the offence of crime against Humanity. It appears from evidence that the attack was made by the perpetrators in a systematic way against civilian population. In the context of a crime against Humanity the civilian population is the primary object of the attack. It is evident that the civilian population i.e. the victims of the occurrence were not carrying any arms or ammunitions. They were simply innocent villagers leaving their homes towards India in fear of the perpetrators but the attack was directed

by the perpetrators to be part of a widespread and systematic as disclosed in the evidence of the witnesses. This view finds support in the case of **Blaskic**, [ICTY, Appeals Chamber]. July 29, 2004, Para. 98:

*“It is well established in the jurisprudence of the International Tribunal that in order to constitute a crime against humanity, the acts of an accused must be part of a widespread or systematic attack directed against any civilian population.”*

176. However, in the case in hand the defence has claimed throwing suggestion to the prosecution witnesses that the accused was not involved with the horrific atrocious acts taken place in the alleged area of Tarail police station by Syed Hasan Ali. Defence further claim is that the accused used to stay in Dhaka and studied at a madrasha during the Liberation War in 1971. In support of this plea of alibi no evidence both documentary or orally has been found to be considered to be true as claimed by the defence counsel.

177. However, the burden of proof of alibi is not laid upon the accused to establish his claim but in the instant case there was an ample opportunity on the part of the accused to submit relevant documents in support of his learning at madrasha and staying in Dhaka during the Liberation War in 1971. Since the trial is held in absentia because of his absconding no document was submitted in support of such claim. Such claim brought by defence counsel does not mean that he has to prove it. In support of this view it was held by Appeals Chamber in the case of **Delalic**, ICTY February 20, 2001, Para. 581:

*“It is a common misuse of the word to describe an alibi as a ‘defence.’ If a defendant raises an alibi, he is merely denying that he was in a position to commit the crime with which he is charged. That is*

*not a defence in its true sense at all. By raising that issue, the defendant does not more than require the prosecution to eliminate the reasonable possibility that the alibi is true."*

178. It also opined in the case of **Vaseljevic**, [ICTY, Trial Chamber] November 29, 2002, Para. 15:

*"When a 'defence' of alibi is raised by an accused person, the accused bears no onus of establishing that alibi. The onus is on the Prosecution to eliminate any reasonable possibility that the evidence of alibi is true."*

179. Having considered the evidence on record couple with the above propositions of law of International Crimes Tribunals we can legally and validly infer that the accused had facilitated to commit the offence of persecution in committing the offences of not only genocide but also murder, abduction, confinement and other inhumane act as crimes against Humanity.

180. More so, in the instant charge it appears that the prosecution has brought the liability against the accused under section 4(1) of the ICT Act of 1973. The occurrence took place by a group of perpetrators as disclosed in the evidence. In the perpetration the accused had played the role as a member of the group. Section 4(1) of the ICT Act refers to the concept of Joint Criminal Enterprise [JCE] that when any crime as enumerated in section 3 of the Act is committed by several persons each of such person is liable for that crime in the same way as if it were done by him alone. JCE doctrine requires some elements that a group of individuals had a common plan, design or purpose to commit a crime. In the present case it appears from evidence that the accused heinously delivered his participation in some way in the plan to commit the crime on the basis of intention with the

accomplishment of common plan and design. In the case in hand, prosecution has been able to establish that the accused was related to a scheme or system which had a criminal outcome as a potential leader of his accomplice Razakar and he had significant influence in carrying out criminal acts at the time of occurrence at crime site during the Liberation War in 1971. The active conduct of the accused has been established considering the whole evidence of the prosecution witnesses to include him in joint criminal responsibility.

181. In view of the facts and evidence together with the propositions of legislation as narrated above, we are constrained to hold that the prosecution has successfully been able to prove the instant charge beyond reasonable doubt. Thus the accused is criminally liable under section 4(1) of the Act of 1973 and found him guilty for substantially participating and facilitating the actual commission offences of genocide, abduction, confinement and other inhumane acts as crimes against Humanity as specified in sections 3(2)(a)(c)(g)(h) and 4(1) of the Act of 1973 which is punishable under section 20(2) of the Act.

### **Adjudication of charge no.05**

**[Abduction, torture, murder and other inhumane acts at village Araiura and Chikni under police station Tarail on 08 October 1971.]**

182. **Summary charge:** On 8 October, 1971 at about 12.00 noon, the accused Syed Md. Hachhan alias Syed Md. Hasan alias Hachhen Ali, a local leader of Razakars, along with his accomplice 15/20 Razakars having gone to village Araiura under Tarail Police Station of the then Kishoregonj Sub-Division surrounded the house of Kamini Kumar Ghosh [65] and apprehended him, and thereafter he [accused] sent some of his accomplice Razakars to the house of Jibon Thakur alias Jibon Chakroborty at village Chikni situated at the western side of the canal, and his accomplices having

captured Jibon Thakur from his house brought him to accused Hasan Ali Razakar and then both Kamini Kumar Ghosh and Jibon Thakur were taken to an open place in front of the house of Monindra Kishore Sarker, near the house of Kamini Kumar Ghosh and then the accused killed both of them by gun shots. The accomplice Razakars of accused Hasan Ali Razakar also looted various valuable goods including the gold ornaments from the house of Jibon Thakur.

183. Thereby the accused has been charged for abetting, facilitating and complicity in the commission of the offences of murder, abduction, torture and other inhumane acts as crimes against Humanity as specified under section 3(2)(a)(g)(h) read with 4(1) of the Act of 1973 which are punishable under section 20(2) of the said Act.

**Discussion and evaluation of evidence and findings:**

184. To prove the instant charge the prosecution has examined 05(five) live witnesses [P.Ws-09,10, 11, 19 and 20]

185. **P.W-09 Rekha Rani Ghosh**, an eye witness, has testified that in 1971 during the War of Liberation she was 35 year old and at the relevant time she had been staying at her husband's house. On 8 October 1971 corresponding to 21 Ahswin at about 12.00 noon a group of Razakars attacked their house; seeing the Razakars she tried to come out from the room but she was intercepted by them and 10/15 Razakars entered their room. At that time one of the Razakars introduced himself as Hasan Ali Daroga, the Razakar commander of Tarail thana and asked the inmates of the house not to move further; Razakar Hasan Ali was wearing a 'khaki' dress and had a white 'tupi' [cap] on his head and also had sharp pointed beard, and at that time said Hasan Ali Daroga was restless. Eventually, some of the Razakars having captured her father-in-law Kamini Kumar Ghosh, husband Nipendra Ranjon Ghosh, two sisters-in-law namely Fatu and Gita from their hidden place brought them to the courtyard of the

house. There were so many portraits of many goddesses in their room and accused Razakar Hasan Ali Daroga asked his accomplice Razakars to bring the portraits down from the walls and then his accomplices having brought those portraits threw all of them on earth and damaged those portraits showing disrespect to them. Accused Hasan Ali Daroga repeatedly asked her father-in-law to urinate on those portraits but he did not do so. Accused Hasan Ali Daroga also demanded money from her father-in-law but he refused to give any. Thereafter, the Razakars looted rice, money, gold ornaments, 05 [five] cattle from their house. In the meantime accused Hasan Ali instructed 5/6 Razakars to apprehend Jibon Thakur from neighbouring village Chikni, and after some times the said Razakars brought Jibon Thakur to their house and then both Kamini Kumar Ghosh and Jibon Thakur were taken to an open place from their courtyard, 6/7 cubits away from their house. Thereafter, Hasan Ali Razakar blew a whistle and all the Razakars gathered there. In the meantime her husband managed to escape and thereafter accused Hasan Ali Daroga killed her father-in-law Kamini Kumar Ghosh and Jibon Thakur by gun shots one after another. After such killing accused Hasan Ali again came to their courtyard and asked them not to cremate the dead body of her father-in-law but to bury that dead body; he [accused] further told them that if they would not convert themselves to Muslims then they would be exterminated. Thereafter, at about 4.00 P.M accused Hasan Ali and his accomplice Razakars left the place. After their departure Milon wife of Jibon Thakur and her aunt Gowri Rani came to their house and informed them that the Razakars having attacked their house tortured them and looted money and gold ornaments from their house. She [P.W-09] also narrated to them about the occurrence she witnessed. Out of fear they buried the dead body of her father-in-law instead of cremating the same. The dead body of Jibon Thakur was taken by his wife and sons from the place of occurrence to their own village and they also buried the dead

body of Jibon Thakur instead of cremating the same. After liberation of the country on the same day both the families performed 'rituals' [sraddha] of the deceased. She has further testified that she can identify accused Razakar Hasan Ali if he is present in the dock.

186. In cross-examination P.W-09 has stated that she read upto Class VI/VII in Baghat School; her relative Adhir Ghosh, a neighbour, warned them about the presence of Razakars; Bimol and Shukharonjan her brothers-in-law with their family members managed to escape. She could also identify Askor Ali [now dead] another Razakar who came with accused Hasan Ali. She could identify accused Hasan Ali as he introduced himself as Hasan Ali Daroga. Sumez Ali and Gumuz Ali, two brothers [now dead], who used to work in their agriculture field took part in burying the dead body of her father-in-law. After independence of the country her husband lodged a case regarding the murder of his father-in-law implicating accused Hasan Ali Razakar. She has no knowledge about the result of that case and whether she was made a witness in that case. She has further stated that the Razakars took rice, paddy, gold ornaments, money and cattle from their house. Jibon Thakur was brought to their house about one hour later after passing the order by Hasan Razakar. She has denied the defence suggestions that at the time of occurrence she was not in the house and did not see any occurrence as stated by hers.

187. **P.W-10 Sonjib Kumar Sarker** has testified that he was a boy of 13/14 years old in 1971 and was a student of class VIII. On 8 October 1971 corresponding to 21 Ahswin at about 12.00 noon 15/20 Razakars carrying arms attacked their house; one of the Razakars asked the inmates of the house not to move further and he introduced himself as Hasan Ali Daroga, Razakar commander of Tarail thana. The said person was wearing 'khaki' dress and had a white 'tupi' [cap] on his head and short beard. As ordered by accused Hasan Ali Daroga his accomplice Razakars plundered their house.

The Razakars having captured his grandfather Kamini Kumar Ghosh took him to the open yard and started torture to him. As per order of accused Hasan Ali Daroga the other Razakars brought the portraits of goddesses down from the wall of the room and asked his grandfather Kamini Kumar Ghosh to urinate on those portraits but he did not do so. Accused Hasan Ali Daroga also sent 05[five] Razakars to apprehend Jibon Thakur from their adjacent village and after half an hour the said Razakars having captured Jibon Thakur brought him at their courtyard; Jibon Thakur begged mercy of his life from accused Hasan Ali Daroga. Thereafter, accused Hasan Ali Daroga and other Razakars took Kamini Kumar Ghosh and Jibon Thakur to an open place, 5/7 cubits away from their courtyard and then accused Hasan Ali Daroga killed both of them by gun shots. He has further testified that he witnessed the said occurrence. Thereafter, the accused Hasan Ali Daroga made a whistle blow and then the Razakars gathered there and accused Hasan Ali Daroga asked not to cremate the dead bodies and also asked all of them to be converted to Muslims; at about 4.00/5.00 P.M the accused Hasan Ali Daroga along with accomplice Razakars left the village with the various looted goods. Thereafter, the wife of Jibon Thakur and her inmates came to their house and informed that the Razakars also looted their house. Out of fear with the help of Muslim villagers they buried the dead body of Kamini Kumar Ghosh and similarly the dead body of Jibon Thakur was also buried in his village. He has further stated that he can identify accused Hasan Ali Daroga if is present in the dock of the Tribunal.

188. In cross-examination this witness has stated that he passed S.S.C examination in 1974. Their house and his grandfather Kamini Kumar Ghosh's house is the same house. Kamini Kumar Ghosh was the uncle [Mama] of his father and his father had been residing at his uncle's house from his boyhood. Kamini Kumar Ghosh had 3[three] sons namely Bimol Ghosh, Nipen Ghosh and Shukharonjan Ghosh. He has further stated that

the Razakars took away 6/7 maunds rice, 4/5 bhoori gold ornaments and cash taka 7,000/- from their house. Adhir Ghosh had made alarm sensing the presence of Razakars. Bimol Ghosh and Shkharonjan Ghosh, two sons of Kamini Ghosh and Adhir Ghosh had managed to escape. He has denied the defence suggestions that he was not present at the place of occurrence and did not see any incident as stated by him. He knew Razakars Soljar and Aksar, who are now dead. He has also denied the defence suggestion he deposed falsely against the accused with a motive to defame him.

189. **P.W-11 Badhan Chakraborty** has testified that in 1971 during the War of Liberation he was a boy of 13/ 14 year old and a student of Class VI. On 8 October 1971 corresponding to 21 Ahswin at about 2.00 P.M he along with his cousins Sadhon Chakraborty, Narayan Chakraborty and younger brother Chandan Chakraborty went to Purura bazaar north side from their village. While they were in bazaar they came to learn that the Razakars attacked Araiura village. Hearing the said news they assumed that the Razakars might have attacked their village Chikni also, and then they started towards their house. On the way to their house he heard the sound of two gun shots. When they were near to their village they came to know that Jibon Thakur and Kamini Ghosh were killed by the Razakars. Hearing the said news they started running towards their house. Having reached their house they found that his mother Gowry Rani Chakraborty and aunt Milon Rani Chakraborty were crying and he also saw mark of bleeding injury on the right side of the face of Gowry Rani Chakraborty. Gowry Rani Chakraborty and Milon Rani informed them that under the leadership of Razakar Askor Ali 05[five] Razakars came to their house and having captured his uncle Jibon Thakur tied him and when the Razakars tried to take him away then his mother and aunt tried to resist the Razakars and at that time the Razakars assaulted them and took their wearing gold ornaments. Razakar Askor Ali told her mother and aunt that if they would

give money then they would release Jibon Thakur. Thereafter, his aunt gave taka 300/- to Razakar Askor Ali and having taken the said money Askor Ali told them that they could not release Jibon Thakur right now without the order of their commander Hasan Ali Daroga who was staying at village Araiura. Thereafter, the said Razakars started towards Araiura village with Jibon Thakur. Soljer one of their accomplices took 05[five] cattles from their house. The Razakars took Jibon Thakur to Araiura village at Kamini Ghosh's house and thereafter Jibon Thakur and Kamini Ghosh were killed by accused Razakar Hasan Ali Daroga by gun shots in an open place in front of the house of Monindra Sarker. At the evening he along with his father Profulla Chakraborty, younger brother Chandan Chakraborty, and cousin Narayan Chakraborty went to village Araiura at the house of Kamini Kumar Ghosh and saw Rekha Rani, son's wife of Kamini Kumar Ghosh, and inmates of the house to cry. Then Rekha Rani Ghosh and Sonjib Sarker narrated about the incident of killing of Kamini Kumar Ghosh and Jibon Chakraborty and also the incident of plundering of their houses. Rekha Rani also informed them that accused Hasan Ali Daroga introduced himself as the Razakar commander and he at first killed Kamini Ghosh and then his uncle Jibon Thakur by gun shots. Rekha Rani also informed him that at the time of leaving the place of occurrence accused Hasan Ali asked them not to cremate the dead bodies and also asked the living persons to be converted to Muslims; otherwise the Hindus would face dire consequence. Thereafter they took the dead body of his uncle Jibon Chakraborty to their village and buried the same.

190. In cross-examination he has stated that he passed S.S.C Examination in 1976. Jibon Thakur was his brother's cousin and he [Jibon Thakur] was the only son of his father. The house of Jibon Thakur and their house was the same house; he heard about the occurrence at about 3.00/3.30 P.M while he was in the bazaar; he could not recall the name of the person from

whom he heard about the information with regard to the attack of Razakars. He along with his father, younger brother and cousin went to village Araiura to bring the dead body of Jibon Thakur. He has denied the defence suggestion that he deposed falsely just to victimize the accused. He has admitted that Nipendro Chandra Ghosh filed a case about the killing in question but he did not see the first information report of the said case.

191. **P.W-19 Narayan Chandra Chakraborty** has deposed that he was a boy of 09/10 year old in 1971 and a student of Class IV. The Pakistani army came to Tarail 01(one) month after the Liberation War was started. Eventually, accused Md. Sayed Hachhan alias Syed Md. Hasan alias Hachhen Ali son of Moulana Muslehuddin came to Tarail as a Razakar commander and Daroga. Accused Syed Md. Hasan started committing torture, looting, arson and other inhumane acts on the freedom loving people and the members of Hindu community. On 8 October 1971 at 2.00 P.M after taking meal he along with his cousins Badhon Kumar Chakraborty, Chandan Kumar Chakraborty, Sadhon Kumar Chakraborty went to Purura bazaar. At about 4.00 P.M they came to know that the Razakars attacked their Chikni village and hearing such news they started towards their house and when they reached in front of the Muchi Bari of village Kona Bhawal they heard the sound of two gun shots. Having reached their house they found her aunt Gowri Rani Chakraborty and mother Milon Rani Chakraborty weeping; he also found mark of bleeding injury on the right side of the face of his aunt. His aunt informed them that local Razakar Askor Ali hit her face with a rifle butt. She also informed that under the leadership of Askor Ali 05[five] Razakars having come to their house apprehended Jibon Krishno Chakraborty and tortured him and plundered their house. When her aunt begged mercy of life of Jibon Chokraborty then the Razakars demanded money from them and his aunt gave taka 300/- to the Razakars. After taking said money the Razakars told that without the order of Hasan Ali, the

Razakar commander, who was staying in the house of Kamini Ghosh, they could not release his father [Jibon Chakraborty]. The Razakars also took five cattle from their house and their accomplice Soljer was asked to take the said cattle to Tarail Police Station. Thereafter, the Razakars took his father to the house of Kamini Kumar Ghosh and then accused Hasan Ali, the Razakar commander, killed his father Jibon Krishna Chakraborty and Kamini Kumar Ghosh in an open place in front of the house of Monindro Sarker. After the departure of the Razakars from the place of occurrence he along with his mother, aunt, uncle Profullo Chakraborty, cousins Badhon Kumar Chakraborty and Chandan Kumar Chakraborty and other inmates came to the house of Kamini Ghosh and found the dead bodies of Kamini Ghosh and his father. Rekha Rani, the daughter-in-law of Kamini Ghosh, informed them that at about 12.00 noon a group of Razakars came to their house and one of the Razakars introduced himself as Hasan Ali, Daroga of local Police Station and commander of Razakar Bahini. He also heard from Rekha Rani that accused Hasan Ali asked his accomplice Askor Ali to apprehend Jibon Krishno Chakraborty from village Chikni and on getting such order Razakar Askor Ali along with four Razakars went to village Chikni and apprehended Jibon Krishno Chakraborty and brought him to the house of Kamini Ghosh and thereafter accused Hasan Ali killed Kamini Kumar Ghosh and Jibon Krishno Chakraborty by gun shots. After such killing the Razakars asked not to cremate the dead bodies but to bury the same and if they did not do so they would face dire consequence. Rekha Rani Ghosh further informed them that she witnessed the whole occurrence of killing and Sonjib Sarker of that house also informed them that he also saw the said occurrence. Thereafter they took the dead body of his father Jibon Chakraborty to their village and out of fear they buried the dead body without cremating the same. After liberation of the country on the same day both the families observed rituals of the departed soul of the deceased separately.

192. In cross-examination this witness has stated that he having obtained M. A degree has been serving as the manager of Agroni Bank, Kotiadi bazaar Branch, Kishorergonj. His uncle Profullo Chakraborty and Shukumar Chakraborty managed to escape sensing the presence of Razakars; but his aunt and others were staying in the house. The house of Kamini Ghosh is 300/400 yards away from their village. He heard that after the liberation of the country a case was filed with the local Police Station with regard to the killing of his father Jibon Chakraborty and Kamini Ghosh; but he could not know what was written in the first information report of the said case and he could not know the result of the said case. This witness has denied the defence suggestions that he has deposed falsely and that he has not deposed before the Tribunal as he heard about the occurrence and that only Razakars Askor Ali and Soljar were involved with the alleged killing and that accused Hasan Ali was not involved with the occurrence.

193. **P.W-20 Gowri Rani Chakraborty** has testified that she was 35 year old in 1971; when the Liberation War had been going on they were living in fear of Razakar Bahini. On 8 October 1971 corresponding to 21 Ahswin her 02[two] sons namely Badhan Chakraborty, Chandon Chakraborty and nephews Sadhon Chakraborty, Narayan Chakraborty after taking meal at noon went to Purura bazaar near their village; after sometimes of their departure 05[five] Razakars came to their house and made search for her brother-in-law Jibon Chakraborty; while she kept herself silent one of the Razakars hit right side of her face with the butt of rifle; the Razakars captured Jibon Chakraborty from hidden place and tied him up. She and Milon Rani wife of Jibon Chakraborty requested the Razakars to release Jibon Chakraborty and then the Razakars told them if they would give money them they would release Jibon Chakraborty. Then they gave taka 300/- to the Razakars and the Razakars also took the gold ornaments of Milon Rani. After taking the money and gold ornaments the Razakars told

them that without the consent of Razakar Hasan Ali Daroga, who was staying in the house of Kamini Kumar Ghosh, they would not be able to release Jibon Chakraborty. Razakar Askor Ali asked Razakar Soljer to take 05 [five] cattle from their house and send them to the local Police Station. The Razakars also looted away all the household goods and took her brother-in-law Jibon Chakraborty to the house of Kamini Ghosh. After sometimes they heard the sound of two gun shots; later on they by the by came to know that the Razakars killed his brother-in-law Jibon Chakraborty and Kamini Ghosh. At the evening when her sons and nephews returned to the house she disclosed to them about the incident and they went to the house of Kamini Ghosh and found the dead bodies of Jibon Chakraborty and Kamini Ghosh. In that place Rekha Rani the son's wife of Kamini Ghosh and Sanju Sarker informed them that accused Hasan Ali Daroga killed them by gun shots and they witnessed the occurrence. Rekha Rani also informed that Kamini Ghosh begged mercy for his life from Hasan Ali Daroga despite he killed him. They also informed that the Razakars also asked them not to cremate the dead bodies but to bury them. Rekha Rani also informed them that one of the Razakars introduced himself as Hasan Ali Daroga, Razakar commander and said person asked some other Razakars to apprehend Jibon Chakraborty. Rekha Rani also disclosed to her about the plundering committed in their house and causing damage of the portraits of the goddesses. Thereafter, they took the dead body of Jibon Chakraborty to their house and buried the same out of fear without cremation.

194. In cross-examination P.W-20 Gowri Rani Chakraborty has stated that when the Liberation War started the Pakistani army killed so many people in their locality. In their Chikni village there were 15 Hindu families; sensing the presence of Razakars her husband Profullo Chakraborty and brother-in-law Shukumar Chakraborty managed to escape. She has denied the defence suggestions that she did not see any occurrence and she went into hiddig

with her husband and brother-in-law. She has also denied the defence suggestions that accused Hasan Ali never went to the house of Kamini Ghosh and he did not send any Razakar to the house of Jibon Chakraborty and that accused Hasan Ali Razakar did not kill Jibon Chakraborty and Kamini Kumar Ghosh.

195. On a careful scrutiny and examination of above evidence adduced by the prosecution it appears to us that P.W-09 Rekha Rani Ghosh and P.W-10 Sonjib Kumar Sarker alias Sonju Sarker are the eye witnesses of the whole occurrence and P.W-20 Gouri Rani Chakraborty witnessed the occurrence partly.

196. P.W-09 and P.W-10 in their respective depositions categorically and consistently have testified that on 8 October 1971 corresponding to 21 Ashwin, at about 12.00 noon a group of Razakars attacked their house and one of the Razakars introduced himself as Hasan Ali Daroga, Razakar commander of Tarail and said person was wearing a 'khaki' dress and had a white 'tupi' [cap] on his head and also sharp pointed beard. The Razakars after apprehending Kamini Kumar Ghosh brought him to the open yard and accused Hasan Ali asked some of his accomplice Razakars to bring down the portraits of many goddesses from the wall of their house and said Hasan Ali also asked Kamini Ghosh to urinate on those portraits but he did not do so. The Razakars also tortured him, looted rice, paddy, money, gold ornaments and cattle from their houses. Said witnesses have further stated that accused Hasan Ali Daroga also asked some of the Razakars to apprehend Jibon Thakur alias Jibon Chakraborty from the neighbouring Chikni village and pursuant to the said order under the leadership of Razakar Askor Ali 05[five] Razakars went to village Chikni and having captured Jibon Chakraborty the Razakars brought him to the house of Kamini Kumar Ghosh, where accused Hasan Ali was staying. Thereafter, both Kamini Kumar Ghosh and Jibon Thakur alias Jibon Chakraborty were put in an

open place in front of the house of Monindra Kumar, which is near to the house of Kamini Ghosh and thereafter, accused Hasan Ali Daroga killed them one after another by gun shots. The said witnesses have further deposed that before leaving the place of occurrence accused Hasan Ali Daroga asked them [P.W-09 and P.W-10] and their inmates not to cremate the said dead bodies but to bury them and also asked them to be converted to Muslims otherwise they would face dire consequence. Out of fear they buried the dead body of Kamini Kumar Ghosh and the relatives of Jibon Krishno Thakur having taken the dead body also buried the same at their village instead of cremating them.

197. We do not find any inconsistency or material contradiction among the evidence of P.W-09 Rekha Rani Ghosh and P.W-10 Sonjib Kumar Sarker, the two ocular witnesses. Rather corroborated each other on the incriminating part of the story connecting accused Hasan Ali with crimes as listed in the instant charge.

198. P.W-20 Gowri Rani Chakraborty in her deposition categorically has stated that 05[five] Razakars including Razakars Askor Ali and Soljer of their locality came to their house on 8 October 1971 at noon after departure of his 02[two] sons and nephews to the nearest bazaar. The said Razakars apprehended her brother-in-law Jibon Chakraborty and one of the Razakars hit the right portion of her face with the butt of rifle which caused bleeding injury. They took taka 300/- from them with a promise to release Jibon Chakraborty but after taking said money they told them that without the permission of accused Hasan Ali Daroga, who was staying in the house of Kamini Kumar Ghosh at village Ariura, they would not be able to free him. They also took five cattle from their house and looted the household goods. The said Razakar having abducted Jibon Chakraborty took him to the house of Kamini Ghosh at village Ariura and thereafter accused Hasan Ali killed Jibon Chakraborty and Kamini Ghosh one after another by gun shots. This

witness is also an eye witness and victim of the occurrence. She herself witnessed the incident of abduction of her brother-in-law Jibon Chakraborty by Razakar Askor Ali and others and eventually, she and other witnesses having gone to the house of Kamini Kumar Ghosh found the dead bodies of Jibon Chakraborty and Kamini Ghosh, and they heard from Rekha Rani [P.W-09] and Sonjib Sarker [P.W-10] about the incident of killing of Jibon Chakraborty and Kamini Kumar Ghosh. They also heard from them that accused Hasan Ali Daroga before leaving the place of occurrence asked them to bury the dead bodies but not to cremate them and to be converted themselves to Muslims; otherwise they would face dire consequence and accordingly, having taken the dead body of Jibon Krishno Chakraborty to their Chikni village they had to bury the same.

199. P.W-11 Badhan Chakraborty and P.W-19 Narayan Chandra Chakraborty in their respective deposition have stated that on 8 October, 1971 after taking meal at about 2.00 P.M they left the house for Purura Bazaar and when they were in the bazaar they came to learn that the Razakars attacked villages Araiura and Chikni. On hearing the said news they rushed towards their village home Chikni and on the way to Chikni they heard the sound of two gun shots and after reaching home they heard from Gowri Rani Chakraborty [P.W-20] about the incident of abduction of Jibon Krishno Chakraborty from their house. Said Gowri Rani Chakraborty also informed them that one of the Razakars who came to their house hit her right side of the face with the butt of rifle and looted their house and also took taka 300/- with a promise to free Jibon Chakraborty but after taking such money the Razakars told them that without the permission of accused Hasan Ali Daroga they would not be able to release Jibon Chakraborty. Thereafter, the Razakars including Razakar Askor Ali took Jibon Chakraborty to the house of Kamini Kumar Ghosh at village Araiura and accused Hasan Ali Daroga himself killed Jibon Chakraborty and Kamini

Ghosh by gun shots in open place near to the house of Kamini Ghosh. In the evening on the same day the said witnesses along with other inmates of the house came to the house of Kamini Ghosh and found the dead bodies of Jibon Chakraborty and Kamini Kumar Ghosh. From Rekha Rani and Sonjib Kumar Sarker they learnt about the incident of their killing as well as the incident of looting the house of Kamini Kumar Ghosh and destruction of portraits of goddesses. The said witnesses have also categorically stated that at the time of leaving the place of occurrence accused Hasan Ali Daroga asked Rekha Rani and others not to cremate the dead bodies but to bury them and asked them to be converted to Muslims, otherwise they would face dire consequence. Out of fear they buried the dead body of Jibon Chakraborty in their village after taking the same from the house of Kamini Ghosh.

200. P.W-09 Rekha Rani Ghosh, P.W-10 Sonjib Kumar Sarker and P.W-20 Gowri Rani Chakraborty are not only the ocular witnesses of the occurrence but they are also the members of victim families.

201. P.W-20 Gowri Rani Chakraborty was tortured by the Razakars at the time of abduction of Jibon Krishno Chakraborty. P.W-11 Badhan Chakraborty and P.W-19 Narayan Chandra Chakraborty, the nephew and son of Martyr Jibon Krishno Chakraborty respectively, heard about the incident of abduction of Jibon Chakraborty, torture on Gowri Rani and looting of the house and killing of Jibon Thakur and Kamini Ghosh; but immediately after the occurrence of the killing they rushed to the place of killing site and saw both the dead bodies and heard from P.W-09 and P.W-10, the two ocular witnesses, about the killing of Jibon Chakraborty and Kamini Kumar Ghosh and out of fear as per instruction of accused Hasan Ali they buried the dead body of Jibon Chakraborty without cremation of the same. The testimonies of said PWs [P.Ws-11 and 19] are very much corroborative with the evidence of ocular witnesses P.W-09 Rekha Rani

Ghosh, P.W-10 Sonjib Kumar Sarker and P.W-20 Gowri Rani Chakraborty. All the above witnesses are natural, credible and trustworthy witnesses and there is hardly any scope to disbelieve and discard their evidence.

202. It is the historical fact that in 1971 during the War of Liberation it was the policy of Pakistan occupation army and its auxiliary forces like Razakar Bahini to eliminate the freedom loving civilian Bangalees and also the Hindu religious people. In order to implement the above plan and policy under the leadership of accused Hasan Ali who introduced himself as 'Daroga' [Police Officer] and commander of Razakar Bahini of Tarail, a group of Razakars attacked the houses of Kamini Kumar Ghosh at village Ariura and Jibon Krishno Chakraborty at village Chikni, two adjacent villages, and after apprehending them accused Hasan Ali himself killed both of them by gun shots and also looted their respective houses and showed disrespect to the portraits of their goddesses and also destructed them.

203. Now the question is whether showing disrespect to the portraits of goddesses targeting a particular religious people and destruction of them and compelling the members of Hindu religious victim families to bury the dead bodies instead of cremating them and thereby restraining the Hindu religious people from performing their rituals come within the mischief of **'other inhumane act'** as mentioned in section 3(2)(a) of the Act of 1973.

204. **'Other inhumane acts'** is a residual category in the crimes against Humanity as specified in section 3(2)(a) of the Act of 1973. The intentional acts of destruction of houses, shops, worship house, portraits of goddesses, plundering and arson inevitably were the attacks on human dignity, right to worship and right to live in peace and happiness and that caused grave suffering, deprivation and mental trauma to the victims of the attack.

205. It is to be noted that **'mental harm'** may include, but is not necessarily restricted to, acts of torture or inhumane or degrading physical treatment. Harm need not cause permanent and irremediable physical harm,

but it must involve harm to a person's ability to lead a normal and constructive life with all recognized rights. The offence of 'other inhumane act' involves harm that goes beyond temporary unhappiness, embarrassment, or humiliation. It must be harm that results in a grave and long-term disadvantage to a person's ability to lead a normal life with freedom of worship.

206. **'Harm'** generally concerns a serious setback to an important interest and right of a person. One of the most important interests of civilians is that they shall not be deprived of life, liberty, or property in an arbitrary manner. **'Liberty'** refers to right to unhindered worship.

207. The massive and malicious intentional destruction of homes, worship houses, destruction of portraits of goddesses, schools and property of civilian population detracts their customary livelihood and it is recognized as a blatant denial of their fundamental rights. Such act is an attack to humanity and civility and no doubt it causes untold mental harm to the victims.

208. The criminal acts of destruction of portraits of goddesses and restraining from performing rituals indisputably resulted in grave mental harm and violation of fundamental right of civilians belonging to Hindu religion. Intentional carrying out such terrorizing wanton destructive activities do not seem compatible with the humanity and it is considered as grave infringement of international humanitarian law, as it happens in the instant charge.

209. This kind of atrocity was against humanity and fundamental rights of normal livelihood of civilians who belonged to particular religion. We consider such devastating destructive acts as quite incompatible with the norm of humanity and international humanitarian law.

210. Such criminal acts inevitably caused serious and immense mental anguish to the Hindu community of the crime locality. Destruction of the portraits of goddesses was in other words an attack to one's religious belief

and freedom of worship. Thus, destruction of portraits of goddesses and compelling to bury the dead bodies of Hindu religious people instead of cremating them and thereby restraining the Hindu religious people from performing their rituals by launching attack, in furtherance of policy and plan, indubitably had detrimental effect on Hindu civilians fundamental right to normal and smooth course of worship and thus it caused enormous mental harm to the victims. The civilians were non combatants. The object was to terrorize the Hindu community, which eventually constituted the offence of **'other inhumane act'** as it substantially affected their fundamental right to property, safety and right to religion and worship, in violation of international humanitarian law.

211. Section 4(1) of the Act of 1973 refers to Joint Criminal Enterprise [JCE] that when any crime as specified in section 3(2) is committed by several persons, each of such person is liable for that crime in the same manner as if it were done by him alone. In the instant charge we have found that the accused Syed Hasan Ali himself participated and contributed along with his accomplice Razakars in the commission of crimes against Humanity and as such he is also held criminally liable under section 4(1) of the Act of 1973.

212. At the time of summing up the defence case the learned State defence counsel referring to the evidence of P.Ws-11, 19, 20 and 26, the investigation officer, and exhibit-1 [attested photostat copy of G R register] has submitted that with regard to the abduction and killing of Jibon Krishna Chakraborty and Kamini Kumar Ghosh Police earlier [ in1972] submitted charge sheet against 08[eight] persons including the present accused for committing offences under sections 148/ 380/ 323/ 364/ 111/ 302 BPC read with section 11(a & b) of the Collaborators order 1972 vide Tarail Police Station Case no.08 dated 26.03.1972 corresponding to G R no.719 of 1972 and as

such the present trial on the self same offences is barred by the principle of **'double jeopardy'**.

213. However, on behalf of the prosecution it has asserted that no trial was commenced on the basis of such charge sheet against the accused and thus, the present trial under the ICT Act of 1973 is not barred by the principle of **'double jeopardy'**.

214. On scrutiny of the evidence and other materials on record it appears to us that the prosecution has failed to bring any material as to the ultimate fate of the aforesaid GR case save and except a report dated 18.06.2014 of the concerned Judge in charge of District Nejarat [Record room Kishoreganj] where it has been mentioned that the records of the said case is not available in the record room.

215. But, the defence never asserted that the trial of the above case was commenced on the basis of the charge sheet submitted in the year 1972 and it was concluded. As such, the assertion of the prosecution that no trial was commenced on the basis of the charge sheet in question is legally presumed to be correct.

216. In view of the above facts, we are of the opinion that the principle of **'double jeopardy'** will not be applicable in adjudicating the present charge.

217. Having considered and discussed as above we have no hesitation to hold that the prosecution has proved the charge no.05 beyond reasonable doubt that is on 8 October 1971 at about 12.00 noon a group of Razakars under the leadership of accused Syed Hasan Ali having attacked villages Araiur and Chikni apprehend Kamini Kumar Ghos and Jibon Krishna Chakraborty alias Jibon Thakur from their respective houses and thereafter accused Hasan Ali killed both of them one after another by gun shots near the house of Kamini Ghosh and plundered the houses of both of them, tortured Gowri Rani [P.W-20] and destructed the portraits of goddesses and thus accused Syed Md. Hachhan alias Syed Md. Hasan alias Hachhen Ali

abetted and facilitated the actual commission of the offences of abduction, murder, torture and other inhumane acts [looting and mental harm] as crimes against Humanity as specified under section 3(2)(a)(g)(h) read with 4(1) of the act of 1973 which are punishable under section 20(2) of the said act.

### **Adjudication of charge no. 06**

#### **[Murder and arson at Pacchimpara of Sachail village under Tarail police station]**

218. **Summary charge:** On 11 December 1971 at about 03.00/ 03.30 P.M under the leadership of the accused Syed Md. Hachhan alias Syed Md. Hasan alias Hachhen Ali 30/ 40 Razakars along with some Pakistani army men surrounded Pacchimpara of village Sachail under Tarail Police Station as the people of that village supported the Liberation War, and set fire on about 100 houses of that village, and fire caught on the body of Md. Abdur Rashid, a villager, and he started running towards north to save his life but accused Hasan Ali Razakar having chased killed him by gun shot near the paddy field of Shah Alam about 300 yards away from his house.

219. Thereby the accused Syed Md. Hachhan alias Syed Md. Hasan alias Hachhen Ali committed the offences of murder, plundering and arson and other inhumane acts as crimes against Humanity as specified under section 3(2)(a)(g)(h) read with 4(1) of the Act of 1973 which are punishable under section 20(2) of the said Act.

#### **Discussion and evaluation of the evidence and findings:**

220. For proving the instant charge the prosecution has in all adduced and examined 03[three] witnesses.

221. **P.W-12 Md. Atahar Ali Bhuiyan** has deposed that he was a boy of 14/15 year old in 1971 during the Liberation War and at that time he was involved in cultivation. The Pakistani army came to Tarail Police Station

headquarter immediately after starting of the Liberation War and established a camp there. After sometimes of establishing the said camp accused Razakar Hasan Ali commander and his accomplice Razakars started looting the houses of civilian people and torturing them. They used to loot cattle from the houses of local people and brought them to Tarial Police Station to eat; his house was situated 300 yards away from Tarail Police Station compound and he used to see the said activities of the Razakars and accused Hasan Ali commander. On 11 December 1971 at about 03.30 P.M under the leadership of Razakar Hasan Ali Daroga 40/ 50 Razakars and some Pakistani army men attacked their para under village Pacchim Sachail [Baligati] and set fire to about 100 houses of that area. When the Razakars set fire to the house of Abdur Rashid he was staying in the house and then Abdur Rashid came out from the house and started running towards the north of his house and Razakar Hasan Ali having seen Abdur Rashid to run chased him and when Abdur Rashid reached near the paddy field of Kashem Ali Fakir accused Razakar Hasan Ali Daroga killed him by gun shot from behind. He saw the said occurrence hiding in a jungle behind his house. After such occurrence accused Hasan Ali Daroga made a whistle blow and hearing such whistle blow all the Razakars assembled in one place and thereafter they left their para towards the Police Station. After their departure in the evening he and some other co-villagers saw the dead body of Abdur Rashid and he took shelter in neighbouring Bharontola village. On the following morning they sent message regarding the killing of Abdur Rashid to his father-in-law's house at village Sohil Hati and having received the said news the inmates of his father-in-law came to the place of occurrence and they took the dead body of Abdur Rashid to Sohil Hati where it was buried. This witness has further deposed that when Razakar Hasan Ali Daroga attacked their house he was wearing 'khaki' dress and 'white tupi'

on his dead and had beard. He has also deposed that he can identify accused Hasan Ali if he is present in the dock.

222. In cross-examination he has stated that he read up to Class II/III and he gave up his education before the Liberation War in 1971; his father had a grossary shop in Tarail bazaar. Tarail Police Station is situated in the southern side from their village. On the day when the Razakars attacked their village 5/7 Pakistani army men were also with them. He saw the Pakistani army camp till 11 December 1971. The Razakars and Pakistani army men having attacked their village opened indiscriminate firing and set fire on the houses of their village. He has further stated that he did not know Sofir Uddin, Gaju Miah and Bhula Munshi and he had no knowledge whether they were the Razakars. Momtazuddin Akonda the Chairman of Dikdar union Parishad was the Chairman of Tarail 'peace committee' and he had no knowledge whether he became the commander of Tarail Thana Razakar Bahini. He has denied the defence suggestions that under the leadership of Momtazuddin the Razakars had attacked their village and committed the offences as alleged by him and that he deposed falsely at the instance of interested quarter implicating the accused Sayed Hasan Ali, who is a 'peer' [Saint].

223. **P.W-13 Md. Abdullah** has deposed that in 1971 he was 16/17 year old. One month after the starting of the Liberation War the Pakistani army came to Tarail Thana Sadar and eventually they established camp at Tarail High School. After 5/7 days of establishing said camp accused Hasan Ali came to Tarail Police Station and introduced himself as Razakar commander and 'Dagora' [Police Officer] of Tarail Police Station. Accused Hasan Ali Razakar locally formed Razakar Bahini and started killing, looting and torturing targeting freedom loving and the Hindu religious people.

224. On 7 December 1971 at about 10.00/11.00 A.M under the leadership of accused Hasan Ali Daroga some Razakars having attacked their house

looted 35 maunds sugar, 67 bags Trishi and 44 bags pulse. On 11 December 1971 at about 3.00/ 3.30 P.M under the leadership of accused Razakar Hasan Ali Daroga 40/50 Razakars and some Pakistani army men attacked their village and set fire to about 100 houses of their village. At that time he took shelter in a jungle behind their house and from that hidden place he saw the occurrence. When the Razakars set fire to the house of his cousin Abdur Rashid, he started running towards north of his house and accused Hasan Ali Daroga seeing Abdur Rashid chased him and eventually, Hasan Ali Daroga killed him by the shot of rifle from behind near the paddy field of Kashem Ali, 300 yards away from the house of Abdur Rashid. Thereafter, accused Razakar Hasan Ali made a whistle blow and assembled all the Razakars and thereafter they all including Pakistani army men left their village. The paddy field of Kashem Ali was about 50 yards away from his hidden place. He knew accused Hasan Ali Daroga previously as his house was near the Tarail Police Station. When accused Hasan Ali Daroga attacked their house he was wearing 'khaki' dress and had a white tupi [cap] on his head and beard carrying rifle. After the departure of the Razakars and Pakistani army men he saw the dead body of Abdur Rashid and at night he stayed at neighbouring village Bharentola. On the following morning he along with Abdul Ashiq, Safir Uddin, Atahar Ali and some other villagers came to the killing spot where the dead body of Abdur Rashid was lying and they made arrangement to send message to his father-in-law's house at Sohail Hati. Having got the said information the father-in-law of Abdur Rashid along with some others came to the place of occurrence and took the dead body of Abdur Rashid to Sohail Hati, where it was buried. He has further deposed that he can identify accused Hasan Ali if he is present in the dock.

225. In cross-examination this witness has stated that at present he is doing the business of cloth's besides agriculture. His father had a shop at Tarail bazaar since before 1971. He could not say the actual date of arrival of

the Pakistani army at Tarail Sadar. Momtaz Uddin Akond, the Chairman of the Dikder Union Parishad was the Chairman of Tarail Thana 'Peace Committee'. He has denied the defence suggestion that under the leadership of Momtaz Uddin Razakar Bahini was formed in Tarail area. Tarail Police Station compound is 300 yards away from their house and Bharentola is only half kilometer away to the north side of their village. Their two rooms were burnt in the incident of 11 December but he could not remember the actual number of villagers who were staying in the village. The house of Abdur Rashid was beside his house. Abdur Rashid had three brothers and they all are now dead. He did not know Safir Uddin, Gazu Miah and Dulal Munshi and he had no knowledge whether they were the Razakars. He has denied the defence suggestions that under the leadership of Momtaz Uddin the alleged occurrence had taken place and he did not see the occurrence and that he deposed falsely against accused Sayed Hasan Ali, who is a 'peer'[Saint].

226. **P.W-14 Md. Qaiyum** has deposed that he was a boy of 04 year old in 1971. During the Liberation War his father Abdur Rashid used to help the freedom fighters and freedom loving people and sometimes he made consultation with them in their house and his mother used to supply them cooked food. On 11 December 1971 at about 3.00/ 3.30 P.M under the leadership of accused Hasan Ali Razakar a group of 40/ 50 Razakars and some Pakistani army men having attacked their village set fire on the various houses of the village. When their house was set to fire his father Abdur Rashid was in the house and having seen the flame of fire he started running towards north of the house. Having seen his father Abdur Rashid accused Hasan Ali Daroga started chasing him and when his father reached near the paddy field of Kashem Ali accused shot him by rifle from behind and killed him. Thereafter, accused Hasan Ali again came to their village and having stayed sometimes the Razakars and the Pakistani army men left their village.

On the following morning his uncles came to the place of occurrence where the dead body of his father was lying and sent message to his grandfather's house at Soheli Hati and having got the said news his grandfather along with some other relatives came to the place of occurrence and then took the dead body to Soheli Hati and buried the same. His cousin Abdullah witnessed the occurrence of killing of his father by accused Razakar Hasan Ali by gun shot from a hidden place behind his house and grandfather Atahar Ali also saw the said occurrence. After becoming major he heard about the said occurrence from his cousin Abdullah and grandfather Atahar Ali, mother and grandfather Hafez Abdur Razzak.

227. In cross-examination he has stated that he has another brother but he is elder and his father had three brothers who are now dead. Abdullah was the cousin of his father; village Soheli Hati is one kilometer away from their house. He has denied the defence suggestion that he has deposed falsely against the accused at the instance of the interested quarter to defame accused Sayed Hasan Ali.

228. On scrutiny of the above evidence it appears to us that P.W-12 and P.W-13 are the eye witnesses of the occurrence. P.W-12 and P.W-13 categorically and consistently corroborating each other have stated that on 11 December 1971 at about 3.00/ 3.30 P.M 40/50 Razakars under the leadership of accused Razakar Hasan Ali Daroga and some Pakistani army men having attacked their Para under village Pachim Sachail [Baligathi] set fire to about 100 houses of that area. The Razakars also set fire to the house of Abdur Rashid who used to co-operate the freedom fighters and freedom loving people and supplied food to them and at that time he was staying in that house and that seeing the flame of fire he came out from his house and started running towards north and accused Razakar Hasan Ali Daroga having seen him running started to chase him and when Abdur Rashid reached near the paddy field of Kashem Ali, 300 yards away from his house,

accused Hasan Ali shot him behind back by rifle and killed him. After departure of the Razakars and Pakistani army men from the occurrence village P.W-12 and P.W-13 went near the paddy field of Kashem Ali and saw the dead body of Abdur Rashid. On the following morning they again came to the said place where the dead body was lying and sent message to the house of father-in-law of Abdur Rashid at Sohel Hati and having learnt the said information the father-in-law of Abdur Rashid and some other relatives came to the place of occurrence and took the dead body of Abdur Rashid to village Sohel Hati, where it was buried. We do not find any inconsistency and contradiction in the evidence of these P.W-12 and P.W-13. They are the most natural, credible and competent witnesses. The defence has failed to shake their evidence in any manner.

229. Moreover, P.W-14 the son of the victim has corroborated the evidence of P.W-12 and P.W-13. It is true that P.W-14 is a hearsay witness, but being the son of the victim Abdur Rashid after he became major he heard about the killing of his father Abdur Rashid by accused Hasan Ali and he corroborated the evidence of P.W12 and P.W-13 as such his evidence 'though hearsay evidence' have got probative value. Since P.W-12 and P.W-13 being the eye witnesses of the occurrence, the natural, credible and trustworthy witnesses, we can safely rely on their evidence in finding the guilt of accused Hasan Ali.

230. Section 4(1) of the Act of 1973 refers to Joint Criminal Enterprise [JCE] that when any crime as specified in section 3(2) is committed by several persons, each of such person is liable for that crime in the same manner as if it were done by him alone. In dealing with the present charge we have found that the accused Syed Hasan Ali himself participated and contributed along with his accomplice Razakars and Pakistani army men, in the commission of crimes against Humanity and as such he is also held criminally liable under section 4(1) of the Act of 1973.

231. Having considered as above we are of the view that the prosecution has proved the charge no.06 beyond reasonable doubt that accused Syed Hasan Ali committed the offence of murder of Abdur Rashid, an unarmed freedom loving person, and abetted, facilitated and participated in the commission of the offence of other inhumane act [arson] in Pacchim para of village Sachial as crimes against Humanity as specified under section 3(2)(a)(g)(h) read with section 4(1) of the Act of 1973 which are punishable under 20(2) of the said Act.

### **XVIII. Conclusion**

232. It is a fact of common knowledge as well that the Pakistani occupation army organized Razakar, Al-Badr, Al-Shamas Bahini for the purpose of their support in implementing its atrocious activities in furtherance of organized plan and policies.

233. Together with the Al-Badr and Al-Shams paramilitary forces, the Razakars were under Pakistani army command. The Razakar force was composed of mostly pro-Pakistani Bengalees. Razakars were actively associated with many of the atrocities committed by the Pakistan army during the 9 month War of Liberation in 1971. On September 7, 1971, Pakistan Defence Ministry through an official order [No.4/8/52/543 P.S=1/Ko/3659 D-2Ka] elevated the Razakar Bahini to the status of auxiliary force of the Pakistan Armed Force, it is true, but even before such elevation, the alleged East Pakistan Razakars Ordinance, 1971 was promulgated by the Government of East Pakistan on 2 August 1971 and prior promulgation of the said Ordinance the accused as a member of volunteer Razakar force acted and conducted actively along with and in association with the Pakistani army in committing atrocities. This is enough for an unerring inference that the accused had acted as a member of a militia force under control of Pakistani army for their operational and other

purposes and therefore, we are of view that at the time of committing crimes for which he has been charged with, the accused was a member of 'auxiliary force' as defined in section 2(a) of the Act of 1973.

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

### **POGROM IN PAKISTAN**

**Teachers, Writers, Journalists eliminated**

**Magistrates shot, Doctors disappear**

**Gestapo-like raids, rape, extortion.**

In the said report it was narrated to the effect:

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

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

*The activities of RAZAKARS are known, if not overtly approved, by the military administration. Occasionally, they are a source of concern.*

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

235. Thus, the above report proves that before formal promulgation of Razakar Ordinance in August, 1971 the Razakar bahini was formed and the members of said bahini conducted atrocious acts all over the country to implement the common plan and policies of Pakistani occupation army, as its auxiliary force.

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

236. Now it is indeed a history that the Pakistani army with the aid of its auxiliary forces, pro-Pakistan political organizations implemented the commission of atrocities in 1971 in the territory of Bangladesh in furtherance of following policies:

- i.** policy was to target the self-determined Bangalee civilian population;
- ii.** high level political or military authorities, resources military or other were involved to implement the policy;
- iii.** auxiliary forces were established in aiding the implementation of the policy; and
- iv.** the regular and continuous horrific pattern of atrocities perpetrated against the targeted non combatant civilian population.

237. The above facts in relation to policies are not only widely known but also beyond reasonable dispute. The context itself reflected from above policies is sufficient to prove that the offences of crimes against Humanity as

specified in section 3(2)(a) of the Act of 1973 were the inevitable effect of part of systematic attack directed against civilian population.

238. It is quite coherent from the facts of common knowledge involving the backdrop of our War of Liberation for the cause of self determination that the Pakistani armed force, in execution of its plan and policy in collaboration with the local anti liberation section belonging to Jamaat-e-Islami[JEI] and its student wing Islami Chhattra Sangha [ICS] and auxiliary forces, had to deploy public and private resources and target of such policy and plan was the unarmed civilian Bangalee population, pro-liberation people, Hindu community and pursuant to such plan and policy atrocities were committed to them as a 'part of a regular pattern basis' through out the long nine months of War of Liberation. It may be legitimately inferred from the phrase "directed against any civilian population" as contained in the Act of 1973 that the acts of the accused comprise part of a pattern of 'systematic' crimes directed against civilian population.

239. Therefore, the crimes for which the accused has been charged and found guilty were not isolated crimes, rather these were part of organized and planned attack intended to commit the offence of crimes against Humanity as enumerated in section 3(2)(a) of the Act of 1973 in furtherance of policy and plan with the aim of frustrating the result of general election of 1970 and to deprive the fruits of election result.

240. From the backdrop and context it is thus quite evident that the existence of factors, as discussed above, lends assurance that the atrocious criminal acts '**directed against civilian population**' formed part of '**systematic attack**'. Section 3(2) (a) of the Act of 1973 enumerates the offences of crimes against Humanity. If any of such offences is committed '**against any civilian population**' shall fall within purview of crimes against Humanity.

241. Despite lapse of long 42 years time the testimonies of prosecution witness most of whom are live witnesses to the incidents of atrocities narrated in the charges do not appear to have been suffered from any material infirmity. Besides, no significant inconsistencies appear between their examination in chief made before the Tribunal and cross-examination.

242. It has been proved from the testimonies of witnesses that the accused had directly participated and facilitated in the commission of crimes as listed in charge nos.2-6 as a member of Razakar Bahini [force]. Moreso, we have found that for the reason of his atrocious acts in the locality the accused was widely known as '**Razakar Hasan Ali Daroga**'. According to section 3(1) of the Act of 1973 it is manifested that even any person (**individual or a member of group of individuals**) is liable to be prosecuted if he is found to have committed any of the offences specified in section 3(2) of the Act of 1973. Thus, accused Syed Hasan Ali even in the capacity of an 'individual' or a member of 'group of individuals' comes within the jurisdiction of the Tribunal as per provision of section 3(1) of the Act of 1973.

243. We are convinced from the evidence both oral and documentary led by the prosecution that accused Syed Md. Hachhan alias Syed Md. Hasan alias Hachhen Ali was a potential member of Razakar Bahini [force] of the then Kishoreganj Sub-Division. He, at that time, was widely and generally known as Tarail Thana Razakar commander Hasan Ali Daroga. The purpose of Razakar Bahini was to assist the Pakastani occupation army to implement their design and plan in the commission of their atrocious acts against the Bengalee civilian population including the Hindu, religious group, intellectuals and pro-liberation civilians. As such we may legitimately infer that the accused Syed Hasan Ali as a potential member of committed the said offences as listed in charge nos.2-6.

244. Section 4(1) of the Act of 1973 refers to Joint Criminal Enterprise [JCE] that when any crime as specified in section 3(2) is committed by

several persons, each of such person is liable for that crime in the same manner as if it were done by him alone. In the case in hand, in dealing with the charges we have found that the accused Syed Hasan Ali himself participated and contributed along with his accomplices Razakars and Pakistani occupation army, in the commission of crimes against Humanity and genocide and as such he is also held criminally liable under section 4(1) of the Act of 1973.

245. In the instant case, it is abundantly clear that accused Hasan Ali absconded to evade the process of justice though the defence has claimed that he is a respected person in his locality and a 'Peer' [Saint]. Thus, it may be presumed that had the accused not been involved in the crime he would have certainly appeared before the Tribunal to face the trail.

#### **XIX. Verdict on Conviction**

246. For the reasons set out in the judgment and having considered all the evidence and arguments advanced by both the parties, this Tribunal unanimously finds accused Syed Md. Hachhan alias Syed Md. Hasan alias Hachhen Ali guilty and not guilty in the following charges framed against him.

##### **Charge no. 01:**

The accused is found **NOT GUILTY** of the offences of plundering and arson [other inhumane acts] as crimes against Humanity as specified in section 3(2)(a)(g) and (h) of the Act of 1973 and thus he be acquitted of the said charge.

##### **Charge no. 02:**

The accused is found **GUILTY** of the offences of murder, abduction, confinement, torture and plundering [other inhumane act] as crimes against Humanity as specified in section 3(2)(a)(g) and (h) read with section 4(1) of the Act of 1973 and he be convicted and sentenced under section 20(2) of the said Act.

**Charge no. 03:**

The accused is found **GUILTY** of the offences of genocide and murder, deportation and other inhumane acts [plundering and arson] as crimes against Humanity as specified in section 3(2)(a)(c)(g) and (h) read with section 4(1) of the Act of 1973 and he be convicted and sentenced under section 20(2) of the said Act.

**Charge no. 04:**

The accused is found **GUILTY** of the offences of genocide and murder, abduction, confinement and other inhumane acts as crimes against Humanity as specified in section 3(2)(a)(c)(g) and (h) read with section 4(1) of the Act of 1973 and he be convicted and sentenced under section 20(2) of the said Act.

**Charge no. 05:**

The accused is found **GUILTY** of the offences of murder, abduction, torture and other inhumane acts [looting and mental harm] as crimes against Humanity as specified in section 3(2)(a)(g) and (h) read with section 4(1) of the Act of 1973 and he be convicted and sentenced under section 20(2) of the said Act.

**Charge no. 06:**

The accused is found **GUILTY** of the offences of murder and other inhumane act [arson] as crimes against Humanity as specified in section 3(2)(a)(g) and (h) read with section 4(1) of the Act of 1973 and he be convicted and sentenced under section 20(2) of the said Act.

**XX. Verdict on Sentence**

247. Mr. Mohammad Ali, the learned prosecutor has submitted that accused Syed Md. Hachhan alias Syed Md. Hasan alias Hachhen Ali should face the highest sentence, being a sentence of death, as he is proved to have participated in the commission of barbaric criminal acts constituting the offences of genocide and crimes against Humanity. The intrinsic gravity and extent and pattern of criminal acts constituting the offences of genocide and

crimes against Humanity deserve to be considered as an 'aggravating factor' in awarding the highest sentence. He has also submitted that only such sentence would be just and appropriate to punish, deter those crimes at a level that corresponds to their overall magnitude and reflect the extent of the suffering inflicted upon the million of victims.

248. Per contra, Mr. Abdus Shukur, the learned State defence counsel has sought for acquittal of the accused as the prosecution has failed to prove his culpability with any of the events of atrocities.

249. As a cursory review of the history of punishment reveals that the forms of punishments reflect norms and values and aspiration of a particular society at a given time. Distressed victims may legitimately insist appropriate and highest sentence while the defence may demand acquittal, in a criminal trial. But either of such demands is never considered as a catalyst in deciding the sentence to be inflicted upon the person found guilty of a criminal charge, in a court of law. Undeniably, the punishment must reflect both the calls for justice from the persons who have directly or indirectly been victims and sufferers of the crimes, as well as respond to the call from the nation as a whole to end impunity for massive human rights violations and crimes committed during the War of Liberation in 1971.

250. We have taken due notice of the intrinsic magnitude of the offences of genocide and crimes against Humanity which are predominantly shocking to the conscience of mankind. We have also carefully considered the mode of participation of the accused to the commission of crimes proved beyond reasonable doubt and the proportionate to the gravity of offences.

251. We have already found in our foregoing discussions that the accused is guilty of the offences mentioned in 05[five] charges being charge nos.02, 03, 04, 05 and 06 in the commission of those offences as specified in section 3(2) of the Act of 1973.

252. On perusal of the evidence as discussed earlier it is found in charge no.03 that on 9 September, 1971 at about 1.00 P.M the accused and his accomplice 15/20 armed Razakars having attacked Purba Para known as Paul Para under Tarail Police Station killed about 12[twelve] persons of Hindu community with intent to destroy, in whole or in part, the Hindu religious group. They also plundered many houses of that Purba Para and set them on fire. The accused substantially participated, abetted, aided and facilitated the actual commission of said offences of genocide and crimes against Humanity.

253. As regards crimes narrated in charge no.04, it is proved beyond reasonable doubt that on 27 September, 1971 at about 8.00 P.M some Hindu people including eight males and 4/5 females along with some infants reached Markan Beel under Tarail Police Station with a view to go to India as refugees, then the accused along with his accomplice Razakars having abducted there from took them onto Balongka road under Tarail Police Station and killed said eight male Hindu persons by gun-shots with intent to destroy, in whole or in part, the Hindu religious group. They also snatched away the ornaments and money in each from the females and confined them along with the infants at Tarail Police Station. The accused substantially participated and facilitated the actual commission of said offences of genocide and crimes against Humanity.

254. All the crimes mentioned in the said two charges [charge nos.03 and 04] relating to genocide and crimes against Humanity were massive human rights violations committed during the War of Liberation in 1971. The fierceness of the events of genocide and crimes against Humanity were extremely detrimental to basic humanness. It deserves to be evaluated as **'crimes of serious gravity'** intending to demean the human civilization. Designed plan and pattern of such heinous crimes inescapably aggravate the magnitude of the criminal acts and liability of the accused as well.

255. We have weighed up the gravity of offences proportionately which had been committed by the accused during the War of Liberation of Bangladesh in 1971 as discussed earlier. All the crimes, particularly listed in charge nos.03 and 04 relating to genocide and crimes against Humanity were worst and barbarous types of crimes and are particularly shocking to the conscience of mankind. It is well proved that the accused had direct complicity and substantially contributed and facilitated in the commission of such barbarous types of crimes and as such no punishment other than death will be equal to the said horrendous crimes for which the accused has been found guilty beyond reasonable doubt in the above mentioned two charges. It may be mentioned here that the accused expressed no repentance for his such conduct at any stage, rather he has been deliberately absconding to avoid the trial of this case, as such, we do not find any mitigating factors to award lesser sentence to the accused other than death.

256. Considering all the factors and circumstances as mentioned above we are of agreed view that justice would be met if for the crimes as listed in charge nos.03 and 04 accused Syed Md. Hachhan alias Syed Md. Hasan alias Hachhen Ali who has been found guilty beyond reasonable doubt is sentenced to death for each of the said two charges under section 20(2) of the Act of 1973.

257. However, we are of the further view that considering the proportionate to the gravity of the offences, the accused deserves 'imprisonment for life till his natural death' for each of the charge nos.02, 05 and 06.

258. It may be mentioned here that in the International Crimes (Tribunals) Act,1973 there is no specific provision relating to the mode of execution of death sentences. But section 368 of the Code of Criminal Procedure provides that when any person is sentenced to death, the sentence shall direct that he be hanged by the neck till he is dead. Section 34A of the Special Powers

Act,1974 also provides the provision relating to the mode of execution of death sentences. As per said provision when a person is sentenced to death under the said Act, the sentence may be executed by hanging him by the neck till he is dead or by shooting him till he is dead. So, it appears that in our jurisdiction a death sentence may be executed either by hanging the accused by the neck or by shooting him, till he is dead.

260. Accordingly, we do hereby render the following **ORDER ON SENTENCE.**

Hence, it is

**ORDERED**

That accused Syed Md. Hachhan alias Syed Md. Hasan alias Hachhen Ali, son of late Syed Muslehuddin and late Syeda Fatima Banu of village Machhihata [Peer Bari], Police Station and District Brahmanbaria is found guilty of the offences of '**genocide**' and '**crimes against Humanity**' enumerated in section 3(2)(a)(c)(g) and (h) of the International Crimes (Tribunals) Act,1973 as listed in charge nos.03 and 04, and he be convicted accordingly and sentenced thereunder to death for each of the said two charges and the said sentences of death be executed by hanging the accused by the neck till he is dead or by shooting him till he is dead, as decided by the government, under section 20(2) of the said Act.

The accused Syed Md. Hachhan alias Syed Md. Hasan alias Hachhen Ali is also found guilty of the offences of 'crimes against Humanity' enumerated in section 3(2)(a)(g) and (h) of the International Crimes (Tribunals) Act,1973 as listed in charge nos.02, 05 and 06, and he be convicted accordingly and sentenced thereunder to suffer imprisonment for life till his natural death, for each of the said three charges under section 20(2) of the said Act.

However, the above three sentences of imprisonment for life till natural death shall run concurrently.

The accused Syed Md. Hachhan alias Syed Md. Hasan alias Hachhen Ali is found not guilty of the offences of 'crimes against Humanity' enumerated in section 3(2)(a)(g) and (h) of the International Crimes (Tribunals) Act, 1973 as listed in charge no.01 and he be acquitted of the said charge.

However, as and when any one of the two 'sentences to death' will be executed, the other 'sentence to death' and the sentences to suffer imprisonment for life till natural death would naturally get merged into the sentence to death first executed.

Since the convicted accused has been absconding the 'sentence of death' and 'sentence of imprisonment for life till natural death' as awarded above shall be executed after causing his arrest or when he surrenders before the Tribunal, whichever is earlier.

The sentence of death and imprisonment for life till natural death awarded as above under section 20(2) of the International Crimes (Tribunals) Act, 1973 [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 convict is at liberty to prefer appeal to the Appellate Division of the Supreme Court of Bangladesh against the conviction and sentence within 30[thirty] days of the date of order of conviction and sentence as per provisions of section 21 of the Act of 1973 if he is arrested or surrenders within said stipulated period and in that event certified copy of this judgment and order will be provided to the accused, free of cost.

Issue conviction warrant accordingly.

The Secretary, Ministry of Home Affairs and the Inspector General of Police are hereby directed to ensure the apprehension of the fugitive convict Syed Md. Hachhan alias Syed Md. Hasan alias Hachhen Ali with the help of the Inter-Pol, if necessary.

Let a copy of the judgment be transmitted together with the conviction warrant to (1) the Secretary, Ministry of Home Affairs, Bangladesh Secretarial, Dhaka, (2) the Inspector General of Police, Bangladesh Police, Police Head Quarters, Dhaka, and (3) the District Magistrates, Dhaka and Brahmanbaria for information, necessary action and compliance.

Let a certified copy of the judgment also be provided to the prosecution at once, free of cost.

**(M. Enayetur Rahim, Chairman)**

**(Jahangir Hossain, Member)**

**(Anwarul Haque, Member)**