

International Crimes Tribunal-1 (ICT-1)
Old High Court Building, Dhaka, Bangladesh.
ICT-BD Case No.04 OF 2013

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

The Chief Prosecutor
Versus
Zahid Hossain Khokon @ M.A. Zahid @ Khokon Matubbar @ Khokon

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

Date of delivery of Judgment on 13 November, 2014.

Prosecutors:

Mr. Golam Arif Tipu, Chief Prosecutor with
Mr. Syed Haider Ali
Mr. Mokhlesur Rahman
Mr. Abdur Rahman Howladar
Mr. Md. Altab Uddin
Mr. Abul Kalam
Mr. Hrishikesh Saha
Mr. Md. Zahid Imam
Mr. Syed Sayedul Haque (Suman)
Ms. Sabina Yesmin Khan
Mr. Sheikh Mosfeq Kabir

State Defence Counsel:

Mr. Abdus Shukur Khan

Judgment

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

I. Introduction

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 crimes committed in the territory of Bangladesh, in violation of customary international law, particularly between the period of 25th March and 16th 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 25th of March 2010.

II. Historical Context

2. 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.

3. 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.

4. 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 7th 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 26th March, 1971 following the onslaught of "**Operation Search Light**" by the Pakistani Military on 25th March, Bangabandhu Sheikh Mujibur Rahman declared Bangladesh independent immediately before he was arrested by the Pakistani army.

5. 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.

6. The Pakistan government and the military with the help of some pro-Pakistani leaders set up a number of auxiliary forces such as the Razakars, the Al-Badr, 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.

III. Brief account of the Accused

7. Accused Zahid Hossain Khokon @ M.A Zahid Khokon @ Khokon Matubbar @ Khokon son of late Abdul Motaleb Miah @ Motaleb Matubbar @ Motaleb Dafader and late Joynab Begum of village- Nagarkanda, Nagarkanda Poursava, Police Station, Nagarkanda, District Faridpur was born on 11.01.1942. He was the local leader of Jamaat-e-Islami. He took training of arms for becoming a Razakar in April, 1971. In the month of May, 1971 the accused along with his elder brother late Zafor formed a Razakar Bahini in their locality. After the death of his elder brother Razakar Zafor in a combat with freedom fighters, he [accused] took absolute leadership of local Razakar Bahini as a commander. He was directly involved in the commission of crimes against Humanity and genocide as committed in different places of Nagarkanda, Faridpur. Subsequently, he joined Bangladesh Nationalist Party [BNP] giving up Jamaat-e-Islami politics. Now he is the senior vice-president of BNP of Nagarkanda Thana unit and elected Mayor of Nagarkanda Pourashava.

IV. Procedural History

8. The Chief Prosecutor submitted formal charge under section 9(1) of the Act of 1973 in the Tribunal on 23.06.2013 on the basis of investigation report of the Investigation Agency. It has been alleged in the Formal Charge that during the War of Liberation in 1971, the accused as a local leader of Jamaat-e-Islami and Razakar Bahini of Nagarkanda Police Station, Faridpur, had committed crimes against Humanity, genocide including abetting, aiding, participating and providing moral support to commit such crimes in different places of Nagarkanda Police Station. The Tribunal, on perusal of

Formal Charge, statement of witnesses and the documents submitted by the prosecution, took cognizance of offences as specified in section 3(2) of the Act of 1973 on 18.07.2013 against the accused. The prosecution was then directed to furnish copies of Formal charge and documents submitted therewith which it intends to rely upon for supplying the same to the accused for preparation of the defence. The Tribunal issued warrant of arrest against the accused and the same was found unserved as he was absconding. Thereafter, the Registrar of the Tribunal was directed to take necessary measures as per provision of rule 31 of the International Crimes (Tribunal-1) Rules of Procedure, 2010 [hereinafter referred to as the "ROP of 2010"] by order dated 30.07.2013. Accordingly, it was complied with as it appears from order no.3 dated 13.08.2013. As the accused did not turn up after publication of proclamation of arrest in the two daily national news papers, the Tribunal appointed Mr. Md. Abdus Shukur Khan as state defence counsel to defend absconding accused Zahid Hossain Khokon and fixed the date for hearing on charge matter by order dated 14.08.2013.

9. Before this Tribunal, in course of hearing the charge matter, the learned Prosecutor Mr. Mokhlesur Rahman made submissions in support of framing charge against the accused in the light of the Formal Charge 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 elaborate submissions in support of discharging the accused from the charges brought against him. It appears from record that hearing on charge framing matter was started on 05.09.2013 and it was finally concluded on 17.09.2013 by both the parties. Having considered the Formal Charge, submission of the learned prosecutors and defence counsel and other materials on record the

Tribunal by its order dated 09.10.2013 framed 11 charges against the accused.

V. Consistency of the Act of 1973 with other Statutes on international crimes

10. Section 3(2)(a) of International Crimes (Tribunals) Act, 1973 defines the crimes against Humanity in the following manner:

“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;”

11. Many have expressed their concern by the degree to which the above definition of ‘Crimes against Humanity’ under the Act differs from international standards. It may be stated that ‘international standard’ itself is a fluid concept, it changes with time and requirement through a mechanism of progressive development of law. Therefore, one can look at the concept of ‘standard’ from entirely a technical perspective; whereas, others can see it as a matter of inherent spirit.

12. Looking at the contemporary standards of definition of ‘Crimes against Humanity’ in various Statutes on international crimes, the first observation can be made is that there is no consistency among definitions. The Statute of the International Criminal Tribunal for the former Yugoslavia, 1993 [ICTY Statute], the Statute of the International Criminal Tribunal for Rwanda, 1994 [ICTR Statute], the Rome Statute of the International Criminal Court, 1998 [Rome Statute] or the Statute of the Special Court for Sierra Leone,

2002 [Sierra Leone Statute] although share common spirit, do differ in legal technical nitty-gritty.

VI. The Rome Statute: Article-7

Crimes against humanity

13. For the purpose of this 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.

VII. The ICTR Article 3: Crimes against Humanity

14. The International Criminal Tribunal for Rwanda 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.

VIII. THE ICTY Article 5

15. The International Criminal Tribunal 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.

IX. ICT, 1973 [BD] Section 3

16. Section 3(1) confers the power upon the Tribunals to try and punish any individual or organisation, or group of individuals, 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) of section 3.

17. Section 3(2) (a) enumerates crimes against Humanity as 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.

X. Elements differ in the different Statutes

18. The ICTY requires the crime to be taken place in an armed conflict, be it international or national. The Statute does not require the crime to be committed as a part of widespread or systematic attack on the civilian population, nor it requires that the crime to be perpetrated on discriminatory grounds.

XI. Case laws

19. In February 1995, the Prosecutor of the ICTY indicted Dusko Tadic for war crimes and crimes against humanity. Tadic challenged the ICTY's jurisdiction over crimes against Humanity. Tadic argued that the definition of crimes against humanity did not conform to contemporary International law, which required such crimes to be committed in an international armed conflict. In its decision on the Defense Motion for Interlocutory Appeal on Jurisdiction ["Tadic Decision on Jurisdiction"], the Appeals Chamber of the ICTY rejected this argument by affirming that crimes against humanity can even be committed in peacetime; the Trial Chamber of the ICTY ["ICTY Trial Chamber"] reaffirmed that although Article 5 of the ICTY Statute required a nexus with armed conflict, such a requirement is unnecessary under international law. The ICTY Trial Chamber also noted that Article 5 required crimes against humanity to be committed under a second set of circumstances, that is, the acts must be "directed against any civilian

population." The ICTY Trial Chamber interpreted the term "ANY CIVILIAN POPULATION" as having three elements. First, the civilian population must be "specifically identified as a group by the perpetrators of these acts." Although the ICTY Trial Chamber does not articulate the bases for such as identification, this interpretation suggests that the ICTY Trial Chamber accepted the need for a discriminatory motive. The other two components raised by the ICTY Trial Chamber are that the crimes must be "organized and systematic" and "of a certain scale and gravity". The ICTY Trial Chamber's approach in reading these elements into the meaning of "any civilian population" is a novel one. The ICTY Trial Chamber also appeared to require both elements to be present, rather than accepting them as alternative conditions.

20. However, customary international humanitarian law requires that the attack to be either systematic or widespread. Rome Statute and the ICTR also require these two elements to be alternatively present.

21. The ICTY trial Chamber also noted that a crime against humanity must be widespread or demonstrate a systematic character. However, as long as there is a link with the widespread or systematic attack against a civilian population, a single act could qualify as a crime against humanity. As such, an individual committing a crime against a single victim or a limited number of victims might be recognized as guilty of a crime against humanity if his acts were part of the specified context identified above.

22. So it appears that though the ICTY Statute requires the crime to be taken place in an armed conflict, the tribunal holds that armed conflict is not necessary. And though the Statute did not require the crime to be taken place as a part of widespread or systematic attack, the tribunal holds that the term 'any civilian population' instead of any civilian people indicates that

the crime to be taken place as a part of widespread or systematic attack on civilian population. Court's language 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 widespread or systematic basis that there must be some form of a governmental, organizational or group policy to commit these acts and that the perpetrator must know of the context within which his actions are taken, as well as the requirement that the actions be taken on discriminatory grounds.

23. The above paragraph and the structure of the opinion made it clear that the ICTY Trial Chamber viewed the term "population" as having three essential components: "widespread or systematic" commission of the acts that constitute crimes against humanity; a discriminatory motive for those acts; and a governmental, organizational, or group policy to commit those acts. Furthermore, the ICTY Trial Chamber held that if a population was "predominantly" civilian, then the presence of a few non-civilians would not defeat this characterization. The Tadic Judgment did not elaborate on how to construe "Widespread" or "Systematic." But customary IHL mandates that either systematic or widespread is enough to qualify a crime to be a crime against humanity.

XII. Law in the International Crimes Tribunal Bangladesh

24. Existence of armed conflict is not necessary though it is admitted that there was an armed conflict in 1971.

25. There is no requirement of discriminatory element except in the case of persecution. The plethora of international case law suggests that "law in this area is mixed". But as our Statute clearly mentioned the discriminatory element for the act of persecution, the proper law should be to impose the existence of discriminatory elements only for persecution and not for the other acts mentioned in section 3(2)(a).

26. Widespread or systematic: Our law does not require the attack to be part of a widespread or systematic attack. But as discussed in Tadic case by ICTY the word 'civilian population' indicates that the attack to be a part of widespread or systematic attack. It is now well-settled that the attack in Bangladesh in 1971 was widespread and systematic in nature. Tadic case elaborately discussed what constitutes an attack widespread and systematic.

27. The criterion of "*widespread*" describes a quantitative element. The widespread nature of the attack can arise from the number of victims or its extension over a broad geographic area. The criterion of a "*Systematic*" attack is qualitative in nature. It refers to the organized nature of the committed acts of violence and thus serves to exclude isolated acts from the notion of crimes against humanity. Earlier case law of the ad hoc tribunals required that the individual act follow a predetermined plan or policy. The Appeals Chamber of the Yugoslavia Tribunal has now distanced itself from such a requirement. Although attacks on a civilian population will typically follow some form of predetermined plan, this does not make the existence of a plan or policy an element of the crime. Under customary international law, crimes against humanity do not call for a "*policy element*". However, Article 7(2) (a) of the ICC Statute requires that the attack on a civilian population be carried out "*pursuant to or in furtherance of State or organizational policy to commit such attack.*"

28. The International Crimes (Tribunals), Act, 1973, Bangladesh states the jurisdiction of the Tribunal and defines crimes against Humanity 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) -----.

(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."

To our understanding the proper construction of this section should be

29. 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 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.

30. Though the Statute of the Tribunal does not explicitly requires the attack to be a part of systematic or widespread attack against the civilians,

the very term "*any civilian population*" instead of civilian people indicates the plurality of the attack and thus implies that the attack to be part of a systematic or widespread attack against civilian [Tadic case for references]. However, the term '*systematic and widespread*' is a disjunctive, rather than cumulative requirement. The Rome Statute and the ICTR Statute provide that the attack must be part of a systematic or widespread attack against civilians. That means the existence of either systematic or widespread attack is enough to qualify crime against Humanity.

31. "*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.

32. 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 of 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.

33. 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.

34. 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.

XIII. Special feature of laws and rules applicable to trial procedure

35. The proceedings before the Tribunal shall be guided by the Act of 1973 and the 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, photograph, 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. 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. 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 58A of the ROP.

36. 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.

37. The Act of 1973 has ensured all the universally recognised 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.

38. 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.

39. Before going into discussion and evaluation of the evidence on record, it is needed to be mentioned here that this Tribunal has already resolved some common legal issues agitated by the defence in the following cases of the Chief Prosecutor vs. Delwar Hossain Sayeedi [ICT-BD Case No. 01/2011], The Chief Prosecutor Vs. Professor Ghulam Azam [ICT-BD case No. 06/2011], the Chief Prosecutor Vs. Salauddin 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 vis-a-vis has also decided the legal issues involved in the cases under the Act of 1973.

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) the Act of 1973 through Act No. LV of 2009] the jurisdiction of the Tribunal has been extended to try and punish 'any individual' 'organisation' 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, sub-section 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.

XIV. Burden of the Prosecution

40. 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.

XV. Backdrop and Context

41. The backdrop and context of commission of untold barbaric atrocities in 1971, the War of Liberation, is the conflict between the Bangalee nation and the Pakistani government that pushed the Bangalee nation for self determination and eventually for freedom and emancipation. The War of Liberation was started following the '**operation search light**' in the night of 25 March 1971 and ended on 16 December 1971 when the Pakistani occupation force surrendered.

42. Having regard to the fact that during the period of Liberation War in 1971 parallel forces i.e Razaker Bahini, Al-Shams, Al-Badar Bahini, Peace Committee were formed as auxiliary forces of the Pakistani armed force 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.

XVI. Points to be determined

43. 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 member of Razakar Bahini at the relevant time;

(ii) whether the accused was substantially associated with Pakistani army and his activities 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' within the Tribunal's jurisdiction.

XVII. Validity of holding Absentia trial

44. Section 10A (1) of the Act of 1973 provides for holding trial in *absentia*, if the appearance of the accused could not be ensured for the reason of his absconson. In the international context, the issue of trials in absentia arose with the first modern International Criminal Tribunal, the International Military Tribunal (IMT) at Nuremberg, which was established to try war criminals operating under the European Axis Powers during World War II. Article 12 of the Charter of the International Military Tribunal allowed for trials in absentia whenever the Tribunal found it necessary, was indicted, tried, and sentenced to death, all in absentia, despite doubts as to whether he had even been informed of the proceedings.

45. Accused Zahid Hossain Khokon alias M. A. Zahid could have due opportunity of being properly informed of the proceedings in advance if the warrant of arrest could have been executed. But by remaining absconded, the accused has willfully declined to exercise his right to be present for facing trial and as such under these circumstances, trial in his absence would be permissible "in the interest of the proper administration of justice."

46. In this particular case, at pre-trial stage, the Tribunal issued warrant of arrest against the accused but it appears from the execution report that the warrant of arrest issued by the Tribunal could not be executed as the

accused remained absconded. Besides, proclamation of arrest was also published in the two national daily news papers but he did not turn up to face the proceedings and trial.

47. It may be reiterated that for ends of justice the Tribunal appointed a counsel for defending the fugitive accused at the cost of the State. The accused has not intended to take part in the trial, rather wished to escape prosecution even after publishing notice in the widely circulated news papers of the country. The jurisprudence of both the ICCPR and the ECHR confirms that a trial in absentia will not violate a person's right to be present when he has expressly declined to exercise this right. The circumstances and the time and way the accused had gone to absconsion while he has been holding the post of Mayor, Nagarkanda Pourashava, a post of public office, has led us to draw lawful inference that the accused has willingly declined to face the trial. It is a patent indicium that the accused, by his conduct, has waived his right to be present and as such trial in his absence is quite permissible and justifiable.

XVIII. Whether the accused can be prosecuted without prosecuting his accomplices

48. From the charges it is revealed that apart from the accused, some other armed Razakars and co-perpetrators 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 belonging to Hindu community constituting crimes against Humanity and genocide untrue or give any immunity to accused Zahid Hossain Khokon. 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.

XIX. Witnesses adduced by the parties

49. The prosecution submitted a list of 50(fifty) witnesses along with Formal Charge and documents. But at the time of the trial, the prosecution has examined in all 24 witnesses including the investigation officer. The prosecution has also adduced some documentary evidence which were duly marked as exhibits 1-12.

50. The defence though on 09.12.2013 filed a list of defence witnesses, in total 30 in numbers, but eventually the learned defence counsel filed an application on 17.04.2014 for withdrawal of the said list and accordingly the Tribunal by its order of the same date allowed the said application and thus, the defence has denied to adduce any evidence both oral and documentary.

XX. Defence Case

51. From the trend of cross-examination of prosecution witnesses and the suggestions put to them, it is the defence case that the prosecution has brought wrong person in book and M. A. Zahid, the Mayor of Nagarkanda Pourashava, is not Zahid Hossain alias Khokon alias Khokon Razakar and M. A. Zahid is a freedom fighter and he was in Purapara freedom fighter's camp in the month of November to 16th December 1971 and further that, the accused in 1971 during the Liberation War never went to the alleged crime sites and also never participated, abetted or facilitated the atrocities as alleged by the prosecution, rather the Pakistani army had committed those atrocities. As such, all the charges brought against the accused involving with crimes against Humanity and genocide during the War of Liberation are false, fabricated and motivated. The accused is a popular man in his locality

and he held the post of Chairman of Nagarkanda Union Parishad for about 10(ten) years and after it's upgradation as Pourashova he was also elected it's Mayor and at present he belongs to a political party, Bangladesh Nationalist Party[BNP].

XXI. Summing up the prosecution Case

52. Mr. Mokhlesur Rahman and Ms. Sabina Yeasmin, the learned prosecutors referring to the evidence on record have submitted that the prosecution has proved all the charges brought against the accused beyond all reasonable doubt by adducing and examining 24 live witnesses including the investigation officer [P.W-24]. Save and except P.W-01 and P.W-24 the other 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. As such their credible, corroborative and unimpeachable evidence sufficiently has proved that accused Zahid Hossain Khokon alias Khokon Rajakar physically participated in killing unarmed civilian people, plundering and setting fire to the houses of different villages of the crime sites accompanied by his accomplice Rajakars and Pakistani occupation army during the Liberation War in 1971. And 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 and arson] as crimes against Humanity as specified in section 3(2) (a) (g) and (h) of the Act of 1973.

53. The learned prosecutors have further submitted that the prosecution has also proved beyond reasonable doubt that the accused along with his accomplice Rajakars and Pakistani army also committed offence of genocide as they committed such atrocious acts with intent to destroy, in whole or in part, the pro-liberation Bangalee people, a national and political group, and

as such the accused also committed offence of genocide as defined in section 3(2)(c) of the Act of 1973.

54. Mr. Mokhlesur Rahman, the learned prosecutor 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 an armed member of Rajakars along with other Rajakars and once he led the Rajakar forces at his locality, Nagarkanda, and Pakistani occupation forces and thus the accused is liable for those crimes 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, the accused Zahid Hossain Khokon deserves highest punishment under section 20(2) of the Act of 1973.

XXII. Summing up the defence Case

55. The state defence counsel Mr. Abdus Shukur Khan reiterating the defence case has submitted that the prosecution has failed to prove that M. A. Zahid, the present Mayor of Nagarkanda Poursava is Zahid Hossain alias Khokon alias Khokon Rajakar. He referring to exhibit-1, the alleged list of Rajakars, Al Badr and Al Shams of Faridpur District has submitted that although in the said list at serial no.6 a name 'Khokon' appears but father's and village name of the said Khokon has not been mentioned, which creates reasonable doubt about the veracity of the said documents and thus relying on the same it can not be held that the present accused M. A. Zahid is none but Khokon Rajakar. Mr. Khan has further submitted that exhibit-3, regarding the list of Rajakars of Upazila Nagarkanda [prosecution document volume-2 of page-74], wherein serial no. 12 the name of Zahid Hossain Khokon appears, is created one for the purpose of this case and as such no reliance should be given on it. Mr. Khan has also submitted that most of the witnesses are interested and partisan

witnesses as they belong to the rival group of the accused, who was/ is the Chairman/ Mayor of Nagarkanda Union Parishad/ Pourashava, and as such their evidence bears no evidentiary value and thus, in absence of legal evidence the accused is liable to be acquitted from the charges brought against him.

XXIII. Whether the prosecution has brought the actual person to book

56. Defence has categorically challenged the identity of the accused. It has been submitted by the defence that the prosecution with malafide motive has implicated the sitting Mayor of Nagarkanda Pourashova whose actual name is M.A. Zahid, and he is not Khokon Rajakar or Zahid Hossain Khokon or Khokon Matubbar as alleged by the prosecution. It has also submitted by the defence that wrong person has been charged and prosecuted.

57. In view of the above claim of the defence it is necessary to decide first whether the accused before the Tribunal is the actual perpetrator and whether M.A. Zahid, the present Mayor of Nagarkanda Pourashava under Faridpur district is nobody else, but Khokon Rajakar alias Zahid Hossain Khokon alias Khokon Matubbar as claimed by the prosecution.

58. P.W-1 Abdul Kashem has testified that he knows accused Zahid Hossain since 1970 when he along with his brother Zafor, Abul Kalam Azad Bacchu, Aynal, Atahar had worked for Moulana Mohammad Ali, the nominee of Jammata-e-Islami, in the election of National Assembly, and Khokon's house was adjacent to his [P.W-1] house under the same union. P.W-2 Kanailal Mondol in his cross-examination has asserted that he knew accused Zahid Hossain and they are three brothers, and the name of other two brothers are Zafor and Hudu. P.W-3 Md. Ekram Mollah has stated that he knows the family of the accused and name of his younger brother is Hudu Miah. P.W-4 Md. Abdul Hai Mollah has stated that he and accused

Zahid Hossain Khokon hail from the same union and accused Khokon at present belongs to BNP [Bangladesh National Party] and he was a Rajakar. P.W-5 Md. Yunus Mollah, P.W-20 Mini Begum, P.W-21 Monjuara Begum and P.W-22 Botu Mia have also testified that they knew accused Zahid Hossain Khokon as he used to come to their respective villages to meet with his [accused] relatives. P.W-7 Abdul Aziz Matubbar has stated that Hudu is the Younger brother of accused Zahid Hossain. P.W-8 Md. Hafizur Rahman Chanu has stated that at present accused Zahid Hossain Khokon is absconding. P.W-10 Sree Rabindra Nath Datta has stated that he knew accused Zahid Hossain Khokon and at present he is holding the post of Vice-President of Nagarkanda Thana Unit of BNP. P.W-11 Sree Jogonnath Datta, P.W-12 Md. Hannan Munshi and P.W-17 Yakub Mollah have testified that accused Khokon had come to their locality in 1970 for seeking vote in favour of the Jammata-e-Islami candidate in the national election. P.W-23 Jibon Krishna Das has also testified that he knew accused Zahid alias Zahid Hossain Khokon, and they are three brothers, his elder brother was Zafor, who was a Rajakar commander, and younger brother is Hudu. These unimpeachable evidence of the witnesses regarding the identity of the accused, who are hailing from the same locality of the accused, there is no room to doubt that the prosecution has brought the real perpetrator to book, and M. A. Zahid the presently Mayor of Nagarkanda Pourashava and a local BNP leader is none but accused Khokon Rajakar alias Zahid Hossain Khokokn alias Khokon Matubbar. Moreso, the father's name of the accused late Abdul Motaleb Miah alias Mataleb Matubbar alias Mataleb Dafadar has not been denied by the defence. P.Ws-2, 3, 7 and 23 have also categorically and consistently stated that the accused has two other brothers namely

Zafar and Hudu and this assertion of the witnesses have also not been refuted by the defence.

59. Thus, the claim of the defence that wrong person has been charged and prosecuted, has no leg to stand.

XXIV. Relevant and Decisive Factual Aspects

60. For the purpose of adjudicating the charges, at the out set, the following decisive factual aspects need to be resolved. These aspects relate to the context and status of the accused at the relevant time of perpetration of crimes alleged. To qualify the criminal acts, allegedly committed by the accused, as the offences of crime against Humanity these aspects are essentially needed to be resolved.

When the Pakistani army rolled into Faridpur Town

61. This factual issue is crucially related to the events of crimes alleged. Because, from the charges framed against the accused it reveals that all the events of alleged atrocities were committed between the period of May and August 1971. The accused Zahid Hossain Khokon alias Khokon Rajzakar allegedly in the capacity of Razakar and his accomplices perpetrated all these crimes and charges as framed against the accused demonstrate that he used to maintain close and active association with the Pakistani occupation army.

62. It has clearly emerged from the evidence of witnesses that the Pakistani occupation army rolled into Faridpur town on 21 April 1971, in furtherance of '**operation search light**' executed on 25 March 1971 in Dhaka and all the events of atrocities as listed in the charges took place since the entry of Pakistani occupation army into Faridpur district and target of such horrific atrocious acts was mostly the pro-liberation Bangaless

and Hindu community. Exhibits 8 and 9 add strength to an unerring inference on these pertinent relevant facts.

63. The East Pakistan Police Abstract of Intelligence [Vol XXV No.17] dated April 24 1971 [Exhibit-8] so far it relates to 'Faridpur' in serial no.387 speaks as below:

"Faridpur. On 21st April, 1971, some deserters from East Bengal Regiment along with some 'Mukti Fauz' numbering about 20/25 approached the Deputy Commissioner, Faridpur and the Superintendent of Police, Faridpur, at the later's [it should be later's] residence and demanded arms and ammunition and Police Force from them to resist the Pakistan Army who were coming to Faridpur on that day. They refused to fulfill their demands. At this the 'Mukti Fauz' and EBR deserters surrounded the residence of the Superintendent of Police when some police personnel who were present there took their position to encounter them. Then the 'Mukti Fauz' and EBR deserters left the place, and fled away from Faridpur town just before the arrival of the Army on 21st April 1971."

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

65. Together with the Al-Badr and Al-Shams paramilitary forces, the Razakar 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.

66. Most of the witnesses have testified that accused Zahid Hossain Khokon was a Rajzkar and his brother Zafor was the commander of Razakars of Nagarkanda Police Station who was killed by the freedom fighters in a combat at Chanderhut on 29th May,1971 and thereafter accused took over the responsibility of commander of Rajakars in Nagarkanda area. From exhibits-1 and 3 [the lists of Rajakars of Faridpur District, prepared by the local admistration] it is also crystal clear that the accused Zahid Hossain Khokon was a Rajakar.

67. Thus, we have no hesitation to hold that at the time of perpetration of alleged horrific crimes alleged status of accused was that he was a potential Razakar and a close affiliate of Pakistani army in Nagarkanda area under Faridpur District.

XXV. Adjudication of charges

Adjudication of charge no. 01

[Pillage, setting fire, abduction, confinement and torturing pro-liberation supporters at Bangram village]

68. **Summary charge:** On 27.04.1971 at about 6.00 A.M accused Zahid Hossain Khokon, his elder brother Zafor and their accomplices being armed, entered Bangram under Nagarkanda police station. Upon instruction of Zafor, six houses including the houses of freedom fighters Abdul Hye Mollah and Nazim Uddin Mollah were set on fire after looting by the accused and his accomplices. Nineteen pro-liberation supporters had been abducted by them and subsequently two of the abductees, namely Sattar Mollah and Aziz Sheikh were released after beating by the accused along with his cohorts. Remaining 17 abductees, thereafter, were taken to police station from where they had been released on 19.04.1971 upon request of their family members by giving money to the accused after keeping them confined for two days, on being physically and mentally tortured there. Thus, the accused has been charged for abetting and facilitating the commission of offences of abduction, confinement and torture as crimes against Humanity as specified in section 3(2)(a)(g)(h) read with section 4(1) of the Act of 1973.

Discussion and evaluation of evidence and findings:

69. In respect of proving this charge, prosecution has examined as many as five live witnesses of whom, P.W 01 Abdul Kashem has testified that on 27th April accused Zahid Hossain Khokon and his accomplices went to village Bangram where they set fire to the houses of two villagers after having plundered. They also took seventeen innocent locals to the police station and confined them there for two days for being tortured. They, subsequently,

released the victims by taking money from their relatives. On cross-examination he has denied that he has deposed falsely against the accused.

70. P.W 03 Md. Iqram Mollah has deposed that around 20/25 Razakars including accused Zahid Hossain Khokon, his elder brother Zafor, Aynal and Atahar made an attack on their house. He woke up from sleep upon hearing blank fire by the accused along with his elder brother Zafor and hue and cry of the dwellers of the house. He recognized Razakar Zahid Hossain Khokon, Zafor, Aynal and Atahar through window of the house. They [accused and his accomplices] dragged him out and gave pressure on him to extract information of whereabouts of freedom fighters. In reply he said, they were petty men, no freedom fighter stayed there. Thereafter, they set fire to the six houses including the house of his cousin, freedom fighter Abdul Hye Mollah, after looting the houses. They captured nineteen locals including his uncle Barik Mollah, Yunus Mollah and Rotan Mollah. Two of them had been released after torture and remaining seventeen including a woman were taken to Nagarkanda police station where they were tortured under confinement. They were subsequently released by payment of Tk. 10,000/= [ten thousand] in cash to the accused. On cross-examination he has denied the suggestions that accused Zahid Hossain Khokon did not oppose to liberate the country and was involved in the commission of offences of atrocious acts.

71. P.W 04 Md Abdul Hye Mollah has deposed that on 27th April, 1971 about 06.00 A.M in the early morning accused Zahid Hossain Khokon, his elder brother Zafor along with their accomplices being armed, attacked their house. He had seen them coming out of the house. In fear, he had, thereafter, gone into hiding in a jute field situated at the southern side of their house. Thereafter, the houses of his brother freedom fighters Hiru

Mollah, Nazim Mollah, Rahman Mollah and others were set on fire by the accused along with his accomplices after plundering. They [accused and his accomplices] captured nineteen locals from the village, among them, two had been released and remaining seventeen was taken to Nagarkanda police station. They also took away two goats of Yunus Mollah on their way to police station along with seventeen arrestees including Rotan Mollah, Hatem Mollah, Omed Mollah, Mokbul Kha, Searun Nessa, Yunus Mollah and others. He himself saw the occurrence from the jute field. Accused Khokon and his accomplices having taken them to the police station, tortured them under confinement. Thereafter, leader of the Peace Committee as well as local chairman Abdus Salam went to the police station where the accused demanded Tk. 10,000/= [ten thousand] for their [arrestees] release. Then, Abdus Salam arranged the aforesaid money from the relatives of the arrestees and released them after two days of their arrest by giving Tk. 10,000/= [ten thousand] to the accused. On cross examination he has denied the suggestions that he has given evidence falsely against accused Zahid Hossain Khokon who did not realise money from them and set fire to the houses of the villagers.

72. P.W 07 Abdul Aziz Matobber has deposed that on Tuesday 27th April, 1971 accused Khokon Razakar along with some other Razakars came to Bangram village beside their village. They [accused and his accomplices] raided the house of freedom fighter Abdul Hye who was found absent, then, they set fire to six houses after plundering his [Abdul Hye] house. They held nineteen villagers and two of them were subsequently released after being assaulted. They caught and took two goats of Yunus Kha on their way to Nagarkanda police station along with seventeen arrestees including Rotan Mollah, Yunus Mollah, Searun Nessa, Rahman Mollah, Motalab Mollah, and

Lalmiah. On hearing hue and cry of relatives of the arrestees, he went to the place of occurrence and came to know the aforesaid facts. After two days of their arrest, local chairman A. Salam, Sheken Matobber and he along with more persons jointly went to the Police Station and brought the arrestees on release by giving Tk. 10,000/= (ten thousand) to the accessed.

73. On cross examination he has replied that he went to the scene after it took place and heard the occurrence. He has denied that he has falsely deposed against the accused.

74. Upon scrutiny of the evidence adduced by the aforesaid five live witnesses against the fugitive accused, it appears that the state defence counsel has cross-examined them [witnesses] thoroughly to ascertain their veracity and credibility. Now the question is 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 he heard the alleged occurrence committed by the accused but from whom he received the information of the occurrence has not been disclosed in his evidence. P.W 03, though, has stated in his examination-in-chief that accused along with his accomplices set fire to six houses including the house of P.W 04 on the day of alleged occurrence whereas P.W 04 himself is silent in his testimony about the burning of his house by the accused. Nevertheless, P.W 05 has not particularly narrated in his examination-in-chief that six houses were ignited by the accused after looting. P.W 07 has stated that the house of freedom fighter Abdul Hye had been looted but he has failed to narrate whether the house of Abdul Hye was set on fire by the accused. Therefore, it finds contradictions in the scanning of the evidence adduced by the aforesaid eye witness nos. 3, 4, 5 and 7.

75. It has been stated in the evidence of all five witnesses that 17 inhabitants of the village after their arrest, were taken to Police Station where they were detained and tortured for two days and subsequently they were released by giving money to the accused. With regard to this allegation of torture no evidence has been presented particularly by the witnesses as to how and in what manner the arrestees had been tortured in the Police Station by the accused or his accomplice Razakars. Now the question arises whether such arrest of seventeen inhabitants and subsequent their release by rendering money to the accused constitutes any offence within the purview of Act of 1973 since the arrestees were allegedly put in a Police Station.

76. On a plain-reading of the definition of crimes as specified in the Act we do not find any assertive meaning in the Act itself that keeping any person in the police custody constitutes an offence. The prosecution has been unable to produce evidence that Nagarkanda Police Station was not controlled by the lawful authority at the time of alleged occurrence and the accused had role and control over it. Although, the allegations of arson and pillage have been made by the perpetrators including the accused in committing the offence but sufficient evidence are not found categorically against the accused as to how he had committed such crimes at the crime site as alleged by the prosecution. However, it reveals from the evidence adduced by the prosecution that the accused freed the seventeen arrestees from Police Station by taking money from their [arrestees] relatives. But there has been no evidence adduced by the aforesaid witnesses that Nagarkanda Police Station was run under control of the accused and the said Police Station was used as Razakar camp during the Liberation War in 1971. Thus, it may be justifiably inferred that the accused had no role and control in keeping

seventeen inhabitants confined at the Police Station and to influence their release there from. Therefore, we find no element of any offence committed by the accused within the purview of the Act. Moreover, we find many contradictions in the evidence presented by the prosecution witnesses to each other in proving the instant charge. It is not safe to find an accused guilty on the basis of much contradictory evidence. Therefore, we are led to say that prosecution has been failed to establish the instant charge beyond reasonable doubt that accused Zahid Hossain Khokon by his act or conduct abetted or facilitated to the commission of the offences of abduction, confinement and torture as crimes against Humanity as specified in section 3(2) (a)(g) read with section 4(1) of the Act of 1973.

Adjudication of charge nos. 02 and 03

(a) [Destruction of houses and intimidations to the Hindus for conversion, and deportation and genocide at Jonggurdi-Bagutia village]

77. **Summary charge no.2:** In 1971 between 28th April and 6th May, in any day, accused along with his accomplices, under his leadership, destroyed the houses of Kanai Lal Mondal and others and made intimidation to the members of Hindu communities to convert themselves to be Muslims, otherwise they would have to face dire consequence or leave the country. By threatening as such, the accused had forcibly taken Tk. 5000/= (five thousand) from the family of Kanai Lal Mondal and Tk. 10,000/= (ten thousand) from the family of Jibon Das as well. Thus, the accused has been charged for abetting and facilitating the commission of offences of genocide and other crimes against Humanity as laid down in sections 3(2)(c)(ii) and 3(2)(a)(g)(h) read with section 4(1) of the Act of 1973.

(b) [Forceful conversion into Muslim religion, deportation, persecution and genocide at Jonggurdi-Bagutia village]

78. **Summary charge no.3:** Between 16th and 28th May, in any day, 1971 around 11.A.M and between 18th and 30th July in any day in 1971 accused Zahid Hossain Khokon and his accomplices being armed with an unknown Moulovi, under his leadership, went to the house of Jibon Das at Jonggurdi-Bagutia village under Nagarkanda Police Station and they brought four brothers of Jibon Das including himself from the house to the courtyard and converted them to Muslims against their will by rendering them Muslim names. Thereafter, the accused along with his accomplices converted four female members into Muslim after reciting 'Kalema' through the said Moulovi. Having been afraid of such action of the accused, they left for India as refugees to keep their teenagers' chastity between 18th and 30th July, 1971. They restored their religious right of prayer as Hindus in India and started to perform the same by using their original names after relinquishing Muslim names. In fear, Santosh Das had been compelled to keep his name as Kabir Chowdhury while his wife Komala Rani Das was renamed as Amena Begum. Thus, the accused has been charged for abetting and facilitating the commission of offences of deportation, confinement, mental torture and persecution as crimes against Humanity and genocide as specified in section 3(2)(a)(c)(g)(h) read with section 4(1) of the Act of 1973.

Discussion and evaluation of evidence and findings

79. To prove the charge no. 02, prosecution has examined two live witnesses of whom P.W 02 Kanai Lal Mondal has testified that accused Zahid Hossain Khokon, Zafor, Aynal and others having taken arms from

Faridpur, came to their Hindu village in the middle of Jaistha. They ignited their house and another beside their house and also demanded ransom.

80. On cross examination he has replied that he knew accused Zahid Hossain personally who was a Razakar. He has denied that he has falsely deposed against the accused.

81. P.W-23 Zibon Krishna Das has deposed that accused Khokon Razakar, his elder brother Zafor Razakar, Aynal, Atahar and many others came to their village and set fire to the houses of Kanai Lal Mondal and Romesh Roy. Later, they came to their house and made intimidation to them to be converted into Muslims, failing which they would kill them and ignite their houses. They also demanded ransom from them. In fear of life threat, his elder brother Santosh Das rendered Tk. 10,000/= (one thousand) and they [accused and his cohorts] plucked away 5½ vories of ornaments from his wife. They also forcibly took Tk. 5000/= (five hundred) from Shurja Kantha, the elder brother of Kanai Lal Mondal. The accused left the village after taking money from other villagers under threat as well.

82. In order to prove the charge no.03 prosecution has also examined two live witnesses and placed a statement of a proposed witness under section 19(2) of the Act. P.W 02 Kanai Lal Mondal has stated in his deposition that accused Zahid Hossain Khokon along with his accomplices forcefully converted Bhuban Das, Santosh Das, Jibon Das and Khhetra Mohan Das and Netai Das of their village into Muslims by wearing Islamic caps on their heads which he saw on his own eyes.

83. On cross-examination he has denied that the accused did not ignite the houses after pillage and convert them to Muslims. He has also denied that he has falsely deposed before the Tribunal.

84. P.W 23 Jibon Krishna Das has testified that 2/3 days after the incident at the house of Romesh Roy and Kanai Lal Mondal, accused Zahid Hossain Khokon and his accomplices along with an unknown Moulovi again came to their house. They [accused and his accomplices] forcibly converted them including a neighbour Netai Das to Muslim religion on reciting 'Kalema' by a Moulovi by wearing Islamic caps on their heads. Thereafter, they entered their house and forcibly dragged four wives of their brothers from the house and broke their bracelet and erased their 'Shedur' and converted them into Muslims after reciting 'Kalema'. He has further stated that he was renamed as Zaheed Chowdhury while his elder brother Santosh Das as Kabir Chowdhury, Khhetra Mohan Das as Khairuzzaman Chowdhury, Bhuban Das as Salam Chowdhury, his wife Jamuna Das as Nur Jahan, his brother Santosh Das wife's Kamola Das as Amena Begum and neighbour Netai Das as Rahim Chowdhury. Thereafter, they [accused and his accomplice Razakars] compelled his brother's wife to cook 'Khichuri' which they ate there. They left the crime site after having Khichuri. From time to time they extracted information about their movements. In fear, they wore Islamic caps on their heads in order to perform prayer [Namaz] some times. He has further testified that they left for India to keep modesty of teenage girls [teenagers] of their house and they restored their religious right of prayer as Hindus in India. After independence, they came back to their motherland feeling love and affection with the soil. In cross-examination he has denied the suggestions that the accused Khokon Razakar did not go to their village and convert them into Muslims forcibly and he has falsely given evidence against the accused.

85. In the statement of Abu Bakkar Mollah, it has been stated that a group of Razakars under leadership of accused Zahid Hossain Khokon

compelled to deport [exile] Hindu civilians of Jonggurdi-Bagutia village including Jibon Das by giving threat to them.

86. From the aforesaid charge nos. 02 and 03 it appears that the occurrences as allegedly took place in the same village one after another on different dates and time. But the nature of the crimes of both the charges has been seen to be similar in form. And as such, we feel it comfortable to evaluate the evidence of both the charges in a one way for its result.

87. Having gone through the evidence of P.W 02, it finds that he, who happened to be an eye follower, has stated in examination-in-chief that the accused Zahid Hossain Khokon along with his accomplices arrived at their village in the middle of Jaistha, 1971 and subsequently set fire to their house along with another house and they also demanded money as ransom from them. This version of his evidence has been corroborated by P.W 23 Jibon Krishna Das who has narrated claiming that the accused along with his accomplices ignited two houses of Kanai Lal Mondal and Romesh Roy respectively. P.W 02 has also deposed that accused Khokon Razakar and his accomplices forcefully converted Bhuban Das, Santosh Das, Jibon Das, Khhetra Mohan Das, Netai Das and their wives of the village by wearing Islamic caps on their heads, into Muslims from Hindus against their will. Such incident he [P.W 02] had seen on his own eyes. Defence has failed to dislodge the evidence of this witness rather his evidence for conversion has been supported by P.W 23 in the same manner depicting that the accused along with a Moulovi came to their house 2/3 days after the occurrence took place at the house of P.W 02. He has further told in examination-in-chief that the aforesaid Hindu religious persons including him had been forcibly converted into Muslims by wearing Islamic caps on their heads upon reciting 'Kalema' by a Moulovi. Immediate after conversion from Hindus to Muslims,

they [victims] were also given individual Muslim names in place of their real ones. The event of conversion and presenting Muslim names with the victims on the date and time are not disputed at all. It also appears from evidence that both P.W 02 Kanai Lal Mondal and P.W 23 Jibon Das are eye witnesses of the alleged occurrence and P.W 23 himself is one of the victims who has further narrated that most of the victims were eventually compelled to leave the country for India taking shelter as refugees in fear of threatening life by the accused during the Liberation War in 1971. Such narration made by P.W 23 as to the fact of forceful conversion and deportation remained unshaken.

88. It is found from the statement of one Abu Bakkar Mollah, which has been marked as exhibit no. 11, depicting that he came to know that some Hindu religious persons including Jibon Das of Jonggurdi-Bagutia village were forcibly converted into Muslim religion by the accused along with his accomplice Razakars who compelled them to go in exile. This piece of evidence has supported the evidence of P.Ws 02 and 23. It is to be noted here that prosecution proposed Abu Bakkar Mollah as prosecution witness but prior to his appearance as prosecution witness before the Tribunal he passed away. For such reason, the prosecution by filing an application has prayed for the statement of Abu Bakkar Mollah to be received in evidence under section 19(2) of the Act and the same has been allowed accordingly by the Tribunal.

89. During scanning of the evidence, it may find some minor inconsistencies and contradictions among that evidence adduced by the witnesses, but an assessment is to be made on the basis of totality of the evidence presented in the case. The Tribunal, however, is not obliged to address insignificant inconsistencies, if occur in witnesses' testimony. In this

context, we can refer to the decision of the 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.”

[ICTR Appeals Chamber, judgment May 21, 2007, para-99]

90. However, on a careful scrutiny of the evidence of live witnesses as well as statement of Abu Bakkar Mollah, it is found that the accused rendered mental pressure on the victims including P.W 23 to be converted as Muslims against their will and the accused also forced them [victims] to follow Islamic rituals. Prosecution has argued that mental pressure to the victims by way of conversion against their will is also fallen in the form of torture as specified in the Act. Considering the contention of the prosecution it can be said that there is no necessity to prove the physical torture directly with the victim by adducing evidence. Torture may happen in different ways, like mental pressure, forceful conversion, intimidation for deportation, even by way of making loudly sound of horn to the victims etc. It has emerged from the evidence of cross-examination that the defence has only given suggestions to the witnesses who have vehemently denied that the accused did not go to the crime site of the village during the War of Liberation as a Razakar or Razakar commander. Moreover, the cross-examination of the above P.Ws does not offer any indication that can reasonably insist to deduce that they [witnesses] had no reason to see or know the incident by the accused on the date and time alleged. It is also evident that accused Zahid Hossain Khokon and his brother were Razakars during the War of

Liberation and his elder brother Zafor Razakar was killed in a combat occurred between the freedom fighters and Pakistani invading force and its auxiliary forces at Chanderhut. After Zafor's death, Khokon took charge as the commander of Razakar Bahini of Nagarkanda Thana unit and became more furious against the freedom fighters as well as pro-liberation supporters.

91. In the light of discussion as narrated above by a careful scrutiny of the evidence, it is crystal clear that offences of arson [inhumane act], torture by way of conversion from Hindus to Muslims and deportation committed by the accused during the Liberation War of 1971 as a Razakar as well as commander of Razakar Bahini of Nagarkanda Thana unit. The offence of genocide indicted in the charge against the accused has not been established as its lack of evidence. Therefore, we are led to hold that the prosecution has been able to prove the aforesaid offences in both the charge nos. 02 and 03 beyond all reasonable doubt against the accused that had direct participation in the commission of those atrocities. As such, accused Zahid Hossain Khokon is criminally liable under section 4(1) of the Act of 1973 and held him guilty for his substantial contributions to the actual commission of the offences of deportation and torture by way of forceful conversion 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 Act.

Adjudication of charge no.04

[Confinement, deportation and rape at Bonik Para of Chanderhut village]

92. **Summary charge:** On 27th May between 9.00 A.M and 11.00 A.M in 1971 accused Zahid Hossain Khokon, his elder brother Razakar Zafor along

with other accomplice Razakars being armed, entered the house of Jogannath Datta at Bonik Para and confined around 16/17 people belonging to Hindu community and forcibly took away different kinds of gold ornaments and cash by threatening on their lives. The accused destructed homestead and set fire to those homestead and temple. At around 11.00 A.M accused Zahid Hossain Khokon forcibly raped Rada Rani Datta, wife of Tagore Das Datta, who previously took shelter at Bonik Para. At the same time Khuku Rani Datta, an unmarried daughter of late Holdar Dey, who took shelter in the same village, was also raped by other Razakars. Subsequently, raped victims and their family members were deported to India for taking shelter as refugees. Thus, the accused has been charged for abetting and facilitating the commission of offences of confinement, deportation, rape as crimes against Humanity as specified in section 3(2)(a)(g)(h) read with section 4(1) of the Act of 1973.

Discussion and evaluation of evidence and findings:

93. In order to prove the instant charge, prosecution has examined as many as three live witnesses and submitted a statement of one Abu Bakker Mollah under section 19(2) of the Act. P.W 01 Abul Kashem has deposed that on 27th May, 1971 accused Khokon Razakar along with his accomplices went to Chanderhut village at Bonik Para where they committed offences of arson, pillage and rape on women. One Rada Rani, who previously took shelter thereinto, was raped by accused Khokon Razakar and another girl was also raped by his [accused] accomplices. He found the incident true after going there along with their freedom fighter commander Aziz Mollah on information.

94. On cross examination he has replied that it is not a fact that the accused was not involved in the commission of offences as crimes against Humanity and he has deposed falsely.

95. P.W 10 Sree Rabindra Nath Datta has testified that on 27th May, 1971 at about 10.00 A.M accused Razakar Khokon and his elder brother Razakar Zafor along with other Razakars made attack in their village where many of their relatives, coming from other villages, previously took shelter. Sensing presence of Razakars in the village, locals started to run hither and thither while he had gone on hiding in a bamboo bush. From there he had seen that Khokon Razakar held one married woman named Rada Rani Datta at the time of her fleeing away and forcibly took her in the house of Surendra Nath Datta where she was raped by him [Khokon Razakar].

96. He further heard the sound of firing coming from the house of Bhuban Mohan Datta and saw ablaze there. Soon thereafter he saw accused Zahid Hossain Khokon along with his accomplices entering their house and acts of plundering prior to setting fire to the house and temple. Immediate after their [accused] departure, upon hearing hue and cry of a woman, he came forward to help her by providing a cloth, and then she came out of the house wrapping up her body by the said cloth. He saw marks of violence with the raped victim Rada Rani Datta falling blood down from her body. On asking she replied in a weeping tone that Zahid Hossain Khokon Razakar committed rape on her. Thereafter, he went to the house of Bhuban Mohan Datta where he saw burned house of Bhuban Mohan Datta whose wife and daughter informed him that Razakar Khokon along with his accomplices looted and set fire to their houses. On hearing hue and cry he went to the house of Amulla Bonik where he saw an unmarried teenage girl named Khuku Moni weeping. He further saw Khuku Moni standing by wearing a

tore cloth [sharee] who told him in a weeping tone that she was raped by Razakars. A group of freedom fighters under leadership of Commander Aziz Mollah came to the spot on hearing and verified the incident.

97. On cross-examination he has replied that on 27th May, 1971 around 15/16 armed Razakars made attack in their village. At the time of occurrence he went into hiding in bamboo bush around 5/6 yards afar from their house. He has denied that accused Zahid Hossain Khokon did not come to their village and rape Rada Rani Datta forcibly on the day of alleged occurrence. On further cross-examination he has replied that Rada Rani Datta is not in Bangladesh at present, she resides along with her husband in India.

98. P.W 11 Sree Jogannath Datta has deposed that accused Khokon and his accomplices moved towards the house of Surendra Nath Datta after looting and setting fire to their house and temple on 27th May, 1971 around 10:00 A.M which he saw from the hiding place in a bamboo bush. At the time of fleeing away, the wife of Tagore Das named Rada Rani Datta was held by accused Zahid Hossain Khokon Razakar and he took her forcibly to inside the house of Surendra Nath Datta which he had seen from the hiding place. Thereafter, they went to the house of Robindra Nath Datta where they plundered and set fire to his house and temple. They also committed rape on an unmarried girl, daughter of Haldor Babu, who previously took shelter in his [P.W-11] uncle's house during the war time. After their [accused and his cohorts] departure from the crime site, he came out and saw burned house and temple. He had also seen the marks of violence with the victim Rada Rani Datta who told him in a loud voice that accused Khokon Razakar committed rape on her. Thereafter, freedom fighters came to the spot and heard the incident.

99. On cross-examination he has replied that on 27th May, 1971 he went into hiding in a bamboo-bush for an hour and it is not a fact that he did not see the occurrence on 27th May, 1971. On further cross-examination he has said freedom fighters came to the spot around half an hour later of their [accused] departure. He has further said in reply that it is not a fact that accused Zahid Hossain Khokon is a popular personality and to tarnish his image, he [witness] has falsely deposed against him.

100. In the statement of Abu Bakkar Mollah [now dead] he has stated that on 27th May, 1971 Razakar Zafor and his own brother Khokon Razakar along with other accomplices being armed, went to the Chanderhut at Bonik Para. Bhubesh Datta, son of Bhuban Mohan Datta and freedom fighter Ishak informed commander Aziz Mollah about their [accused] arrival at Bonik Para. On getting instruction from commander Abdul Aziz he along with other freedom fighters went to the crime site but in the meantime accused departed from the place. They found the incident true that accused Razakar Zahid Hossain Khokon committed rape on a married woman named Rada Rani Datta in a house at about 11.00 A.M and other Razakars raped one Khuku Moni, an unmarried girl. Both the victims previously took shelter in the village before the occurrence took place. They also got sign of burned houses and destructions in the village.

101. It appears from the instant charge that the occurrence took place on 27th May, 1971 between 9.00 A.M and 11.00 A.M at Bonik Para of Chanderhut village under Nagorkanda police station. The allegations of offences of confinement, deportation by threatening life and setting fire to the homestead along with a temple and rape [sexual assault] have been brought by the prosecution against the accused which took place during the War of Liberation, 1971. In proving the aforesaid allegations prosecution has

examined as many as three live witnesses along with a statement of a proposed witness under section 19(2) of the Act of 1973, of whom P.W 01 has said in his examination-in-chief depicting that on the day of alleged occurrence, accused along with his accomplice Razakars went to the crime site where accused Khokan committed rape on one Rada Rani Datta, a married woman, who previously took shelter thereinto and another girl was also raped by his accomplices. Before committing such heinous offence they set fire to the houses at Bonik para after pillage. On getting such information this witness along with his commander Aziz Mollah went to the spot and found the incident constant. From scrutiny of this evidence it appears that at the time of occurrence this witness was not present near the crime area and he did not see the incident directly but he found its purity immediately after incident on his arrival at the crime site. This version of evidence has not been dislodged on cross-examination by the defence. It has been corroborated by the evidence of P.W.10 who has testified claiming that on the day of occurrence at about 10:00 A.M the accused along with his accomplices made attack in their village. Sensing presence of Razakars in the village, locals started to run hither and thither while he was going to hide in a bamboo-bush. From the hiding place he saw directly that Khokon Razakar caught hold of one married woman named Rada Rani Datta while she was attempting to flee home in fear of the Razakars and she was forcibly taken to inside the house of Surendra Nath Datta where she was raped by Khokon Razakar. He also heard sound of firing coming from the house of Bhuban Mohan Datta and had seen ablaze there. He has further narrated that accused along with his accomplices entered their house and did acts of plundering prior to setting fire to the house and temple. Immediately after their departure he heard hue and cry of a woman, then, he forwarded

himself to help the woman named Rada Rani Datta when she was asking to provide a cloth to her. Getting a cloth from him, she came out of the house wrapping up her body by that cloth. He saw marks of violence with the raped victim Rada Rani falling blood down from her body. On asking she replied in a weeping tone that Zahid Hossain Khokon Razakar committed rape on her. Later, he [P.W 10] had gone to the house of Bhuban Mohan Datta where he saw burned house of Bhuban Mohan Datta whose wife and daughter told him that Razakar Khokon along with his accomplices looted and set fire to their house. He has further testified that on hearing hue and cry he, thereafter, went to the house of Amulla Bonik where he saw an unmarried teenage girl named Khuku Moni weeping, standing by wearing a tore cloth, who told him in a weeping tone that she was raped by Razakars. Sometime thereafter, commander Aziz Mollah along with some other freedom fighters came to the spot on information and verified the incident. The defence has not impeached credibility of this witness rather his deposition has been corroborated by way of cross-examination that the attack was made in the village by 15/16 armed Razakars on 27th May, 1971 and this witness saw the incident around 5/6 yards afar from his hiding place.

102. It appears further from cross-examination that victim Rada Rani Datta now is residing in India which is meant that after rape she was compelled to leave the country at least to avoid her black stigma in the locality, which she embraced forcibly by the accused on the day of alleged occurrence. It is a clear case of evidence given by this witness that he saw directly as to how the victim Rada Rani Datta was apprehended and dragged forcibly inside a house to be raped by the accused. Such version of evidence also corroborates the evidence of P.W 01 who recognized the truthfulness of the

incident on his arrival at the spot by getting information immediate after the occurrence.

103. P.W 11 has also claimed in the same voice as adduced by P.W 10, stating that he saw from a hiding place at about 10:00 A.M on 27th May, 1971 that the wife of Tagore Das named Rada Rani Datta had been raped inside the house of Surendra Nath Datta by the accused. It is further evident by this witness that Rada Rani Datta tried to escape the attack, sensing presence of the accused but in vain. By the cruel action of rape of the accused she lost her chastity

104. It is also found from his evidence that another unmarried girl, daughter of Haldor Babu, was raped by the accomplice Razakars of the accused. Both the victims previously took shelter at Bonik Para before such cruel incident took place during the War of Liberation in 1971. This witness had also seen the marks of violence with the victim Rada Rani Datta who told him in a loud voice that accused Khokon Razakar committed rape on her. By the said piece of evidence it has unambiguously corroborated the evidence of P.W 10 in to to. This witness has further narrated by supporting evidence of P.W 10 in a same voice that freedom fighters came to the spot and heard the incident. Defence could not controvert the evidence of P.W 11 in any way. On cross-examination P.W 11 has said, adding that he stayed in a bamboo-bush for an hour by which he has affirmed the assertion made in his deposition. On further cross-examination he [P.W 11] has said in reply that freedom fighters came to the scene around half an hour later of departure of the accused. This piece of evidence finds also corroborations in between the last portion of evidence of P.W 01 and P.W 10, thus, we have found from the corroborative and unimpeachable evidence of P.Ws 01, 10 and 11 that the accused along with his accomplice Razakars committed

offence of rape on two victims in a broad day light at the alleged crime site and as such there is no scope to discard and disbelieve the testimonies of the aforesaid witnesses who are the live witnesses in the present charge. Besides, the Exhibit 11, a statement of Abu Bakker Mollah, which narrates that upon getting information from commander Abdul Aziz, he along with other freedom fighters went to the crime site after departure of the accused on 27th, May, 1971 and found the occurrence true that Rada Rani Datta was raped by Razakar Khokon at about 11.00 A.M in a house and Khuku Moni, an unmarried girl, was also raped by other Razakars. Both the victims previously took shelter in the village. They also got sign of burned houses and destructions in the village. Although, such statement of exhibit 11 does not have probative value alone as it was settled earlier by the Tribunal in other cases, but it creates its credibility stronger when it supports and corroborates the other testimony of live witnesses examined before us. In the present charge, the evidence of all live witnesses have been supported and corroborated by the statement of Abu Bakkar Mollah [exhibit-11]. In that view of the fact as narrated above, the statement of late Abu Bakkar Mollah has a probative value. The whole evidence of the witnesses indicate that it was not possible for civilians to resist the armed perpetrators led by the accused who, in fact, participated directly in the commission of offences to execute the policy and plan of the Pakistani invading forces. The mode of attack and deeds of the accused have also indicated that the gang targeted the house of the victims belonging to Hindu community. It is also immaterial as to how many civilians were targeted by carrying out an attack, context and mode of criminal acts; the group perpetrating the crime are to be envisaged Long Tom exclude the notion of isolated crime. In this content, the ICTR Appeals Chamber observed as under,

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

[Nahimana, Barayagwiza and Ngeze may be recalled, (Appeals chamber), November 28, 2007, para-924]

105. The accused and his co-perpetrators finding no male inmates at the crime site held the victims and dragged to the house where they sexually abused them [victims] cruelly. In relation to the identification of the accused in the commission of offence, like rape on the victim is very significant one. From the evidence of all witnesses it finds that the present accused had been seen in committing rape on victim Rada Rani and other atrocious acts. But in the Tribunal they [witnesses] could not get the scope to identify the accused on dock because of his absconding, although the accused had been given opportunity to appear before the Tribunal for defending such allegation brought against him by the prosecution. As such the evidence of all live witnesses are to be constrained that accused Zahid Hossain Khokon is that person who allegedly committed the offence of rape and other atrocious acts at the scene at the time of occurrence. Thus, the prosecution has been able to establish the instant charge beyond reasonable doubt that the accused Zahid Hossain khokon had committed the offences of confinement, deportation and rape. As such he is criminally liable under section

3(2)(a)(g)(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.05

[Genocide, murder, abduction, confinement, torture and other inhumane acts in village Shahidnagar-Kodialia]

106. **Summary charge:** On 30.05.1971 between 8.00 A.M. and 1.00 P.M. accused Zahid Hossain Khokon, leader of Rajakar Bahini of Nagarkanda police station, and his associate Rajakars Atahar, Aynal and others along with Pakistani army went to village Shahidnagar Kodalia and set fire to many houses of that village after having plundered. Thereafter, they caught hold of 50-60 people from a nearby hiding place and among them 16 (sixteen) persons including females and children were shot to death by the accused and his accomplices through brush firing, six severely injured persons and an infant luckily survived. They also broke the waist of a teenager named Alauddin Sheikh with a rifle ingot under confinement when he refused to go with the Pakistani army. They also killed two other persons namely Afzal Hossain at near Kodalia Koumia Madrasha and the accused himself killed Shukur Sheikh at a jute-field by gun shots. After their departure from the village, pro-liberation people buried the dead bodies in three different places. Thus, the accused has been charged for abetting and facilitating the offences of genocide, and murder, abduction, confinement, torture 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.

Discussion and evaluation of evidence and findings:

107. To prove charge no. 05, the prosecution has examined as many as four live witnesses [P.Ws. 1, 4, 8 and 9] and produced statements of two witnesses [Exts. 11 and 12] which were recorded by the investigation officer.

P.W.1 Abul Kashem has testified that on 30.05.1971 at about 7.00 A.M. he saw that accused Zahid Hossain Khokon Rajakar along with his accomplices and Pakistani army having entered Purbo Para of their village started burning and firing shots. At the advice of his father he then went to his father's maternal uncle's house situated at village Baro Kazuli, which was adjacent to their own village, wherefrom he could also see that the accused and his accomplices were burning and firing shots. He has further testified that after the departure of the accused and his accomplices, he came back to his own village home and found in the house of Sattar Miah of Purbo Para that sixteen persons including women and babies had been killed in one place where he saw the dead bodies of Rahima, Sufia, Baru Khatun and three babies namely, Kochi, Shewli and Lablu among other dead bodies. Apart from said sixteen dead bodies, he also found there the dead bodies of Afzal Miah and Shukur. He then came to know from Sattar Miah, Mannan Miah, Hingul Kha, Kanchu Mridra and others that 40/50 unarmed innocent persons being afraid of Pakistani army and Rajakars went into hiding in a depressed place of Velur Bhita. Hearing the cries of babies the accused and his accomplices having caught hold of those persons brought out of that place and confined them. When they were taking the booties away through the younglings and adolescents, the accused hit Alauddin [P.W. 9], with the ingot of his rifle which caused severe injuries to him, who refused to go with them. He has stated in his cross-examination that the accused was involved with the politics of Jamaat-e-Islami and he is now absconding. He has denied the defence suggestions that the accused was never a Rajakar and he was not involved with the crimes against Humanity in 1971. He has also denied the defence suggestion that he has deposed falsely against the accused.

108. P.W.04 Abdul Hye Mollah has deposed that on 30.05.1971 in the morning accused Zahid Hossain Khokon, under his leadership, along with armed Rajakars and Pakistani army having come to village Kodalia committed arson and killed sixteen unarmed innocent persons in that village. He has stated in his cross-examination that his house and the house of the accused are situated in the same union and the accused was a Rajakar during the Liberation War, 1971. He has denied the defence suggestion that the accused was not present at the place of occurrence when the atrocities were committed there. He has also denied the defence suggestion that he has deposed falsely against the accused.

109. P.W.08 Md. Hafizur Rahman Chanu has stated that on 30.05.1971 in the morning at about 7.30/8.00 he saw that accused Zahid Hossain Khokon Rajakar along with other Rajakars and Pakistani army were coming towards their village Shahidnagar Kodalia. Having seen them, he along with others totalling 50/60 persons went into hiding in a depressed place of Velur Bhita, situated at near to their house, and of them his father Mannan Miah, uncles Sattar Miah and Kanchan Mridha, brothers Alauddin and Ayub Mridha, mother Rahima Begum, sister Reksona and aunt Firoza Begum were also in the said hiding place. He has further stated that the accused and his accomplices and Pakistani army having plundered their houses along with others set fire to those houses. Hearing the cries of his baby sister Shewli Akter [2], the accused and his accomplices having caught hold of them and brought out of that place and confined them of whom the male persons were used to carry out their booties. The accused hit the waist of Alauddin [P.W. 09], with the ingot of his rifle which caused injuries to him, when he refused to go with them. After sometimes, he heard the sounds of brush-firing and firing of bullets coming from different places. After the departure of the

accused and his accomplices he came back to his house and again kept himself hiding therein. After about 1 ½ /2 hours, his father and uncles also came back to their houses and then he was looking for his mother, sisters and aunts and at one stage, he found sixteen dead bodies sustaining bullet injuries, lying at a place beside the house of Sattar Miah, including the dead bodies of his own sister Reksona, aunt Firoza Begum, cousin Koli Akter, aunt Rahima Begum and grand-mother Baru Khatun. He also found his mother Rahima Begum, sister Shewli Begum, cousins Kochi Miah and Lablu Miah, aunt Sufia Begum and Alauddin Sheikh's grand-mother Baru Khatun sustaining bullet injuries lying beside those dead bodies. Thereafter, he could also see the dead body of Afzal Miah with bullet injury lying beside the Madrasha and the dead body of Shukur Sheikh lying at the jute-field, situated at the northern side of his house. He has also stated that thereafter the dead bodies of Afzal Miah and Shukur Sheikh along with above mentioned sixteen dead bodies were buried in three different places of their village. He has stated in cross-examination that out of three brothers, the accused and his another brother were Rajakars. On 30.05.1971, after the departure of the accused and his accomplices, he along with other 10/12 adolescents came back to their village. He has denied the defence suggestions that the accused was not a Rajakar and he was not involved with crimes against Humanity. He has also denied the defence suggestion that he has deposed falsely against the accused.

110. P.W.09 Md. Alauddin Sheikh has testified that on 30.05.1971 in the morning at about 8.00/8.30 Rajakar commander accused Zahid Hossain Khokon, under his leadership, along with other Rajakars and Pakistani army came to their village Shahidnagar Kodalia. Then they being afraid of went into hiding in bushes and ditches of Velur Bhita and then the accused and

his accomplices having plundered their houses set fire to those houses, and thereafter, they having found caught hold of them totalling 50/60 persons from the said Velur Bhita and then confined them. He has further testified that the accused hit his waist with the ingot of his rifle when he refused to go with them, and as a result of such hit, his waist was broken. After sometimes, he heard sounds of brush-firing and bullet shots coming from south-west corner of the house of Satter Miah and from the side of Madrasha. After the departure of the accused and his accomplices, he along with others came back to their houses and again kept themselves hidden. Thereafter, they having gone before the house of Sattar Miah, wherefrom he had heard sounds of brush-firing and bullet shots, saw sixteen dead bodies and six injured persons lying there. The dead bodies of Helena, Shewli and Reksona were there amongst said sixteen dead bodies and Hafizur Rahman, Chanu's mother, sister, aunts and their grand-mother Buru Khatun were there amongst the injured persons. He has also testified that at that time he also saw the dead body of Afzal Miah lying before the Madrasha and the dead body of his father Abdur Shukur Sheikh lying in the jute-field, situated at the northern side of their house, and on the following day those dead bodies were buried in different places of their village. Afterward, amongst six injured persons his grand-mother Baru Khatun, Lablu and Kanchan died. He has denied the defence suggestions that the accused was not a Rajakar and on 30.05.1971 the accused did not go to his village Shahidnagar Kodalia and he did not kill any person and plunder any house and set fire to any house. He has also denied the defence suggestions that the accused did not hit him with the ingot of a rifle and he has deposed falsely against the accused.

111. Upon scrutiny of the testimonies of said four live witnesses [P.Ws. 1, 4, 8 and 9] as discussed above, it appears that their evidence are very much

corroborative to each other, and out of said four witnesses three witnesses [P.Ws. 1, 8 and 9] are the eye-witnesses of the part incidents as mentioned in charge no. 05. Besides, P.W. 09 himself is a victim. P.W.01 Abul Kashem and P.W.08 Md. Hafizur Rahman Chanu have stated in one voice that on 30.05.1971 in the morning they saw accused Zahid Hossain Khokon Rajakar along with other Rajakars and Pakistani army to come to their village Shahidnagar Kodalia. Besides, P.W.01 has stated that the accused and his accomplices having entered Purbo Para of their village started burning and firing shots. P.W.08 and P.W.09 have also stated that the accused and his accomplices having come to their village plundered their houses along with others and then set fire to those houses. P.W.04 is a hearsay witness who has corroborated the testimonies of P.Ws.1, 8 and 9 in respect of arson. P.W.01 and P.W.08 have stated that the accused himself hit Alauddin Sheikh [P.W.09] with the ingot of his rifle which caused injuries to him when he refused to go with them. P.W.09 having corroborated the said evidence of P.Ws.1 and 8 has stated that the accused himself hit his waist with ingot of his rifle when he refused to go with them, and as a result of such hit his waist was broken.

112. P.W.08 and P.W.09 have categorically stated in one voice that having seen the accused and his accomplices coming to their village, they along with others totalling about 50/60 persons went into hiding in Velur Bhita wherefrom the accused and his accomplices subsequently abducted and confined them. P.W.08 has further stated that his father, mother, brother, uncles, sister and aunt were also hiding themselves with them in the Velur Bhita. P.W.01 has stated that he came to know that 40/50 unarmed innocent persons being afraid of Pakistani army and Rajakars went into hiding in Velur Bhita, but hearing the cries of babies, the accused and his

accomplices having abducted them from the Velur Bhita confined them. So, it is evident that at the time of occurrence the accused and his accomplices having abducted about 50/60 unarmed civilians from the said Velur Bhita confined them.

113. P.W.01 Abul Kashem has stated that after the departure of the accused and his accomplices from the place of occurrence, he came back to his own village and found in the house of Sattar Miah that sixteen persons including women and babies had been killed in one place where he found the dead bodies of Rahima, Sufia, Baru Khatun and three babies namely, Kochi, Shewli and Lablu among other dead bodies. Apart from said dead bodies, he also found there the dead bodies of Afzal Miah and Shukur. P.W.08 Hafizur Rahman Chanu has stated that after the departure of the accused and his accomplices, he also came back to his house and thereafter he found sixteen dead bodies lying beside the house of Sattar Miah including the dead bodies of his own sister Reksona, aunt Rahima Begum and grand-mother Baru Khatun. He also found his mother Rahima Begum, sister Shewli Begum, cousins Kochi Miah and Lablu Miah, aunt Sufia Begum and Alauddin Sheikh's grand-mother Baru Khatun sustaining bullet injuries lying beside those dead bodies. Thereafter, he also saw the dead bodies of Afzal Miah and Shukur Miah. P.W.09 Md. Alauddin Sheikh has also stated that after the departure of the accused and his accomplices, he came back to his house and then he went to the house of Sattar Miah where he found sixteen dead bodies and six injured persons lying there. He has further stated that the dead bodies of Helena, Shewli and Reksona were there among said sixteen dead bodies and Hafizur Rahman, Chanu's mother, sister, aunts and their grand-mother Buru Khatun were there amongst the injured persons. At that time he also saw the dead bodies of Afzal Mia and his father Abdus Shukur.

P.W.04 Abdul Hye Mollah corroborating the evidence of P.Ws 1, 8 and 9 has also stated that on 30.05.1971 in the morning the accused and his accomplices having come to village Kodalia committed arson and killed sixteen unarmed innocent persons in that village. So, it is evident from the evidence as discussed above that at the time of said occurrence, accused Zahid Hossain Khokon Rajakar along with other Rajakars and Pakistani army also killed eighteen [16+2=18] unarmed civilians and injured six(6) unarmed civilians in village Shahidnagar Kodalia.

114. It may be reiterated that all the four live witnesses [P.Ws. 1, 4, 8 and 9] have implicated the accused with the killing, abduction, confinement, torture, plundering and arson as narrated in charge no. 05. The State defence cross-examined those witnesses thoroughly, but their evidence remains unshaken in respect of charge no. 05, and as such, there is no reason to disbelieve their evidence. Besides, Ext. 11 and Ext. 12, the statements of witnesses namely, Abu Bakkor Molla and Md. Kanchan Mridha alias Kanchu Mridha respectively which have been received in evidence under section 19(2) of the Act of 1973, have also corroborated the evidence of the above mentioned four live witnesses.

115. The accused has been indicted for abetting and facilitation the commission of the offences of crimes against Humanity and genocide. It has already evident from the evidence on record that the accused directly abetted and facilitated the commission of the offences of abduction, confinement, torture, plundering and arson [other inhumane acts] and 'killing'. Now, the question arises whether this 'killing' would be within the purview 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 killed persons were the 'supporters of Awami League', they

deserve to be considered to belong to a 'group' for the purpose of constituting the offence of 'genocide'. Conversely, the defence has contended that the 'supporters of Awami League' did not belong to any 'stable' group. The Genocide Convention does not protect all types of 'human groups'. Its application is confined to national, ethnical, racial or religious group. In addition to these four groups, the Act of 1973 protects the 'political group' as well. It does not appear from the evidence on record that the killed persons were the supporters of Awami League. Rather we have already found the accused responsible for the killing of eighteen unarmed innocent civilians including females and babies and for other crimes against Humanity. We are persuaded to conclude that the killing of eighteen unarmed civilians constituted the offence of 'murder' as crimes against Humanity, instead of the offence of 'genocide'.

116. On rational appraisal of evidence, the acts done on part of accused Zahid Hossain Khokon Rajakar are not found to be isolated. These formed part of 'attack'. The Tribunal notes that even a single act constituting the offence makes an accused culpable for the offence of crimes against Humanity. In this regard the ICTY has observed in the case of Deronjic that-

"All other conditions being met, a single or limited number of acts on [the accused's] part would qualify as a crime against humanity, unless those acts may be said to be isolated or random."

[Deronjic, (Appeals Chamber), July 20, 2005, para-109]

117. It has been found from evidence that the alleged killing of 18(eighteen) unarmed civilians took place as a part of systematic attack. Crimes against Humanity is a 'group crime' and usually it happens by participation of several individuals who act in different manners. Thus, there can be several

perpetrators in relation to the same crime where the conduct of each one of them forming 'attack' fulfils the requisite elements to constitute the substantive offence. In the instant charge it is alleged that accused Zahid Hossain Khokon Rajakar along with other Rajakars and Pakistani army committed the crimes against Humanity.

118. On totality of evidence as discussed above we arrive at a decision that the prosecution has been able to prove beyond reasonable doubt that on 30-05-1971 accused Zahid Hossain Khokon Rajakar along with other Rajakars and Pakistani army having gone to village Shahidnagar-Kodalia plundered and burnt many houses, and abducted, confined and tortured many persons and killed eighteen unarmed civilians in that village. Thus, the accused is criminally liable under section 4(1) of the Act of 1973 and found him guilty for substantially contributing the actual commission of the offences of abduction, confinement, torture, murder and other inhumane acts [plundering and arson] 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 Act.

Adjudication of Charge no.06

[Murder, plundering and arson in village Ishhardi]

119. **Summary charge:** On 30-05-1971 at about 1.30 P.M. accused Zahid Hossain Khokon, leader of Rajakar Bahini of Nagarkanda police station, along with other Rajakars including Atahar and Aynal Rajakars and Pakistani army went to village Ishhardi and thereafter having plundered many houses and shops set fire to those houses and shops of that village. At that time while unarmed villagers being frightened were fleeing away, the accused and his accomplices shot Salam Matubbar, Srimoti Khatun, Lal Miah Matubbar and Mazed Matubbar to death and caused grievous injury to

baby Fulmoti Begum. Thus, the accused has been charged for abetting and facilitating the offences of murder and other inhumane acts [plundering and 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.

Discussion and evaluation of evidence and findings:

120. The prosecution has examined three live witnesses [P.Ws. 14, 15 and 16] to prove charge no. 06. P.W. 14 Md. Abul Kashem Matubbar has deposed that on 30.05.1971 at about 1.00 /1.30 P.M. he saw from inside a bush that accused Zahid Hossain Khokon Rajakar, Aynal Rajakar and other Rajakars along with Pakistani army came to their village Ishhardi and then they having plundered the houses of that village including their houses set fire to those houses and then they went to the house of Kolom Sheikh [P.W. 16]. He has further deposed that while Kolom Sheikh's brother Salam Sheikh, sisters Srimoti and Fulmoti and mother Baru Khatun were fleeing away towards the jute-field, situated at the northern side of their house, the accused and his accomplices shot fires at them and, he also saw that incident from inside the said bush. After about 1/ 1 ½ hours when the firing of shots was stopped, then they having come out of inside the bush saw that their houses including other houses and shops were burnt to ashes. Thereafter, he went to the aforesaid jute-field, wherefrom he had heard firing shots, and saw that the dead bodies of Kolom Sheikh's brother Salam [cousin of P.W. 14] , sister Srimoti, mother Baru Khatun, Lal Mia and Mazed Matubbar were lying there sustaining bullet injuries and Kolom Sheikh's another sister Fulmoti was also there sustaining bullet injuries. He has also deposed that the accused and his accomplices having committed those atrocities left their village. On the following day [31.05.1971] they buried the dead bodies. He has denied the defence suggestions that the accused was

not a Rajakar and he was not present at the time and place of said occurrence and he did not plunder any house and kill any body. He has also denied the defence suggestion that he has deposed falsely against the accused.

121. P.W. 15 Abdus Salam Matubbar has testified that on 30.05.1971 at about 1.00/1.30 P.M. he could see from inside a bush, situated beside his house, that accused Zahid Hossain Rajakar along with other Rajakars and Pakistani army having setting fire to village Kodalia came to their village Ishhardi and at that time the accused and other Rajakars had arms with them. He could also see that then the accused and his accomplices having plundered their houses including other houses of their village burnt those houses and thereafter they went to the house of Kolom Sheikh [P.W. 16]. At that time Kolom Sheikh's brother Salam, mother Baru Khatun, sisters Srimoti and Fulmoti were running away towards the jute-field, situated at the northern side of their house and then the accused along with his accomplices shot fires at them and he himself saw that incident from inside the bush. He has further testified that after having committed those atrocities, the accused and his accomplices went towards northern side of the village and then he having come out of inside the bush saw that their houses were burnt to ashes and then he went to the jute-field, situated at the northern side of the house of Kolom Sheikh and saw the dead bodies of Kolom Sheikh's brother, mother, sister, Lal Miah and Mazed Matubbar lying there sustaining bullet injuries. Having seen the atrocities they went into hiding for the whole night. He has also testified that on the following day i.e. 31.05.1971 at about 10.00 A.M. he went to the said jute-field and found Kolom Sheikh's sister Fulmoti crying being inflicted with bullet injuries and then she was taken to a doctor for treatment. Thereafter, he along with

others buried the dead bodies [at this stage this witness was crying incessantly]. He has stated in his cross-examination that he knew the accused since before. He himself saw the Rajakars and Pakistani army men to fire shots at the family members of Kolom Sheikh. He has denied the defence suggestions that on the date of occurrence the accused did not come to their village with Pakistani army and he did not kill any person nor did he set fire to any house. He has also denied the defence suggestion that he has deposed falsely against the accused.

122. P.W. 16 Md. Kolom Sheikh has stated that on 30.05.1971 at about 1.30 P.M. accused Khokon Rajakar, Aynal Rajakar and Pakistani army came to their village Ishhardi. Having seen them coming, he hid himself at the northern side of their house and saw that while his mother Baru Khatun , sister Srimoti and brother Salam were running away to the jute-field , situated at beside their house, accused Khokon Rajakar along with other Rajakars and Pakistani army shot them to death . After the departure of the accused and his accomplices, he went to the place of occurrence and then Salam bhai, Kashem bhai of their house and others also came to the crime site and saw the occurrence. Then they buried the dead bodies. He has further stated that his another sister Fulmoti was inflicted with bullet injuries in the same incident whom he took to Dr. Badal for her treatment. He himself saw accused Khokon Rajakar to shoot his mother to death. He has denied the defence suggestions that the accused was not a Rajakar and on the date of occurrence the accused did not go to their village with Pakistani army and he was not involved with the killing of his [P.W.16] mother, brother and sister and that on the date of occurrence Pakistani army having come to their village killed his mother, brother and sister. He

has also denied the defence suggestion that he has deposed falsely against the accused.

123. Upon evaluation of the testimonies of those three prosecution witnesses, it transpires that all of them are the eye-witnesses of the occurrence relating to charge in hand. Besides, all of them are the members of the victims' family as well, particularly P.W-16 Md. Kolom Sheikh's mother, brother and one sister were killed and another sister Fulmoti Begum was injured. P.W. 14 Md. Abul Kashem Matubbar and P.W. 15 Abdus Salam Matubbar have stated that at the time of occurrence, accused Zahid Hossain Khokon Rajakar and other Rajakars along with Pakistani army having plundered their houses along with other houses burnt those houses to ashes and they themselves witnessed those incidents of plundering and arson. In respect of killings narrated in charge no. 06, all these three witnesses are the eye witnesses. P.W. 14 Md. Abul Kashem Matubbar and P.W. 15 Abdus Salam Matubbar have vividly narrated that at the time of occurrence, while Kolom Sheikh's [P.W. 16] brother Salam Sheikh, sisters Srimoti and Fulmoti and mother Baru Khatun were fleeing away towards the jute-field, situated at the northern side of their house, accused Zahid Hossain Khokon Rajakar and other Rajakars along with Pakistani army shot fires at them and they themselves witnessed the said incident from inside a bush. They have also stated that after the departure of the accused and his accomplices having committed those atrocities, they came out from the bush and then went to the jute-field i.e. the place of killing and saw there the dead bodies of Kolom Sheikh's brother Salam, sister Srimoti, mother Baru Khatun, Lal Miah and Mazed Matubbar lying there sustaining bullet injuries and on the following day i.e. 31.05.1971, they buried the said dead bodies. At this stage P.W. 15 was crying incessantly. P.W. 16 Md. Kolom Sheikh having corroborated the

evidence of P.Ws. 14 and 15, has also stated that at the time of occurrence, while his mother Baru Khatun, sister Srimoti and brother Salam were fleeing away towards the said jute-field, accused Khokon Rajakar along with other Rajakars and Pakistani army shot them to death and he himself saw the said incident. He has further stated that after the departure of the accused and his accomplices, he went to the jute-field and thereafter they buried the dead bodies. He has also stated that he himself saw the accused to shoot his mother to death. All of these three prosecution witnesses have denied the defence suggestion that the accused was not involved with the said atrocities.

124. At the time of summing up by way of argument, the learned state defence counsel argued that the evidence of P.W. 16 is not corroborated by other evidence of P.Ws. 14 and 15, and as such, a doubt may arise as to the involvement of the accused with the atrocities committed as mentioned in charge no. 06. This argument has no leg to stand as we have already seen that the evidence of these three witnesses are very much corroborative to each other. It may be mentioned here that P.W. 16 along with P.Ws. 14 and 15 have directly implicated the accused with the offences of killing, plundering and arson as narrated in charge no. 06. Now, even if we concede the said argument advanced by the defence, the Tribunal may arrive at a decision even on the basis of single testimony of P.W.16 and 'corroboration' is simply one of 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]

125. It may be mentioned here that the said principle is being followed in our jurisdiction.

126. The learned state defence counsel cross-examined these three prosecution witnesses thoroughly, but their evidence remain unshaken in respect of the incidents mentioned in charge no. 06, and as such, there is no reason to disbelieve their evidence, rather the evidence appear to be credible. In this regard we recall the observation given by the ICTR Appeals Chamber as under:

"The Appeals Chamber recalls that statements made by witnesses in court are presumed to be credible at the time they are made; the fact that the statements are taken under oath and that witnesses can be cross-examined constitute at that stage satisfactory indicia of reliability."

[Nahimana and others, ICTR Appeals Chamber, November 28, 2007, para 194]

127. Considering all the evidence as discussed above and the attending facts and circumstances and the context of the Liberation War, 1971 as well, we are of the opinion that the prosecution has been able to prove beyond reasonable doubt that on 30.05.1971 accused Zahid Hossain Khokon Rajakar along with other Rajakars and Pakistani army having entered the village Ishhardi plundered and burnt many houses and shot Salam Matubbar, Srimoti Khatun, Baru Khatun, Lal Miah Matubbar and Mazed Matubbar to death when they were fleeing away and also caused injury to

baby Fulmoti Begum. Thus, the accused is criminally liable under section 4(1) of the Act of 1973 and found him guilty for substantially contributing and facilitating the actual commission of the offences of murder and other inhumane acts [plundering and arson] 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 Act.

Adjudication of charge no.07

[Murder and arson in village Shahidnagar Kodalía; plundering and arson in village Bangram; and murders, plundering and arson in village Meherdia]

128. **Summary charge:** On 31.05.1971 at about 7.30 A.M. accused Zahid Hossain Khokon Rajakar along with other armed Rajakars and Pakistani army went to Digholia-Ghoramara Beel, situated at village Shahidnagar Kodalía, to find out the dead bodies of Pakistani army men, killed on 29.05.1971 in a fighting with freedom-fighters and set fire to the houses of Pijiruddin, his brother Afaz and their neighbour Sheikh Sadek and as a result those three persons burnt to death inside their houses. Thereafter, the accused and his accomplices at about 10.00 A.M. went to village Bangram and plundered many houses and then set fire to those houses. On the same day at about 11.30 A.M. the accused and his accomplices again having gone to village Meherdia brought out Achir Uddin Matubbar from inside Meherdia Purbo Para Jame Mosque and then the accused himself shot him to death. Then the accused and Pakistani army shot Safizuddin Matubbar to death on the road and thereafter, they plundered many houses and set fire to those houses of that village. Thus, the accused has been charged for abetting and facilitating the offences of murders and other inhumane acts [plundering

and 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.

Discussion and evaluation of evidence and findings:

129. To prove charge no. 07, the prosecution has examined as many as eight live witnesses [P.Ws 1, 3, 4, 5, 6, 7, 8 and 9] and produced statements of two other witnesses [Exts. 11 and 12] which were recorded by the investigation officer. It may be mentioned here that there are three incidents described in charge no. 07, committed in three separate villages namely, Shahidnagar-Kodalia, Bangram and Meherdia on the same date i.e. 31.05.1971 at about 7.30 A.M., 10.00 A.M. and 11.30 A.M. respectively which are discussed separately as follows:

130. The **incident no. 1** is that on 31.05.1971 at about 7.30 A.M. accused Zahid Hossain Khokon Rajakar along with other armed Rajakars and Pakistani army went to Dhigolia-Ghoramara Beel, situated at village Shahidnagar-Kodalia, to find out the dead bodies of Pakistani army men, killed on 29.05.1971 in a fighting with freedom-fighters and set fire to the houses of Pijiruddin, his brother Afaz and their neighbour Sheikh Sadek and as a result those three persons were burnt to death inside their houses. In respect of this incident, P.W.01 Abul Kashem has testified that on 29.05.1971 accused Zahid Hossain Khokon Rajakar along with his armed accomplices and Pakistani army went to Chanderhut and then they were locked into a fighting with freedom-fighters and in the said fighting the accused's brother Zafor along with many Pakistani army men and three unarmed innocent villagers were killed. He has further testified that on 31.05.1971 in the morning accused Zahid Hossain Khokon Rajakar along with other Rajakars and Pakistani army went to Dhigolia-Ghoramara Beel, situated at his village Kodalia, to find out the dead bodies of Pakistani army

men, but when they failed to find out the same, they having come to village Kodalia set fire to the houses of Pijiruddin, Afazuddin and ailing Sadek and as a result, all of them died. He has denied the defence suggestions that the accused was never a Rajakar and he was not involved with the crimes against Humanity in 1971. He has also denied the defence suggestion that he has deposed falsely.

131. P.W.04 Md. Abdul Hye Mollah has deposed that on 29.05.1971, accused Zahid Hossain Khokon Rajakar and his brother Zafor Rajakar, commander of Nagarkanda police station, and his accomplices along with Pakistani army went towards the camp of freedom-fighters, situated at Chanderhut to attack freedom-fighters and then they were involved in fighting with the freedom-fighters and in the said fighting many Pakistani army men including said Rajakar commander Zafor and three unarmed innocent villagers were killed. After the death of Zafor, his brother accused Khokon became the Rajakar commander of Nagarkanda police station. He has further deposed that on 31.05.1971 in the morning, the accused, under his leadership, his accompanist armed Rajakars and Pakistani army went to Digholia Beel to find out the dead bodies of Pakistani army men, but when they failed to find out the dead bodies they having come to village Kodalia set fire to three houses of Pijiruddin, Sadek and Asaduddin [Afajuddin] and as a result all of them were burnt to death inside their houses. He has stated in his cross-examination that the house of the accused is two and a half kilometers far from his house, but both are the inhabitants of the same union. He has denied the defence suggestion that he has falsely implicated the accused in the killing, arson, etc.

132. P.W.08 Md. Hafizur Rahman Chanu has stated that Zafor, the elder brother of accused Zahid Hossain Khokon, was a Rajakar commander

during the Liberation War, 1971. On 29.05.1971 the accused and his said brother Zafor along with other Rajakars and Pakistani army went to Chanderhut and were locked into a fighting with freedom-fighters and in the said fighting many army men including Rajakar commander Zafor and three villagers were killed. After the death of Zafor, the accused became the Rajakar commander. He has further stated that on 31.05.1971 in the morning at about 8.00 / 8.30, accused Khokon along with his accompanist Rajakars and Pakistani army came to their village at Digholia Beel to find out the dead bodies of Pakistani army men and failing which they set fire to the houses of ailing Pijiruddin, Sadek and Afazuddin of their village and as a result of such arson all of them were killed inside their houses. He has also stated that he himself witnessed the said occurrence from inside a bush. He has stated in his cross-examination that the accused is absconding and he was involved with the Jamaat-e-Islami. He has denied the defence suggestions that the accused was not involved with crimes against Humanity and he was not a Rajakar as well. He has also denied the defence suggestion that he has deposed falsely.

133. P.W.09 Md. Alauddin Sheikh has testified that on 29-05-1971 at Chanderhut and in front of their house at Digholia-Ghoramara Beel there was a fighting between Rajakar commander Abu Zafor, accused Zahid Hossain Khokon, other Rajakars and Pakistani army and freedom-fighters and in the said fighting, commander Abu Zafor and many Pakistani army men along with three unarmed innocent villagers were killed. He saw the said occurrence keeping himself hidden. He has further testified that on 31-05-1971 in the morning at about 8.00/8.30, the accused along with other Rajakars and Pakistani army came to their village Shahidnagar-Kodalia and thereafter having gone to Digholia-Ghoramara Beel started looking to find

out the dead bodies of Pakistani army men. But after having failed to find out the same, they set fire to the houses of Afazuddin, Pijiruddin and Sadek of their village and as a result of which all of them were killed inside their houses. He also saw the said occurrence keeping himself hidden. He has stated in his cross-examination that the accused was a Rajakar. He has denied the defence suggestions that on 31-05-1971 the accused did not go to Digholia-Ghoramara Beel with the Pakistani army and the accused along with the Pakistani army did not kill Afazuddin and others setting fire to their houses. He has also denied the defence suggestion that he has deposed falsely.

134. Ext.11 and Ext.12 are the statements of witnesses namely, Abu Bakkor Molla and Md. Kanchan Mridha alias Kanchu Mridhra respectively which have been received in evidence under section 19(2) of the Act of 1973 as they are now dead. Having considered the legal aspect of the said statements of the witnesses, we are of the opinion that the statement of a witness received under section 19(2) of the Act of 1973 alone does not form the basis of conviction, but such statement may be used as a corroborative evidence to prove a particular occurrence. In the case in our hand, the statements of said two witnesses, who are now dead, have corroborated the evidence of P.Ws. 1, 4, 8 and 9 relating to the incident No. 01 of charge no. 07 as discussed above.

135. It is also narrated in Ext.5, a report, received from the office of the Deputy Commissioner, Faridpur that Pijiruddin, Sadik and Afazuddin were burnt to death inside their respective houses, which also supports the prosecution case in respect of instant charge.

136. Upon scrutiny of the testimonies of said four live witnesses [P.Ws. 1, 4, 8 and 9] as discussed above, we find that out of said four live witnesses

three witnesses i.e. P.Ws. 4, 8 and 9 are the eye witnesses of the incident no. 01 of charge no. 07 and all of them have directly implicated the accused with the crimes narrated in the said incident. The state defence cross-examined these witnesses thoroughly, but their evidence remains unshaken in respect of the incident no.01 and as such, there is no reason to disbelieve their evidence. Besides, the statements [Exts. 11 and 12] of witnesses namely, Abu Bakkor Mollah and Md. Kanchan Mridha alias Kanchu Mridha have corroborated the evidence of the above mentioned four live witnesses. So, the incident no. 01 of charge no. 07 relating to killing of Pijiruddin, Afaz and Sheikh Sadek in their houses by setting fire to those houses in village Shahidnagarkodalia, is proved beyond all reasonable doubt.

137. Now let us discuss about the **incident no.02** of charge no.07 that on 31.05.1971 at about 10.00 A.M. accused Zahid Hossain Khokon Rajakar along with other Rajakars and Pakistani army went to village Bangram and plundered the houses of Abdul Hye Molla, Ikram Molla, Nazim Uddin Molla, Md. Yunus Molla and Abdur Rahman Molla and then set fire to those houses. The prosecution has examined P.Ws. 1, 3, 4 and 5 and produced the statement of a witness which has been marked as Ext. 11 to prove incident no. 02 of charge no. 07. P.W.01 Abul Kashem has deposed that on 31.05.1971 in the morning accused Zahid Hossain Khokon along with Rajakars and Pakistani army having gone to village Kodalia killed Pijiruddin, Afazuddin and Sadek in their houses by setting fire to those houses and thereafter they went to village Bangram and plundered and set fire there.

138. P.W.03 Md. Iqram Molla is a member of a victim family and also an eye witness who belongs to village Bangram. He has testified that accused Zahid Hossain Khokon Rajakar along with other Rajakars and Pakistani army on 31.05.1971 at about 10.00 A.M. having come to their village Bangram

started setting fire to houses etc. Then they came out to the road and could identify the accused and Aynal Rajakar and then they being afraid of went into hiding in bushes. Then the accused and his accomplices having plundered their houses and setting fire to those houses left the place towards west. He has further stated that after about one hour of the said occurrence they having come back to their houses saw their houses along with many other houses of their village burnt to ashes.

139. P.W.04 Md. Abdul Hye Molla is also an eye witness. He has stated that on 31.05.1971 in the morning accused Zahid Hossain Khokon along with armed Rajakars and Pakistani army went to village Kodalia and set fire to three houses and as a result Pijiruddin, Sadek and Asaduddin were burnt to death inside those houses. Thereafter, they having come to their village Bangram set fire to houses of their village. He has further stated that he himself saw the said occurrence.

140. P.W.05 Md. Yunus Molla has deposed that there was a fighting between freedom-fighters and Rajakars and Pakistani army and in the said fighting many Pakistani army men and Rajakar commander Zafor, the elder brother of accused Khokon, were killed. One day after of the said occurrence, the accused along with other Rajakars and Pakistani army having come to their village Bangram and Meherdia plundered houses and then set fire to those houses. He has further deposed that he himself witnessed the said occurrence.

141. Upon scrutiny of the testimonies of said four live witnesses [P.Ws. 1, 3, 4 and 5] as discussed above, we find that their evidence are very much corroborative to each other and out of said four witnesses three witnesses, i. e. P.Ws 3, 4 and 5 are the eye-witnesses of the incident no. 02 of charge no. 07 and all of them have directly implicated the accused with the crimes as

narrated in the said incident. The learned state defence counsel has cross-examined these live witnesses, but could not shake their evidence in respect of the incident no. 02, and as such, there is no reason to discard their evidence. It may be mentioned here that Ext.11 the statement of witness Abu Bakkor Molla [now dead] has been received in evidence under section 19(2) of the Act of 1973 he [now dead] has also corroborated the evidence of the above mentioned live witnesses, and as such, the statement of Abu Bakkor Molla has probative value. So, the incident no.02 of charge no.07 relating to committing plundering and arson to different houses in village Bangram, is proved beyond all reasonable doubt.

142. The **incident no.03** of charge no. 07 is that on 31.05.1971 at about 11.30 A.M. accused Zahid Hossain Khokon Rajakar along with other Rajakars and Pakistani army having gone to village Meherdia brought out Asiruddin Matubbar from inside Meherdia Purbo Para Jame Mosque and then the accused himself shot him to death and, then the accused and Pakistani army shot Safizuddin Matubbar to death on the road and thereafter, they plundered many houses and then set fire to those houses of that village. P.Ws. 4, 5, 6 and 7 have testified in respect of incident no. 03 of charge no. 07 along with other charges. P.W.04 Md. Abdul Hye Molla has testified that on 31.05.1971 at about 10.00 A.M. accused Zahid Hossain Khokon along with armed Rajakars and Pakistani army having set the houses of their village Bangram on fire went to village Meherdia where they also set fire to houses and killed unarmed Asiruddin Matubbar and Safizuddin.

143. P.W.05 Md. Yunus Molla has deposed that there was a fighting between freedom-fighters along with Rajakars and Pakistani army and in the said fighting many Pakistani army men and Rajakar commander Zafor,

the elder brother of accused Khokon, were killed. One day after of the said occurrence, the accused along with other Rajakars and Pakistani army having come to their village Bangram and Meherdia plundered houses and then set them on fire .

144. P.W.06 Md. Idris Sarder is an eye witness of incident no. 03 of charge no. 07. He has stated that on 29.05.1971 there was a fighting between freedom fighters and Pakistani army and Rajakars including accused Zahid Hossain Khokon at Chanderhut and in the said fighting many Pakistani army men along with Rajakar commander Zafor, brother of the accused and three unarmed villagers were killed. After one day of the said occurrence, at about 11.00/ 11.30 A.M. he heard a sound of firing shot and then he having come out of the house saw accused Khokon, Aynal and Pakistan army men coming to their village Meherdia and then he informed his father about the matter and went into hiding in a jungle , near their house. He has further stated that thereafter he saw the accused along with his accomplice Rajakars and Pakistani army to set fire to their houses. He also saw that the accused was taking his father towards the road, situated towards east-south of their house, after having caught hold of him and, sometimes after he heard sounds of two firing shots. The accused and his accomplices having set fire to other houses went towards Pura para and then he [P.W.06] went to the road and found his father [martyr Safizuddin Sarder] dead lying there sustaining bullet injuries. He has also stated that then he informed Seken Matubbar of their village about the killing of his father and then Seken Matubbar came to the place of occurrence. At that time Aziz Matubbar [P.W.07] also having come to the place of occurrence informed them that accused Khokon Rajakar had also killed his father [martyr Achir Uddin Matubbar] and the accused also had shot fire at him but he was luckily

saved. Thereafter, he buried the dead body of his father. He has denied the defence suggestions that the accused never came to their village with Pakistani army and the accused did not kill his father and the father of Abdul Aziz Matubbar [P.W.07]. He has also denied the defence suggestions that he himself did not see the aforesaid occurrence and the accused at the place of occurrence.

145. P.W.07 Abdul Aziz Matubbar has deposed that on 31.05.1971 at about 11.30 A.M. accused Rajakar commander Khokon along with other Rajakars and Pakistani army came to the eastern side of Purbo Para Jame Mosque, situated at their village Meherdia and at that time he was working in a jute-field, near the said mosque. At that time the accused shot a fire from his rifle aiming at him which passed away beside his right ear, as a result of which his right ear and eye were destroyed. At that time his ailing father Achir Uddin Matubbar took shelter in the aforesaid mosque and then the accused himself having dragged his father out of the mosque killed him by bullet shot from his rifle and he [P.W.07] himself witnessed the said occurrence from inside the bush. He has further deposed that thereafter the accused and his accomplices set fire to the entire village and while they were going back, the accused himself also killed Safizuddin Sarder, father of Idris Sarder [P.W.06], by firing shot on the road, situated at the southern side of their house and then they went towards Purapara. Then he came to the place of occurrence and found his father dead sustaining bullet injuries and thereafter he buried his father's dead body and the dead body of martyr Safizuddin Sarder was also buried. He has denied the defence suggestions that on 31.05.1971 the accused did not go to their village and he did not kill his father. He has also denied the defence suggestions that the accused was never a Rajakar and he was not involved with any crime against Humanity.

146. Upon evaluation of the testimonies of said four live witness [P.Ws.4, 5, 6 and 7] as discussed above, it is evident that their evidence are corroborative to each other and out of said four witnesses two witnesses, i.e. P.Ws. 6 and 7 are the eye-witnesses of the incident no. 03 of charge no. 07 and the fathers of both of them were martyred in the said incident. Moreso, P.W.07 himself is a victim as mentioned above. All the said four live witnesses have directly implicated the accused with the killing, plundering and arson as narrated in the incident no. 03. The learned state defence counsel has cross-examined these live witnesses, but their evidence remain unshaken in respect of the said incident, and as such, there is no reason to disbelieve their evidence. Besides, Ext.11, the statement of witness Abu Bakkor Molla has been received in evidence under section 19(2) of the Act of 1973, has also corroborated the evidence of the above mentioned four live witnesses, and as such, the statement of the said witness has probative value. So, the incident no. 03 of charge no. 07 relating to murders, plundering and arson committed in village Meherdia, is proved beyond all reasonable doubt.

147. It has been argued by the learned state defence counsel that prosecution has not been able to establish that the accused was directly involved with the commission of the atrocities as narrated in the instant charge. No witness claims to have witnessed the accused committing the criminal acts constituting the offences alleged. Without proving participation of accused in the commission of offences as listed in the charge, he cannot be held guilty. This contention is not sustainable at all as we have already found that the eye witnesses have stated that the accused was directly involved with the commission of the atrocities as listed in the instant charge. Besides, to incur in criminal liability, in a case of crimes against Humanity,

the accused himself need not have participated in all aspects of the alleged criminal conduct [**Stakic, ICTY Trial Chamber, July 31, 2003, para -439**].

The *actus reus* of aiding and abetting a crime may occur before, during, or after the principal crime has been perpetrated [**Blaskic, ICTY Appeals Chamber, July 29, 2004, para - 48**]. 'Participation' includes both direct participation and indirect participation. It has been observed in the case of **Kvocka** that-

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

148. In the case in hand, the accused knowing fully the consequence of his act or conduct or behaviour, which have been convincingly proved, are thus qualified to be the constituent of 'participation' too to the actual accomplishment of the crimes as it substantially contributed to, or have had a substantial effect on the perpetration of the crimes for which the accused has been charged with in charge no. 07.

149. Considering all the evidence as discussed above and the facts, attending circumstances and the context of the Liberation War, 1971, we are inclined to hold that accused Zahid Hossain Khokon is criminally liable under section 4(1) of the Act of 1973 and found him guilty for abetting and facilitating the actual commission of the offences of murder and other inhumane acts [plundering and arson] as narrated in charge no. 07, in the villages namely Shahidnagar-Kodialia, Bangram and Meherdia, 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 Act.

Adjudication of charge no. 08**[Killing of Rajendra Nath Roy and a female baby Bulu Khatun (2) and committing of plundering and arson in village Galdi]**

150. **Summary charge:** On 31.05.1971 at about 1.30 P.M. accused Zahid Hossain Khokon Rajakar along with other armed Rajakars and Pakistani army went to village Galdi in order to exterminate the people who were infavour of the Liberation War, the workers and supporters of Awami League and Hindus and at that time while the unarmed civilians being afraid of were fleeing hither and thither, the accused and Pakistani army shot an old man named Rajendra Nath Roy to death at the jute-field, situated at the south of their house. While one Hannan Munshi along with his parents and younger brothers and a baby sister Bulu Khatun (2) were fleeing away, the accused and Pakistani army also killed the said baby, lying on its mother's lap, by firing shot. They also plundered and set fire to many houses of that village. Thus, the accused has been charged for abetting and facilitating the offences of murder and other inhumane acts [plundering and 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.

Discussion and evaluation of evidence and findings:

151. The prosecution has examined as many as two witnesses [P.Ws.12 and 13] to prove charge no. 08 relating to the killing of Rajendra Nath Roy and Bulu Khatun and committing of plundering and arson.

152. P.W. 12 Md. Hannan Munshi is a freedom-fighter and an eye witness of the alleged occurrence mentioned in the instant charge. He has testified that on 31.05.1971 at about 1.30 P.M. he saw accused Zahid Hossain Khokon Rajakar, Aynal Rajakar and other Rajakars along with Pakistani army comming towards their village Galdi and having seen them he along

with his parents, two younger brothers and sister Bulu (2) were fleeing away towards Ghoramara Beel. The accused and his accomplices having seen them fleeing away opened fire on them and then and there his said baby sister Bulu was killed at its mother's lap being inflicted with bullet injuries. He has further testified that thereafter they saw their houses afire and after sometime, the accused and his accomplices went towards Purapara and then he [P.W.12] and his family members went to his elder brother's father-in-law's house, situated at Jhaturdia and buried the dead body of his said baby sister there. He has also stated that having stayed at Jhaturdia for two days, they came back to their village and found their houses along with other houses burnt to ashes and, at that time Ramesh Chandra Roy [P.W.13] apprised him that the accused and Pakistani army had killed his Thakurda [grand father] Rajendra Nath Roy by firing shot in a jute-field. P.W.12 has stated in his cross-examination that accused Zahid Hossain Khokon worked for the candidate of 'Daripalla' [balance] in the election held in 1970. He has denied the defence suggestions that the accused was not involved with any killing or arson and that only Pakistani army on 31.05.1971 killed his sister and Rajendra Nath Roy and set fire to the houses. He has also denied the defence suggestion that he has deposed falsely.

153. P.W.13 Ramesh Chandra Roy having corroborated the said testimonies of P.W. 12, has stated that on 31.05.1971 at about 1.00 / 1.30 P.M. accused Khokon Rajakar, Bachhu Rajakar, Aynal Rajakar and Pakistani army came to their village Galdi. Having seen them, they [P.W. 13 and others] fled away to Talbagan and his Thakurdada [grand father] Rajendra Chandra Roy went into hiding into a jute-field and at that time the accused and Pakistani army shot him to death. He has further stated that from Talbagan, he heard the sound of said firing shot and saw their houses including other houses of

their village aflame. After the flame having been extinguished, they came back to their houses and saw the dead body of his said grand- father lying in the jute-field and their houses along with other houses of their village burnt. He has also stated that after two days, he heard from Md. Hannan Munshi [P.W.12] that on the date of occurrence [31.05.1971] the accused and his accomplices killed his [P.W.12] sister Bulu [2 years old] at its mother's lap by firing shot. P.W.13 has categorically stated in his cross-examination that his grand-father was killed by gun shots of accused Khokon Rajakar and Pakistani army. He has denied the defence suggestions that on the date of occurrence the accused did not come to their village with Pakistani army and that the accused was not a Rajakar and he was not involved with the killing and arson committed in their village. He has also denied the defence suggestion that he has deposed falsely.

154. Upon scrutiny of the testimonies of the prosecution witnesses as discussed above, we find corroboration among their testimonies. The learned state defence counsel has cross-examined these two witnesses thoroughly, but could not shake their evidence in respect of charge no. 08 and as such, there is no reason to disbelieve their evidence. Both have categorically stated that accused Zahid Hossain Khokon Rajakar along with other Rajakars and Pakistani army on 31.05.1971 in the afternoon having gone to village Galdi killed Rajendra Nath Roy [grand-father of P.W.13] and a female baby Bulu Khatun [2] [sister of P.W.12]. They also plundered and set fire to many houses of that village. Though it appears that the testimonies of the eye witnesses i.e. P.Ws. 12 and 13 are corroborative in respect of charge no. 08, but it is a settled jurisprudence that corroboration is not a legal requirement for finding to be decided. It was observed by ICTR trial Chamber that-

"Corroboration of evidence is not necessarily required and a chamber may rely on a single witness, testimony as proof of a material fact. As such, a sole witness, testimony suffices to justify a conviction if the chamber is convinced beyond all reasonable doubt."

[Nchamihigo, ICTR Trial Chamber, November 12,2008, para -14].

155. In view of the facts and circumstance and the evidence on record as discussed above, we are inclined to hold that it is proved beyond all reasonable doubt that during the Liberation War, 1971, on 31.05.1971 in the afternoon accused Zahid Hossain Khokon Rajakar along with other Rajakars and Pakistany army went to village Galdi and killed Rajendra Nath Roy, grand-father of P.W. 13, and a female baby Bulu Khatun [2], sister of P.W. 12. They also plundered and set fire to many houses of that village. Thus, the accused is criminally liable under section 4(1) of the Act of 1973 and found him guilty for substantially contributing and facilitating the actual commission of the offences of murder, and 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 which are punishable under section 20(2) of the Act.

Adjudication of Charge no.09

[Murder, plundering and arson in village Purapara]

156. **Summary charge:** On 31st May,1971 at about 3.30 P.M under the leadership of accused Zahid Hossain Khokon, a local leader of Jammat-e-Islami and a Razakar, his associate Razakars accompanied by Pakistani army having entered the village Purapara shot Chhoto Khatun alias Noa Chhoto Begum, Shafiuddin Sheikh alias Sheikh Shafi, Manik Sarder, Ratan

Sheikh, Jainuddin Matubbar and Abul Barek Mollah and three others to death and also plundered and set fire to many houses of that village. Thus, the accused has been charged for abetting and facilitating the offences of murder and other inhumane acts as crimes against Humanity as specified under section 3(2)(a)(g) and (h) read with section 4(1) of the Act of 1973.

Discussion and evaluation of the evidence and findings;

157. For proving the instant charge the prosecution has adduced and examined three live witnesses as P.W-17, P.W-18 and P.W-19 of them P.W-18 and P.W-19 are the eye witnesses of the occurrence.

158. P.W-17 Md. Yaqub Mollah in his examination in chief has stated that he had known accused Zahid Hossain Khokon since 1970's general election when Khokon took part in the election campaign for Jamaat-e-Islami's candidate having symbol 'balance'. On 31st May, 1971 during the Liberation War at about 3.00-3.30 P.M while he was shopping at Purapara bazaar he saw that accused Khokon Razakar along with other Razakars and some Pakistani army were moving towards their village Purapara and seeing them he went into hiding in a near by jute field and from there he had witnessed that accused Zahid and the Pakistani army started torching the various houses of the village and he also heard the sound of firing and about two hours later when the sound of firing stopped he came out of his hiding place and returned to his house and having reached there he saw his house as burnt and he also found that there was none in their village and out of fear he stayed in a hiding place at night, and on the following morning when he again returned back to his house and then Guru Das, a local, informed him that Chhoto Khatun, a paternal grand-mother of him [P.W-17] was shot to death by accused Khokon near the bank of the village canal and Gofur Mollah [P.W-19], son of Chhoto Khatun, buried the dead body of his mother

without observing ritual. He has further stated that another local, Chunu Sheikh [P.W-18], had informed him that Ratan Sheikh [uncle of Chunu Sheikh] was also killed by accused Khokon Razakar and he along with Chunu Sheikh, Samad and Hashem and other locals, had buried the dead body of Ratan Sheikh, and he also came to learn that while Barek Mollah was reciting Holy Qur'an at the Mosque of the village accused Khokon dragged him out of the Mosque and shot him to death and they also buried the dead body of Barek Mollah beside the Mosque. He has further stated that accused Khokon also killed Safez Uddin and Manik Sarder while they were trying to flee away and he along with other locals also buried them at the place of occurrence. This witness has also categorically deposed that he knew accused Zahid Hossain Khokon who is not present in the dock.

159. In cross-examination by the defence this witness has denied the defence suggestions that the accused was a freedom fighter and he was in freedom fighter's camp at Purapara from November to December 16th 1971 and accused Zahid Hossain Khokon had no complicity with the alleged occurrence. This witness in his cross-examination has further asserted that on 21st May, 1971 at the evening accused Zahid Hossain Khokon along with his associate Razakars and Pakistani army had entered their village through bazar road. He further replied that he was not a freedom fighter but he helped the freedom fighters in various ways.

160. P.W-18 Md. Chunu Sheikh has deposed that at about 3.00 P.M on 16th Jaistha, [the second month of Bangla calender year] in 1971 accused Khokon Razakar accompanied by Aynal, Atahar and other Razakars had gone to their village and at that time he along with his uncle Ratan Sheikh was going towards the field with cattle and having seen them his uncle Ratan Sheikh asked him to go into hiding and accordingly he went into

hiding in a jute field and from there he saw that accused Khokon killed his uncle [Ratan Sheikh] by firing shot.

161. This witness has further stated that accused Khokon and Pakistani army had plundered and torched many houses of their village. He has further narrated about the killing of Barek Molla that Khokon and his accomplices had dragged Barek Molla from inside the village Mosque and then accused Khokon Razakar shot him to death.

162. P.W-18 has further deposed that on that day, Khokon Razakar also shot Safez Uddin and Manik Sardar dead on the bank of a pond in their village, and another elderly woman, Chhoto Khatun, was also shot dead by Khokon.

163. In cross-examination he has denied the defence suggestions that accused Zahid Hossain Khokon was not a Razakar and on the day and time of occurrence he did not go to the village Purapara and he was not involved with the alleged killing, looting and torching the houses of that village.

164. P.W-19 Abdul Gafur Mollah in his examination-in-chief has stated that on 16th Jaistha [the second month of Bangla calender year] in 1971 accused Khokon Razakar along with his accomplices and the Pakistani force had attacked their village and having seen them, they made plans to go into hiding in the adjacent village from the persecution of the collaborators and the army and he along with his children and mother Chhoto Khatun had gone to the side of a canal which was on the western side of their house, but his elderly mother Chhoto Khatun failed to cross the canal and leaving his mother he along with other family members through crossing the canal took shelter at village Dofa. He has further stated that later on when he was again going towards the bank of the canal in order to know the condition of his mother, he came to know from Guru Das, a local, that Khokon Razakar shot

his mother dead and at that time his cousin Kanchu Mollah prevented him from going near the canal. After a while, he found the dead body of his mother near the canal and then he buried her thereon without maintaining ritual.

165. In cross-examination this witness has stated that on the day of occurrence at the evening he had met with Guru Das near the canal, and buried his mother on the same day. He has denied the defence suggestion that he did not know accused Zahid Hossain and he was not at all involved with the alleged occurrence and he was not a Razakar.

166. On scrutiny of the above testimonies of the witnesses it has been clearly proved that on 31st May, 1971 corresponding to 16th Jaistha [second month of Bangla calender year] in the afternoon [about 3.00-3.30 P.M] accused Zahid Hossain alias Khokon Razakar along with his accomplices including Aynal and Atahar Razakars and the Pakistani occupation force had attacked the village Purapara, looted and torched the various houses of that village and they also by firing shots killed Chhoto Begum, Ratan Sheikh, Barek Mollah, Safaz Uddin and Manik Sarder, the unarmed civilians and P.Ws-17 and 18 along with other locals had participated in burying them. It is true that P.W-17 Yaqub Mollah did not see that accused Khokon himself shot Chhoto Begum to death but from the facts and circumstances it is clear that accused Zahid Hossain Khokon had played an active role with the Pakistani occupation army and the Razakars in attacking the village Purapara, looting and torching the houses of the said village in a systematic way and he had also substantially contributed, facilitated and participated in the killing of Chhoto Begum, Ratan Sheikh, Barek Mollah, Safaz Uddin and Manik Sarder, whose dead bodies were found following the atrocities. From the trend of cross-examination by the defence it appears that only claim of

the defence is that accused Zahid Hossain was not present at the place of occurrence as alleged by the prosecution. But the defence did not put any suggestion to the witnesses that no such occurrence had ever taken place as alleged by the prosecution. The testimonies of P.Ws.17, 18 and 19 as to the commission of crime and physical complicity of the accused with it are quite corroborative to each other. They could identify and recognize the accused Zahid Hossain, who led the Pakistani army and local Razakars to the accomplishment of crime. Their corroborative and credible evidence sufficiently demonstrate that accused Zahid Hossain Khokon alias Khokon Razakar physically participated in the killing of Chhoto Begum, Raton Sheikh, Barek Mollah, Safez Uddin Sheikh and Manik Sarder at village Purapara and the date, time and manner of horrific event of killing, looting, torching and physical participation of accused Zahid Hossain alias Khokon Razakar accompanied by local Razakars and Pakistani forces to the commission thereof have been proved beyond reasonable doubt by the unimpeachable evidence of P.Ws-17, 18 and 19. The above criminal acts on the part of the accused Zahid Hossain Khokon and his accomplices were certainly a part of systematic attack against civilian unarmed population which qualify the offences of murder and plundering and arson [other inhumane acts] as crimes against Humanity as specified in sections 3(2) (a)(g)(h) and 4(1) of the Act of 1973 which are punishable under section 20(2) of the said Act.

Adjudication of Charge no.10

[Genocide, killing and other inhumane acts at villages Baghat and Churiarchar]

167. **Summary Charge:** On 1st June,1971 at about 6.00 A.M accused Zahid Hossain Khokon, a local leader of Jamaat-e-Islami and Razakars, along with

other Razakars including Atahar and Aynal Razakars accompanied by the Pakistani army in order to destroy the people at large, who were in favor of the Liberation War, having entered villages Baghat and Churiarchar plundered and set fire to many houses of both villages including the house of Mini Begum, a supporter of Awami-League, of village Baghat and killed her father Malek Matubbar, brother Mosharrof Matubbar and her paternal and maternal grandmothers and also killed 10/15 unarmed villagers including Amjad Munshi, Raton Matubbar, Ayub Ali and Monju Rani by gun shots. Thus, the accused has been charged for abetting and facilitating the offences of genocide, murder and other inhumane acts as crimes against Humanity as specified under section 3(2)(a)(c)(g) and (h) read with section 4(1) of the Act 1973.

Discussions and evaluation of the evidence and findings:

168. In order to prove the instant charge the prosecution has examined 4 [four] witnesses [P.W-01, P.W-20, P.W-21, and P.W-22].

167. P.W-20 Mini Begum in her examination in chief has stated that on 1st June, 1971 at about 6.00 A.M having seen the flame in village Churiar Char, adjacent village of them, her father waked them up from sleep and advised them to flee away and having opened the door of the room they saw that accused Khokon Razakar along with other Razakars and some Pakistani army had been standing at their courtyard, and at that time one of them asked her father whether he was a 'Hindu' or 'Muslim' and in the meantime she went into hiding in a bush, beside their house, where her mother had already taken shelter and from there she had witnessed that accused Khokon Razakar forced her father, elder brother Mannan, another brother Mosharrof, paternal grand mother Mozirunnessa, maternal grandmother Thanda Khatun, grandfather Mojid Matubbar to stand in a queue and

another paternal grandfather Amzad Munsi was also forced to stand in the said queue after being captured from the Mosque, where he was reciting Holy Qur'an, and then accused Khokon Razakar shot them and upon receiving the bullet injuries except her father all others fell down on earth and having seen her father still standing accused Khokon again shot his father and then he fell down on earth and at that time her grandfather who was about 85 years old asked Khokon Razakar, what he was doing, and then Khokon Razakar replied: 'I am not killing men but birds'. This witness has further stated that she witnessed the occurrence along with her mother from their hiding place and when accused Khokon along with his accomplice Razakars and Pakistani forces left the place then they came out of their hiding place and then her injured father asked them to flee else where, otherwise, they would be also killed and then she along with her mother and minor brother (one year old) again took shelter in a nearby jute field, and after 1½/ 2 hours when they came out from the jute field they found their house plundered and burnt and also found the dead bodies of her paternal and maternal grand-mothers and a paternal grand-father and saw her father and younger brother Mosharrof in a severely injured condition and at about 1.00-2.00 P.M on the same day her father and younger brother Mosharrof had succumbed to their injuries. This witness has also deposed that on the following morning the neighbours Fazlu, Shukur and Makbul buried the dead bodies without maintaining ritual at the place of occurrence.

169. In cross-examination this witness has stated that she was a student of class IV. in 1971 and their village is three kilometers away from Nagarkanda police station and she knew accused Khokon as he used to come to his relatives' houses at their village and she hid in a bush behind their west 'Bhiti' room on the day of occurrence. She has denied the defence

suggestions that accused Khokon had no relatives in their village and he never went there. She has also denied the suggestion that accused Khokon did not participate in the killing of his father, brother, grandmothers and others but the Pakistani army killed them.

170. P.W-21 Monjuara Begum has testified that in the middle of Bangla month Jaistaha, in 1971 at one morning she was collecting *dates* under date palm and at that time he saw accused Khokon Razakar along with other Razakars and Pakistani army coming towards her maternal grandfather's [Amjad Munshi] village from north side and having reached the village they set fire to the house of her maternal grand-father and thereafter they went to the house of Mini Begum. Accused Khokon Razakar, his accomplices and Pakistani army dragged the father of Mini Begum, paternal and maternal grand-mothers and two brothers out from inside the room and forced them to stand in a queue and they also dragged out his maternal grand-father Amzad Munshi from inside the Mosque, while he was reciting the Holy Qur'an and he had also forced to stand in the said queue and thereafter accused Khokon Razakar and his accomplices shot them, and as a result, the maternal and paternal grand-mothers, one brother of Mini Begum and her maternal grand-father Mazid Munshi died on the spot and Mini Begum's father and another brother succumbed to their injuries at noon. This witness has further stated that she witnessed the occurrence from inside the bush of date palm and after the said occurrence Khokon Razakar and his accomplices moved from the place of occurrence towards the western side of the village by firing shots. Thereafter she came to know that accused Khokon Razakar and his accomplices killed 12/13 civilian people including Tajel Miah of that village. After this occurrence the villagers had fled away in order to save their lives. P.W-21 has also deposed that on the following morning

villagers namely Fazlu, Mokbul and Shukur buried the dead body of his grand-father Majid Munshi beside the Mosque and other dead bodies were buried at the courtyard of Mini Begum and she also came to know that the dead bodies of Tajel Miah and others were lying for two days and the said dead bodies were decomposed as being eaten by dogs and foxes and eventually the locals buried the said decomposed dead bodies and at present said place is known as 'place of execution'. She has further stated that subsequently she married the son of martyr Tajel Mia[P.W-22].

171. In cross-examination this witness has stated that the house of her maternal grandfather was situated at beside the Mosque and the said Mosque was situated on the land of her grandfather; Mini Begum's house was situated at beside the house of her maternal grandfather. She has further stated that she knew Zahid Hossain Khokon as he used to come to said village at his relatives' houses. She has denied the defence suggestions that accused Khokon was not a Razakar and he was not involved with the alleged occurrence and he never went to the occurrence village.

172. P.W-22 Batu Mia in his examination in chief has stated that in the middle of Jaistaha [2nd month of Bangla calendar year] in 1971 at one early morning he hearing the sound of firing shots came out from his house and saw that accused Khokon Razakar along with other Razakars and Pakistani forces having fired indiscriminately were coming towards their village and seeing Khokon Razakar he along with his father Tajel Mia, mother, brother and sisters started running towards west and at one stage he went into hiding beside a 'Ail' and from there he had witnessed accused Khokon Razakar to shoot his father, cousin Ayub Ali and a relative [Behai] Ratan to death and at that time they also killed another 15/16 unarmed villagers, and also looted and torched the houses of the village and then they left towards

western side of the village and being afraid of he along with his mother, brother and sisters took shelter in a neighbouring village and after two days on returning to their village he saw the decomposed dead body of his father. He has further stated that two days before this occurrence, the elder brother of Khokon Razakar, Zafor Razakar was killed by the freedom fighters in a combat at Chanderhut and out of that grudge accused Khokon Razakar killed the father, maternal and paternal grand-mothers, brothers and another paternal uncle Amzad Munshi of Mini Begum.

173. In cross-examination this witness has stated that he read up to class V and he knew Khokon Razakar as he used to come to their village at the house of his brother-in-law. He has denied the defence suggestions that accused Khokon was a freedom fighter and on the day of the occurrence he did not go to the place of occurrence, rather the Pakistani army had committed the offences.

174. From exhibit-11, it appears that witness Abu Bakkar Mollah had made statement before the investigating officer stating that he was a freedom fighter and he heard that on 1st June,1971 accused Zahid Hossain Khokon with his accomplice Razakars being armed and a group of Pakistani army went to villages Churiarchar and Bagahat where they killed 15/20 villagers and said dead bodies were eaten by dogs and foxes.

175. With regard to this exhibit 11 the defence did not put any suggestion to the investigating officer.

176. P.W-01 Abul Kashem, a freedom fighter, has testified that he heard about the occurrence.

177. In his cross-examination he has stated that he contested for the post of Chairman with the accused in the election of Nagarkanda Union Parishad

in 1991. He has denied the suggestion that because of political rivalry he has deposed falsely.

178. On scrutiny of the evidence of P.Ws-20, 21 and 22 it transpires that P.W-20 Mini Begum, P.W-21 Monjuara Begum and P.W-22 Batu Mia are the eye witnesses of the horrific killing at large and they are the members of the victim families. The said witnesses have corroborated to each other that in the middle of Bangla month Jaistaha in 1971 one early morning the accused Zahid Hossain alias Khokon Razakar with his accomplice Razakars being armed and a group of Pakistani occupation forces came to their village Baghat and they having surrounded the house of the father of P.W-20 forced her father, two brothers, maternal and paternal grand-mothers and Majid Munshi, grand-father of P.W-21 Monjuara Begum to stand in a queue at the courtyard of Mini Begum father's house and then accused Zahid Hossain and his accomplices shot them to death.

179. The defence simply has suggested the witnesses that accused Zahid Hossain Khokon was not a Razakar and he was not present at the place of occurrence, rather the atrocities were committed by the Pakistani army which were claimed by them.

180. P.W-20 in her cross-examination has asserted that she was a student of class IV in 1971 and she knew accused Khokon Razakar as he used to come at the houses of his relatives in their village.

181. P.W-21 in her cross-examination similarly has stated that from her childhood she knew accused Zahid Hossain as he used to come to the village of her grand-father [Majid Munshi] at his relatives' houses.

182. P.W-22 has also categorically stated in his cross-examination that he knew Khokon Razakar as his brother-in-law's house was situated at their village and he used to come to that village.

183. The defence has failed to shake the testimonies of the above eye witnesses. These witnesses are not only the eye witnesses but they are also the members of the victim families. Their testimonies sufficiently and believably have corroborated to each other particularly the date, time and manner of the horrific occurrences.

184. Thus, we have no hesitation to hold that the prosecution has been able successfully to prove the charge of murder, plundering and arson by adducing reliable and unimpeachable evidence of P.Ws-20, 21 and 23 apart from the evidence that accused Zahid Hossain Khokon was not only present in the crimes site, he also actively participated with a group of Rajakars and Pakistani army in the horrific event of killing of the unarmed civilian targeting them and the attack was 'systematic' one. In the instant charge, charge of genocide has also been alleged against the accused. But on examination of evidence we do not find satisfactory elements of genocide. The basic principle of the concept of 'genocide' is indiscriminate and systematic destruction of members of a group because they belong to that particular group. Merely the killing of a number of individuals in a particular village in a 'systematic' manner can not be the only object for an inference as to constitution of genocide. It is the prosecution case that Mini Begum [P.W-20] being a supporter of Awami League, she was targeted by accused Zahid Hossain Khokon and the Rajakars and as such her family members were brutally killed by the accused and the Pakistani occupation army. But, from the evidence of P.W-20 it reveals that she was a student of class IV in 1971 and thus it is not acceptable to us that the said witness belonged to the political party Awami-League in 1971 and as such her inmates were killed as targeted by the Rajakars and Pakistani army. But it has been well proved that the inmates of P.W-20, the civilian unarmed people, were killed by

accused Zahid Hossain Khokon and Pakistani army as a part of 'systematic' attack. Having discussed and considered above, we are of the view that the charge of genocide has not been proved but accused Zahid Hossain Khokon has substantially contributed and participated in committing the offences of murder and other inhumane acts [plundering and arson] as crimes against Humanity under section 3(2)(a)(g)(h) read with section 4(1) of the Act, 1973.

Adjudication of Charge no.11

[Torture and inhumane act on Kanai Lal Mondal].

185. Summary charge: On 1st July, 1971 at about 12.30 P.M accused Zahid Hossain Khokon being the Razakar commander along with other armed Razakars having gone to the village Jonggurodi-Bagutia apprehended Kanai Lal Mondal [P.W-02] from his hiding place and accused Zahid Hossain Khokon shot him in order to kill which caused badly injury on the elbow of his right hand and eventually [he] was deported to India. Thus, accused Khokon has been charged for abetting and facilitating the offences of deportation and other inhumane acts as specified under section 3(2)(a)(g)(h) read with section 4(1) of the Act of 1973.

Discussions and evaluation of evidence and findings:

186. To prove the aforesaid charge the prosecution has examined two witnesses, P.W-02 and P.W-23 out of whom P.W-02 is the victim himself.

187. P.W-02 Kanailal Mondal in his deposition has stated that when Bangabandhu Sheikh Muzibur Rahman declared independence he received training as a freedom fighter from Surza Mollah and Ali Mollah at Nagarkanda after 25th March, 1971. The Pakistani occupation army came to Faridpur town on the 1st part of Baishakh [1st month of Bangla calendar year], and accused Zahid Hossain Khokon, Zafor, Aynal and others went to Faridpur town and they made contact with the Pakistani forces and they

collected arms from them. In the middle of Bangla month Jaistha in 1971 they came to their village, where most of the villagers belonged to Hindu community, and they [accused] asked them to pay ransom and torched several houses including a room of him [P.W-02]. The accused and his accomplices forced Bhubon Das, Santos Das, Jibon Das, Khhetra Mohan Das and Nitai Das and their wives to be converted to Muslims. He has further stated that on the 1st part of Bangla month Ashar accused Khokon and Aynal came to his house and sensing their presence he went into hiding in a jute field near his house; but ultimately accused Khokon and Aynal apprehended him from the said jute field and thereafter accused Khokon inflicted a blow on his shoulder with the haft of rifle in his hand and told him that they would kill him as he took training as a freedom fighter and the freedom fighters had killed his brother, thereafter, they took him on the side of a road near his house and accused Zahid Hossain Khokon with a rifle in his hand shot him, but luckily he sustained bullet injury on the right elbow instead of the chest and he fell down on earth and accused Khokon and his accomplices left the place presuming that he had died and hearing the sound of firing his brother came to the place of occurrence and took him to his house and thereafter he was treated by village doctor Godai and after his recovery from injury he participated in the Liberation War.

188. In cross-examination this witness has stated that he knows Zahid Hossain Khokon, and they are three brothers and the name of other two brothers are Zafor and Hudu Miah and did not know whether accused Khokon was the Chairman of Nagarkanda Union Parishad from 1991 to 2000 and he became the Mayor of Nagarkanda after its upgradation into Pourashava. He has further stated that Aynal Razakar hailed from their village and he was killed by the freedom fighters during the Liberation War.

He has denied the suggestions that accused Khokon was an Ansar commander, not a Razakar and he did not torch his house and never shot him.

189. P.W-23 Zibon Krishno Das in his deposition has stated that though he did not see the said occurrence but, immediately after the occurrence he rushed to the house of Kanailal and saw him in an injured condition and heard about the occurrence from him. He has further stated that Surja Kanta, the brother of Kailal Mondol had made arrangement for treatment by village doctor Godai.

190. This witness has denied the defence suggestions that accused Zahid Hossain Khokon was not at all involved with the alleged occurrence and never went to the said village.

191. It appears from exhibit-11, the statement of witness Abu Bakkor Mollah made before the investigating officer that he heard that accused Khokon Razakar and his accomplices on the day and time of occurrence apprehended Kanailal Mondol from a jute field where he hid himself, and thereafter accused Khokon Razakar himself shot him in order to kill him but he luckily survived having sustained bullet injury on his right elbow.

192. P.W-02 victim Kanailal Mondol himself has narrated about the inhumane acts of accused Zahid Hossain Khokon before this Tribunal on oath that accused targeted him as he received training as a freedom fighter.

193. P.W-23 though did not see the actual occurrence but immediately after the occurrence he rushed to the house of P.W-02 hearing about the incident and saw him in an injured condition and heard about the occurrence from him. Though P.W-23 is not an eye witness of the occurrence but in the facts and circumstances of the present case particularly the fact that immediately after the occurrence he rushed to the house of the P.W-02 and saw him in

an injured condition and heard about the occurrence and thus, his evidence has a probative value.

194. The trial panel in Momin Savic case presented examples of inhumane acts from ICTY case law, where beatings and other acts of violence, injury and serious injuries to physical or mental integrity have been included. **[Savic, 1st inst. Page-53 (47 BCS), (relevant part upheld on appeal) referring to Blaskic, TJ,239 and Krstic,TJ, 523]**

195. If we consider the evidence of P.W-02, the victim, P.W-23 and Exhibit-11 along with the above proposition of law coupled with the context of the Liberation War 1971, we are of the view that the perpetrator, accused Zahid Hossain Khokon, had the intention to kill or inflict serious physical injuries to P.W-02 and he knew that his act of shooting was likely to cause grievous injury, even to death and thus, the charge of torture and inhumane acts as enumerated in section 3(2)(a) of Act of 1973 has been proved against the accused Zahid Hossain Khokon beyond reasonable doubt.

196. But the prosecution has failed to prove the charge that victim Kanailal Mondol had been deported to India to save his life. Victim Kanailal Mondal in his deposition has clearly stated that after recovery from injury he went to India and participated in the Liberation War as a freedom fighter.

197. In going to India in order to participate in the Liberation War as a freedom fighter will not come within the definition of deportation. Victim Kanailal Mondal was not forced by the accused to leave the country. Rather it is emerged from the evidence of P.W-2 Kanailal Mondal that he voluntarily left the country to join the Liberation War as a freedom fighter. As such, the prosecution has failed to prove another part of the charge of deportation and as such the instant charge has been proved in part. Thus, accused Zahid Hossain Khokon alias M.A. Zahid has participated, abetted and facilitated

the commission of offence of torture and inhumane acts as crimes against Humanity as enumerated in section 3(2)(a)(g)(h) read with section 4(1) of the Act of 1973.

XXVI. Conclusion

198. It is now, 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.

199. 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.

200. 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.

201. 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 offences 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 the election result.

202. 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.

203. Despite lapse of long 40 years time the testimonies of PWs 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.

204. It has been proved from the testimonies of witnesses that the accused had directly participated in the commission of crimes as an armed member

of Razakar force. 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 Zahid Hossain Khokon 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.

205. We are convinced from the evidence both oral and documentary led by the prosecution that accused M.A Zahid Hossain Khokon alias Zahid Hossain Khokon alias Khokon was a potential member of Razakar Bahini [force] of Nagarkanda area of District Faridpur, otherwise, he would not have carried fire arms with him when he led the armed gang to the crime sites for committing crimes. He, at that time, was widely and generally known as 'Khokon Razakar'. The purpose of Rajakar Bahini was to assist the Pakistani occupation army to implement their design and plan in the commission of their atrocious operations against the Bengalee civilian population including the Hindu rlesious group, intellectuals, pro-liberation civilians. As a result, we may legitimately infer that accused Zahid Hossain Khokon alias M.A Zahid Hossain Khokon alias Khokon as a Rajakar committed the offences.

206. Section 4(1) of the Act of 1973 refers to Joint Criminal Enterprise [JCE] that when any crime as specified in section 3 is committing 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 accused Zahid Hossain Khokon alias M.A Zahid Hossain alias Khokon himself participated, along with his armed accomplices and Pakistani army, in the commission of crimes against Humanity and as such he is held criminally liable under section 4(1) of the Act of 1973.

207. In the case in hand, it is abundantly clear that the accused absconded to evade the process of justice though he is the sitting Mayor of Nagarkanda Pourashava. 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 trial.

XXVII. Verdict on conviction

For the reasons set out in the judgment and having considered all evidence and arguments advanced by both the parties, this Tribunal unanimously finds accused Zahid Hossain Khokon alias M. A. Zahid Khokon alias Khokon Matubbar alias Khokon guilty and not guilty in the following charges framed against him.

Charge No.1: The accused is found **NOT GUILTY** of the offences of abduction, confinement and torture as crimes against Humanity as specified in section 3(2)(a)(g) of the Act of 1973 and thus he be acquitted.

Charge No.2: The accused is found **GUILTY** of the offences of deportation and torture by way of forceful conversion 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.3: The accused is found **GUILTY** of the offences of deportation and torture by way of forceful conversion 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.4: The accused is found **GUILTY** of the offences of confinement, deportation and rape 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.5: The accused is found **GUILTY** of the offences of abduction, confinement, torture, murder and other inhumane acts [plundering and 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.

Charge no.6: The accused is found **GUILTY** of the offences of murder and other inhumane acts [plundering and 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.

Charge no.7: The accused is found **GUILTY** of the offences of murder and other inhumane acts [plundering and 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.

Charge no.8: The accused is found **GUILTY** of the offences of murder and other inhumane acts [plundering and 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.

Charge no.9: The accused is found **GUILTY** of the offences of murder and other inhumane acts [plundering and 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.

Charge no.10: The accused is found **GUILTY** of the offences of murder and other inhumane acts [plundering and 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.

Charge no.11: The accused is found **GUILTY** of the offences of torture and 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.

XXVIII. Verdict on sentence

From the foregoing discussions we have found the accused guilty of the offences of murder, torture, deportation, rape, confinement, abduction and other inhumane acts as mentioned in 10(ten) charges being nos.2,3,4,5,6,7,8,9,10 and 11 which fall within the purview of crimes against Humanity as specified in section 3(2)(a)(g) and (h) of the International Crimes (Tribunals) Act, 1973. Now a pertinent question is before us as to decide what punishment can be awarded to the accused which shall squarely meet the ends of justice.

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. We are of agreed view that the above mentioned 10(ten) charges brought against the accused have been proved beyond reasonable doubt. It is well proved that accused Zahid Hossain Khokon substantially contributed and facilitated in mass killing as listed in charge nos.5,6,7,8,9 and 10. It is also proved that the mass killing was followed by abduction, confinement, torture and other inhumane acts like plundering and arson. We have taken due notice of the intrinsic gravity of the said offences of crimes against Humanity which are particularly shocking to the conscience of mankind.

In consideration of the gravity and magnitude of the offences committed particularly in charge nos.5,6,7,8,9 and 10, we unanimously hold that the accused deserves the highest punishment as provided under section 20(2) of the ICT Act of 1973.

However, we are of the further view that considering the proportionate to the gravity of the offences, the accused Zahid Hossain Khokon deserves

imprisonment i.e. lesser punishment for convictions relating to the remaining offences as crimes against Humanity as listed in charge nos.2,3,4 and 11. Accordingly, we do hereby render the **following ORDER on SENTENCE.**

Hence, it is

ORDERED

That the accused Zahid Hossain Khokon alias M. A. Zahid Khokon alias Khokon Matubbar alias Khokon son of late Abdul Motaleb Miah alias Motaleb Matubbar alias Motaleb Dafader and late Joynab Begum of village-Nagarkanda, Nagarkanda Poursava, Police Station-Nagarkanda, District-Faridpur is found guilty of the offences of 'crimes against Humanity' as listed in charge nos. 5,6,7,8,9 and 10 and he be convicted and sentenced to death for each charge mentioned above and be hanged by the neck till he is dead under section 20(2) of the International Crimes (Tribunals) Act, 1973.

The accused Zahid Hossain Khokon alias M.A. Zahid Khokon alias Khokon Matubbar alias Khokon be convicted and sentenced to suffer rigorous imprisonment for 5(five) years for the crimes as listed in charge no.2 under section 20(2) of the Act of 1973.

The accused Zahid Hossain Khokon alias M. A. Zahid Khokon alias Khokon Matubbar alias Khokon be convicted and sentenced to suffer rigorous imprisonment for 10(ten) years for the crimes as listed in charge no.3 under section 20(2) of the Act of 1973.

The accused Zahid Hossain Khokon alias M.A. Zahid Khokon alias Khokon Matubbar alias Khokon be convicted and sentenced to suffer rigorous imprisonment for 20(twenty) years for the crimes as listed in charge no.4 under section 20(2) of the Act of 1973.

The accused Zahid Hossain Khokon alias M.A. Zahid Khokon alias Khokon Matubbar alias Khokon be convicted and sentenced to suffer rigorous imprisonment for 5(five) years for the crimes as listed in charge no.11 under section 20(2) of the Act of 1973.

The accused Zahid Hossain Khokon alias M.A. Zahid Khokon alias Khokon Matubbar alias Khokon is found not guilty of the offences of crimes against Humanity as listed in charge no.1, and he be acquitted from the said charge.

However, all the aforesaid sentences awarded to the accused will naturally get merged into a single sentence of death as and when executed it upon him.

Since the convicted accused has been absconding the 'sentence of death' and 'sentence of rigorous imprisonment' 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 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.

Let a copy of the judgment be transmitted together with the conviction warrant to (1) the Inspector General of Police, Bangladesh Police, Police Head

Quarters, Dhaka, and (2) the District Magistrate, Dhaka and Faridpur for information and necessary action and compliance.

Let certified copy of the judgment also be provided to the prosecution at once.

(M. Enayetur Rahim, Chairman)

(Jahangir Hossain, Member)

(Anwarul Haque, Member)