

International Crimes Tribunal-1
Old High Court Building, Dhaka, Bangladesh.
ICT-BD [ICT-1] Case No.02 of 2017

Present:

Justice Md. Shahinur Islam, Chairman
Justice Amir Hossain, Member
Justice Md. Abu Ahmed Jamadar, Member

The Chief Prosecutor

Vs.

1. Md. Ranju Miah, 2. Md. Abdul Jabbar Mondol, [absconding]
3. Md. Jachhijar Rahman @ Khoka [absconding] , 4. Md. Abdul Wahed Mondol [absconding] and 5. Md. Montaz Ali Bepari alias Momtaz [absconding]

For the prosecution

Mr. Golam Arief Tipoo, Chief Prosecutor

Mr. Zead Al Malum, Prosecutor

Mr. Hrishikesh Saha, Prosecutor

Mr. Mokhlesur Rahman Badal, Prosecutor

Mr. Altaf Uddin Ahmed, Prosecutor

Mr. Zahid Imam, Prosecutor

Ms. Sabina Yesmin Khan, Prosecutor

Ms. Rezia Sultana, Prosecutor

Mr. Tapas Kanti Baul, Prosecutor

For the defence

Mr. Mohammad Abul Hassan, Advocate: Engaged counsel
for accused (1) Md. Ranju Miah **AND**

Also the **state defence counsel** for 04 absconding accused (2) Md. Abdul Jabbar Mondol, (3) Md. Jachhijar Rahman @ Khoka, (4) Md. Abdul Wahed Mondol and (5) Md. Montaz Ali Bepari @ Momtaz

Date of delivery of Judgment: 15 October, 2019

JUDGMENT

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

I. Introductory Words

1. This case involves arraignments of barbaric atrocities carried out in 1971 in the territory of Bangladesh during the war of liberation directing the pro-liberation civilians , non-combatant freedom-fighters and Hindu civilians constituting the offences of ‘crimes against humanity’ as enumerated in Section 3(2) of the International Crimes (Tribunals) Act, 1973.

2. Five[05] accused (1) Md. Ranju Miah, (2) Md. Abdul Jabbar Mondol, (3) Md. Jachhijar Rahman @ Khoka , (4) Md. Abdul Wahed Mondol , (5) Md. Montaz Ali Bepari @ Momtaj have been jointly tried for the atrocious criminal activities constituting the offences of ‘confinement’ , ‘torture’, ‘other inhumane act’ , ‘deportation’ and ‘murder’ as crimes against humanity committed in the localities under Police Station Gaibandha Sadar of District[now] Gaibandha in 1971, during the war of liberation.

3. Four [04] accused(1) Md. Abdul Jabbar Mondol, (2) Md. Jachhijar Rahman @ Khoka , (3) Md. Abdul Wahed Mondol , (4) Md. Montaz Ali Bepari @ Momtaj have been indicted in all

the four charges. Accused Md. Ranju Mia has been indicted in charge nos.01 and 04.

4. Prosecution alleges that the accused persons as loyalist activists of Pakistani occupation army, in exercise of their affiliation in locally formed Razakar Bahini actively participated in accomplishing the crimes with which they have been charged, sharing common purpose.

5. Out of five accused only the accused Md. Ranju Mia has been detained in prison. The rest four accused have been tried in absentia after compliance of necessary legal requirement. Pursuant to issuance of production warrant the prison authority has produced the accused Md. Ranju Mia today before this Tribunal [ICT-1].

6. In course of trial, Tribunal received efficient and valued assistance from both the prosecution and the defence, to go on with the proceeding in accordance with law by ensuring recognised rights of defence. We appreciate their efforts.

II. Jurisdiction of the Tribunal

7. We reiterate that the Act No. XIX enacted in 1973 is meant to prosecute crimes against humanity, genocide and system crimes as enumerated in the Act, committed in violation of customary

international law. Prosecuting, trying and punishing not only the ‘armed forces’ but also the perpetrator[s] who belonged to ‘auxiliary forces’, or who culpably participated in committing the offence enumerated in the Act as an ‘individual’ or a ‘group of individuals’ or ‘organisation’ under the Act of 1973, an *ex post facto* legislation is fairly permitted.

8. In the case in hand, the accused persons have been arraigned for committing the alleged offences, being active part of the enterprise and , as close loyalists of Pakistani occupation army. Prosecution also avers that all the accused got enrolled in locally formed Razakar Bahini.

9. The offences for which the accused persons stood trial were ‘system crimes’ and not isolated crimes as those were committed in context of the war of liberation in 1971. It is manifested from section 3(1) of the Act of 1973 that even any person (individual), if he is *prima facie* found accountable either under section 4(1) or 4(2) of the Act of 1973 for the perpetration of offence(s), can be brought to justice under the Act.

10. The Tribunal is governed by its guiding legislation ‘The International Crimes (Tribunals) Act of 1973[Act No. XIX of 1973]’ and by the Rules of Procedure [ROP] 2010 formulated by

the Tribunal [ICT-1] under the power conferred in section 22 of the principal Statute.

11. Pursuant to the Act of 1973, the Tribunal [ICT-1] has the authority and jurisdiction to prosecute persons responsible for the offences enumerated in section 3(2) of the Act committed in violations of international humanitarian law in the territory of Bangladesh in 1971, during the war of liberation. This Tribunal set up under the Act of 1973 is absolutely a domestic Tribunal but aimed to try ‘internationally recognized crimes’ or ‘system crimes’ committed in 1971 in the territory of Bangladesh.

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

III. Brief Historical Background

13. In drawing the historical background, in brief, that ensued the war of liberation of the Bengali nation in 1971 we reiterate that in August, 1947, the partition of British India based on two-nation theory, gave birth to two new states, one a secular state named India and the other the Islamic Republic of Pakistan. The

western zone was named West Pakistan and the eastern zone was named East Pakistan, which is now Bangladesh.

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

15. The history goes on to portray that in the general election of 1970, the Awami League under the leadership of Bangabandhu Sheikh Mujibur Rahman, the father of the nation became the majority party of Pakistan. But deliberately defying the democratic norms Pakistan Government did not care to respect this overwhelming majority.

16. As a result, movement started in the territory of this part of Pakistan and Bangabandhu Sheikh Mujibur Rahman, the father of the nation in his historic speech of 7th March, 1971, called on the Bangalee nation to struggle for independence. It is to be noted with immense pride that the historic March 7 speech of Bangabandhu Sheikh Mujibur Rahman, the father of nation has

been recognised by the UNESCO as a world documentary heritage.

17. The 7 March blazing speech of Bangabandhu calling on the freedom-loving Bangalees indispensably mobilized and inspired the whole nation, excepting a few pro-Pakistan people to get prepared for the war of liberation. In the early hour of 26th March, following the onslaught of “Operation Search Light” by the Pakistani Military on 25th March, Bangabandhu Sheikh Mujibur Rahman declared Bangladesh independent immediately before he was arrested by the Pakistani authorities.

18. Disparity and deprivation eventually pushed the Bengali nation to start struggle. In 1971 after the operation searchlight on 25 March night and after declaration of independence by Bangabandhu Sheikh Mujibur Rahman the Pakistani occupation army and their local collaborators belonging to pro-Pakistan political parties and auxiliary forces started barbarous mayhem directing Bengali population throughout the territory of Bangladesh which continued for long nine months.

19. In the War of Liberation that ensued in 1971, all people of the then East Pakistan unreservedly supported and participated in the call to make their motherland Bangladesh free but a small

number of Bangalees, Biharis, other pro-Pakistanis, as well as members of a number of different religion-based political parties, particularly Jamat E Islami (JEI) and its student wing Islami Chatra Sangha (ICS), Muslim League, Convention Muslim League joined and/or collaborated with the Pakistani occupation army to aggressively resist the conception of independent Bangladesh and most of them committed and facilitated as well the commission of systematic and widespread appalling atrocities directing civilian population in the territory of Bangladesh, in 1971, to further their policy and plan of annihilating the dream of self determination of Bengali nation. This is now a settled history of which this Tribunal takes judicial notice as permitted by the Act of 1973 and the ROP.

20. The Pakistani occupation army's terrible brutality directing civilian population of Bangladesh was planned and in furtherance of policy-- the policy to wipe out the pro-liberation Bengali civilians. The Appellate Division, in the case of *Abdul Quader Molla* has observed that –

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

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

21. The Bengali nation on call of Bangabandhu Sheikh Mujibur Rahman, the Father of the Nation started war of liberation to achieve indolence and independent mother land. Three millions laid their lives, hundreds of thousands of sisters and mothers sacrificed their supreme honour for the cause of independence and one crore civilians had to deport to India quitting own homes. Existing terrorizing and coercive situation forced them to deport.

22. The alleged atrocities for which the accused persons stood trial were not isolated from the policy and plan of the Pakistani occupation army who started its 'mayhem' since 25 March 1971 intending to wipe out the pro-liberation Bengali civilians, to resist their aspiration of self determination.

23. The nation fought for the cause of independence and self determination and finally achieved independence on 16 December 1971. History testifies that enormously grave and recurrent horrific atrocities directing the Bengali civilians in the territory of Bangladesh starting since 25 March 1971 did not thrive to foil the highest sacrifice of the nation. The nation

always pays tribute and homage to the blood of millions of patriotic martyrs and innocent defenceless people who too sustained immense trauma and pains.

24. In 1971, the Pakistani army had no friends in Bangladesh—except a few traitors who took stance against the war of liberation and they belonged to the ideology of pro-Pakistan political parties, e.g. Muslim League, the Convention Muslim League, the Jamaat-e-Islami [JEI] and the Nizam-i-Islami.

25. It is now settled history that Jamat E Islami [JEI] with intent to provide support and assistance to the Pakistani occupation army by forming peace committee, armed Razakar and Al-Badar force obtained government's recognition for those *para militia* forces. JEI started acting antagonistically since the beginning of the war of liberation and it ended in killing of intellectuals. It is found from a report published in **The Daily Sangram 17 April 1971** that a delegation team comprising of members of Central Peace Committee including Professor Ghulam Azam [also the then Amir of Jamat E Islami] in a meeting with the Governor of East Pakistan Lt. General Tikka Khan expressed solidarity and their adherence to the armed forces.

26. Prosecution avers that accused persons did not keep them distanced from the strategy of JEI to further the policy and plan of the Pakistani occupation army in carrying out barbaric atrocities against the non combatant pro-liberation civilians that resulted in commission of offences enumerated in the Act of 1973. Victims of their target of criminal acts in grave breach of Geneva Convention were the civilians in occupied territory of Bangladesh. It is now a settled history.

27. The ‘aggression’ that resulted in untold violation of civilians’ recognized rights and indiscriminate killings in the territory of Bangladesh in 1971 started with launching the ‘operation searchlight’ was in grave breaches of Geneva Convention 1949. After the ‘operation search light’ ten millions of Bengali civilians were compelled to deport under the horrors of dreadful aggression and brutality spread over the territory of Bangladesh.

28. It is true that the perpetrators of horrific atrocious activities accomplished in 1971 in the territory of Bangladesh are being prosecuted long more than four decades later. But delay in prosecuting the crimes enumerated in the Act of 1973 cannot be a clog at all. There has been no statutory limitation of prosecuting and trying the ‘system crimes’ or ‘group crimes’ which happened in context of war.

29. Finally, the untold atrocious resistance on part of thousands of local collaborators could not impede the nation's fearless voyage to freedom. In the present-day world history, conceivably no nation paid as extremely as the Bangalee nation did for its self-determination and independence. The nation shall remain ever indebted to the best sons and daughters of the soil who paid supreme sacrifices for an indelible motherland – **Bangladesh.**

IV. Brief account of the Accused Persons

30. Before we begin adjudication of indictments brought and accountability of the accused persons for the crimes alleged we consider it relevant to focus on the brief account of the accused person which is as below:

(i) Md. Abdul Jabbar Mondol

Md. Abdul Jabbar Mondol (86), son of late Abdul Gofur Mondol and late Fuljan Nesa Begum, **village-Nandina**, Police Station-Gaibandha Sadar, District-Gaibandha was born on 05.06.1929 (as per NID). He studied up to Class VIII in Khordo Kamorpur High School under Police Station- Gaibandha Sadar of District [now]-Gaibandha. He was a village Doctor by profession. As an active member of Jamaat-E-Islami during the war of Liberation in 1971, accused Md. Abdul Jabbar Mondol participated in anti-liberation activities and in order to help Pakistani Occupation

Army he was engaged in forming local Peace Committee and armed Razakar Bahini. He was the Union Commander of Razakar Bahini and led them in aiding Pakistani Occupation Army in Saha Para Union and Gaibandha Sadar area. He was involved in committing the offences of genocide, murder, rape, looting, arson and other inhumane act as Crimes against Humanity in collaboration with Pakistani Occupation Army and Razakar Bahini, prosecution alleges.

(ii) Md. Jachhijar Rahman alias Khoka

Md. Jachhijar Rahman alias Khoka (64), son of Abdul Jabbar Mondol and Mst. Amena Begum, village-Nandina, Police Station-Gaibandha Sadar, District-Gaibandha, at present- House No.464/5, North Ibrahimpur (4th floor, Bou Bazarer Dhal), Police Station-Kafrul, DMP, Dhaka. His date of birth is 22.04.1954 (According to Bangladesh Police Identity Card). He passed S.S.C in 1968 from Khordo Komorpur High School. In 1971, during the liberation war of Bangladesh, he was an active member of local Jamaat-E-Islami. In 1971 he joined the Razakar Bahini and led it in aiding Pakistani Occupation Army in carrying out mass atrocities around his locality, prosecution avers.

(iii)Md. Abdul Wahed Mondol

Md. Abdul Wahed Mondol (62),son of Md. Abdul Jabbar Mondol and Mst. Amena Begum, village-Nandina, Police

Station- Gaibandha Sadar, District5 Gaibandha. He passed S.S.C.

He was an active member of local Jamaat-E-Islami in 1971.

(iv) Md. Montaz Ali Bepari alias Momtaj

Md. Montaz Ali Bepari alias Momtaj (68), son of late Shomesh Uddin Bepari and late Khatijan Bewa, village-Nandina, Police Station- Gaibandha Sadar, District [now]-Gaibandha. His date of birth is 05.03.1947. He was an active supporter of Jamaat-E-Islami in 1971.

(v)Md. Ranju Miah

Md. Ranju Miah (59), son of late Abbas Ali and late Amena Begum, village- Chak Goyashpur, Police Station-Gaibandha Sadar, District-Gaibandha. His date of birth is 21.04.1957. He is illiterate and can just sign his name only. In 1971 he was a supporter of Jamaat-E-Islami and was a member of Razakar Bahini.

V. Procedural History

Initiation of Investigation

31. The Investigation Agency of the Tribunal constituted under the Act of 1973 started the task of investigation pursuant to complaint register's serial no. 58 dated 12.10.2015, in respect of commission of offences enumerated in section 3(2) of the Act of

1973 allegedly perpetrated in 1971 during the war of liberation, in collaboration with the Pakistani occupation army around the localities under police station-Gaibandha Sadar of District [now]-Gaibandha.

Pre-trial detention

32. During investigation, on prayer of the IO through the prosecution the Tribunal on 29.05.2016 ordered issuance of warrant of arrest [WA] against the six suspected accused persons. Suspected accused Md. Ranju Miah was found arrested in connection with Palashbari-police station case no. 20 dated 17.02.2016 and thus in execution of WA issued he was produced before this Tribunal on 27.07.2016 when he was sent to prison, showing arrested in connection with this case.. The four other suspected accused could not be apprehended, in execution of warrant.

Interrogation at safe home

33. Tribunal, on application of the Investigation Officer moved by the prosecution permitted to interrogate the accused Md. Ranju Miah and he was interrogated accordingly on 31.10.2016 at the 'safe home' of the Investigation Agency.

Submitting investigation report

34. On wrapping up investigation, the Investigation Officer [IO] Md. Helal Uddin submitted report together with documents and materials collected and statement of witnesses on 21.12.2016 before the Chief Prosecutor under Rule 11 of the ROP, wrapping up of investigation.

35. Afterward, on 07.03.2017 the IO by submitting a report to the prosecution informed that one suspected accused Md. Asgar Hossain Khan died on 03.12.2016 i.e at pre-trial stage.

Submitting formal charge

36. The Chief Prosecutor, on the basis of the report and documents submitted therewith by the Investigation Agency and also taking the information about death of one suspected accused at pre-trial stage into account, submitted the 'Formal Charge' on 09.03.2017 under section 9(1) of the Act of 1973 before this Tribunal alleging that accused persons were engaged in committing the offences as enumerated in section 3(2) of the Act of 1973 during the period of War of Liberation in 1971 around the localities under Police Station- Gaibandha Sadar of District[now]-Gaibandha.

Taking cognizance of offences

37. The Tribunal, under Rule 29(1) of the Rules of Procedure, took cognizance of offences as mentioned in section 3(2)

(a)(g)(h) of the Act of 1973, by application its judicial mind to the Formal Charge, materials and documents submitted therewith.

Legal requirements for holding absentia trial against four accused

38. The law enforcement agency could not secure arrest of four[04] accused Md. Abdul Jabbar Mondol, Md. Jachhijar Rahman @ Khoka, Md. Abdul Wahed Mondol and Md. Montaz Ali Bepari @ Momtaz as they remained absconded and there was no immediate prospect of causing their arrest as the report in execution of warrant of arrest demonstrated it .

39. After having report in respect of execution of warrant of arrest issued against those four accused the Tribunal, for the purpose of holding proceeding in their *absentia*, ordered publication of notification in two national daily news papers as required by law. But those accused did not turn up despite such notification published in two national daily news papers and as such treating them absconding the Tribunal ordered for hearing the charge framing matter by appointing Mr. Mohammad Abul Hassan as the state defence counsel, at the cost of Government, to defend the absconding four accused persons.

Hearing on charge framing matter

40. Then hearing on charge framing matter took place on 08.03.2018 when both sides placed their respective submission, drawing attention to the formal charge and documents submitted therewith.

Examination of witnesses and summing up

41. Prosecution intending to substantiate the arraignments brought in four charges adduced 16 witnesses including the investigation officer [IO]. Of them 15 have been examined and one has been tendered. Learned state defence counsel defending all the accused duly cross-examined the witnesses.

42. After conclusion of summing up advanced by both sides on 29.05.2019 and 21.07.2019 the case was kept in CAV i.e. for delivery and pronouncement of judgment.

VI. Applicable laws

43. The tribunal formed under the Act of 1973 is a domestic judicial forum to prosecute, try and punish the offences of crimes against humanity, genocide. It is to be reiterated that the provisions as contemplated in the International Crimes (Tribunals) Act 1973 and the Rules of Procedure 2010 formulated by the Tribunal [ICT-1] under the powers given in

section 22 of the Act are applicable to the proceedings before the Tribunal.

44. Section 23 of the Act of 1973 prohibits the applicability of the Code of Criminal Procedure, 1898 and the Evidence Act 1872. Tribunal is authorized to take judicial notice of fact of common knowledge which is not needed to be proved by adducing evidence [Section 19(4) of the Act].

45. Any evidence if it is considered to have probative value [Section 19(1) of the Act] may be admitted by the Tribunal. The Tribunal shall have discretion to consider even the hearsay evidence by weighing its probative value [Rule 56(2)]. The defence shall have liberty to cross-examine prosecution witness on his credibility and to take contradiction of the evidence given by him [Rule 53(ii)]. Defence shall have right to examine witnesses [Section 10(1) (f) of the Act of 1973].

46. In dealing with the trial relating to offence of crimes against humanity, committed in violation of customary international law, the Tribunal however is not precluded from seeking guidance from international reference and relevant jurisprudence, if needed to resolve legal issues or crucial matters substantially

related to adjudication of event constituting the offences alleged and culpability of the accused persons therewith.

VII. Summing up [Argument]

Summing up by the Prosecution

47. Mr. Mokhlesur Rahman Badal the learned prosecutor drawing attention to the documentary and oral testimony tendered placed summing up when it has been first submitted that all the accused persons were infamous Razakars; that they by virtue of their such affiliation collaborated with the Pakistani occupation army in committing atrocious activities constituting the offences of crimes against humanity . All the events arraigned were barbaric in nature. All the five accused have been indicted in charge nos. 01 and 04 and four accused, excepting accused Ranju Mia have been indicted in charge nos.02 and 03.

48. The learned prosecutor submits that the evidence relied upon proves the arraignments brought against the accused persons. Most of witnesses are direct witnesses and sufferers who sustained trauma and pain as they experienced the commission of horrendous activities forming part of the attacks. Defence could not controvert what the witnesses recounted in relation to the

events happened. Rather, some crucial matters shall seem to have been affirmed in cross-examination.

49. In arguing on indictment the learned prosecutor Mr. Mokhlesur Rahman Badal drew attention to the materially incriminating part of the testimony of witnesses examined intending to establish the nexus, mode of participation of the accused persons with the commission of the crimes for which they have been charged with. However, we consider it appropriate to address the argument advanced on each charge independently when we will go on to adjudicate the same.

Summing up by the defence

50. Mr. Mohammad Abul Hassan the learned engaged counsel for accused Md. Ranju Mia and state defence counsel for the four absconding accused submits that none of accused belonged to Razakar Bahini; the document relied upon does not show membership of four accused in Razakar Bahini; that accused Md. Ranju Mia was a tender aged in 1971; that the prosecution witnesses did not have reason of knowing the accused persons and their testimony suffers from inconsistency and not credible.

51. The learned defence counsel also argued on each charge drawing attention to inconsistencies between evidence tendered

by the prosecution. It has been submitted that the prosecution failed to prove concern and participation of accused persons with the commission of the offences alleged; that the witnesses examined by the prosecution are not reliable and their testimony does not carry value and the accused persons have been falsely implicated in this case, out of rivalry. However, the submission agitated in respect of each charge may be well focused while we will go on for adjudicating the charges independently.

VIII. Razakar Bahini: It's Objective in 1971 and whether the accused persons belonged to the locally formed Razakar Bahini

52. Mr. Mokhlesur Rahman Badal the learned prosecutor started placing summing up by submitting that the accused persons started collaborating with the Pakistani occupation army since they got stationed in Gaibandha. Afterwards, Razakar Bahini was formed locally of accused persons, Asgar Ali Khan [now dead]. Accused persons were of those Bengali people who had acted taking stance against the war of liberation. The list dated 10.11.2010 **Exhibit-1 [prosecution documents volume page nos. 15-16]** obtained from Gaibandha Sadar Upazila Command, Bangladesh Muktiyodhdha Sangsad proves that accused Md. Ranju Mia was a Razakar and four other accused persons were collaborators.

53. The learned prosecutor further submits that it was a challenging task indeed to collect documented evidence in support of the related fact. Drawing attention to the list **Exhibit-1** it has been submitted that it does not state the name of four accused as Razakars, true. But oral testimony of witnesses who knew those accused beforehand as they were from their locality in testifying the events arraigned have consistently termed them as Razakars which could not be refuted in any manner. Thus, mere inaccurate or incomplete information contained in the list does not diminish the fact of affiliation of those four accused in locally formed Razakar Bahini, particularly when the ocular evidence tendered shall demonstrate that all the accused persons, in exercise of their affiliation in Razakar Bahini were culpably engaged in committing systematic attacks directing pro-liberation civilians that constituted the offences of crimes against humanity as arraigned in the charges framed.

54. Mr. Mohammad Abul Hassan the learned engaged counsel and also the state defence counsel submits that none of accused persons was member of locally formed Razakar Bahini; that the document Exhibit-1 relied upon by the prosecution on this matter itself states that four accused, excepting accused Md. Ranju Mia were ‘collaborators’ and not ‘Razakars’; that accused Md. Ranju Mia was a tender aged boy in 1971 ; that NID Card of accused

Md. Ranju Mia relied upon by the prosecution demonstrates it and thus information contained in the alleged list in respect of his membership in Razakar Bahini is not authoritative and true and oral testimony is not sufficient to establish this pertinent fact. The accused persons have been falsely implicated in this case terming them Razakars, without any authenticated basis, the learned defence counsel added.

55. Tribunal reiterates that the Act of 1973 permits to prosecute even an 'individual' for the commission of any of offences enumerated in section 3 of the Act. However, the accused persons are alleged to have had affiliation in the locally formed Razakar Bahini. Long four and half decades after the atrocities committed in 1971 it was indeed a challenge to collect evidence to substantiate this crucial issue. However, prosecution chiefly relied upon oral evidence intending to make this matter proved. It transpires that the prosecution also relies upon a document, a list obtained from the Upazila Command, Bangladesh Muktijodhdha Sangsad, under signature of its commander.

56. In the above list **Exhibit-1** only one accused Md. Ranju Mia has been shown as Razakar and four other accused persons have been shown therein as 'collaborators'. It is not understood why compassion has been extended to accused Abdul Jabbar Mondol

and Jachhijar Rahman when ocular testimony of residents of crime localities goes to show their active affiliation in Razakar Bahini.

57. In the case in hand, all the charges framed arraign that the accused persons enthusiastically participated in carrying out alleged recurrent atrocious activities around the localities targeting the pro-liberation civilians, non-combatant freedom-fighters and Hindu civilians.

58. Presumably, due to lapse of long passage of time and for the reason of post conflict situation it could not be possible to collect more documented evidence , in course of investigation, particularly in support of affiliation of accused persons in Razakar Bahini. But merely for this reason the truthfulness of ocular testimony presented in this regard shall not be diminished.

59. In view of above, mere absence of mentioning the four accused as Razakars, instead a collaborator does not lessen the value of information made in the list **Exhibit-1** in its entirety. Tribunal notes that in a case involving offences as enumerated in section 3(2) of the Act of 1973 we are to resolve whether the person indicted committed the offences in question and whether

he committed such offence in exercise of his affiliation in an auxiliary force i.e. Razakar Bahini or in capacity as an ‘individual’. It is now well settled that –“[.....] mere failure to prove membership in Razakar Bahini an accused cannot be exonerated if he is found to have had participation and complicity with the commission of the offences alleged even in the capacity of an ‘individual’. [**Md. Amir Ahmed and others , ICT-BD [ICT-1] Case No. 05 of 2015, Judgment , 13 March, 2018, para, 49].”**

60. Besides, we reiterate that section 3(1) of the Act of 1973 permits also to prosecute, try and punish an individual or group of individuals, in addition to member or members of an auxiliary force for the offences as crimes against humanity, genocide. Thus, from this point of view too, we are not agreed with the submission advanced on this document, on part of defence. However, now let us see what the witnesses testified on this issue.

61. P.W.02, a relative of victims of the event arraigned in charge no. 02 in reply to defence question put in cross-examination that ‘the accused Razakars were with the Pakistani occupation army [at the time of the attack]’. Presence of the accused persons at the crime scene relates to the commission of alleged crimes which

deserves to be resolved on evaluation of evidence. But now, it impels that affiliation of accused persons in Razakar Bahini has been affirmed.

62. P.W.04, the wife of one victim of the event of killing as arraigned in charge no.02 recounted the event describing the accused persons as Razakars. It has not been denied even in cross-examination.

63. Another witness P.W.13 also stated that Gaibandha Sadar Thana Razakar Bahini was formed of Ranju Mia, Abdul Jabbar Mondol, Wahed Mondol, Montaz Ali Bepari, Asgar Khan, Jachhijar Rahman and 30/40 others. He knew the Razakars he named beforehand as they were from their locality. Defence could not bring anything to diminish it in any manner. This piece of unimpeached version also provides assurance as to affiliation of accused persons in locally formed Razakar Bahini.

64. P.W.15 testified that in 1971 Razakar Bahini was formed in Gaibandha for collaborating with the Pakistani occupation army; that Razakar Asgar Ali Khan [now dead], Razakar Abdul Jabbar Mondol whom he knew and their cohorts used to keep the Sakoa Bridge guarded. Defence declined to cross-examine this P.W.15 and as such this fact remained undisputed. It thus leads to

conclude that accused Jabbar Mondol was a potential Razakar. Be that as it may the list **Exhibit-1** does not speak of complete and accurate information.

65. In 1971, during the war of liberation 'Razakars' and 'collaborators' became synonymous. Thus, showing four accused as 'collaborators' in the list **Exhibit-1** does not diminish the fact that also two accused Abdul Jabbar Mondol and Jachhijar Rahman were associated in locally formed Razakar Bahini. Unimpeached version of P.W.15 goes to show indisputably that accused Jabbar Mondol was a Razakar.

66. Two accused Wahed Mondol and Jachhijar Mondol are the sons of accused Md. Abdul Jabbar Mondol. It is admitted. These three accused have been absconding. Ocular evidence reasonably shows that they too got engaged in collaborating with the Pakistani occupation army, in exercise of their affiliation in Razakar Bahini. Presumably, being imbued by the stance their father took against the war of liberation accused Jachhijar Mondol also got affiliated in Razakar Bahini, intending to collaborate with the Pakistani occupation army in a syndicated way.

67. It transpires from ocular testimony of witnesses the relatives of victims that the accused persons were the residents of their locality, nearer to their houses. Thus, naturally the witnesses had reason of being acquainted to the identity of the accused persons who were allegedly engaged in carrying out extreme wrong doings and notoriety, and thus all collaborators were known to them as Razakars.

68. In view of reasoned deliberation made above, based on evidence it stands proved beyond reasonable doubt that all the five accused collaborated with the Pakistani occupation army, maintaining close nexus to it. And they did it to further the policy and plan of the Pakistani occupation army. It emerges that the sufferers of atrocities of which the accused persons have been indicted have unequivocally testified that in 1971 the accused persons whom they knew beforehand were Razakars and such testimony could not be impeached by the defence.

69. In the case in hand, it emerges from evidence of P.W.15 that almost instantly after the Pakistani occupation army got stationed in Gaibandha Razakar Bahini was formed. What was the object of creating the Razakar force in 1971? Infamous Razakar Bahini was an 'auxiliary force' as defined in section 2 of the Act of

1973 as it had acted maintaining ‘static relation’ with the armed force for ‘operational’ purpose.

70. It is now settled that it was composed of mostly pro-Pakistani Bengalis. Razakars were actively associated with many of the atrocities committed by the Pakistani occupation Army during the 9-month war of liberation in 1971. From totality of evidence tendered as already discussed it stands proved that the accused persons despite being Bengali took stance with the Pakistani occupation preserving solidarity of Pakistan.

71. Razakar force was formed with the aim of resisting the ‘miscreants’ and to wipe out the ‘anti state elements’ with the aid of army [**Source: ‘The Daily Dainik Pakistan’, 16 May 1971**]. Peace Committees were also formed with the identical plan. The plan was to combat and annihilate the pro-liberation civilians who were perceived to be the ‘miscreants’. History says it.

72. Razakar Bahini, an auxiliary force was thus formed to collaborate with the Pakistani occupation army to further the policy of annihilating the Bengali nation—it is now well settled. Peace committee, Pro-Pakistan political parties including Jamat E Islami, Muslim League etc. had played key role in forming this auxiliary force and they symbolized the pro-liberation Bengali

people as their ‘enemies’ and ‘miscreants’. Two accused are alleged to have had affiliation in Jamat-E-Islami. It could not be controverted.

73. It appears that in narrating the brief account of accused persons in the formal charge it has not been claimed that two accused Md. Abdul Wahed Mondol and Md. Montaz Ali Bepari alias Momtaz got enrolled in locally formed Razakar Bahini in 1971. It has been asserted therein that they were actively affiliated in politics of Jamat-E-Islami a potential pro-Pakistan political party. The list **Exhibit-1** also demonstrates that they and two other accused Md. Abdul Jabbar Mondol and Md. Jachhijar Rahman @ Khoka were ‘collaborators’.

74. In view of above we are to chiefly see whether the accused Md. Abdul Wahed Mondol and Md. Montaz Ali Bepari alias Momtaz collaborated with the Pakistani occupation army in accomplishing the alleged atrocities. Merely for the reason that these two accused did not belong to Razakar Bahini cannot be readily exonerated of the liability.

75. Tribunal notes that prosecution even against an individual for the offences enumerated in the Act of 1973 is quite permissible. We are to see whether these two accused had close nexus with

the Pakistani occupation army stationed in Gaibandha and the Razakar Bahini formed there, in exercise of their affiliation in Jamat-E Islami.

76. In respect of two other accused i.e. Md. Abdul Jabbar Mondol and Md. Jachhijar Rahman @ Khoka it has been found proved from cumulative evaluation of ocular evidence that they were affiliated in Razakar Bahini, despite the fact that the list **Exhibit-1** does not state them as Razakars.

77. P.W.13 stated that Gaibandha Sadar Thana Razakar Bahini was formed of all the accused Ranju Mia, Abdul Jabbar Mondol, Wahed Mondol, Montaz Ali Bepari, Jachhijar Rahman, Asgar Khan[now dead] and 30/40 others. It may be inferred that for the reason of notoriety and nexus with the Pakistani occupation army all the accused were perceived to be Razakars which became synonymous to collaborators and that is why the P.W.013 included also the accused Wahed Mondol, Montaz Ali Bepari as members of Razakar Bahini.

78. However, it reveals that all the accused persons allegedly collaborated with the Pakistani occupation army in carrying out alleged atrocities, some of them in capacity as individuals and

some in exercise of their affiliation in locally formed Razakar Bahini.

79. In conclusion, we may therefore arrive at a conclusion that three accused Md. Ranju Miah, Md. Abdul Jabbar Mondol and Md. Jachhijar Rahman @ Khoka had allegedly acted in exercise of their explicit and culpable affiliation in Razakar Bahini, an 'auxiliary force' under control of Pakistani occupation army for their operational and other purposes. And two other accused Md. Abdul Wahed Mondol and Md. Montaz Ali Bepari alias Momtaz, the active followers of Jamat-E-Islami culpably collaborated with the Pakistani occupation army, to further policy and plan, under control of Pakistani army for their operational and other purposes.

IX. The way of adjudicating the charges and the settled jurisprudence

80. In the case in hand, evidence relied upon by the prosecution in support of respective arraignments is chiefly testimonial. Some of prosecution witnesses allegedly experienced criminal acts conducted in conjunction with the dreadful event of alleged attacks. Tribunal in exploring the truth duly weighed value, relevance and credibility of such testimonies in a most

dispassionate manner, keeping in mind that the accused persons shall be presumed innocent till they are found guilty.

81. Totality of horrific profile of the offences arraigned naturally left little room for the people or survived civilians to witness the entire event or all aspects of attacks. Due to the nature of crimes, context and post-conflict instability, these crimes could not be well documented by post-conflict authorities. Additionally, for the reason of lapse of long passage of time, it may not always be reasonable to expect the witnesses to recount every detail with precision. All these reality need to be kept in mind in assessing the evidence tendered.

82. It is to be noted that the Tribunal it is not bound to apply the technical rules of evidence. Rather, the Tribunal is to determine the probative value of all relevant evidence admitted. Hearsay evidence, in a trial under the Act of 1973, is not inadmissible *per se*, but that such evidence should be considered with caution and if it carries reasonable probative value.

83. It is now well settled that corroboration of evidence is not necessarily required and the Tribunal may rely even on a single witness' testimony as proof of a material fact if the same demonstrates credence.

84. Tribunal must eye on the settled principle that onus squarely lies upon the prosecution to establish accused persons' participation and complicity forming part of attacks resulted in commission of the offences in question as enumerated in section 3(2) of the Act of 1973 for which they have been arraigned.

85. Finally, we unanimously pen the view that it would be appropriate and jurisprudentially logical if, in the process of appraisal of evidence, we separate the grains of acceptable truth from the chaff of exaggerations and improbabilities which cannot be safely or prudently accepted and acted upon. To go on with this task the Tribunal shall not be precluded from borrowing guidance from the jurisprudence evolved for the purpose of arriving at decision.

86. Keeping the above inevitable settled perspectives and propositions in mind now let us move to the task of adjudication of charges framed, on rational appraisal of evidence presented by the prosecution.

X. Adjudication of Charges

**Adjudication of Charge No. 01: [05 accused indicted]
[Offences of 'Abduction'; 'Confinement'; 'Torture';
'Plunder', 'Murder', 'Deportation' and 'other Inhumane
Acts']**

87. Charge: That **in the first fortnight of June, 1971** on any day at about 10.00 A.M. a group formed of 15/20 Pakistani occupation army men and other Razakars being accompanied by accused (1) Md. Ranju Miah, (2) Md. Abdul Jabbar Mondol (absconded), (3) Md. Jachhijar Rahman alias Khoka (absconded), (4) Md. Abdul Wahed Mondol (absconded), (5) Md. Montaz Ali Bepari alias Momtaj (absconded) and Razakar Md. Asgar Ali Khan (now dead), coming from Helal Park army camp launched attack directing the local Hindu community at village-Bishnopur under police station-Gaibandha Sadar of District-[now] Gaibandha. In conjunction with the attack the accused persons and their accomplices captured Ambika Charan Sarkar from his house and tortured him inhumanly, looted valuables and left that house guessing him dead.

Thereafter, the accused persons and their accomplices, in conjunction with the attack forcibly captured Dijesh Chandra Sarkar, Abdul Mazid Prodhan from their house, looted the valuables, unlawfully detained Ful Kumari Rani and her sister-in-law Sadhana Rani Sarkar and forcibly converted them into Muslim.

In conjunction with the attack, Pakistani occupation army men exonerated Abdul Mazid Prodhan as he was a Muslim and

forcibly took Dijesh Chandra Sarkar away to the army camp in Gaibandha and afterward, he was killed and his dead body was made concealed. Two months later, victim Ambika Charan Sarkar succumbed to injuries inflicted by the accused persons and their accomplices.

By carrying out above atrocious activities directing civilians belonging to Hindu religious group , 300/400 Hindu civilians of different villages under Sahapara Union including 45 Hindu civilians as named in the formal charge were forced to deport to India.

Therefore, accused (1) Md. Ranju Miah, (2) Md. Abdul Jabbar Mondol (absconded), (3) Md. Jachhijar Rahman alias Khoka (absconded), (4) Md. Abdul Wahed Mondol (absconded), (5) Md. Montaz Ali Bepari alias Momtaj (absconded) have been charged for participating, abetting, facilitating, contributing and also for complicity in the commission of offences of **‘abduction’; ‘confinement’; ‘torture’; ‘deportation’, ‘other inhumane act’ and ‘murder’** as crimes against humanity as enumerated in section 3(2)(a)(g)(h) read with section 4(1) of the International Crimes (Tribunals) Act, 1973 which are punishable under section 20(2) of the Act.

Evidence of Witnesses Examined

88. Prosecution relies upon seven [07] witnesses of whom P.W.11, P.W.12, P.W.13 and P.W.15 are direct witnesses who had natural occasion of witnessing the acts crucially related to the event of attack alleged. Before we weigh and assess the credibility of the narrative they have made let us see what they have recounted in Tribunal.

89. P.W. 11 Sri Prodip Kumar Sarkar [63] is a resident of village- Bishnopur under police station- Gaibandha Sadar of District Gaibandha. In 1971 he was 14 years old. He is a direct witness to facts materially related to the event of attack arraigned.

90. P.W.11 stated that during first part of June and end of Bangla month Jaistha in 1971 at around 10:00 A.M he had been playing in the fields, east to their house when he saw 15/20 Pakistani occupation army men and Razakars approaching towards their home. With this he rushed to home and alarmed everybody to go into hiding. Being panic-stricken he went into hiding inside a nearby jungle adjacent to their home wherefrom he saw the Pakistani occupation army being accompanied by Razakar Asgar Ali [now dead], Razakar Abdul Jabbar Mondol, Razakar Jachhijar Rahman, Razakar Abdul Wahed Mondol, Montaz Ali

Bepari, Ranju Mia of their neighbouring village and other Razakars entering inside their home and they started plundering and looting. They dragged out his [P.W.11] cousin brother Dijesh Chandra Sarkar and his friend Abdul Majid, detaining unlawfully and tied them up with a treed and started causing torture inhumanely. They[the attackers] then set one detainee Abdul Majid at liberty as he was a Muslim and took away his[P.W.11] detained brother Dijesh Chandra Sarkar by vehicle towards Gaibandha army camp.

91. P.W.11 also stated that next [after the gang had left the site] he came out of the hiding place and he came to know from his mother and aunt Sadhana Rani [now dead] that the Pakistani occupation army men and their collaborators brought them out from home, made them terrorized and told them that they would be taken to army camp if they were not converted to Islam. With this being very terrified of their life, they acknowledged being Muslim. Then they [attackers] made bangles that are used by married Hindu women broken and wiped out red vermilion they used on head.

92. Finally, P.W. 11 stated that on the following day he came to know that his cousin brother Dijesh Chandra Sarkar was tortured inhumanely and afterward, he was gunned down to death and his

dead body was made hidden. Subsequent to the event he narrated that the Hindu residents of their locality and their family inmates being terrified by such atrocious activities were forced to deport to India and returned back after the independence achieved.

93. In cross-examination, P.W.11 in reply to defence question stated that their home was about 2-2.5 kilometers away from the village-Chak Goyashpur; that the nearby jungle from their home was around 50 yards far.

94. In cross-examination, defence suggested P.W.11 that his brother Dijesh Chandra Sarkar died in battle with Pakistani occupation army; that the accused persons he named were not Razakars; that they were not involved with the event he narrated and that what he testified was untrue. P.W.11 denied all these suggestions blatantly.

95. P.W. 12 Sri Kanti Bhusan Sarkar [74/75] is a resident of village- Bishnopur under police station- Gaibandha Sadar of District Gaibandha. In 1971 he was 27 years old and at that time he was a service holder in health department. He claims to have witnessed facts crucially related to the event of attack arraigned.

96. P.W.12 stated that during the last part of Bengali month Jaistha he had been at their home when he saw a group formed of

15/20 Pakistani occupation army and Razakars heading towards their home and when they arrived in front of their house he saw Razakars Abdul Jabbar Mondol, Asgar Ali Khan (now dead), Jachhijar Rahman, Wahed Ali Mondol, Momtaj Ali Bepari, Ranju Mia accompanying the gang. Then he ran toward his home and alarmed everybody of it. Being panic-stricken he and his siblings went into hiding inside a nearby jungle next to their home wherefrom he heard the sound of his parents' screaming and vandalizing carried out inside the house. Afterward, he came out of the hiding place after the Pakistani occupation army and Razakars had quitted and coming inside home he found his father lying unconscious, caused by torture.

97. P.W.12 next stated that he heard later on that the Pakistani occupation army and their accomplice Razakars by launching attack at the house of Dijesh Chandra Sarkar, south to their house unlawfully detained him and his friend Abdul Majid, tortured them inhumanely. Furthermore , he heard that they[the attackers] detaining Ful Kumari Rani and Sadhana Rani and made their bangles that are used by married Hindu women broken and wiped out red vermilion they used on head and spared them subject to get converted as Muslim.

98. P.W.12 also stated that he heard too that the detainee Abdul Majid was exonerated as he was a Muslim and the gang forcibly took Dijesh Chandra Sarkar away to the army camp in Gaibandha, by vehicle. Later on, he heard too that detainee Dijesh Chandra Sarkar was shot to death. After the event 200/250 Hindu residents of their locality being scared deported to India. He knew the Razakars he named beforehand as they were from their neighbouring village.

99. In cross-examination, P.W.12 in reply to defence question stated that they did not initiate any case over the event, after independence achieved. P.W.12 denied the defence suggestion put to him that the accused persons he named were not Razakars; that he did not know them; that he did not see or hear the event he testified and that what he testified was untrue.

100. P.W. 13 Sri Binoy Kumar Sarkar [66] is a resident of village- Bishnopur under police station- Gaibandha Sadar of District Gaibandha. In 1971 he was a student of class X in Bollomjhar High School. Chiefly he is a hearsay witness.

101. Before testifying the event arraigned P.W.13 made a narrative as to formation of Razakar Bahini around their locality. He stated that during the Liberation War, in Gaibandha Sadar

Thana Razakar Bahini was formed of Ranju Mia, Abdul Jabbar Mondol, Wahed Mondol, Montaz Ali Bepari, Asgar Khan, Jachhijar Rahman and 30/40 others. He knew the Razakars he named beforehand as they were from their locality.

102. P.W.13 stated that one day, in first part of June, 1971 he got informed that Pakistani occupation army along with Razakars were about to launch attack at their village. Then they went into hiding quitting home. After the attackers had left the site they came back home and heard that by launching attack at Ambika Charan Starker's home the attackers tortured him inhumanly, looted valuables and left the site guessing him dead and took away his son Dijesh Chandra Sarkar , on forcible capture. They being terrified deported to India and returned back after independence achieved.

103. In cross-examination, P.W.13 in reply to defence question stated that he could not say whether Ranju Miah was 10/12 years old, in 1971; that name of father of accused Ranju Mia was Abbas Ali; that Samad, the brother of accused Ranju Mia was a Razakar. P.W.13 denied the defence suggestions put to him that the accused were not Razakars.

104. P.W. 15 Abdul Majid Prodhan [70/71] is a resident of village- Sakoa under police station- Palashbari of District Gaibandha. In 1971 he was 22/23 years old and was a teacher of Bishnopur A R High School. He is the survived victim. The charge framed arraigns that he was forcibly captured along with his friend Dijesh Chandra Sarker and eventually he got exonerated as he was a Muslim. Thus, he is a vital direct witness to the event of attack arraigned.

105. Before testifying the event P.W.15 narrated the formation of Razakar Bahini around their locality and activities of accused persons and their accomplice Razakars. P.W.15 stated that during the war of liberation, Peace Committee and Razakar Bahini were formed in Gaibandha aiming to collaborate with the Pakistani occupation army. He knew two Razakars Asgar Ali [now dead] and Jabbar Mondol who and their cohort Razakars used to keep the Sakoa Bridge on Gaibandha-Palashbari highway, nearer to their house.

106. Next, in narrating the event P.W.15 stated that in 1971 in the Bangla month Jaistha he went to his friend Gongesh Kumar Starker's house. While he was there, he found that a group formed of Pakistani occupation army men and other Razakars cordoned off the house. Then his friend Gongesh escaped the

home. He too tried to escape but the Razakar Asgar Ali [now dead] and his cohorts captured him and handed him over to the Pakistani Army. They then tied him up with a tree. Razakar Asgar Ali and his cohorts committed looting and unlawfully detained his friend's elder brother Dijesh Chandra Sarker and tied him up with him.

107. P.W.15 also stated that afterward, they were taken to Kabir para and tortured them putting them down near a truck parked there. When the attackers got confirmed that he [P.W.15] is a Muslim, they made him free. Then they took Dijesh Chandra Sarker and other detainees towards Gaibandha. Dijesh Chandra Sarker who never came back. After the event, family of Gongesh Chandra Sarker's family and neighbouring families deported to India

108. Defence declined to cross-examine the P.W.15, presumably for the reason that he has not implicated any of five accused indicted in this charge no. 01 with the event of attack.

109. P.W.07 Md. Abdul Latif Akondo [63], a resident of village-Nandina testified simply a fact related to the upshot of the event of attack. P.W.07 stated that in 1971 Hindu residents of village Doulatpur deported to India due to fear of life caused by

atrocities committed by Razakars he named [Razakar Abdul Jabbar Mondol, Jachhijar Rahman @ Khoka, Abdul Wahed Mondol, Montaj Ali, and Razakar Asgar Ali Khan [now dead]. In cross-examination this version of P.W.07 does not seem to have been controverted or denied even.

110. P.W.08 Md. Shaheb Uddin [62] , a resident of village-Nandina similarly simply testified that after the atrocities committed 150/200 Hindu Families of village-Doulatpur deported to India quitting own homes, in fear of Razakars and many of them did not return back. This version crucially related to the end result of atrocious attacks arraigned remained unshaken in cross-examination.

Finding with Reasoning on Evaluation of Evidence

111. Mr. Mokhlesur Rahman Badal, the learned prosecutor submits that all the five persons indicted in this charge are found proved to have had participation and complicity with the attack launched which resulted in killing of Hindu civilians, destructive activates and deportation of hundreds of Hindu residents of the locality to India. Some of witnesses are relatives and neighbours of victim and that one survived victim also narrated how the gang had attacked and took away the victim on forcible capture.

112. The learned prosecutor next submits that defence could not controvert what the direct witnesses i.e. P.W.11, P.W.12, P.W.13 and P.W.15 recounted on oath in Tribunal in respect of the event they experienced. Commission of the crimes arraigned and accused persons' participation therewith, being part of the criminal enterprise has been found proved beyond reasonable doubt from consistently corroborative evidence of these witnesses, the learned prosecutor added.

113. Mr. Mohammad Abul Hassan, the learned defence counsel defending all the accused persons, on contrary, questioning credibility of witnesses relied upon by the prosecution submits that in 1971 the accused persons did not have affiliation in Razakar Bahini; that accused Md. Ranju Mia was tender aged in 1971; that the P.W.s had no reason of knowing them beforehand; that the victim Dijesh Chandra Sarker died in front battle with Pakistani army and Razakars; that no evidence could be brought to prove the alleged act of killing and accused persons' participation and concern therewith and the P.W.s testified falsely implicating the accused persons , out of local rivalry.

114. Tribunal notes that the gang formed of Pakistani occupation army, five accused first conducted its attack at Hindu community at village-Bishnopur under police station-Gaibandha Sadar of District-[now] Gaibandha.

115. The charge framed also indicts that the event involves causing inhumane torture to one Ambika Charan Sarkar on forcible capture, forcible conversion of Hindu women as Muslim, killing of Hindu civilian Dijesh Chandra Sarkar, and deportation of hundreds of panicked Hindu residents of the locality attacked.

116. Prosecution requires proving that the attack was systematic in nature and the accused persons being part of the criminal enterprise actively assisted, substantially contributed and participated to the accomplishment of prohibited acts that resulted in torture, abduction and murder of two unarmed Hindu civilians and causing mental harm to defenceless civilians.

117. P.W.11 Sri Prodip Kumar Sarkar, a resident of crime village recounted what he observed and experienced. Victim Dijesh Chandra Sarkar was his cousin brother. Narrative made by P.W.11, a direct witness demonstrates that the gang formed of Pakistani occupation army, Razakars accused (1) Md. Ranju

Miah, (2) Md. Abdul Jabbar Mondol, (3) Md. Jachhijar Rahman @ Khoka , (4) Md. Abdul Wahed Mondol , (5) Md. Montaz Ali Bepari @ Momtaj and their cohorts by launching attack at their house started plundering and looting.

118. Unshaken evidence of P.W.11 also depicts that the aggressors dragged out his [P.W.11] cousin brother Dijesh Chandra Sarkar and his friend Abdul Majid [P.W.15], detaining unlawfully and then tying them up with a tree they started causing torture to them inhumanely. P.W.11 saw all these prohibited activities remaining in hiding place. Defence could not bring anything to assume that it was not practicable of seeing the aspects of the attack the P.W.11 testified.

119. P.W.11 is the cousin brother of victim Dijesh Chandra Sarkar. He saw the accused (1) Md. Ranju Miah, (2) Md. Abdul Jabbar Mondol , (3) Md. Jachhijar Rahman @ Khoka (absconded), (4) Md. Abdul Wahed Mondol , (5) Md. Montaz Ali Bepari @ Momtaj and their cohort Razakars plundering and looting their house, dragging out his cousin brother and causing inhumane torture by tying him up with a tree. This piece of version remained unimpeached and it makes obvious that the accused persons deliberately got engaged in causing brutal

torture to detained Dijesh Chandra Sarkar, before he was taken away toward Gaibandha.

120. During the first phase of attack two female inmates of the house attacked were coerced to get converted as Muslim and to ensure it the Pakistani occupation army men and their collaborators made their bangles broken and wiped out red vermilion they used on head. P.W.11 heard such coercive acts from the victims, the female inmates who happened to be his near relatives.

121. The account of the facts relating to participation of accused persons leads to the conclusion that the accused persons consciously facilitated to administer systematic violence as an instrument even to the female inmates of victims' family. It caused intense fear and trauma to them. This prohibited act and the act of looting and plundering household were not only intended to create horror but it was undeniably filled of grave mental harm and detrimental to human rights and normal livelihood which constituted the offence of '**other inhumane act**'.

122. P.W. 12 Sri Kanti Bhusan Sarkar is the son of victim Ambika Charan Sarker. He too experienced how the gang

accompanied by the accused persons carried out its atrocious activities. His evidence demonstrates that on seeing the gang arriving in front of their house he went into hiding inside a nearby jungle next to their home wherefrom he heard his parents screaming and vandalizing carried out inside the house.

123. The above unimpeached version leads to deduce that the aggressors' attack was calculated also to cause detriment by destruction of livelihood of Hindu community in addition to wiping out pro-liberation residents of Hindu community. What the P.W.12 recounted in Tribunal in respect of the horrendous attack gets consistent and strong corroboration from the evidence of P.W.15.

124. P.W.13 a resident of crime village- Bishnopur sensing attack went into hiding and later on after the gang of attackers had left the site he came back home and heard the event. His hearsay testimony seems to have been corroborated by evidence of P.W.11, P.W.12 and P.W.15, the three direct witnesses.

125. One crucial matter has been unveiled from evidence of P.W.13. In addition to narrating the atrocious event P.W.13 stated that Gaibandha Sadar Thana Razakar Bahini was formed of Ranju Mia, Abdul Jabbar Mondol, Wahed Mondol, Montaz

Ali Bepari, Asgar Khan, Jachhijar Rahman and 30/40 others. He knew the Razakars he named beforehand as they were from their locality. In cross-examination it has been simply denied. But defence could not bring anything to diminish it in any manner.

126. We have got it too from evidence of P.W.15 that during the war of liberation, Peace Committee and Razakar Bahini were formed in Gaibandha aiming to collaborate with the Pakistani occupation army. He knew two Razakars Asgar Ali [now dead] and Jabbar Mondol who and their cohort Razakars used to keep the Sakoa Bridge on Gaibandha-Palashbari highway, nearer to their house.

127. It is true that P.W.15 could not recognize other accused persons and their cohorts while they accompanied the gang in launching the attack. But it by itself does not diminish the testimony of P.W.15. Rather, his testimony in its entirety patently indicates that he has not made any exaggeration.

128. P.W.12 and P.W.15 are vital witnesses in support of the event arraigned in this charge. Of them P.W.12 is the son of one victim Ambika Charan Sarker and P.W.15 is a survived victim. Both of them consistently recounted what they experienced and observed, in course of the attack launched.

129. Uncontroverted evidence of those two P.W.s cumulatively demonstrates that all the five accused (1) Md. Ranju Miah, (2) Md. Abdul Jabbar Mondol, (3) Md. Jachhijar Rahman @ Khoka , (4) Md. Abdul Wahed Mondol, (5) Md. Montaz Ali Bepari @ Momtaj persons culpably and knowingly participated, being part of the ‘murderous enterprise’ in perpetrating forcible capture of Ambika Charan Sarker, by launching systematic attack at his house.

130. What happened next? The invaders caused grave inhumane torture to Ambika Charan Sarker and the gang accompanied by the accused persons then left him abandoned guessing dead and took away his son Dijesh Chandra Sarker on forcible capture.

131. It also stands proved from unshaken and natural evidence of P.W.15 that at the relevant time he had been at the house attacked and he too was unlawfully detained by the gang along with Dijesh Chandra Sarker, the elder brother of his [p.w.15] friend and just before the gang started moving back taking them with them allowed him [P.W.15] to walk free knowing that he is a Muslim. This version could not be impeached. Thus, it may be validly concluded that the accused persons were extremely violent to the Hindu population. We find no reason to disbelieve the testimony made in this regard by the P.W.15.

132. Rational appraisal of evidence of P.W.11, P.W.12 and P.W.15 proves it irrefutably that unlawfully detained victim Dijesh Chandra Sarker was taken away toward Gaibandha by vehicle and since then he could not be traced. However, the P.W.s testified that they learnt that the victim was shot to death.

133. Defence argued that in absence of any evidence it could not be proved that the detained Dijesh Chandra Sarker was annihilated, as arraigned. But we are not with this submission. The detained victim could not be traced since the event of taking him away on forcible capture, it stands proved. This very fact is sufficient to deduce it lawfully that the victim was wiped out, after taking him away toward Gaibandha, on forcible capture.

134. Since the accused persons by their explicit act of assistance and contribution during the first phase of attack at victim's house in taking away the victim with them, on forcible capture it may be justifiably deduced that they were concerned also with the act of killing the detained victim. The accused persons thus cannot evade responsibility of materializing the mission which ended in killing the detained victim Dijesh Chandra Sarker.

135. Tribunal notes that dead body is not required to prove the offence of 'murder' as crime against humanity which occurs in

context of war time situation. It is now well settled. In war time situation some aspects of systematic attack happen in sly and beyond notice of people. Since the time when the killing was committed was not times of normalcy, it is inappropriate to apply rules of national systems that require the production of a body as proof to death.

136. Thus, even in absence of dead body it may be well inferred from facts and circumstances unveiled that the detained victim who was taken away unlawfully, violating the customary international law and the laws of war was eventually killed. In this, regard we recall the observation of **ICTY Appeal Chamber** made in the case of **Kvočka** which is as below:

“[.....] proof beyond reasonable doubt that a person was murdered does not necessarily require that the dead body of the person been recovered. The fact of a victim’s death can be inferred circumstantially from all of the evidence presented to the Trial Chamber. All that is required to be established from that evidence is that the only reasonable inference from the evidence is that the victim is dead as a result of acts or omissions of the accused or of one or more persons for

whom the accused is criminally responsible.”

[Kvočka, ICTY Appeal Chamber, Judgment 28 February 2005, para 260]

137. It has been unveiled too from unimpeached narrative of P.W.12 and P.W.15 that Ambika Charan Sarker who was subjected to severe inhumane torture at his house, in conjunction with the attack succumbed to injuries two months later. That is to say, prohibited barbarous acts conducted not only caused injuries to him but the same resulted in his death as well.

138. It was a willful killing as death of injured victim Ambika Charan Sarker was the result of the prohibited action(s) of the accused persons and their cohorts, who intended to cause death as they understood that the torture caused was likely to lead to death of the victim, a protected civilian.

139. Accused persons’ act of presence with the gang while launching attack itself was rather an act of ‘participation’, ‘abetment’ and ‘facilitation’ to the accomplishment of victim’s confinement and torture caused to him. Such deliberate acts of accused persons were specifically directed to ‘commit’ the crimes in question. Facts and circumstances unveiled suggest this irresistible conclusion.

140. ‘Committing’ connotes an act of ‘participation’, physically or otherwise, directly or indirectly, in the material elements of the crime charged through positive acts, whether individually or jointly with others. It has been observed by the **ICTY Trial Chamber in the case of *Stakic*** that-

"[.....]a crime can be committed individually or jointly with others, that is, there can be several perpetrators in relation to the same crime where the conduct of each one of them fulfils the requisite elements of the definition of the substantive offence."

[Case No. IT-97-24-T, Judgment : 31 July 2003, Para-528]

141. Participation and conscious concern of all the five accused in conducting criminal acts, sharing common intent, as found proved from evidence of direct witnesses including a survived victim[P.W.15] could not be impeached in any manner. Thus, the accused (1) Md. Ranju Miah, (2) Md. Abdul Jabbar Mondol, (3) Md. Jachhijar Rahman @ Khoka, (4) Md. Abdul Wahed Mondol and (5) Md. Montaz Ali Bepari @ Momtaj being part of the criminal enterprise incurred equal liability for the crimes committed.

142. It stands proved that the first phase of attack ended with taking away one victim Dijesh Chandra Sarker toward Gaibandha and all the five accused remained stayed with the gang when it headed toward Gaibandha after accomplishing criminal acts in conjunction with the first phase of attack.

143. It is true that there is no evidence as to how, when and where the next phase i.e. the killing of detained victim was carried out. But the killing was the end result of the first phase of attack to which the accused persons knowingly and actively participated. Thus, it is lawfully inferred that the accused persons were 'concerned' also in materializing the killing of detained victim.

144. It is now jurisprudentially settled that in a criminal trial mere denial is not sufficient to exclude one's testimony if it inspires credence. In the case in hand, it appears that even trustworthiness of witnesses particularly the direct witnesses to material facts could not be tainted by cross-examining them. Mere putting suggestion to P.W.s in cross-examination that what they testified implicating accused persons were untrue does not go with the object of cross-examination, when such suggestion is blatantly denied by the P.W.s.

145. It transpires that the attack was systematic and designed directing civilian population. The term ‘population’ does not refer to entire population of particular geographic vicinity. It is now well settled. In this regard ICTR Trial **Chamber** observed in the case of **Bisengimana** that--

“The term ‘population’ does not require that crimes against humanity be directed against the entire population of a geographical territory or area.”

[Bisengimana, ICTR Trial Chamber, Judgment, April 13, 2006, para. 50]

146. In the case in hand, it has been proved that the attack arraigned in this charge resulted in killing two civilians, causing torture and inhumane act and unlawful deportation of numerous civilians. All these together tend to the conclusion that the criminal acts proved constituted the offences of crimes against humanity, by launching systematic attack which was directed against the ‘civilian population’.

147. We reiterate that a crime need not be carried out against a multiplicity of victims or entire civilian population in order to constitute a crime against humanity. In this regard the legal proposition propounded in the case of **Nahimana, Barayagwiza and Ngeze, ICTR Appeal Chamber** is that --

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

[Nahimana, Barayagwiza and Ngeze, ICTR Appeals Chamber, Judgment, November 28, 2007, para. 924]

148. The charge also arraigns that the attack also resulted in forcible deportation of a number of civilians of the locality including the inmates of victims’ family. It transpires that consistently corroborative evidence of P.W.11, P.W.12, P.W.13 and P.W.15 proves it beyond reasonable doubt that immediate after the event of aggressive attack conducted deliberately the family inmates of victims and Hindu residents of the locality attacked, being gravely panicked opted to deport to India.

149. It appears too from testimony of P.W.07 Md. Abdul Latif Akondo and P.W.08 Md. Shaheb Uddin , the residents of Nandina, a village neighbouring to the crime village that Hindu

residents of village- Doulatpur deported to India due to fear of life caused by atrocities committed by the accused persons and their cohorts.

150. As the residents of neighbouring locality P.W.07 and P.W.08 had natural opportunity of knowing that terror, created by committing atrocious activities, forced the civilians of the village attacked to deport. Defence could not impeach it. This piece of version crucially related to the end result of atrocious attack gains strong corroboration from the other witnesses who were directly affected by the atrocities committed.

151. Factual matrix leads to valid inference that the coercion and horror resulted from the criminal activities by launching attack eventually 'forced' them to deport. Defence could not controvert it. Tribunal notes that act of causing '**deportation**' as enumerated in section 3(2) of the Act of 1973 constitutes the offence of crimes against humanity.

152. The destruction of private objects of civilians, the brutality of the killings of perceived followers of war of liberation collectively amounted to coercion and grave terror, which in the end forced the residents of the locality attacked to choose to

deport to India quitting their own homes, crossing border of territory of Bangladesh.

153. Such forced deportation was rather upshot of the coercive situation resulted from the horrific attack to which the accused persons were active part. ‘Force’ need not be limited to physical force. It may be caused even by spreading coercion, panic and terror. In this regard we recall the observation made by the **ICTY** in the case of **Milorad Krnojelac** which is as below:

“Deportation is illegal only where it is forced. “Forced” is not to be interpreted in a restrictive manner, such as being limited to physical force. It may include the “threat of force or coercion, such as that caused by fear of violence, duress, detention, psychological oppression or abuse of power against such person or persons or another person, or by taking advantage of a coercive environment. The essential element is that the displacement be involuntary in nature, where the relevant persons had no real choice.”

[**Prosecutor v. Milorad Krnojelac, Case No. IT-97-25-T, ICTY Trial Chamber, Judgment 15 March 2002, para. 475**]

154. Defence case as it appears from the trend of cross-examination is that accused persons were not Razakars; and that

Dijesh Chandra Sarkar died in battle with Pakistani occupation army. There has been no indication that Dijesh Chandra Sarkar died in battle. Negative assertion need not be proved. Besides, mere putting such defence suggestions do not negate the arraignment for which the accused persons have been indicted. No effort seems to have been made on part of defence intending to cast doubt on the truthfulness of event of attack and facts related to it.

155. Other assertions forming defence case are affirmative in nature, burden to establish which lies upon the defence. Defence asserts that accused Md. Ranju Miah was 10/12 years old in 1971. But there has been no proof before us in this regard. Date of birth as stated in the formal charge presumably is based on NID Card of accused Md. Ranju Mia.

156. But we are not ready to accept the plea taken by the defence based on NID Card of the accused Md. Ranju Mia. NID Card cannot be considered as the conclusive proof of its holder's actual age. Information as to age contained in NID Card does not always correspond to its holder's actual age as it has become a social practice of showing lesser age by providing incorrect information as to age of the holder of NID Card.

157. Thus, merely relying on the unauthenticated information contained in NID Card there can be no room to deduce that in 1971 accused Md. Ranju was a tender aged and did not participate in committing any crime alleged, particularly where it has been proved that he was affiliated in locally formed Razakar Bahini and collaborated and assisted the criminal enterprise in accomplishing crimes arraigned.

158. In the case in hand, the attack was systematic in nature. The accused persons actively collaborated with the Pakistani occupation army in conducting the attack directing Hindu civilians. The crimes committed were not isolated. Those were 'group crimes' for accomplishing which all the members forming the criminal enterprise incurred equal liability.

159. According to jurisprudence propounded says that an accused will incur individual criminal responsibility for aiding and abetting a crime committed in violation of international humanitarian law. It has been patently depicted that the five accused persons, in exercise of their nexus with the Pakistani occupation army, deliberately assisted and participated in carrying out the attack, to further common purpose. Their act and conduct consisted of practical assistance, encouragement or moral support to the perpetration of the crime in question.

160. On cumulative and rational evaluation of evidence and circumstances divulged and in light of reasoned finding made herein above we arrive at decision that prosecution has been able to prove it beyond reasonable doubt that the accused (1) Md. Ranju Miah, (2) Md. Abdul Jabbar Mondol , (3) Md. Jachhijar Rahman @ Khoka , (4) Md. Abdul Wahed Mondol and (5) Md. Montaz Ali Bepari @ Momtaj, by their act and conduct forming part of systematic attack pursuant to common design and plan in materializing the criminal mission participated , aided , abetted and substantially contributed to the commission of the offences of **'confinement'; 'torture'; 'deportation', 'other inhumane act'** and **'murder'** as crimes against humanity enumerated in section 3(2)(a)(g)(h) of the Act of 1973 and thus all the five accused persons incurred criminal liability under section 4(1) of the Act of 1973.

Adjudication of Charge No. 02: [04 accused indicted]

[Offences of 'Abduction'; 'Confinement'; 'Torture'; 'Plunder'; 'Arson' and 'Murder'.]

161. Charge: That on 18 October, 1971 at about 8.00 A.M. a group formed of 8/10 Razakars and 25/30 Pakistani occupation army men being accompanied by the accused (1) Md. Abdul Jabbar Mondol (absconded), (2) Md. Jachhijar Rahman alias Khoka (absconded), (3) Md. Abdul Wahed Mondol (absconded) and (4) Md. Montaz Ali Bepari alias Momtaj (absconded) by

launching attack at village-Nandina under Police station-Gaibandha Sadar of District-[now] Gaibandha forcibly captured non-combatant innocent pro-liberation civilians Abu Bakkar, Tara Akanda, Ansar Ali and Nasim Uddin Akanda from their houses and their accomplices and Pakistani occupation army men made them stand in a line in front of the house of Abu Bakkar and shot them to death.

In conjunction of the attack, the accused persons and their accomplices forcibly captured Abdus Samad Mollah, Sada Miah, Faras Uddin and Sekender Ali Mollah of village-Nandina from their houses and shot them to death and destroyed 40/50 houses of village Nandina by setting those on fire.

Therefore, accused (1) Md. Abdul Jabbar Mondol (absconded), (2) Md. Jachhijar Rahman alias Khoka (absconded), (3) Md. Abdul Wahed Mondol (absconded) and (4) Md. Montaz Ali Bepari alias Momtaj (absconded) have been hereby charged for participating, abetting, facilitating, contributing and also for complicity in the commission of offences of **‘abduction’**; **‘confinement’**; **‘torture’**; **‘arson’** and **‘murder’** as crimes against humanity as enumerated in section 3(2)(a)(g)(h) read with section 4(1) of the International Crimes (Tribunals) Act, 1973 which are punishable under section 20(2) of the Act.

Evidence of Witnesses Examined

162. Prosecution intending to establish the arraignment brought in this charge relies upon seven witnesses and most of them are relatives of victims who claim to have seen facts related to the attack that resulted in killings. We require to appraise what the witnesses have portrayed in tribunal in a rationale way and keeping the settled principle in mind. Now, first let us eye on what the witnesses testified.

163. P.W. 01 Md. Abul Hossain Akondo [69] is a resident of crime village- Nandina under police station- Gaibandha Sadar of District Gaibandha. In respect of the event arraigned P.W. 01 is a direct witness. He was teacher in primary school from 1966 to 1969 he. He was the General Secretary of Sahapara Union Awami League since 1969.

164. P.W. 01 stated that on 17.10.1971 at around 09:00 P.M. 25/30 freedom-fighters came to their house and then he was arranging serving of food for them. Just then Razakar Abdul Jabbar Mondol, Razakar Md. Jachhijar Rahman @ Khoka, Razakar Abdul Wahed Mondol, Razakar Montaz Ali Bepari @ Momtaz and Razakar Asgar Ali Khan [now dead] informed the Pakistani Army Camp about the arrival of the freedom-fighters at

his [P.W.01] home. As soon as the freedom-fighters came to know about the leakage of their staying there to the Pakistani Army they went away therefrom.

165. P.W.01 next stated that on 18.10.1971 at around 08:00 A.M he was at home when he got information that the Razakars he named along with 25/30 Pakistani occupation army were approaching toward their village. With this, he went into hiding inside a nearby bamboo bush. Remaining in hiding there he witnessed the Razakars and Pakistani occupation army bringing his cousin brother Ansar Ali, Abu Bakkar, Tara Mia out from home and they were shot to death there. They [attackers] also shot down his elderly uncle Nosim Uddin Akondo to death in the courtyard. In conjunction with the attack, the attackers including the Razakars also plundered and burnt down their house.

166. P.W. 01 kept stating that the Razakars then went back to north way from their house and after some time he heard the sound of indiscriminate gun firing from that end. Then he came out from the hiding place and found dead bodies of his uncle and cousin brothers lying and they buried those with the help of villagers. P.W.01 also stated that he heard later on that the gang, on their way back had shot down some civilians to death at the

locality north to their house. He [P.W.01] knew the accused persons beforehand as they were from their village.

167. In cross-examination, P.W.01 in reply to defence question stated that none of their family initiated any case over the event he narrated. P.W.01 also stated in reply to specific question put to him that the Razakars he named dragged out the victims from house and then they and Pakistani occupation army gunned them down to death.

168. P.W.01 denied the defence suggestions that the accused persons did not belong to Razakar Bahini; that the accused were not present at the crime site and that what he testified was untrue and tutored.

169. P.W. 02 Md. Nurul Islam Akondo [63] is a resident of crime village-Nandina under police-station- Gaibandha Sadar of District Gaibandha. In 1971 he was a student of class IX. He is a direct witness to the event of attack that resulted in killing his relatives.

170. P.W. 02 stated that on 17.10.1971 at around 10:00 P.M. 25/30 freedom fighters came to their house. At that night Razakars of their village Razakar Abdul Jabbar Mondol, Razakar

Md. Jachhijar Rahman @ Khoka, Razakar Abdul Wahed Mondol, Razakar Md. Montaz Ali Bepari @ Momtaz and Razakar Asgar Ali Khan (now dead) made the freedom-fighters' shelter at their home leaked to the Pakistani Army Camp. His father and uncles being aware of it requested the freedom-fighters to leave their house and consequently the freedom-fighters had left their house.

171. P.W.02 next testified that on the following day, on 18.10.1971 at around 08:00 A.M. they got the information that the Pakistani occupation army and the Razakars were moving toward their house. With this they along with his father and uncle went into hiding at a place nearer to house wherefrom he saw the Razakars he named bringing his [P.W.02] uncle Ansar Ali, Tara Mia, Abu Bakkar at the courtyard, dragging out of room and then the Pakistani occupation army gunned them down to death there. They also shot his elderly grand-father Nasim Uddin Akanda to death who was sitting under a mango tree. Afterwards, the attackers torched their house.

172. P.W.02 testified that afterward the invaders went back to north side of their house, toward Mollah para. Later on he [P.W.02] came to know that the invaders also gunned down Sekander Ali Mollah, Hossain Ali Mollah, Sada Mollah and

Abdul Samad Mollah [in conjunction with the attack]. Finally, P.W.02 stated that he knew the accused Razakars beforehand as they were from their village.

173. In cross-examination, P.W.02 in reply to defence question stated that during that event, he was in the hiding place alone; that between the courtyard and his hiding place there was bamboo bush; that he was 8/10 yards away from the courtyard; that at the time of the event happened not only Pakistani occupation army, the Razakars he named as well were also with them.

174. P.W.02 denied the defence suggestions that that the accused persons did not belong to Razakar; that they were not present at the crime sites; that they were not involved with the event he testified and that what he testified was untrue and tutored.

175. P.W. 03 Md. Abdur Rahim (68) is a resident of village-Nandina under police station- Gaibandha Sadar of District Gaibandha. In 1971 he was a student of class IX. He claims to have witnessed facts related to the event of attack in question.

176. P.W. 03 stated that on 18.10.1971 at about 08:00 A.M he saw a group formed of 25/30 Pakistani occupation army

accompanied by Abdul Jabbar Mondol, Jachhijar Rahman, Abdul Wahed Mondol and Montaz Ali Bepari @ Momtaz approaching towards Baluapara. After some time he heard gun firing from the end of villages-Mollapara, Doulatpur and saw conflagration.

177. P.W.03 also stated that on the same day at about 10:30/11:00 A.M he saw the Razakars he named and Pakistani occupation army moving toward south end of their home. Afterward, he and his nephew Abdus Samad moved to Baluapara and found bullet hit dead bodies of Abu Bakkar Akondo, Tara Akondo, Ansar Ali Akondo and Nosim Uddin Akondo. Then they approached to Mollapara where they found bullet hit dead bodies of Sekandar Ali Mollah, Hossain Ali Mollah, Sada Mollah and Abdul Samad Mollah. Therefrom they returned back home and heard that the aggressors shot down innocent civilians namely Lal Mia Bepari, Abdul Baki, Khalilur Rahman, Dula Miah, Mahesh Chandra Mondol from the nearby village-Doulatpur to death. Then with the help of local people they buried the dead bodies. Finally P.W.03 stated that the accused persons were from their village and that's why he knew them beforehand.

178. On his cross-examination P.W.03 stated in reply to defence question that during the glorious Liberation war he was 18 years old; that there was nobody with him where he went into hiding. P.W. 03 denied defence suggestions that he did not see or hear the event he narrated; that the accused persons were not Razakars; that they were not involved in the event he narrated and that what he testified was untrue or tutored.

179. P.W. 04 Sonabi (75) is a resident of village- Nandina under police station-Gaibandha Sadar of District Gaibandha. She is the wife of victim Sekender Ali. In 1971 she had been staying at her conjugal home. She is a direct witness to the horrific attack she experienced.

180. In narrating the event P.W.04 stated that in the last part of Bangla month Aswin in 1971, in morning at around 08:00/09:00 A.M she had been at her conjugal home. At that time the Pakistani occupation army being accompanied by Razakars Abdul Jabbar Mondol, Jachhijar Rahman @ Khoka, Abdul Wahed Mondol, Montaj Ali and their cohort Razakars came to their house. They dragged out her husband from the room and taking him at open place near their house shot him to death. The attackers gunned down her nephew Samad Mollah, brother-in-

law Sada Molla and uncle-in-law Hossain Ali to death as well [at this point the witness broke down into tears].

181. Finally, P.W. 04 added that accused Razakar Abdul Jabbar Mondol, his sons Razakar Jachhijar Rahman @ Khoka and Razakar Abdul Wahed Mondol and Montaj Ali were their [P.W.04] close neighbours and thus she knew them beforehand.

182. P.W.04 denied the defence suggestions that due to local rivalry with the accused persons she testified untrue narrative implicating the accused persons.

183. P.W. 05 Umme Kulsum [72] is a resident of village-Nandina under police station- Gaibandha Sadar of District Gaibandha. In 1971 she had been staying at her conjugal home at village-Nandina. She claims to have witnessed the event of attack alleged that resulted in killing her near relatives.

184. P.W.05 stated that in the last part of Bangla month Aswin in 1971, in morning at around 08:00/09:00 A.M. she had been at her conjugal home when Pakistani occupation army being accompanied by Razakars Abdul Jabbar Mondol, his sons Razakar Jachhijar Rahman @ Khoka and Razakar Abdul Wahed

Mondol and Montaj Ali and their cohorts came to their house. The invaders then shot down her younger brother-in-law Tara Miah, Abu Bakkar, elder brother-in-law Ansar Ali and uncle-in-law Nosim Uddin to death, on forcible capture. Then the attackers set about 25/30 houses on fire including that of their own and had quitted the site. P.W.05 finally stated that she knew the accused persons she named beforehand as they were their neighbours.

185. On his cross-examination, P.W.05 stated in reply to defence question that in 1971 the house of accused Abdul Jabbar Mondol and that of their own were intervened by 3-4 houses; and that she remained stood at home at distance when the army men and Razakars came to their house. P.W.05 denied the defence suggestion that she testified untrue narrative out of rivalry with the accused persons.

186. P.W. 07 Md. Abdul Latif Akando [63] is a resident of village- Nandina (Baluapara) under police station- Gaibandha Sadar of District Gaibandha. In 1971 he was a student of class- IX. He is a near relative of victims. He claims to have experienced the activities carried out by launching attack at their house.

187. P.W. 07, in narrating the event stated that on 18.10.1971 at around 08:00 A.M. he had been at home when a group of 25/30 Pakistani occupation army accompanied by Razakars Abdul Jabbar Mondol, Razakar Md. Jachhijar Rahman @ Khoka, Razakar Md. Abdul Wahed Mondol, Razakar Md. Montaz Ali Bepari alias Momtaz and Razakar Asgar Ali Khan (now dead) arrived at their home. With this he went into hiding inside a jungle, behind their home wherefrom he saw the Razakars committing looting at their house.

188. P.W.07 next stated that he also saw [remaining inside hiding place] the aggressors detaining his uncle Nosim Uddin, his three cousin brothers Ansar Ali, Tara Mia, Abu Bakkar and beating them and then taking the detainees to the army men the Razakars told them that the detainees used to help the freedom fighters and were followers of the war of liberation. Then the armed army men shot them [detainees] to death there. He [P.W.07], remaining in hiding also saw the invaders setting their house on fire, before they had quitted the site.

189. P.W.07 also stated that after some time he heard the sound of gun firing. Then he came out from hiding place and found the bullet hit dead bodies of his uncle and three cousin brothers lying at courtyard. Finally, P.W. 07 stated that accused Razakars were

his neighbours and he knew them beforehand as their home was nearer to their [P.W.07] house.

190. In cross-examination, defence simply denied the event of attack that resulted in killing four unarmed civilians. But it however could not controvert the commission of the crimes and participation of accused persons therewith. P.W.07 denied the defence suggestions that he did not know the accused persons; that the accused were not Razakars and that they were not involved in the event of killing he testified

191. P.W. 08 Md. Shaheb Uddin [62] is a resident of village-Nandina under police station- Gaibandha Sadar of District Gaibandha. In 1971 he was a student of class- VII. He claims to have witnessed the gang of attackers moving toward the village-Doulatpur and also experienced facts related to the event of barbaric attack arraigned in this charge no.02.

192. P.W. 08 stated that on 18.10.1971 at around 08:00 A.M he was on the bank of the pond of their house. Suddenly he heard the sound of gun firing and then saw 20/25 Pakistani army men accompanied by Razakar Abdul Jabbar Mondol, Razakar Md. Jachhijar Rahman @ Khoka, Razakar Md. Abdul Wahed

Mondol, Razakar Md. Montaz Ali Bepari alias Momtaz and Razakar Asgar Ali Khan (now dead) heading toward village Doulatpur through the front of their house. They then after seeing flames from the end of Baluapara moved to Baluapara where they found bullet hit dead bodies of Tara Akondo, Ansar Akondo, Abu Bakkar Akondo and Nosim Uddin Akondo lying at the house of Nurul Uddin Akanda. Then they on their way back to home saw, remaining in hiding, the Razakars and army men moving towards Tulshighat Razakar camp

193. P.W.08 next stated that they then moved to Mollapara where they found people howling and found bullet hit dead bodies of Sekandar Ali Molla, Hossain Ali Molla, Sada Mia and Samad Molla lying. Finally, P.W. 08 stated that accused Razakars were from their neighbouring locality and he knew them beforehand.

194. In cross-examination, P.W.08 in reply to defence question stated that the distance between his house and that of the accused Jabbar Mondol was almost 100 yards; that when he saw the accused persons coming, standing on the bank of the pond, his elder brother was with him and that he heard from his elder brother, uncle and villagers that the Razakars he named [four

accused indicted in this charge] had killed six [06] non-combatant freedom-fighters.

195. P.W.08 denied the defence suggestions that he did not know the accused persons; they were not involved with the event he testified; they were not Razakars; and that what he testified implicating them was untrue and tutored.

Finding with Reasoning on Evaluation of Evidence

196. Mr. Mukhlesur Rahman Badal the learned conducting prosecutor in advancing argument in support of this charge drew attention to ocular evidence of number witnesses who had natural opportunity of seeing the attack, criminal activities carried out in conjunction with the attack and how the accused persons participated in accomplishing the attack. It has been submitted that the direct witnesses i.e. P.W.01, P.W.02, P.W.03, P.W.04, P.W.05, P.W.07 happen to be close relatives of victims and they experienced the horrific attack that resulted in killing in question.

197. The learned prosecutor also asserted that consistent testimony of those witnesses proves it beyond reasonable doubt that the accused persons deliberately and knowingly

accompanied the gang chiefly formed of Pakistani occupation army in locating the site and people to be annihilated. The accused persons, sharing common intent got engaged with the criminal mission, to further policy and plan. Their culpable and conscious act and conduct formed part of the systematic attack were directed against civilian population. Defence could not controvert the commission of the killing by launching attack on the day and at the relevant time as alleged in the charge framed and also the conscious participation of accused persons therewith, the learned prosecutor added.

198. Mr. Mohammad Abul Hassan the learned state defence counsel questioning the credibility of witnesses submits that it could not be proved that the accused persons were with the gang or allegedly acted in accomplishing the killings; that in context of horrific situation the witnesses who claim to be relatives of victims did not have any space of seeing the commission of the killings arraigned. It has been further submitted that the accused persons have been implicated with the event alleged out of rivalry; that it is not practicable of memorizing what happened more than four decades back and thus narrative made by the witnesses does not carry any evidentiary value.

199. Tribunal notes that arraignment brought in this charge centers around the serious crimes of ‘confinement’; ‘torture’; ‘looting’ ‘arson’ and ‘murder’ of defenceless civilians. All these offences were committed in context of war of liberation in 1971. Prosecution is burdened to establish that on the day alleged and at the relevant time a gang of attackers being accompanied by the four accused persons had attacked the house of four victims and on active and substantial facilitation and contribution of all the accused indicted in this charge four inmates of the house were shot to death and houses were set ablaze. Prosecution also requires proving that on the way back the gang also annihilated four other civilians.

200. What was the backdrop of attack at village-Nandina? Direct witnesses, the near relatives of victim came on dock and described the event in tragic detail. Testimony of P.W.01 a resident of village-Nandina demonstrates that on 17.10.1971 at around 09:00 P.M. 25/30 freedom fighters came to their house and then he was arranging serving of food for them. It could not be refuted.

201. It also depicts from testimony of P.W.01 that the accused Razakar Abdul Jabbar Mondol, Razakar Md. Jachhijar Rahman @ Khoka, accused Abdul Wahed Mondol, accused Montaz Ali

Bepari @ Momtaz and Razakar Asgar Ali Khan [now dead] who were from their [P.W.01] village made the arrival of freedom-fighters there leaked to the Pakistani occupation army. The freedom-fighters quitted the place as soon as they came to know about the leakage of their staying there to the Pakistani Army. The designed attack arraigned was launched on the following day at about 08:00 A.M.

202. The above crucial version of P.W.01 which relates to reason of launching designed attack at the house where the freedom fighters got sheltered, just on the following morning .At the same time it may be unerringly inferred that none but the accused persons, the neighbouring residents despite being Bengali had acted as loyalists of the Pakistani occupation army by making the staying of freedom-fighters leaked. It may be inferred too that the accused persons had conscious close nexus with the locally stationed Pakistani occupation army, as their notorious collaborators.

203. This proved fact leads to the conclusion that the *mens rea* of the accused persons in attacking the house of victims was to annihilate the freedom-fighters and the inmates of the house who provided support to them in getting sheltered there. The evidence and relevant and surrounding circumstances prove it indisputably. Taking it into

account we are forced to deduce it too that none but the accused persons, the residents of the same village enthusiastically made the fact of staying of freedom-fighters leaked to the Pakistani occupation army.

204. Now, let us weigh and evaluate the evidence presented to arrive at decision as to how the event of killing was conducted and how the accused persons participated and contributed in effecting the brutal annihilation.

205. The event of attack happened on the following morning i.e. on 18.10.1971 at around 08:00 A.M. Brutal killing of four civilians by launching attack and accused persons' participation therewith remained undisputed. Four defenceless civilians [Ansar Ali, Abu Bakkar, Tara Mia and Nosim Uddin Akondo] were gunned down to death. P.W.01, a near relative of victims saw the attack remaining in hiding inside a nearer jungle which was quite practicable. Defence does not seem to have attempted to question practicability of seeing the killing as testified by P.W.01.

206. Killing of four civilians, during first phase of attack and accused persons' participation therewith remained undisputed. P.W.01 found dead bodies of his uncle and cousin brothers lying

at the site after the gang went back to north way from their house. This fact remained uncontroverted.

207. Thus, the systematic attack launched at the house of P.W.01, killing four of his relatives stand proved. Presumably, finding none of freedom-fighters who got sheltered at the house of P.W.01 the gang accompanied by the accused persons had carried out aggressive killing of inmates of the house.

208. In cross-examination, P.W.01 in reply to specific question put to him that the Razakars he named dragged out the victims from house and then they and Pakistani occupation army gunned them down to death. That is to say, killing carried out at first phase and participation of accused persons therewith have been affirmed.

209. In respect of the next phase of attack at village-Nandina, as arraigned P.W.01 recounted that some time after the gang had left the site he heard the sound of indiscriminate gun firing from that end. He heard later on that the gang on their way back had shot down some civilians to death at the locality north to their house.

210. P.W.02, another direct witness and near relative of victims of first phase of killing also consistently stated that he [P.W.02] later on came to know that the invaders also gunned down Sekandar Ali Mollah, Hossain Ali Mollah, Sada Mollah and Abdul Samad Mollah [in conjunction with the next phase of attack] to death.

211. The above corroborative version of P.W.01 and P.W.02 relating to second phase of killing remained unimpeached. Both phases of killing as unveiled were linked to each other. Therefore, it is lawfully inferred that the accused persons were active participants to the accomplishment of killing four other civilians namely Sekandar Ali Mollah, Hossain Ali Mollah, Sada Mollah and Abdul Samad Mollah, in conjunction with the next phase of attack as well.

212. P.W. 02 Md. Nurul Islam Akondo too is a relative of victims. He too watched how the gang accompanied by the accused persons and army men attacked their house. His ocular testimony demonstrates that the accused persons dragged out his [P.W.02] uncle Ansar Ali, Tara Mia, Abu Bakkar at the courtyard and then the Pakistani occupation army gunned them down to death there. His elderly grand-father Nasim Uddin Akanda, sitting under a mango tree was also shot to death.

213. P.W.02 recounted the above tragic and violent criminal activities which he watched remaining in hiding at a place nearer to house. It appears that what the P.W.02, a direct witness narrated gains consistent corroboration from evidence of P.W.01, another direct witness.

214. In cross-examination it has been affirmed that P.W.02 was about 8/10 yards away from the courtyard[when the event was being conducted] and that at the time of the event happened not only Pakistani occupation army, the Razakars he named as well were with them.

215. Thus, observing the event of attack that resulted in brutal killing, remaining in hiding as testified by the P.W.02 does not suffer from any impracticability. The accused persons were from their [P.W.02] village and thus naturally he could recognize them participating actively in materializing the killing.

216. P.W.03 saw the four accused accompanying the gang. Reason of knowing the accused persons as testified by P.W.03 has not been disputed. P.W.03 however does not claim to have witnessed the act of killing. But the event of killing civilians could not be controverted and what he watched was obviously related to the perpetration of killing eight civilians.

217. It transpires that before the attack was launched P.W.03, a resident of crime village saw the gang formed of 25/30 Pakistani occupation army accompanied by accused Abdul Jabbar Mondol, Jachhijar Rahman, Abdul Wahed Mondol, Montaz Ali Bepari @ Momtaz approaching towards the crime sites and after some time he heard gun firing from the end of Mollapara, Doulatpur and saw conflagration. Later on, after the gang had quitted the sites P.W.03 found bullet hit dead bodies lying at the sites.

218. Presumably, the accused persons sharing common intent and to further the purpose were with the gang and thereby they substantially facilitated and contributed to the commission of brutal killing of numerous civilians. It stands proved that the mayhem was carried out for couple of hours directing unarmed civilians with the active assistance of four accused, the local Razakars and collaborators. Evidence of P.W.01, P.W.02 and P.W.03 cumulatively suggests this irresistible conclusion.

219. P.W. 04 Sonabi is the wife of victim Sekender Ali. She is a direct witness to the horrific attack she experienced. She too witnessed the gang arriving at their house, being accompanied by accused persons who dragged out her husband from the room and taking him at open place near their house and shot him to death.

220. The above crucial version goes consistently with the evidence of P.W.01 and P.W.02, the two other direct witnesses. The ocular testimony of P.W.03 also demonstrates that the attackers gunned down her nephew Samad Mollah, brother-in-law Sada Molla and uncle-in-law Hossain Ali to death as well. The event of killing thus stands proved.

221. P.W.04 saw the accomplishment of brutal killing of her husband and two other in-laws. It could not be controverted. It happened on active facilitation and contribution of the accused persons, in day time. Accused were their close neighbours. Thus, naturally she could recognize the accused persons participating in carrying out criminal acts. There has been no reason of falsely implicating the accused persons with the brutal killing. In recounting the tragic event of killing dear ones P.W.04 broke down into tears, on dock. This demeanor adds strong assurance as to the truthfulness of the narrative she made in relation to the barbaric event.

222. Besides, in cross-examination accused persons' active participation to the commission of the killing has been affirmed as P.W.04 stated in reply to defence question that the accused Razakars dragged out her husband from home and handed him over to the Pakistani army men who then shot him to death.

223. P.W.05 Umme Kulsum had been at her conjugal home, at the relevant time. She saw the gang formed of army men and Razakars accused persons killing her father-in-law Nasir Uddin and three brothers of her husband namely Tara Mia, Abu Bakar and Ansar Ali. It also depicts from her ocular testimony that after accomplishing the killing the gang burnt down 25/30 huts including their house. Defence simply denied what the P.W.05 testified. But it could not bring anything, by cross-examining the P.W.05 to taint the truthfulness of her version.

224. Besides, in cross-examination of P.W.05 the attack conducted by the accused Razakars and army men seems to have been affirmed as P.W.05 in reply to defence question stated that she had been at their home 'when the Razakars and army men had launched the attack'.

225. How could the P.W.05 recognize the accused persons? The accused persons were her neighbours, P.W.05 testified. It has been affirmed in cross-examination as well. Thus, it was practicable of recognizing the accused persons accompanying the gang. Defence does not deny that the accused persons were Razakars.

226. The event of brutal annihilation of four near relatives was indeed extremely tragic which the P.W.05 had to experience as spectator. It happened within her sight. Such horrific experience caused immense trauma to P.W.05 which cannot be healed in exchange of anything. P.W.05, on the same day later on heard that some more civilians of their locality were killed.

227. P.W.07 Md. Abdul Latif Akando, a relative of victims of the first phase of attack also witnessed the gang formed of army men and the accused Razakars launching attack at their house that resulted in killing his uncle and three cousin brothers and setting their house on fire, on substantial contribution, culpable assistance and explicit instigation of the accused persons. P.W.07 found the bullet hit dead bodies of victims lying in the courtyard, after the gang had moved back toward Doulatpur.

228. Defence could not taint the above ocular version of P.W.07, crucially related to the event of killing, the upshot of the designed attack and accused persons' participation therewith. Accused persons were their nearer neighbours, P.W.07 testified. It could not be refuted. Thus, naturally he could recognize the accused persons accompanying the gang in perpetrating the killing, by their culpable act and conduct which were rather instigation, contribution, aiding and encouraging. We do not find

any reason to keep the evidence of P.W.07 aside from consideration. Core evidence of P.W.07 relating to the killing and accused persons' participation therewith finds consistent corroboration from evidence of other direct witnesses.

229. Testimony of P.W.05 and P.W.07 goes consistently with what has been narrated by P.W.01, P.W.02, and P.W.04 who too had practicable occasion of seeing the attack and criminal acts carried out by the gang accompanied by the accused persons, in conjunction with the attack, as direct witnesses.

230. P.W.08 Md. Shaheb Uddin, a resident of village-Nandina on the day of the event at about 08:00 A.M heard gun firing and then saw a group formed of 20/25 Pakistani occupation army accompanied by accused persons and Razakar Ali Asgar Khan[now dead] moving toward village-Doulatpur.

231. Defence could not bring anything to taint the above version which is a pertinent fact and intimately related to the attack and that the group of attackers formed of army men and accused persons. He knew the accused persons beforehand as they were their neighbours, P.W.08 stated. This fact as has been testified by P.W.08 gains strong corroboration for P.W.03 who too saw the

gang accompanied by the accused persons approaching toward the crime sites.

232. P.W.08 does not claim to have seen the event of killing arraigned. As a resident of the crime village naturally he moved to the sites, after the gang went back, quitting the sites. On visiting the sites later on P.W.08 found dead bodies of Tara Akanda, Ansar Akanda, Abu Bakar Akanda and Nasim Uddin lying at the house of Nurul Uddin Akanda [victims of the first phase of attack]. P.W.08 also saw bullet hit dead bodies of four other civilians [victims of second phase of attack] at Nandina.

233. In absence of anything contrary, moving the gang toward the crime site at the relevant time, as testified by P.W.03 and P.W.08 indisputably indicates that the killing of numerous civilians was perpetrated not by any other group of attackers but by the gang formed of Pakistani occupation army accompanied by the accused persons. Besides, what the P.W.03 and P.W.08 stated gains strong corroboration from the evidence of other direct witnesses who saw the accused persons actively participating to the commission of the first phase of killing.

234. We are in no doubt that the witnesses, the near relatives of victims sustained grave mental harm and trauma by witnessing

acts filled of brutality committed against their dear ones. Burning down numerous houses, in conjunction with the attack as found proved obviously added harm to survived civilians and indeed involved serious despondency to the protected civilians. Malicious intent behind such destructive activities was to spread terror amongst the pro-liberation civilians.

235. Destruction of numerous houses by setting those on fire was indeed utter great contempt for the people and their normal livelihood. Therefore, devastating activities by arson causing serious detriment to the 'normal livelihood' of civilians including relatives of victims, in conjunction with the attack constituted the offence of '**other inhumane act**' as crime against humanity.

236. How the accused persons acted in course of first phase of attack? We have got it proved from the ocular evidence of P.W.01, P.W.02, P.W.04, P.W.05 and P.W.07, the near relatives of victims of first phase of killing that all the four accused Md. Abdul Jabbar Mondol, Md. Jachhijar Rahman alias Khoka, Md. Abdul Wahed Mondol and Md. Montaz Ali Bepari @ Momtaj, being part of collective criminality actively participated by providing substantial contribution, instigation and provocative act in committing killings unarmed civilians, destructive activities, sharing intent of the enterprise.

237. Tribunal notes that an act of abetment as appears in the Act of 1973 is punishable. And the act of abetment encompasses ‘approval’, ‘encouragement’, ‘assistance’ or ‘support’ that contributes substantially to the accomplishment of the actual crime. ‘Aiding’ involves the act of assistance and ‘abetting’ needs providing encouragement and moral support to the commission of crimes, the outcome of the attack. In the case in hand, the accused persons not only abetted but substantially aided to the perpetration of the killings, by their act and conduct, as co-perpetrators.

238. It is now well settled that an accused when he is found to have had contribution to the commission of crimes in execution of a common criminal purpose is subject to criminal liability as a form of ‘commission’ of a crime.

239. Criminal responsibility for any crime enumerated in section 3(2) of the Act of 1973 is incurred not only by individuals who physically committed the crime alleged, but also by individuals who participated in and substantially contributed to the commission of a crime in question in other ways, ranging from its initial planning to its execution.

240. Already we have inferred that all the four accused persons were active part of the agreed criminal mission. That is to say, they were aware about the designed plan. In the case in hand, the accused persons instigated, committed, aided and abetted to the commission of criminal acts and each of these modes of participation independently gave rise to their criminal responsibility.

241. Thus, viewing on facts and circumstances unveiled we are of the view that all the four accused persons participated, as co-perpetrators, being part of the joint criminal enterprise in committing the killings of civilians, pursuant to common design and plan, sharing common criminal intent and knowing probable consequence.

242. We reiterate that the expression ‘common purpose’, ‘awareness of foreseeable consequence’ of act or conduct and ‘intent’ are the key factors involved with the notion of JCE liability. It is now well resolved that the liability mode contained in section 4(1) of the Act of 1973 refers to ‘common plan of collective criminality’ which corresponds to JCE [Basic Form].

243. According to the settled jurisprudence a person is said to have participated in a joint criminal enterprise by personally

committing the agreed crime, or by assisting the principal offender in committing the agreed crime as a co-perpetrator, by facilitating the commission of the crime by the actual offender. Thus, if the agreed crime is committed by one or other of the participants in a joint criminal enterprise, all the members in that enterprise are equally guilty of the crime committed regardless of the part played by each in its commission, or accomplishment.

244. Crimes arraigned in this charge did not result from the criminal propensity of single individual[s] forming part of the group but constituted manifestations of collective criminality. It stands proved that the crimes in question, the upshot of the attack were carried out by a group which acted in pursuance of a common criminal design. Tribunal notes that agreement or understanding for the common plan in conducting an attack is to be inferred from facts emerged in evidence. It need not be tangible. This view finds support from the observation made by the ICTY which is as below:

“The existence of an agreement or understanding for the common plan, design or purpose need not be express, but may be inferred from all the circumstances.”

[Tadic Appeal Judgement, para. 227; see also Krnojelac Trial Judgement, para. 80]

245. In the case in hand, explicit provocative and contributory acts and conduct of accused (1) Md. Abdul Jabbar Mondol, (2) Md. Jachhijar Rahman @ Khoka, (3) Md. Abdul Wahed Mondol and (4) Md. Montaz Ali Bepari @ Momtaj , as already found proved had a tangible causal link with the event of killing accomplished. Facts and circumstances unveiled in trial lead to an irresistible inference that the accused persons agreeing with the common plan and purpose of the gang had acted as co-perpetrators in accomplishing the crimes in question.

246. It has been found proved that the accused persons were present at the crime site with the gang not as mere spectator. Their culpable act substantially contributed to the commission of gunning down the civilians to death. Such supportive and encouraging acts together with instigating utterance of the accused persons were significantly contributory to the actual commission of the annihilation of numerous civilians.

247. It stands proved that on explicit instigation and signal of the accused persons four detainees were gunned down to death by the principals, the army men, in conjunction with the first phase of attack. Such provocative act of the accused persons was indeed specifically directed to assist and encourage and to lend support to the perpetration of annihilation of the victims.

248. Devastating activities by burning down houses were carried out too, in conjunction with the attack. In the case in hand, facts and pattern of attack lead to the conclusion that pursuant to designed plan the accused persons voluntarily participated in all aspects of the attack, as active and loyal activists of the Pakistani occupation army, sharing common intent.

249. It is now jurisprudentially agreed that when criminal purpose is carried out by a group pursuant to common design there exists no distinction between the ‘finger man’ and the ‘trigger man’. This view finds support from the observation made by the **ICTY Appeal Chamber**, in the case of *Tadic*, that

–

“Although only some members of the group may physically perpetrate the criminal act (murder, extermination, wanton destruction of cities, towns or villages, etc.), the participation and contribution of the other members of the group is often vital in facilitating the commission of the offence in question. It follows that the moral gravity of such participation is often no less – or indeed no different – from that of those actually carrying out the acts in question.”

[ICTY Appeal Chamber, Tadic Case No.: IT-94-1-A, Judgment 15.7.1999, para 191]

250. The revenge and abhorrence arising out of failure to capture and liquidate the counterpart, the freedom-fighters who got sheltered at village-Nandina, pursuant to designed plan prompted the accused persons and the army men to conduct the attack directing the civilian population of village-Nandina that resulted in large number of killings, destructive activities, we are forced to deduce it, in view of facts divulged from the evidence tendered. Thus, this ‘context’ itself prompts us to conclude that the criminal acts carried out by the accused persons indisputably formed part of ‘systematic’ attack directed against the unarmed Bengali civilian population.

251. In the case in our hand, we are of the view that the accused persons had acted having ‘awareness’ coupled with their conscious decision to accompany the gang to the crime site. Antagonistic stance against the war of liberation, the freedom-fighters and pro-liberation civilians prompted the accused persons belonging to Razakar Bahini in designing the attack targeting the freedom-fighters who got stayed at the house attacked on the preceding night, we conclude.

252. It has been argued by the learned state defence counsel that it is not practicable of memorizing what happened more than four decades back and thus narrative made by the witnesses does not carry any evidentiary value.

253. We are not agreed with the above defence submission. In dealing with the arraignments relating to atrocious events occurred in 1971 during the war of liberation we are to keep it in mind that the event happened in startling context and narration made by the witnesses in court chiefly on core aspect of the event they experienced may remain still alive in their memory. Research on human cognition suggests that a piece of information or act causing immense trauma, once it is stored in long-term memory, stays alive. Trauma stored in their episodic memory has reliably portrayed the event.

254. On totality of evidence tendered it is found proved that the attack was designed and planned one to which the accused persons were conscious part, in exercise of their nexus with Pakistani occupation army and locally formed Razakar Bahini. Admittedly, accused Md. Abdul Jabbar Mondol is the father of two accused Md. Jachhijar Rahman @ Khoka and Md. Abdul Wahed Mondol. Presumably, they had carried out atrocious

activities in a concerted way forming a criminal syndicate of their own, being part of the gang.

255. The accused persons are found to have had active participation in effecting the killing of eight civilians, in two phases, in conjunction with the attack conducted at village-Nandina. Brutality shown in materializing the object of the mission is indeed a fragmented portrayal of horrendous atrocities carried out in 1971 during the war of liberation directing civilian population.

256. Both phases of killing happened at village-Nandina. Abdus Samad Mollah, Sada Miah, Faras Uddin and Sekender Ali Mollah of village-Nandina, although killing sites were different. But both the phases of attack were conducted by the same gang accompanied by the four accused persons. Seeing the gang moving toward the next site together with the fact of finding bullet hit dead bodies of four civilians impels unerringly that none but the same gang with the active assistance and collaboration of the accused persons had carried out this phase of killing as well.

257. In view of the factual matrix emerged in evidence there is no escape from the conclusion that common design of all the

accused persons was to cause death of a number of targeted civilians and thus none of the group including the accused persons can evade the responsibility of the act of killing.

258. It has been proved that intending to implement collective and designed criminal plan all the members of the group of attackers including the accused persons had acted in different manner and presumably each of them provided different contributions which substantially impacted in achieving the ending goal, the killing of civilians, on forcible capture.

259. Killing of eight civilians was thus the outcome of 'collective criminality' and the accused persons being the members of the joint endeavor thus incurred equal liability as co-perpetrators. In this regard, we may recall the observation of the **ICTY Trial Chamber**, in the case of *Tadic* that-

“In sum, the accused will be found criminally culpable for any conduct where it is determined that he knowingly participated in the commission of an offence that violates international humanitarian law and his participation directly and substantially affected the commission of that offence through supporting the actual commission before, during, or after the

incident. He will also be responsible for all that naturally results from the commission of the act in question”

[Prosecutor v. Tadic, ICTY Trial Chamber, Case No. IT- 94-1-T, Judgment 7 May, 1997, paragraph 692]

260. Conscious participation of accused persons as loyalists of Pakistani occupation army in conducting aggressive criminal acts gave rise to their explicit liability. The deliberate culpable acts of accused persons, agreeing with the object of the designed attack on the unarmed civilians was indeed a grave violation of the principles of international humanitarian law arising from the Geneva Conventions.

261. Pattern and magnitude of attack and mode of participation of the accused persons in perpetrating the crimes in question together tells explicitly what extent of antagonism the accused (1) Md. Abdul Jabbar Mondol, (2) Md. Jachhijar Rahman @ Khoka, (3) Md. Abdul Wahed Mondol and (4) Md. Montaz Ali Bepari @ Momtaj used to carry in their mind, to further policy and plan of resisting the war of liberation and the pro-liberation civilians.

262. On cumulative and rational evaluation of evidence and circumstances revealed and pursuant to reasoned finding made herein above we arrive at decision that prosecution has been able to prove it beyond reasonable doubt that the accused (1) Md. Abdul Jabbar Mondol, (2) Md. Jachhijar Rahman @ Khoka, (3) Md. Abdul Wahed Mondol and (4) Md. Montaz Ali Bepari @ Momtaj, by their act and conduct forming part of systematic attack pursuant to common design and plan in materializing the criminal mission participated, aided, abetted and substantially contributed to the actual commission of the **‘confinement’**, **‘other inhumane act’** and **‘murder’** as crimes against humanity enumerated in section 3(2)(a)(g)(h) of the Act of 1973 and thus all the four accused persons incurred criminal liability under section 4(1) of the Act of 1973.

**Adjudication of Charge No. 03: [04 accused indicted]
[Offences of ‘Abduction’; ‘Confinement’; ‘Torture’ and
‘Murder’]**

263. Charge: That on 18 October 1971 at about 10.00 A.M. with a group formed of 8/10 Razakars and 25/30 Pakistani occupation army being accompanied by accused (1) Md. Abdul Jabbar Mondol (absconded), (2) Md. Jachhijar Rahman alias Khoka (absconded), (3) Md. Abdul Wahed Mondol (absconded) and (4) Md. Montaz Ali Bepari alias Momtaj (absconded) by launching attack at village-Doulatpur under Sahapara Union, Police station-

Gaibandha Sadar of District[now]-Gaibandha forcibly captured Lal Miah Bepari, Abdul Baki, Khalilur Rahman, Dula Miah, Mahesh Chandra Mondol and then killed them at the crime site.

Therefore, accused (1) Md. Abdul Jabbar Mondol (absconded), (2) Md. Jachhijar Rahman alias Khoka (absconded), (3) Md. Abdul Wahed Mondol (absconded) and (4) Md. Montaz Ali Bepari alias Momtaj (absconded) have been charged for actively participating, abetting, facilitating, contributing and also for complicity in the commission of offence of **‘confinement’**; and **‘murder’** as crimes against humanity as enumerated in section 3(2)(a)(g)(h) read with section 4(1) of the International Crimes (Tribunals) Act, 1973 which are punishable under section 20(2) of the Act.

Evidence of Witnesses Examined

264. This charge involves the commission of killing five civilians of village-Doulatpur by launching attack on 18 October 1971 at about 10.00 A.M. This charge rests upon testimony of seven witnesses i.e. P.W.02, P.W.03, P.W.04, P.W.05, P.W.06, P.W.07 and P.W.08. All of them are hearsay witnesses, excepting P.W.06. Many of them are the near relatives of victims of the event of brutal killings arraigned in charge no.02.

265. The event arraigned in charge no.02 happened on the same day and just two hours prior to the event arraigned in this charge no.03, happened at village- Doulatpur. Actually it appears that the event of attack arraigned in this charge was rather recurrence of attack arraigned in charge no.02, carried out at village-Nandina. Now, let us see what the P.W.s have testified in relation to the arraignment brought in this charge no.03 which was continuation of the preceding event of attack.

266. P.W. 02 Md. Nurul Islam Akondo [63] is a resident of village- Nandina under police station- Gaibandha Sadar of District Gaibandha. He chiefly testified the event arraigned in charge no.02, as a direct witness. He however also testified what he heard about the killing defenceless civilians that happened on the same day at village-Doulatpur [as arraigned in this charge no.03].

267. P.W.02 stated that later on [on the same day after the event of attack arraigned in charge o. 02] he came to know that the aggressors he named [Razakars Md. Abdul Jabbar Mondol, Md. Jachhijar Rahman alias Khoka , Md. Abdul Wahed Mondol and Md. Montaz Ali Bepari alias Momtaj] and Pakistani army men shot down non-combatant civilians namely Lal Mia Bepari, Abdul Baki, Khalilur Rahman, Dula Miah, Mahesh Chandra

Mondol of village-Doulatpur to death. P.W.02 testified that he knew the accused persons beforehand as they were from their neighbouring locality.

268. In cross-examination, P.W.02 denied the defence suggestions put to him that the accused were not Razakars; that they were not concerned with the event he testified and that what he testified implicating the accused persons was untrue and tutored.

269. P.W. 03 Md. Abdur Rahim [68] is a resident of village-Nandina under police station-Gaibandha Sadar of District Gaibandha. He chiefly testified the event arraigned in charge no.02, as a direct witness. He however also testified what he heard about the killing of defenceless civilians that happened on the same day at village-Doulatpur [as arraigned in this charge no.03].

270. P.W.03 stated that later on [on the same day after the event of attack arraigned in charge no.02] on returning back home he came to **know** that non-combatant civilians namely Lal Mia Bepari, Abdul Baki, Khalilur Rahman, Dula Miah, Mahesh Chandra Mondol of village Doulatpur were shot to death and their dead bodies were buried by the locals.

271. In cross-examination, P.W.03 denied the defence suggestions put to him that he did not hear the event he testified; that the accused persons were not Razakars and they were not associated with the event of killing he heard and that what he testified implicating the accused was untrue and tutored.

272. P.W. 04 Sonabi [75] is a resident of village- Nandina under police station- Gaibandha Sadar of District Gaibandha. In 1971 she had been staying at her conjugal home. She is a direct witness to the event of killing her husband and near relative as arraigned in charge no.02. In addition to it she testified what she heard about the event of killing happened on the same day, as arraigned in this charge no.03.

273. P.W. 04 in narrating what she heard about the event arraigned in this charge no.03 stated that later on[on the same day after the event accomplished at village-Nandina] four civilians of village-Doulatpur were killed and 30/40 houses were set ablaze. In cross-examination defence simply denied it. Hearing the event of killing four civilians of village-Doulatpur could not be controverted in any manner.

274. P.W. 05 Umme Kulsum [72] is a resident of village- Nandina under police station- Gaibandha Sadar of District

Gaibandha. She chiefly testified what she experienced when the gang accompanied by the accused persons perpetrated the killing of her near relatives, as arraigned in charge no.02. She however also testified what she learnt about the event arraigned in this charge no.03.

275. P.W.05 stated that later on, on the same day [after the event happened at their house] she heard that Sada Molla, Samad, Sekender Ali and Hossain Ali of Molla Para were killed and on that day in all 14 civilians of villages-Nandina, Molla Para and Doulatpur were annihilated. In cross-examination, defence simply denied this hearsay version so far as it relates to the event arraigned in charge no no.03.

276. P.W. 06 Somela Khatun [83] is a resident of village-Doulatpur under police station- Gaibandha Sadar of District Gaibandha. In 1971 she had been staying at her in-laws house. She is the wife of one of victims. She is a direct witness to the act of killing her husband and atrocious acts related to the attack arraigned.

277. In narrating the event P.W.06 stated that in the last part of Bangla month Aswin in 1971, in morning at around 08:00/09:00 A.M. she was at home with her husband, fish seller Mahesh and

others. At that time a group formed of Pakistani occupation army, accompanied by Razakars Jabbar Mondol, Jachhijar Rahman Khoka, Wahed Mondol, Montaj Ali Bepari came to their house and handed over her husband Lal Mia to Pakistani occupation army on forcible capture when they taking him to an open space beside the home gunned him down to death.

278. She [P.W.06] witnessed it staying at home taking her 11 days old kid on her lap. The invaders then burnt down 12/14 houses and moved back towards village-Nandina. She later on, on the same day heard that 14 civilians of villages-Doulatpur, Nandina and Molla para were annihilated and numerous houses were set ablaze. Finally, P.W. 06 stated that accused Razakars she named were their neighbours and thus she knew them beforehand.

279. In cross-examination, P.W.06 stated in reply to defence question put to her that their house and the house of accused Jabbar Mondol were intervened by 5-7 houses and that she did not initiate any accusation over the event of her husband's killing. P.W.06 denied the defence suggestions that she did not know the accused persons and that she testified falsely implicating the accused persons with the alleged event she testified.

280. P.W. 07 Md. Abdul Latif Akondo [63] is a resident of village- Nandina (Balupara) under police station- Gaibandha Sadar of District Gaibandha. In addition to testify the event arraigned in charge no.02, as a direct witness he testified what he learnt later on, on the same day about the event of attack arraigned in this charge no.03.

281. P.W.07 stated that after the gang of attackers had left the site at about 10:00/10:30 A.M [after conducting its mission as arraigned in charge no.02] he along with some villagers moved to village-Doulatpur and on the way at Molla Para they found people crying and saw 04 dead bodies lying there. Then on arriving at village-Doulatpur at the house of Lal Miah he spotted the dead bodies of Lal Miah and Mahesh Chandra. Later, he also saw bullet hit dead bodies of Dula Mia, Khalilur Rahman and Abdul Baki lying at their own house. In cross-examination, defence simply denied the hearsay version made by the P.W.07.

282. P.W. 08 Md. Shaheb Uddin [62] is a resident of village- Nandina under police station- Gaibandha Sadar of District Gaibandha. His testimony chiefly relates to facts he witnessed in respect of the event of attack arraigned in charge no.02. Additionally, he testified what he learnt about the next attack carried out by the same gang as arraigned in this charge no.03.

283. P.W.08 stated that after the gang moved back toward Tulshi para Razakar camp he went to Molla para where he found the people howling and also found bullet hit dead bodies of Sekender Ali Molla, Hossain Ali Molla, Sada Mia and Samad Molla lying there. Next he moved to Doulatpur where he spotted dead body of Dual Mia at his house, dead bodies of Lal Mia and Mahesh Chandra Mondol at the house of Lal Mia. He also found bullet hit dead bodies of Baki Mia, Khalilur Rahman lying at their house. In cross-examination, defence simply denied what has been testified by the P.W.08.

Finding on Evaluation of Evidence Presented

284. **Mr. Mokhlesur Rahman Badal** the learned prosecutor in advancing summing up in respect of this charge submits that the same gang accompanied by the four accused persons after carrying out attack at village-Nandina, as arraigned in charge no.02 moved to village-Doulatpur where by launching systematic attack had killed five unarmed civilians. Horrific situation created around the localities, in course of earlier attack at village-Nandina naturally did not leave space to the people of seeing all the aspects of the recurrent attack launched at village-Doulatpur. But the witnesses relied upon in support of this charge found bullet hit dead bodies of five victims, after the gang had quitted the sites. This fact together with hearsay evidence in relation to

the attack proves the commission of killings and participation of accused persons therewith.

285. The learned prosecutor further submits that hearsay evidence can be acted upon if it gets corroboration from other evidence. P.W.06 is the wife of one victim who had occasion of watching the attack and killing her husband Lal Mia. In absence of anything contrary, it is proved that no other group but the group formed of Pakistani occupation army and the four accused persons, engaged in carrying out attack at village-Nandina had carried out the next attack, to further its designed criminal mission. Defence could not refute what has been divulged from evidence of witnesses.

286. On contrary, **Mr. Mohammad Abul Hassan** the learned state defence counsel submits that hearsay evidence of witnesses relied upon does not connect the accused persons with the event arraigned; that none of hearsay witnesses testified implicating the accused persons; that testimony of alleged direct witness P.W.06 remained uncorroborated and her testimony does not speak of the total attack allegedly launched at village-Doulatpur. Non initiation of any case over the event of killing creates doubt as to complicity of the accused persons with the event alleged and that the P.W.06 had no reason of recognizing the accused persons and

thus her testimony carries no value and credence, the learned state defence counsel added.

287. The event of attack which resulted in killing civilians of villages-Molla para and Doulatpur indisputably was recurrence of the attack arraigned in charge no.02. Already it has been found proved that the four accused persons accompanied the Pakistani occupation army in carrying out attack at village-Nandina that resulted in killing numerous unarmed civilians. The event arraigned in this charge no.03 happened just after the gang had completed its mission at village-Nandina, on the same day. Thus, presumably the same gang accompanied by the accused persons had deliberately carried out the diabolical killing of defenceless civilians, as arraigned in this charge no.03.

288. Tribunal notes that all the witnesses excepting P.W.06 heard the event of killing a number of numerous civilians at villages-Molla Para and Doulatpur. The event of killing as it transpires was conducted on the same day i.e. on 18th October 1971 after the criminal mission ended at village-Nandina, as arraigned in charge no.02.

289. Tribunal notes that even anonymous hearsay evidence is not inadmissible per se, if it is found to carry probative value. The event of killing a number of civilians of Molla para and Doulatpur remained unimpeached. Defence simply denied it. It however could not controvert the event of killing accomplished.

290. First, let us apprise what the P.W.06 Somela Khatun a vital witness testified in relation to this charge. She is the sole direct witness to the attack arraigned in this charge. She is the wife of one victim Lal Mia. Her ocular testimony demonstrates that she watched how the aggressors annihilated her husband. It is evinced that she had been at her conjugal home when a group formed of Pakistani occupation army, Razakars accompanied by Razakars and collaborators Jabbar Mondol, Jachhijar Rahman Khoka, Wahed Mondol and Montaj Ali Bepari attacked their house.

291. What happened next? Evidence of P.W.06 depicts that she saw the Razakars [accused persons] handing over her husband Lal Mia to Pakistani occupation army, on forcible capture when they taking him to an open space beside the home gunned him down to death. She [P.W.06] later on, on the same day heard that many other civilians of villages-Doulatpur, Nandina and Molla para were annihilated and numerous houses were set ablaze. All

these facts crucially related to the event of attack remained unimpeached. Defence simply denied presence of accused persons with the gang and their alleged participation with the commission of crimes.

292. The accused persons were from their [P.W.06] neighbouring locality and thus she knew them beforehand. It is found to have been affirmed in cross-examination as P.W.06 stated in reply to defence question put to her during cross-examination that their house and the house of accused Jabbar Mondol were intervened by 5-7 houses.

293. It appears that P.W.02 came to know that the aggressors Razakars Md. Abdul Jabbar Mondol, Md. Jachhijar Rahman alias Khoka , Md. Abdul Wahed Mondol and Md. Montaz Ali Bepari alias Momtaj and Pakistani army men shot down non combatant civilians namely Lal Mia Bepari, Abdul Baki, Khalilur Rahman, Dula Miah, Mahesh Chandra Mondol of village Doulatpur to death.

294. Hearsay evidence of P.W.03, P.W.04 and P.W.05 also demonstrates that Lal Mia Bepari, Abdul Baki, Khalilur Rahman, Dula Miah, and Mahesh Chandra Mondol of village- Doulatpur were killed in course of the attack. Their hearsay testimony

seems to be natural. They have made no amount of exaggeration. All these witnesses were residents of village-Nandina. They heard the event on the day they experienced the attack at their village [as arraigned in charge no.02]. Their hearsay testimony gains strong corroboration from the ocular testimony of P.W.06, the sole direct witness to part of the attack. Thus, the hearsay evidence of the above witnesses cannot be kept aside from consideration.

295. It transpires too from corroborative evidence of P.W.07 and P.W.08 that they moved to village- Doulatpur, after the gang had left the sites and they spotted the dead bodies of Lal Miah and Mahesh Chandra at the house of Lal Miah and they also saw bullet hit dead bodies of other victims namely Dula Mia, Khalilur Rahman and Abdul Baki lying at their own house. This post attack fact of finding bullet hit dead bodies lying at the sites indisputably proves that the killing of civilians happened pursuant to attack.

296. Now, the question comes forward who or which gang committed the event of killings? P.W.07 and P.W.08 did not see the event of killing the civilians as arraigned in this charge. But what they testified seems to be closely linked to the event of attack that ended in annihilation of a number of defenceless

civilians. Additionally, P.W.06 a direct witness watched the killing of her husband Lal Mia accomplished on active participation of the four accused.

297. We got it proved that on active assistance of the accused persons victim Lal Mia was forcibly captured from his house and was handed over to the Pakistani occupation army. In this way the accused persons, knowing consequence substantially contributed, aided and encouraged the commission of the killing. We may safely presume that the accused persons had acted in similar way even in annihilating the other civilians, being part of the enterprise.

298. The event of attack which resulted in killing civilians as arraigned in this charge indisputably was recurrence of the attack arraigned in charge no.02. Already it has been found proved that the four accused persons accompanied the Pakistani occupation army in carrying out attack at village-Nandina that resulted in killing numerous unarmed civilians.

299. The event arraigned in this charge no. 03 happened just after the gang had completed its mission at village-Nandina, on the same day. Thus, in absence of anything contrary we are inclined to conclude, taking the facts divulged into account that

the same gang accompanied by the four accused persons had deliberately carried out the diabolical killing of defenceless civilians.

300. Already it has been proved that the four accused persons, being part of the criminal enterprise participated and committed the killing as arraigned in charge no.02. Six witnesses relied upon narrated the preceding event of attack conducted at village-Nandina, as direct witnesses and they testified too what they heard about the attack at Doulatpur, as arraigned in this charge no.03.

301. It stands proved, on rational appraisal of evidence presented that five unarmed civilians were annihilated at village Doulatpur, in continuation of the attack arraigned in charge no.02 and that the four accused persons participated in carrying out this phase of attack at village Doulatpur, with same intention.

302. We have got it proved that the preceding attack at village-Nandina was aimed to capture and annihilate the freedom fighters who got sheltered there. But the gang did not find them there and then aggressively conducted killing of civilians. Presumably, next the same gang opted to carry out attack at village-Doulatpur for hunting the freedom-fighters and

eventually being imbued by extreme aggression it being actively assisted by the accused persons deliberately carried out killing five civilians, we conclude irresistibly.

303. Since the event of accomplishing killing at village-Doulatpur was indisputably chained and recurrent to the preceding event occurred at village-Nandina, we are forced to conclude that the same criminal enterprise formed of Pakistani occupation army accompanied by four accused had carried out this attack and the accused persons substantially contributed and participated in perpetrating the killings which were recurrence of the preceding event of attack.

304. Tribunal further notes that without effective assistance of local collaborators it would not be possible for the Pakistani occupation army to locate the locality and select the target of killing. All these circumstances cumulatively lead to conclude that the four accused, the infamous loyalists of the Pakistani occupation army stationed in Gaibandha who participated in committing the killing by launching attack at Nandina [as arraigned in charge no.02], being part of the enterprise formed of Pakistani occupation army were also engaged in effecting the killings at Doulatpur, by launching recurrent systematic attack, as arraigned in this charge no.03.

305. It has been argued on part of the defence that prosecution could not bring evidence as to the event of alleged killing of all the victims and participation and complicity of the accused persons therewith.

306. We are not agreed with the above argument. Horrific situation existing in context of recurrent systematic attack the people of the locality assailed naturally had no opportunity of seeing all the aspects of the attack. In the case in hand, ocular testimony of P.W.06 the wife of one victim Lal Mia together with hearsay evidence of other witnesses collectively proves the event of killing numerous civilians. Prosecution is not required to prove the manner of materializing killing of each victim by adducing direct evidence. It is to be concluded based on facts and circumstances divulged.

307. It has been revealed patently that just after ending the criminal mission at village-Nandina [as arraigned in charge no.02] the group had left the site and afterward the P.W.08 discovered dead bodies of numerous civilians at Molla para and Doulatpur, few hours later and on the same day. It gets corroboration from evidence of P.W.07 who too found bullet hit dead bodies of victims lying at the crime scenes. It thus proves, in absence of anything contrary that the same gang accompanied

by the four accused persons had carried out the recurrent mayhem which resulted in brutal annihilation of civilians at Molla Para and Doulatpur as well.

308. The learned state defence counsel submits that admittedly no accusation was initiated over the alleged event, after it happened and thus now testimony on the event alleged suffers from doubt.

309. We are not with the above submission. Mere non prosecution instantly after the event happened or delay in prosecuting the crimes does not ipso facto makes it doubtful. In this regard Tribunal reiterates that criminal prosecutions are always open and not barred by time limitation. Mere delayed prosecution by itself does not taint the evidence tendered.

310. Besides, neither the Genocide Convention of 1948, nor the Geneva Conventions of 1949 contain any provisions on statutory limitations to war crimes and crimes against humanity. Additionally, the offence of crimes against humanity never gets old and that the perpetrators will face justice. We should not forget it that the victims who deserve that their tormenters are held accountable. The passage of time does not diminish the guilt.

311. The offence of killing unarmed civilians was the upshot of a designed ‘systematic attack’ launched directing non-combatant civilians, in violation of international humanitarian law and the laws of war. The victims were protected civilians and not the counter part of the organised gang of attackers. It is immaterial to show that a large number of civilians were killed, to constitute the offence of crimes against humanity.

312. It is now well settled that even killing a limited number of civilians constitutes the offence of crimes against humanity, if it happens pursuant to systematic attack directing unarmed civilians. In this regard we recall the observation of ICTR Appeal Chamber made in the case of **Nahimana, Barayagwiza and Ngeze** which is as below:

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

[Nahimana, Barayagwiza and Ngeze, ICTR Appeals Chamber, Judgment November 28, 2007, para. 924]

313. Tribunal retells that liability concerning the offences enumerated in section 3(2) of the Act of 1973 under the doctrine of JCE [Basic Form] need not involve the physical commission of crimes by all the members of the JCE. Thus, it is immaterial to show with specificity as to how the accused persons being the members of the enterprise had acted, to further the agreed object of the criminal mission. Legal proposition evolved in this regard in the **ICTY** may be cited here as relevant which is as below:

“If the agreed crime is committed by one or other of the participants in a joint criminal enterprise such as has already been discussed, all the participants in that enterprise are equally guilty of the crime regardless of the part played by each in its commission.”

[Vasiljevic, ICTY Trial Chamber, Judgment: November 29, 2002, para 67]

314. In view of facts unfolded in evidence presented we assume justifiably that the accused (1) Md. Abdul Jabbar Mondol , (2) Md. Jachhijar Rahman @ Khoka , (3) Md. Abdul Wahed Mondol and (4) Md. Montaz Ali Bepari @ Momtaj, the notorious loyalists of Pakistani occupation army did not keep them distanced even in conducting atrocities at village-Doulatpur. They continued staying with the gang intending to assist and facilitate the goal of the criminal mission and they did it in

agreement of a designed plan pursuant to which the preceding attack was conducted at village-Nandina [as arraigned in charge no.02].

315. Besides, the explicit aggressive act of accused persons forming part of attack substantially contributed to the killing of one victim Lal Mia. It stands proved from ocular testimony of P.W.06, the ill-fated wife of the victim. It may be reasonably inferred too from this fact that the accused persons actively assisted, aided, abetted and encouraged the principals forming the gang in perpetrating the killing of other victims, confining them unlawfully as well, by launching attack at Doulatpur under Sahapara Union, Police station- Gaibandha Sadar of District[now]-Gaibandha.

316. From the facts and circumstances unveiled it has been found well proved that the accused persons had conscious 'concern' and 'participation' to the commission of the deliberate killing of civilians at village-Doulatpur, as co-perpetrators. Therefore, they incurred liability under section 4(1) of the Act of 1973 which refers to the doctrine of JCE [Form-I].

317. In the end, we find evidential basis to conclude that the accused persons and Pakistani occupation army men forming a

criminal syndicate had deliberately acted together to further a common criminal purpose and thus the killing of five civilians at village-Doulatpur entails the criminal liability of all the members of the group to which the accused persons were active and conscious part. Therefore, the accused persons are equally guilty, as co-perpetrators under the propounded doctrine of JCE [Form-I].

318. On cumulative evaluation of evidence presented before us, we conclude that it has been proved beyond reasonable doubt that the accused (1) Md. Abdul Jabbar Mondol , (2) Md. Jachhijar Rahman @ Khoka , (3) Md. Abdul Wahed Mondol and (4) Md. Montaz Ali Bepari @ Momtaj by their act and conduct forming part of systematic attack participated, abetted and substantially contributed to the accomplishment of killing 05 civilians , on unlawful capture constituting the offences of **‘confinement’** and **‘murder’** as crimes against humanity as enumerated in section 3(2)(a)(g)(h) of the Act of 1973 which is punishable under section 20(2) read with section 3(1) of the Act and thus the accused persons incurred liability under section 4(1) of the Act for the above offences.

**Adjudication of Charge No. 04: [05 accused indicted]
[Offences of ‘Abduction’; ‘Confinement’; ‘Torture’ and
‘murder’ of seven non-combatant freedom-fighters]**

319. Charge: That on 18 October 1971, at about 12.00 Noon to 5.00 P.M. the accused (1) Md. Abdul Jabbar Mondol

(absconded), (2) Md. Jachhijar Rahman alias Khoka (absconded), (3) Md. Abdul Wahed Mondol (absconded), (4) Md. Montaz Ali Bepari alias Momtaj (absconded) and (5) Md. Ranju Miah by launching systematic attack at villages Nandina and Doulatpur forcibly captured non-combatant freedom-fighter Abul Kashem who was hiding at the place adjacent to Nandina Government primary school. Detained victim was subjected to inhuman torture, by hanging him on a tree in front of the said school and he was forced to drink urine when the detained victim wanted to drink water.

Thereafter, the accused persons took away the detained victim Abul Kashem to Pakistani occupation army men when he was shot to death and his dead body was left abandoned by the side of Bhabanipur road and afterward the villagers buried his dead body there. In conjunction with the event of attack, the accused persons also killed six more non-combatant freedom fighters as named in the formal charge, on forcible capture.

Therefore, accused (1) Md. Abdul Jabbar Mondol (absconded), (2) Md. Jachhijar Rahman alias Khoka (absconded), (3) Md. Abdul Wahed Mondol (absconded), (4) Md. Montaz Ali Bepari alias Momtaj (absconded) and (5) Md. Ranju Miah have been

charged for participating, abetting, facilitating, contributing and also for complicity in the commission of offences of **‘abduction’; ‘confinement’; ‘torture’; and ‘murder’** as crimes against humanity as enumerated in section 3(2)(a)(g)(h) read with section 4(1) of the International Crimes (Tribunals) Act, 1973 which are punishable under section 20(2) of the Act.

Evidence of Witnesses Examined

320. This charge rests upon testimony of six witnesses. Of them some had occasion of seeing the acts carried in accomplishing the alleged killing, happened in phases, in conjunction with the attack which continued for couple of hours. Some have testified what they learnt about the killing of other freedom-fighters. Before we weigh the evidence presented let us eye on what the witnesses narrated in Tribunal.

321. P.W. 02 Md. Nurul Islam Akondo [63] is a resident of village-Nandina under police station-Gaibandha Sadar of District Gaibandha. In 1971 he was a student of class IX. He chiefly testified the event of attack arraigned in charge no.02, as a direct witness. Additionally, he also testified the event arraigned in this charge no.04.

322. P.W.02 stated that on the same day [18 October 1971] at about 12:00 P.M Razakars Md. Abdul Jabbar Mondol, Md. Jachhijar Rahman alias Khoka, Md. Abdul Wahed Mondol, Md. Montaz Ali Bepari alias Momtaj ,Asgar Ali Khan[now dead] and Md. Ranju Miah forcibly captured a freedom-fighter namely Abul Kashem from betel leaf garden and tied him up with a banyan tree in front of Nandina school and informed the Pakistani occupation army who then came there and taking detained Abul Kashem beside the road where they shot him to death. P.W.02 also stated that Razakars he named were from their village and thus he knew them beforehand.

323. P.W.02 denied the defence suggestions put to him that freedom-fighter Abul Kashem died in front battle with Pakistani army; that the accused persons were not Razakars; that they were not at the crime site; that they were not involved in the event he testified and that what he testified implicating the accused persons was untrue.

324. P.W. 04 Sonabi [75] is a resident of village- Nandina under police station- Gaibandha Sadar of District Gaibandha. She is the wife of one of victims of the event arraigned in charge no.02. In respect of the event arraigned in this charge no.04 that happened on the same day she is a hearsay witness.

325. P.W.04 stated that later on, on the same day [on 18 October 1971,] she learnt that few freedom fighters including Abul Kashem were gunned down to death by the Razakars she named [Razakars Jabbar Mondol, Jachhijar Rahman @ Khoka, Abdul Wahed Mondol, Montaj Ali Bepari] and Pakistani army .

326. In narrating the event arraigned in charge no.02 P.W.04 does not state that accused Ranju Mia was with the gang. Additionally, she did not hear that accused Ranju Mia was with the gang of attackers in accomplishing killing freedom-fighters including Abul Kashem.

327. P.W. 07 Md. Abdul Latif Akondo [63] is a resident of village- Nandina (Baluapara) under police station- Gaibandha Sadar of District Gaibandha. He is a near relative of victims of the event arraigned in charge no.02. He testified what he witnessed, in relation to that charge, as a direct witness. Additionally he as a hearsay witness testified the event of attack arraigned in this charge no.04 which relates to killing of number of unarmed freedom-fighters including freedom-fighter Abul Kashem.

328. P.W.07 stated that next [on 18 October 1971] he returned back home and on the same day at about 12:30 P.M he heard

from the locals that Razakars Jachhijar Rahman and Abdul Wahed Mondol forcibly capture freedom-fighter Abul Kashem, tied him up with a tree in front of Nandina primary school and inflicted torture. Then their cohort Razakar Montaj informed it to Tulshighat Razakar camp when Pakistani occupation army coming to the primary school took away detained Abul Kashem toward Gaibandha by a vehicle and on the way at the place Bhabanipur detained Abul Kashem was shot to death.

329. P.W.07 also stated that on the same day [on 18 October 1971 at about 05:00 P.M. Razakar Abdus Samad [now dead] and Razakar Ranju Mia gunned down two detained freedom fighters to death. Later on, he also knew that those Razakars also killed four [04] detained freedom-fighters by gun shots at different places.

330. P.W. 08 Md. Shaheb Uddin [62] is a resident of village-Nandina under police station-Gaibandha Sadar of District Gaibandha. In addition to testify what he watched in conjunction with the attack arraigned in charge no.02 P.W.08 also testified what he witnessed in relation to causing torture to freedom-fighter Abul Kashem on forcible capture, carried out on the same day.

331. P.W.08 , in respect of the event arraigned in this charge stated that on the same day [18 October 1971] at around 12:00 P.M Razakar Abdul Wahed Mondol and Razakar Jachhijar Rahman unlawfully detained unarmed freedom-fighter Abul Kashem and tortured him in front of Nandina Primary School, tying him up with a banyan tree. He [P.W.08] and many villagers witnessed it standing in the field of the school. Next, Razakar Montaz informed Pakistani army at Tulshi Ghat Razakar camp and then the army men came at Nandina primary school when the detained Abul Kashem was handed over to them.

332. P.W.08 also stated that later on he heard that on the way to Gaibandha at Bhabanipur the detainee freedom-fighter was shot to death and his dead body left abandoned by the side of Bhabanipur road. It remained uncontroverted. P.W.08 also stated that on the same day he heard that the Razakars he named [Abdul Jabbar Mondol, Abdul Wahed Mondol, Razakar Jachhijar Rahman@ Khoka and Montaz] and Razakar Ranju Mia gunned down six[06] unarmed freedom-fighters to death detaining them from different places.

333. In cross-examination, P.W.08 stated in reply to defence question put to him that he heard from his elder brother, uncle and villagers that the Razakars he named killed 06 freedom-

fighters; that the house of accused Jabbar Mondol was about 100 yards far from that of their own and that accused Ranju Mia was a resident of village-Chok Goyashpur, about 3-4 miles far from their village.

334. P.W. 09 Md. Abdul Karim [72] is a resident of village-Chok Goyashpur under police station- Gaibandha Sadar of District Gaibandha. In 1971 he was 23/24 years old. In addition to one phase of attack he allegedly witnessed, P.W.09 narrated when the freedom-fighters arrived at their locality.

335. P.W.09 stated that on 18.10.1971, in early morning after the Fazar prayer, he went to their land to work when he saw 80/90 freedom fighters coming from the end of village-Nandina. Then the freedom-fighters approached toward Gaibandha-Sadullapur road and eventually to north direction as he himself [P.W.09] and others guided them the way to hide.

336. P.W.09 also stated that at around 03:00 P.M. he came back home and heard the sound of gun firing. With this he went into hiding inside the bamboo bush wherefrom he saw 03 freedom-fighters were running towards their[P.W.09] home , on being chased by Razakar Ranju Miah and his brother Razakar Abdus Samad[now dead] with gun firing . After some time, when those

three freedom-fighters came near the bamboo garden, he made them out sight by keeping them in the house of Rahim Box [now dead].

337. P.W. 09 further stated that those Razakars kept looking for the 03 freedom-fighters. Razakar Samad [now dead] asked him where he made them sheltered. He [P.W.09] expressed ignorance about the whereabouts of them. Then Razakar Abdus Samad hit him [P.W.09] on his lower abdomen with rifle. Consequently he got fainted. On that day he [P.W.09] was admitted in Gaibandha Hospital and gained his consciousness after a day.

338. P.W.09 next stated that after 6/7 days' treatment he came back home and heard that those Razakars found the freedom-fighters who took shelter at Rahim Box's house and instantly fired gunshot to them which resulted in death of two and one freedom-fighter got seriously injured who was handed over to Pakistani army. He also heard that the villagers buried the dead bodies of those two freedom-fighters in the bamboo garden where now a commemorative plaque has been built. Finally, P.W. 09 stated that accused Razakars were his neighbours and thus he knew them beforehand.

339. In cross-examination, P.W.09 in reply to defence question stated that those freedom fighters were not carrying any gun with them. Defence suggested P.W.09 that the accused were not Razakars; that he did not know them; that they were not engaged with the alleged event; that he did not hear the event he testified and that what he testified was untrue. P.W.09 denied all these suggestions blatantly.

340. P.W. 10 Md. Khaza Mia @ Shaza Mia [56] is a resident of village- Chok Goyashpur under police station- Gaibandha Sadar of District Gaibandha. In 1971 he was 09 years old and a student of class III. In addition to facts related to the attack he stated how and when the freedom-fighters arrived at their locality.

341. P.W.10 stated that on 18.10.1971 in the early morning he and his cousin brother went out for grazing the cow in the grass field when they saw 80/90 freedom fighters coming from the end of village-Nandina ; that his[P.W.10] cousin brother helped them in moving toward north crossing Gaibandha- Sadullapur road.

342. P.W.10 further stated that at around 03:00 P.M on the same day, he heard the sound of gun firing and one shot went away just above his head. With this he went into hiding inside a

bamboo bush wherefrom he saw 03 freedom-fighters running towards their home, on being chased by two Razakars. His [P.W.10] cousin brother Abdul Karim [P.W.09] made them hidden in the house of Rahim Box.

343. P.W. 10 next stated that after some time Razakar Md. Ranju Mia and his brother Razakar Samad [now dead] asked his cousin brother Abdul Karim where the freedom-fighters got sheltered them. But Abdul Karim expressed his ignorance about it when Razakar Abdus Samad [now dead] hit him [Abdul Karim] on his lower abdomen by rifle. Consequently his cousin brother got fainted.

344. P.W.10 also stated that those Razakars finding the freedom-fighters who got sheltered at Rahim Box's house fired gun shot that resulted in death of two and one got seriously injured who was handed over to Pakistani army. The villagers later on buried the dead bodies of those two freedom-fighters in the bamboo garden where now a memorial plaque has been built. Finally, P.W. 10 stated that accused Razakars were his neighbors and thus he knew them beforehand.

345. In cross-examination, P.W.10 in reply to defence question stated that the freedom-fighters were not carrying any fire-arm with them. P.W.10 denied the defence suggestions put to him that the accused were not Razakars; that he did not know them; that they were not engaged with the alleged event; that he did not see or hear the event he testified and that what he testified was untrue.

Finding with Reasoning on Evaluation of Evidence

346. Mr. Mokhlesur Rahman Badal, the learned prosecutor submits that the attack arraigned in this charge was continuation of two other prior events of attack conducted on the same day as arraigned in charge nos.02 and 03; that the target of attackers was the freedom-fighters; that the accused persons deliberately participated in perpetrating the brutal killing of seven unarmed freedom-fighters which has been proved beyond reasonable doubt. Defence could not impeach the evidence presented in this regard.

347. It has been further argued that defence merely denied the participation and complicity of accused persons which is not sufficient at all to refute the narrative recounted by natural and competent witnesses. The event of attack continued for couple of hours and the accused persons participated in annihilating non-

combatant freedom-fighters on forcible capture, at different sites, in conjunction with the attack which has been well proved from facts and circumstances unveiled from evidence of witnesses, the learned prosecutor added.

348. Mr. Mohammad Abul Hassan the learned defence counsel submits that the witnesses who allegedly watched the part of attack are not reliable and at the relevant time particularly P.W.10 was a minor boy of 09 years old and thus it was not practicable of seeing the event as he testified. There has been no evidence to show that either of five accused physically participated in committing the alleged killings. Evidence of witnesses suffers from inconsistencies and prosecution failed to prove participation and complicity of the accused persons with the event alleged. Hearsay evidence of some of witnesses does not seem to have been corroborated by other evidence and accordingly arraignment brought against the accused persons could not be proved by any credible evidence.

349. At the outset, we disagree with defence argument that in absence of any proof as to physical participation of any of five accused with any of killings none of them can be held responsible. We are to see first the commission of the killing a number of unarmed freedom-fighters took place pursuant to

recurrent attacks chiefly directing the freedom-fighters, as arraigned in this charge.

350. Next, we are to see whether the accused had ‘concern’ and ‘common agreement’ with the attack, in any manner. It is to be noted that act of an individual amid or after or prior to the event forms part of attack if it is found to have had substantial effect to the commission of crime, pursuant to the attack. Keeping this jurisprudential proposition in mind we require weighing the evidence adduced, in support of this charge.

351. This charge relates to killing seven [07] unarmed freedom-fighters committed on 18.10.1971, in continuation of attacks arraigned in charge nos. 02 and 03. All the five accused have been indicted in this charge. According to the charge framed the killing was carried out at different sites. Thus, naturally the witnesses did not have fair opportunity of seeing and hearing all the aspects of the attack carried out.

352. This charge rests upon testimony of six[06] witnesses of whom P.W.04 and P.W.07 are hearsay witnesses and P.W.02, P.W.08, P.W.09 and P.W.10 are direct witnesses to facts materially tied to the attack including the killing of unarmed

freedom-fighter Abul Kashem and 03 other unarmed freedom-fighters.

353. It transpires that in relation to killing unarmed freedom-fighter Abul Kashem P.W.02 a resident of village Nandina testified that all the five accused and Razakar Asgar Ali Khan [now dead] forcibly captured Abul Kashem from a betel garden, brought him in front of Nandina school, caused torture tying him up with a banyan tree and then handed him over to Pakistani occupation army who gunned him down to death, taking him beside the road.

354. It stands proved that the victim was unlawfully captured from a place where he remained in hiding. Presumably the victim was unarmed at that time. The accused persons physically participated in effecting his forcible capture, as testified by the P.W.02. It has also been divulged that all the five accused persons substantially contributed, facilitated, aided and abetted the commission of the killing, the principal crime. Defence could not refute the act of killing as recounted by the P.W.02.

355. P.W.02 knew the accused persons beforehand as they were from their village. In cross-examination P.W.02 stated that accused Ranju Mia was a resident of village-Chok Goyashpur

and he was the son of Abbas Ali. Thus, it is believable that P.W.02 had reason of recognizing the accused persons including the accused Md. Ranju Mia when they carried out criminal acts forming part of attack. Besides, defence could not impeach the fact of killing unarmed freedom-fighter Abul Kashem, on forcible capture.

356. The event of killing Abul Kashem, a non-combatant freedom-fighter forming part of the entire attack gains corroboration from evidence of P.W.08, a direct witness who along with some others saw the accused Wahed Mondol, Jachhijar Mondol causing torture to detained Abul Kashem tying him up with a banyan tree at Nandina primary school. Testimony of P.W.08 demonstrates too that accused Montaj Ali also was with those accused Razakars. Defence could not impeach this crucial version in any manner.

357. P.W.08 does not state that accused Abdul Jabbar Mondol and Ranju Mia too remained at the site when the detained Abul Kashem was subjected to torture, true. But such mere omission does not ipso facto diminish the core of the narrative made by P.W.08 and it does not create any doubt as to participation of all the accused persons with this phase of the event that resulted in horrendous killing of Abul Kashem.

358. Tribunal notes that with the lapse of long passage of time witnesses who had occasion of watching a particular fact full of grave violence may not be always able to recount what they experienced with exact and detail accuracy.

359. Tribunal notes that in a case involving the offences of crimes against humanity corroboration is not a requirement of law. Testimony of even a single witness shall suffice to prove the arraignment, if it inspires credence. Even hearsay evidence, if it is found to have probative value, can be safely acted upon in arriving at decision on factual aspect.

360. In the case in hand, it transpires that unimpeached ocular testimony of P.W.02 and P.W.08 cumulatively proves the fact of brutal and deliberate killing of Abul Kashem a non-combatant freedom-fighter in accomplishing which conscious and active participation of the accused persons some of whom belonged to Razakar Bahini and some used to maintain nexus with the Razakar Bahini and Pakistani occupation army.

361. It has been divulged too that P.W.04 and P.W.07 heard the phase of attack that resulted in killing Abul Kashem. Hearsay evidence of these two witnesses gains strong corroboration from ocular testimony of P.W.02 and P.W.08. Hearsay version the

P.W.04 and P.W.07 made does not demonstrate detail precision of the killing, true. Since they are not firsthand witness naturally they did not have opportunity of learning the event in detail. But what they have testified inspires credence and they have not made any exaggeration, we conclude.

362. How the killing of 06 other freedom-fighters happened and when? The charge framed arraigns that the attack that resulted in barbaric annihilation continued for couple of hours which ended at 06:00 P.M. The witnesses who came on dock to testify naturally did not have opportunity of watching all the killings, carried out at different sites, in conjunction with the attack. Presumably, the gang being divided into groups had carried out attack intending to wipe out the unarmed freedom-fighters, on unlawful capture.

363. It appears that P.W.09 and P.W.10 are direct witnesses to facts crucially related to the attack directing 03 unarmed freedom-fighters. This phase of violent event happened at 03:00 P.M. on the same day, P.W.09 testified. His testimony demonstrates too that he and villagers helped 80/90 freedom-fighters in moving back toward north crossing Gaibandha-Sadullapur road, after *Fazar* prayer [on the day of the event].

364. The above piece of version remained unshaken. This unimpeached fact leads to the unerring inference that presence of freedom-fighters around the localities got leaked and then the accused persons some of whom were Razakars, their cohorts and Pakistani occupation army started launching attack at the localities of village-Nandina and Doulatpur. Such attack was pursuant to collective criminal mission.

365. We have already found it proved that two preceding designed attacks as arraigned in charge nos. 02 and 03 were conducted to further plan of annihilation of freedom-fighters.

366. Now, what happened next to moving back of freedom-fighters toward north as testified by P.W.09? Testimony of P.W.09 demonstrates that on the same day at 03:00 P.M. he heard gun firing and with this he went into hiding inside a bamboo bush of their house wherefrom he saw accused Ranju Mia and his brother Razakar Abdus Samad [now dead] chasing three freedom-fighters and he made them hidden inside the house of their neighbour Rahim Box when they came near the bamboo bush. Defence simply denied it in cross-examination but it could not refute this crucial fact in any manner.

367. The above unimpeached version proves that those three freedom-fighters were non-combatant and that is why could not resist the aggressors chasing them and compelled to go into hiding with the help of P.W.09. Thus, it stands proved that at the relevant time the victims had the status of protected civilians, not the status of combatant and thus they naturally attempted to escape.

368. It transpires that the aggressors did not stop to go on with their violent activities even after the non-combatant freedom-fighters got sheltered at the house of Rahim Box. Ocular testimony of P.W.09 depicts that the aggressors i.e. accused Ranju Mia and his brother notorious Razakar Abdus Samad [now dead] started searching those three freedom-fighters who were being chased by them and at a stage on being scolded he [P.W.09] expressed ignorance about the location of those freedom-fighters when Samad Razakar inflicted severe rifle blow on his [P.W.09] abdomen and with this he fell down and became unconscious

369. P.W.09 could not see what happened next as he became unconscious and was admitted in Gaibandha hospital. It depicts from testimony of P.W.09 that on returning back home, 6-7 days later, he [P.W.09] heard that Razakar Abdus Samad [now dead]

and his brother accused Razakar Ranju Mia fired gunshot directing those three freedom-fighters who remained in hiding inside the house of Rahim Box and such gun firing resulted in death of two and one injured freedom-fighter was handed over to Pakistani occupation army.

370. The above pertinent fact relating to such killing of freedom-fighters leads to conclude that intention of chasing these three victims with fire arms was to annihilate them. The fact of killing those unarmed freedom-fighters seems to have been affirmed in cross-examination as P.W.09 categorically stated in reply to defence question that the three freedom-fighters were non-combatant when they approached at their house and that Razakar Abdus Samad[now dead] fired gunshot which resulted in instant death of two and causing bullet hit injury to one.

371. Defence does not appear to have made any effort to controvert what the P.W.09 testified in relation to criminal acts conducted by accused Md. Ranju Mia and his brother Samad Razakar [now dead]. Participation in chasing the victims and presence at the scene when the killing was accomplished is sufficient to infer that the accused Md. Ranju Mia, sharing common intent consciously accompanied his brother, as a co-perpetrator.

372. It has not been denied that two freedom-fighters killed, in conjunction with the attack were buried at the bamboo bush of P.W.09 by villagers and now a commemorative plaque has been built there to memorize their sacrifice. It adds assurance to the brutal killing of those brave non-combatant freedom-fighters, by launching attack arraigned. This killing was the upshot of one of phases of attack conducted for couple of hours.

373. In addition to ocular testimony of P.W.09 and P.W.10 in respect of killing unarmed freedom-fighters who being chased went into hiding at the house of Rahim Box, P.W.07 and P.W.08, the residents of village-Nandina also testified that they heard that in evening, on the day the attack was carried out six [06] unarmed freedom-fighters were gunned down to death by accused persons and Razakar Abdus Samad [now dead], the brother of accused Md. Ranju Mia.

374. Hearsay evidence of P.W.07 and P.W.08 in respect of killing 06 freedom-fighters remained uncontroverted. Besides, it gets corroboration from facts unveiled in testimony of P.W.09 and P.W.10.

375. The charge framed arraigns killing seven freedom-fighters at different sites, in conjunction with the same attack which

prolonged for couple of hours. Already we have got it proved how the killing of Abul Kashem happened and three freedom-fighters became prey of the attackers who eventually annihilated two of them.

376. There has been no direct evidence to show how the killing of rest three freedom-fighters Nabir Hossain, Dr. Anwar Hossain and Aminul Islam [as named in the formal charge] was accomplished, true. But defence does not dispute the fact of annihilation of these three other freedom-fighters, in addition to killing four, as testified by P.W.09 and P.W.10. Thus, it may be reasonably inferred that the accused persons were consciously concerned also with the killing of the rest three [03] unarmed freedom-fighters.

377. The learned defence counsel argued that since admittedly the P.W.10 was only 09 years old in 1971 he did not have practicable opportunity of seeing the event he testified and thus the description he made implicating the accused Ranju Mia and other accused is not credible. It is not likely to recount what the P.W.10 allegedly experienced long more than four decades back.

378. We are not agreed with the above submission. Tribunal notes that mere tender age of a witness does not make his or her

testimony readily unreliable, if it offers the 'core essence' of the traumatic event. Additionally, core essence of an enormously traumatized event retains in human memory even after lapse of long passage of time. This view finds support from the observation propounded by The Appellate Division of Bangladesh Supreme Court in the case of **Ali Ahsan Muhammad Mujahid** observed that –

" There is no rule requiring the Court to reject per se the testimony of a witness who was child at the events in question. The probative value to be attached to testimony is determined to its credibility and reliability".

[Criminal Appeal No. 103 of 2013, Judgment on: 16-06-2015, His Lordship Mr. Justice Hasan Foez Siddique, Page167].

379. It is found that what the P.W.10 testified in relation to the event remained unimpeached. We find no valid reason to keep the narrative he made aside from consideration. Thus, the testimony of a witness who was a child at the time of the events in question cannot be rejected per se. In rendering above observation the **Appellate Division** relied upon the decision made in the case of **Gacumbitsi v. Prosecutor** which runs as below:

[.....] It was reasonable for the Trial Chamber to accept witness TAX's testimony despite her young age at the time of the events (11 years old). The young age of the witness at the time of the events is not itself a sufficient reason to discount his testimony." **[Gacumbitsi v. Prosecutor, Case No. ICTR2001-64-A Appeal Chamber, para 94]**

380. Prosecution chiefly relying upon testimony of P.W.09 and P.W.10 argued that the accused Md. Ranju Mia aided and abetted the killing of unarmed freedom-fighters committed by Razakar Abdus Samad and thus accused Ranju Mia incurred liability as well.

381. Tribunal notes that in adjudicating charge no.01 it has already been found proved that all the five accused participated in committing the crimes arraigned. It now leads to the inference that all the five accused including accused Md. Ranju Mia became known to the locals for their notoriety. It is not disputed that Razakar Abdus Samad [now dead] the brother of accused Md. Ranju Mia was a notorious Razakar. Obviously accused Md. Ranju Mia did not accompany his brother in accomplishing killing the unarmed freedom-fighters as a mere spectator, we deduce.

382. The mens rea of the accused need not be explicit. Indeed, as mens rea is a state of mind, its proof is typically a matter of inference. The standard of proof dictates, of course, that it be the only reasonable inference from the evidence and relevant and surrounding circumstances.

383. Abdus Samad [now dead] the brother of accused Md. Ranju Mia was an armed Razakar -- it is not disputed. This fact rather lends assurance as to accused Md. Ranju Mia's presence with his brother at the crime scene, in exercise of his affiliation in Razakar Bahini. It may be inferred that such act of accused Md. Ranju Mia was explicit reflection of his mens rea for abetting and aiding and assisting his notorious brother Abdus Samad[now dead] in accomplishing the killing of freedom-fighters, by initiating attack. It may be justifiably deduced that he knowing consequence and being aware of the upshot of the attack significantly assisted and contributed in perpetrating the crimes in question.

384. It stands proved that all the seven victims were non-combatant freedom-fighters, at the time they faced the attack. Defence could not refute it. The attack arraigned in this charge was recurrence of preceding attacks, arraigned in charge nos.02 and 03.

385. It has already been proved that being aware of the fact of arriving of a number of freedom-fighters at Nandina the group formed of four accused, their cohorts and Pakistani occupation army carried out attack first at village-Nandina [as arraigned in charge no.02] and next on the same day at village-Doulatpur [as arraigned in charge no.03] when the gang liquidated a number of civilians, finding no freedom-fighter available. Facts unveiled lead to the inference that finally on the same day the same gang being accompanied by all the five accused started conducting mayhem around the localities which eventually resulted in killing seven [07] unarmed freedom-fighters.

386. It has been suggested as defence case to P.W.10 that the two freedom-fighters [who got sheltered at the house of Rahim Box] died and one got injured in front battle with the Pakistani occupation army and Razakars. Presumably, by suggesting such defence case a futile attempt has been made to show that those freedom-fighters were combatant and had died in front battle and thus no offence was committed.

387. But there has been neither any proof nor any indication to make such defence case believable. Rather, it stands proved that those freedom-fighters were non-combatant when they were attacked by accused Md. Ranju Mia and his brother Razakar

Abdus Samad[now dead] and thus their brutal death was the upshot of systematic attack directing civilians. We are to see whether at the relevant time i.e. at the time of commission of the crimes in question the victims were non-combatant and not their status of freedom-fighters. If at the relevant time they were non-combatant then they stood as protected civilians. This view finds support from the observation of **ICTR Trial Chamber** made in the case of **Bisengimana** which is as below:

“As noted in [the] *Blaškić* Judgement, ‘the specific situation of the victim at the moment the crimes were committed, rather than his status, must be taken into account in determining his standing as a civilian.’”

[Bisengimana, ICTR Trial Chamber, Judgment April 13, 2006, para. 49]

388. Proved killing of seven [07] non-combatant freedom-fighters happened at different sites, on the same day, in conjunction with the attack which prolonged for couple of hours. Phases of those killing formed part of the same attack, carried out on the same day to which all the five accused persons were culpable and conscious part, sharing intent and thus they all incurred liability for the commission of all the deliberate killings.

389. All the witnesses might not have equal opportunity of observing all aspects of an attack which prolonged for hours together. Pattern of attack leading to killings impels unerring inference that the perpetrators forming groups had carried out its criminal mission intending to materialize identical purpose i.e. the purpose of wiping out unarmed freedom-fighters. In this way the accused persons by their culpable act of assistance collaborated with the gang of attackers in accomplishing its murderous mission.

390. It has been proved that one victim Abul Kashem, a non-combatant freedom-fighter was subjected to inhumane torment by tying him up with a banyan tree, before causing his death by gun shot. It constituted the offence of 'torture'. It happened in day time and within sight of people. Such torture was a blatant blow to human rights. The helpless spectators too sustained immense mental harm by observing such brutality. It was rather a crime of terror against the pro-liberation civilian population of the localities attacked which was indeed grave violation of international humanitarian law.

391. It is now well settled that if the agreed crime is committed by one or other of the participants in a joint criminal enterprise, all the members in that enterprise are equally guilty of the crime

committed regardless of the part played by each in its commission, or accomplishment. In the case in hand, it stands proved that all the five accused (1) Md. Abdul Jabbar Mondol , (2) Md. Jachhijar Rahman alias Khoka , (3) Md. Abdul Wahed Mondol , (4) Md. Montaz Ali Bepari alias Momtaj and (5) Md. Ranju Miah in agreement of the common plan facilitated the commission of the crime, being part of the criminal enterprise. Such agreement or understanding to materialize the criminal mission may be inferred from facts and circumstances. This view finds support from the observation made by the ICTY which is as below:

“The existence of an agreement or understanding for the common plan, design or purpose need not be express, but may be inferred from all the circumstances.”

[Tadic Appeal Judgement, para. 227; see also Krnojelac Trial Judgement, para. 80]

392. The offence of murder as a crime against humanity as enumerated in the Act of 1973 does not require the Prosecution to establish that the accused personally committed the act of killing. Personal commission is merely one of the modes of responsibility. An accused can also be found guilty of a crime enumerated in the Act of 1973 on the basis of his act and conduct

constituting the act of approval, encouragement and abetment that substantially facilitated the commission of crime.

393. Commission of offence can be done not only by physical participation. It may also be done otherwise, directly or indirectly, by positive acts, whether individually or jointly with others. In this regard it has been observed by the **ICTY Trial Chamber** in the case of **Stakic**, that--

A crime can be committed individually or jointly with others, that is, there can be several perpetrators in relation to the same crime where the conduct of each one of them fulfils the requisite elements of the definition of the substantive offence.

[Stakic, ICTY Trial Chamber, July 31, 2003, para. 528]

394. We reiterate that in 1971 the Pakistani occupation army was not at all familiar with the communications and locations of villages or the information as to where a particular group of civilians used to reside or who were to be targeted for annihilation. The local Razakars and collaborators used to accompany the Pakistani army stationed around the localities and thereby substantially urged and facilitated them to perpetrate the attack targeting the pro-liberation non combatant civilians. In the case in hand too, the accused persons knowingly participated to the commission of crimes by accompanying

the Pakistani occupation army, in achieving goal of the criminal mission.

395. In the case in hand, it stands proved that the contribution of the accused persons, in conjunction with the attack pursuant to the common purpose of the criminal gang substantially impacted to the commission of the principal crime, the killing. Conscious and barbaric participation of accused persons, by their explicit approval, encouragement, abetment and substantial contribution in committing the annihilation of a number of freedom-fighters made them criminally liable.

396. It has been found well proved that the accused persons not only aided and abetted , by their act and conduct which had substantial effect upon the perpetration of the barbaric and indiscriminate killing of seven unarmed freedom-fighters but they, sharing common intent had acted as co-perpetrators, being part of the criminal enterprise. In this regard it has been propounded by the **ICTR** in the case of **Mpambara** that—

“A person who contributes substantially to the commission of a crime by another person, and who shares the intent of that other person, is criminally liable both as a co-perpetrator and as an aider and abettor.”

**[Mpambara, ICTR Trial Chamber,
Judgment September 11, 2006, para 17]**

397. On rational and integrated evaluation of evidence provided on part of prosecution it has been found proved beyond reasonable doubt that all the five accused (1) Md. Abdul Jabbar Mondol, (2) Md. Jachhijar Rahman @ Khoka , (3) Md. Abdul Wahed Mondol , (4) Md. Montaz Ali Bepari @ Momtaj and (5) Md. Ranju Miah by their culpable act and conduct forming part of systematic attack consciously aided, abetted, substantially contributed and participated in committing torture and killings of seven non-combatant freedom-fighters on forcible capture constituting the offences of ‘confinement’, ‘torture’ and ‘**murder**’ as ‘**crimes against humanity**’ enumerated in section 3(2)(a)(g)(h) of the Act of 1973 and thus all the four accused persons incurred criminal liability under section 4(1) of the Act of 1973.

XI. Conclusion

398. The case involves joint trial of five accused (1) Md. Abdul Jabbar Mondol, (2) Md. Jachhijar Rahman @ Khoka , (3) Md. Abdul Wahed Mondol , (4) Md. Montaz Ali Bepari @ Momtaj and (5) Md. Ranju Miah. Of them excepting accused Ranju Mia the rest four accused have been absconding. On cautious and rational appraisal of evidence presented all the five accused

persons are found to have had participation to the offences with which they have been indicted. It is to be noted that five accused have been indicted in two charges i.e. charge nos. 01 and 05. And four accused, excepting accused Ranju Mia have been indicted in two charges i.e. charge nos. 02 and 03.

399. In the case in hand the evidence presented by the prosecution to prove the arraignments brought demonstrates patently that the group of perpetrators accompanied by the accused persons were consciously engaged in committing the offences proved.

400. The accused persons, sharing common intent substantially contributed to the commission of crimes proved. Based on evidence we have rendered finding that the accused persons in agreement with designed plan abetted, encouraged, induced and substantially facilitated the commission of crimes proved. The accused persons are found to have had actively participated and substantially contributed, by their act or conduct forming part of attack, to the actual commission of the crimes as arraigned in all the four charges.

401. On rational and integrated evaluation of evidence provided by the prosecution, we have already concluded that the accused

(1) Md. Abdul Jabbar Mondol, (2) Md. Jachhijar Rahman @ Khoka , (3) Md. Abdul Wahed Mondol , (4) Md. Montaz Ali Bepari @ Momtaj and (5) Md. Ranju Miah were consciously ‘concerned’ as ‘participants’ and had also abetted, facilitated and substantially contributed to the commission of the offences with which they have been indicted.

402. History says, in 1971, thousands of atrocious incidents happened within the territory of Bangladesh as part of organized or systematic and planned attack. In the case in hand, it has been proved that target of organized or systematic and planned attack as proved was the Hindu community, the pro-liberation civilians and non-combatant freedom-fighters.

403. The four charges framed against the accused persons arose from some particular events occurred in 1971 during the War of Liberation in different vicinities under police station Gaibandha Sadar of the then Sub-Division- Gaibandha and the accused persons arraigned of those charges are found to have had explicit participation to the accomplishment of the crimes in question, in different manner, by their act and conduct and they did such atrocities as notorious loyalists of the Pakistani occupation army and also in exercise of their affiliation in locally formed Razakar Bahini.

404. Criminal acts the accused persons are found to have had carried out were aimed to further policy and plan of the Pakistani occupation army and it was a fragmented portrayal of untold mayhem conducted in the territory of Bangladesh in 1971. According to section 4(1) of the Act of 1973 all the accused incurred criminal liability for the commission of diabolical crimes already proved.

405. Untold atrocious violence that resulted in killing of a number of unarmed freedom-fighters [as listed in charge no.04], as found proved indubitably shakes the humanity. The nation shall remain ever indebted to their sacrifices.

406. The truth unveiled through trial before this Tribunal obviously shall shake human conscience and also shall make space of knowing in exchange of what extent of sacrifice the Bengali nation achieved its long cherished independence and independent motherland— **Bangladesh.**

XII. Verdict on Conviction

407. In view of the reasoned findings set out in our unanimous Judgement, by adjudicating all the four charges and having considered all evidence and arguments advanced, we unanimously find the accused (1) Md. Ranju Miah, (2) Md.

Abdul Jabbar Mondol (absconded), (3) Md. Jachhijar Rahman alias Khoka (absconded), (4) Md. Abdul Wahed Mondol (absconded), and (5) Md. Montaz Ali Bepari alias Momtaj[absconded] guilty and criminally liable beyond reasonable doubt as below:

Five[05] accused (1) Md. Ranju Miah, (2) Md. Abdul Jabbar Mondol , (3) Md. Jachhijar Rahman @ Khoka , (4) Md. Abdul Wahed Mondol and (5) Md. Montaz Ali Bepari @ Momtaj

Charge No.01: GUILTY of the offence of participating, aiding, abetting and substantially contributing to the commission of the offences of **‘confinement’; ‘torture’; ‘deportation’, ‘other inhumane act’** and **‘murder’** as crimes against humanity as enumerated in section 3(2)(a)(g)(h) of the Act of 1973 and thus they incurred criminal liability under section 4(1) of the Act of 1973 and they be convicted and sentenced under section 20(2) of the said Act.

Four[04] accused (1) Md. Abdul Jabbar Mondol , (2) Md. Jachhijar Rahman @ Khoka , (3) Md. Abdul Wahed Mondol and (4) Md. Montaz Ali Bepari @ Momtaj

Charge No.02: GUILTY of the offence of participating, aiding, abetting and substantially contributing to the commission of the offences of **‘confinement’, ‘other inhumane act’** and **‘murder’** as crimes against humanity as enumerated

in section 3(2)(a)(g)(h) of the Act of 1973 and thus they incurred criminal liability under section 4(1) of the Act of 1973 and they be convicted and sentenced under section 20(2) of the said Act.

Four[04] accused (1) Md. Abdul Jabbar Mondol , (2) Md. Jachhijar Rahman @ Khoka , (3) Md. Abdul Wahed Mondol and (4) Md. Montaz Ali Bepari @ Momtaj

Charge No.03: GUILTY of the offence of participating, aiding, abetting and substantially contributing to the commission of the offences of ‘**confinement**’ and ‘**murder**’ as crimes against humanity as enumerated in section 3(2)(a)(g)(h) of the Act of 1973 and thus they incurred criminal liability under section 4(1) of the Act of 1973 and they be convicted and sentenced under section 20(2) of the said Act.

Five[05] accused (1) Md. Ranju Miah, (2) Md. Abdul Jabbar Mondol , (3) Md. Jachhijar Rahman @ Khoka , (4) Md. Abdul Wahed Mondol and (5) Md. Montaz Ali Bepari @ Momtaj

Charge No.04: GUILTY of the offence of participating, aiding, abetting and substantially contributing to the commission of the offences of ‘**confinement**’, ‘**torture**’ and ‘**murder**’ as ‘crimes against humanity’ as crimes against humanity as enumerated in section 3(2)(a)(g)(h) of the Act of 1973 and thus they incurred criminal liability under section 4(1) of the Act of 1973 and they be convicted and sentenced under section 20(2) of the said Act.

XIII. Verdict on sentence

408. **Mr. Mokhlesur Rahman Badal**, the learned prosecutor submitted that all the five accused should face the highest sentence, being a sentence of death, as they are proved to have abetted, contributed, substantially facilitated and participated to the commission of horrendous criminal acts constituting the offences of ‘murder’, confinement’, torture’ and ‘deportation’ as crimes against humanity directing pro-liberation civilians, non-combatant freedom-fighters and Hindu civilians.

409. The learned prosecutor further submits that the intent of the group of attackers accompanied by the accused persons and their cohorts was to annihilate the civilians who took stance in support of the war of liberation. The facts and circumstances appeared from the evidence tendered demonstrate it unerringly.

410. The proved criminal acts of the accused persons were explicitly intended to materialize the common purpose of the criminal gang and the accused persons were conscious and active part thereof. Only the heaviest sentence would be just and appropriate to punish those horrendous crimes causing untold torment that justifiably corresponds to their overall magnitude, the learned prosecutor added.

411. On contrary, **Mr. Mohammad Abul Hassan** the learned state defence counsel did not prefer to agitate any submission in relation to awarding sentence, by focusing any mitigating factor. However, he submitted that since prosecution could not prove involvement and complicity of accused persons with the offences alleged they deserve acquittal.

412. History says that the Pakistani occupation armed forces and their armed organs including the auxiliary forces indisputably had indiscriminately committed forbidden acts of aggression directing the civilian population of Bangladesh in 1971. The events arraigned in this case are a split depiction of the diabolical mayhem conducted in 1971.

413. In the case in hand, all the five accused persons have been found guilty for the atrocious crimes committed directing unarmed civilians in 1971, during the war of liberation. According to settled jurisprudence the gravity of the offences committed is the key deciding factor in the determination of the sentence to be awarded.

414. Tribunal notes that provision relating to awarding sentence as contained in section 20(2) of the Act demonstrates that when a person is found guilty for the offences enumerated in section 3(2)

of the Act of 1973, awarding death sentence is the 'rule' and any other sentence of imprisonment is an 'exception'. That is to say, in deciding appropriate sentence Tribunal requires to weigh the aggravating factor[s] and magnitude of the crimes proved.

415. In assessing the aggravating factors, we must eye on the nature and extent of the offences committed, their scale, the role the accused had played in providing contribution and assistance to the accomplishment of crimes proved, and the trauma and harm sustained by the victims and their families.

416. The case in hand carries some distinctive pattern, nature and extent. All the four events arraigned involve the offences of murder and other offences as crimes against humanity conducted in day time. Perpetration of the offences proved happened in extreme diabolical manner.

417. It has been proved that the convicted accused persons were conscious and culpable part of the criminal enterprise. Their acts and conduct as have been found proved formed part of designed attack which was intended to liquidate the unarmed civilians.

418. In the case in hand, already the convicted accused persons are found to have incurred criminal liability for the offences with

which they have been indicted. They in accomplishing the crimes arraigned had acted in extreme beastly manner and antagonism, it stands proved.

419. The event of attack [**as listed in charge no.01**] directing the local Hindu community at village-Bishnopur under police station-Gaibandha Sadar killed Hindu civilians, caused mental harm by forcing Hindu women to get converted to Muslim, carried out devastating activities, detriment to normal livelihood of civilians . The criminal acts collectively forced hundreds of Hindu civilians of the localities to deport to India. All the convicted five accused persons were knowingly engaged in accomplishing the crimes, by unlawful acts and providing substantial contribution. The convicted accused persons had acted knowingly and being part of the murderous enterprise. Mode of their participation in perpetrating the crimes was indeed full of deliberate aggression.

420. The attack launched at village-Nandina under Police station-Gaibandha Sadar of District-[now] Gaibandha [**as listed in charge no.02**] resulted in brutal killing eight [08] pro-liberation civilians. The convicted four accused consciously participated in getting the victims captured. They participated and contributed in effecting the killings, by their act of explicit

culpable contribution. Devastating activities were also carried out by looting and burning down numerous houses, in conjunction with the attack intending to terrorize the civilians.

421. In continuation of attack as arraigned in charge no.02 the gang formed of Pakistani occupation army and convicted four accused carried out systematic attack at village- Doulatpur , on the same day i.e. on 18 October 1971, to further same purpose **[as listed in charge no.03]** and deliberately annihilated five[05] defenceless civilians perceiving them as associates of freedom-fighters. This recurrent attack was conducted on the same day, after the criminal gang concluded its mission at village- Nandina [as listed in charge no.02].

422. Charge no.04 relates to the event of systematic attack which resulted in killing seven [07] non-combatant freedom-fighters. All the five convicted accused participated in perpetrating the crimes at different sites and in different manner. It stands proved. This event was chained to the prior attacks arraigned in charge nos. 02 and 03. On the same day, after carrying out attacks as arraigned in those two charges the gang accompanied by the convicted accused persons started searching freedom-fighters around the localities and eventually they got seven unarmed freedom-fighters captured and annihilated them

in brutal manner, at different sites. Unarmed freedom-fighter Abul Kashem was subjected to untold torture tying him up with a banyan tree, after he was forcibly captured.

423. By maintaining close nexus with the Pakistani occupation army stationed in Gaibandha and also in exercise of affiliation in Razakar Bahini the convicted accused persons despite being Bengali had acted as notorious traitors, being imbued by the policy and plan of resisting the valiant voyage of Bengali nation in achieving its independence. Monstrous role of the convicted accused persons in committing the offences proved indisputably deserves to be taken into account as an aggravating factor, in awarding sentence.

424. Magnitude and horrendous gravity of offences committed entails the particular circumstances of the case, the form and degree of the participation of the convicted accused persons in committing the crimes, and the number of victims. Keeping all these into account the sentence to be awarded also should mirror the totality of criminal acts of the convicted accused persons forming part of systematic attacks.

425. Tribunal emphatically notes that the crimes for which the accused persons have been found guilty and convicted were the

gravest pattern of crimes which were aimed not only against a section of civilian population of particular geographic vicinity but against the entire humankind. This view adds to the magnitude of the crimes proved and also the culpability of the accused persons.

426. Crimes against humanity cut deep. The ultimate victim of such crimes is the nation itself. Intuitively, those crimes seem to have gravely violated humanness itself. Thus, letters of law should not remain non-responsive to the cry, unspeakable trauma and harm sustained by the victims and their families, in awarding sentence. The **Appellate Division** has observed in the Criminal Review Petition No. 62 of 2015 that-

"While awarding the sentence, the Court must take into consideration the unbearable pains, tears rolling down the cheeks and sufferings of the widows and children of the victims who cried for getting justice for about 43 years. "

427. Tribunal notes that an accused who is found guilty for the offences which shake the entire humanity must be awarded just and just punishment and it must commensurate to the magnitude

and gravity of the offences as crimes against humanity committed in 1971 in violation of customary international law during the War of Liberation of Bangladesh.

428. Convicted accused persons are found to have had participation in the mission agreeing with its purpose and intent and knowing the consequence of the criminal mission. Taking all these factors into account we are of the view that the wheels of justice must move not only to halt the culture of impunity but also for healing the immense trauma and untold wound the victims and sufferers sustained.

429. In view of reasoned consideration as made herein above and bearing in mind the nature and proportion to the gravity of the horrific offences proved and also keeping the settled factors as focused above into account we are of the **UNANIMOUS** view that justice would be met if the convicted accused (1) Md. Ranju Miah, (2) Md. Abdul Jabbar Mondol, (3) Md. Jachhijar Rahman @ Khoka, (4) Md. Abdul Wahed Mondol and (5) Md. Montaz Ali Bepari @ Momtaj who have been found guilty beyond reasonable doubt for the crimes proved are condemned and sentenced as below, under the provision of section 20(2) of the Act of 1973:

Hence it is
ORDERED

That the five [05] accused—

(1) Md. Abdul Jabbar Mondol , son of late Abdul Gofur Mondol and late Fuljan Nesa Begum, **village-Nandina**, Police Station-Gaibandha Sadar, District-Gaibandha,

(2) Md. Jachhijar Rahman @ Khoka , son of Abdul Jabbar Mondol and Mst. Amena Begum, village-Nandina, Police Station-Gaibandha Sadar, District-Gaibandha, at present- House No.464/5, North Ibrahimpur (4th floor, Bou Bazarer Dhal), Police Station-Kafrul, DMP, Dhaka,

(3) Md. Abdul Wahed Mondol ,son of Md. Abdul Jabbar Mondol and Mst. Amena Begum, village-Nandina, Police Station- Gaibandha Sadar, District Gaibandha,

(4)Md. Montaz Ali Bepari @ Momtaj, son of late Shomesh Uddin Bepari and late Khatijan Bewa, village-Nandina, Police Station- Gaibandha Sadar, District-Gaibandha **and**

(5) Md. Ranju Miah , son of late Abbas Ali and late Amena Begum, village- Chak Goyashpur, Police Station-Gaibandha Sadar, District-Gaibandha--

Are found **UNANIMOUSLY** guilty of the offence of ‘**crimes against humanity**’ enumerated in section 3(2)(a)(g)(h) of the International Crimes (Tribunals) Act, 1973, arraigned in **charge**

nos. 01 and 04. Accordingly, they be convicted and condemned **UNANIMOUSLY** to the **sentence as below:**

‘Sentence of death’ for the crimes as listed in **charge no.01** and they be hanged by the neck till they are dead, under section 20(2) of the International Crimes (Tribunals) Act, 1973
AND

‘Sentence of death’ for the crimes as listed in **charge no.04** and they be hanged by the neck till they are dead, under section 20(2) of the International Crimes (Tribunals) Act, 1973

In addition to above two charges, **four [04] accused** (1) Md. Abdul Jabbar Mondol (2) Md. Jachhijar Rahman @ Khoka (3) Md. Abdul Wahed Mondol and (4) Md. Montaz Ali Bepari @ Momtaj are also found **UNANIMOUSLY** guilty of the offence of **‘crimes against humanity’** enumerated in section 3(2)(a)(g)(h) of the International Crimes (Tribunals) Act, 1973, arraigned in **charge nos. 02 and 03.** Accordingly, they be convicted and condemned **UNANIMOUSLY** to the **sentence as below:**

‘Sentence of death’ for the crimes as listed in **charge no.02** and they be hanged by the neck till they are dead, under section 20(2) of the International Crimes (Tribunals) Act, 1973

AND

‘Sentence of death’ for the crimes as listed in **charge no.03** and they be hanged by the neck till they are dead, under section 20(2) of the International Crimes (Tribunals) Act, 1973

The **‘sentences of death’** as awarded above, in respect of all the four charges i.e. **charge nos. 01, 02 , 03 and 04** will get merged.

The convicted accused **Md. Ranju Miah** [present on dock as brought from prison] be sent to the prison with conviction warrant accordingly.

Since the four[04] convicted accused persons have been absconding the **‘sentence of death’** as awarded above shall be executed after causing their arrest or when they surrender before the Tribunal, whichever is earlier.

The **‘sentence of death’** awarded as above under section 20(2) of the International Crimes (Tribunals) Act , 1973 [The Act No.XIX of 1973] shall be carried out and executed in accordance with the order of the Government as required under section 20(3) of the said Act.

The convicts are at liberty to prefer appeal before the Appellate Division of the Supreme Court of Bangladesh against their conviction and sentence within 30 [thirty] days of the date of order of conviction and sentence as per provisions of section 21 of the International Crimes (Tribunals) Act, 1973.

Issue conviction warrant against the convicted accused (1) Md. Abdul Jabbar Mondol[absconding] (2) Md. Jachhijar Rahman @ Khoka[absconding] (3) Md. Abdul Wahed Mondol[absconding] and (4) Md. Montaz Ali Bepari @ Momtaj[absconding]

The Inspector General of Police [IGP] is hereby directed to initiate effective, prompt and appropriate measure for ensuring the apprehension of the convict absconding accused (1) Md. Abdul Jabbar Mondol[absconding] (2) Md. Jachhijar Rahman @ Khoka[absconding] (3) Md. Abdul Wahed Mondol[absconding] and (4) Md. Montaz Ali Bepari @ Momtaj[absconding].

Let certified copy of this judgment be provided to the prosecution and the convict accused **Md. Ranju Miah** free of cost, at once.

If the absconding convict accused persons are arrested or surrender within 30[thirty] days of the date of order of conviction and sentence they will be provided with certified copy of this judgment free of cost.

Let a copy of this judgment together with the conviction warrant of the convict accused Md. Ranju Mia be sent to the District Magistrate, Dhaka for information and necessary action.

Justice Md. Shahinur Islam, Chairman

Justice Amir Hossain, Member

Justice Md. Abu Ahmed Jamadar, Member