

International Crimes Tribunal-1 [ICT-1]
[Tribunal constituted under section 6 (1) of the Act No. XIX of 1973]
Old High Court Building, Dhaka, Bangladesh

ICT-BD [ICT-1] Case No. 06 of 2016

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

Present:

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

The Chief Prosecutor

Vs

(1) Shamsul Hossain Tarafdar @
Ashraf [Absconded]
(2) Md. Nesar Ali [absconded]
(3) Yunus Ahmed
(4) Md. Ujer Ahmed Chowdhury and
(5) Mobarak Mia [absconded]

For the Prosecution:

Mr. Golam Arief Tipoo, Chief Prosecutor
Mr. Sultan Mahmud, Prosecutor
Me. Tapas Kanti Baul, Prosecutor
Mr. Abul Kalam, Prosecutor
Ms. Sabina Yesmin Khan, Prosecutor

For the Accused Yunus Ahmed

Mr. Abdus Sobhan Tarafdar, Advocate, Bangladesh Supreme Court

For the accused Md. Ujer Ahmed Chowdhury

Mr. Mujahidul Islam Shaheen, Advocate, Bangladesh Supreme Court

For the three absconded Accused

Mr. Mujahidul Islam Shaheen, [State defence Counsel],
Advocate, Bangladesh Supreme Court

Date of delivery of Judgment: 10 January, 2018
JUDGMENT

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

I. Introductory Words

1. Five accused (1) Shamsul Hossain Tarafdar @ Ashraf[Absconded], (2) Md. Nesar Ali [absconded], (3) Yunus Ahmed, (4) Md. Ujer Ahmed Chowdhury and (5) Mobarak Mia[absconded] have been indicted on three counts for the atrocious criminal activities constituting the offences of ‘genocide’, ‘murder’, ‘abduction’, ‘confinement’, ‘torture’ and ‘other inhuman acts’ as crimes against humanity committed in the locality under Police Station Rajnagar of the then Moulvibazar Sub-Division in 1971, during the war of liberation of Bangladesh, as arraigned in charge nos. 01, 04 and 05. Three accused persons have been indicted on two other counts for the criminal acts constituting the offences of crimes against humanity as narrated in charge nos. 2 and 03.

2. Prosecution alleges that in 1971 the accused persons got themselves enrolled as members of locally formed Razakar Bahini, an ‘auxiliary force’ created intending to collaborate with the Pakistani occupation armed force in carrying out its criminal activities aiming to annihilate the pro-liberation Bengali civilians, civilians belonging to Hindu religious group in furtherance of policy and plan.

3. The trial took place in presence of the accused Yunus Ahmed and Md. Ujer Ahmed Chowdhury. They have been in detention since pre-trial stage. Three other accused Shamsul Hossain Tarafdar @ Ashraf , Md. Nesar Ali and Mobarak Mia remained absconded and thus trial against them took place in their absentia after compliance with necessary legal requirements.

4. Pursuant to issuance of production warrant the prison authority has produced the accused Yunus Ahmed and Md. Ujer Ahmed Chowdhury today before this Tribunal [ICT-1].

5. Now, this Judgment is being rendered by this Tribunal [ICT-1] for the prosecution of persons allegedly responsible for the serious offences as enumerated in the International Crimes (Tribunals) Act, 1973 committed in violation of international humanitarian law in the territory of Bangladesh in 1971, during the war of liberation. Having jurisdiction under section 10(1) (j), section 20(1) and section 20(2) of the International Crimes (Tribunals) Act, 1973[Act No. XIX of 1973] this ‘Tribunal’ known as International Crimes Tribunal-1 [ICT-1] hereby renders and pronounces the following unanimous judgment.

II. Formation and Jurisdiction of the Tribunal

6. The International Crimes (Tribunals) Act, 1973 [Act No. XIX of 1973] enacted in our sovereign parliament is meant to prosecute crimes against humanity, genocide and system crimes

committed in violation of customary international law is an *ex-post facto* legislation. It is fairly permitted. The 1973 Act of Bangladesh has the merit and means of ensuring the standard of safeguards recognized universally. And it is being maintained duly.

7. We reiterate that the Act of 1973 has been enacted to prosecute, try and punish not only the 'armed forces' but also the perpetrators who belonged to 'auxiliary forces', or who committed the offence in the capacity of an 'individual' or a 'group of individuals' or 'organisation'. It is manifested from section 3(1) of the Act of 1973 that even any person (individual), if he is *prima facie* found accountable either under section 4(1) or 4(2) of the Act of 1973 for the perpetration of offence(s), can be prosecuted and tried under the Act.

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

III. Historical backdrop and Context

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

10. The nation and particularly the new generation must know the backdrop of horrific crimes committed in 1971 by the Pakistani occupation army and their local collaborators. We consider it expedient to note that the verdict of a court of law is not only meant to render its decision on the arraignment brought. It must also reflect the truth, behind the commission of horrific criminal acts which shall create youthquake to go ahead with the spirit of the war of liberation.

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

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

12. 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.

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

14. It is to be noted with immense pride that the historic March 7 speech of Bangabandhu Sheikh Mujibur Rahman, the father of the nation has been recently recognised by the UNESCO as a 'world documentary heritage'. The 07 March glowing speech of Bangabandhu calling on the freedom-loving Bangalees crucially

activated and inspired the whole nation, excepting a few pro-Pakistan people to get prepared for the war of liberation.

15. 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.

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

17. Commission of systematic and widespread appalling atrocities directing civilian population in the territory of Bangladesh, in 1971 was intended to further the policy and plan of annihilating the dream of self determination of Bengali nation. This is now a

settled history of which this Tribunal takes judicial notice as permitted by the Act of 1973 and the ROP.

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

“The way the Pakistani Army had acted, surpasses anything that could pass for legitimate use of force. It had resorted to wanton murder of civilians, including women and children in a deliberate plan to achieve submission by stark terror. [**Appellate Division, Abdul Quader Molla Judgment, 17 September 2013 page 39**]

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

20. It is now an undisputed history that the local collaborators actively assisted the Pakistani occupation army in accomplishing their policy and plan to annihilate the pro-liberation Bangalee civilians. The local collaborators truly had acted as traitors. It is now a settled history which needs no further document to prove.

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

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

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

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

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

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

25. The untold atrocious resistance on part of thousands of local collaborators belonging to Razakar Bahini, Al-Badar Bahini could not impede the nation’s valiant journey to freedom. Undeniably,

the ways to self-determination for the Bangalee nation was strenuous, swabbed with enormous blood, struggle and immense sacrifices. In the present-day world history, conceivably no nation paid as extremely as the Bangalee nation did for its self-determination and for achieving independent motherland. The nation shall remain ever indebted to those best sons and daughters of the soil who paid supreme sacrifices for an indelible motherland – **Bangladesh.**

IV. Brief Account of the Accused Persons

26. Brief account of the persons charged with for the offences alleged as provided in the formal charge is being stated as below:

(i) Accused Shamsul Hossain Tarafdar alias Ashraf [absconded]

Accused Shamsul Hossain Tarafdar alias Ashraf [65], son of late Attor Mia Tarafdar [Manto Mia] and late Abiza Bibi of Village-Bagajora, Police Station-Rajnagar, District-Moulvibazar, at present Village-Kornigram, Police Station-Rajnagar, District-Moulavibazar was born on 09.01.1949 [according to his NID]. He passed B.Com Examination from Sheikh Borhanuddin College, Dhaka in 1976. Prosecution alleges that he was an active worker of Islami Chatra Sangha [ICS] the student wing of Jamat-E-Islami [JEI] ;that during the war of liberation in 1971 accused Shamsul Hossain Tarafdar alias Ashraf joined the local Al-Badar Bahini as its commander and carried out atrocious activities in different

areas of Rajnagar Police Station under the then Moulavibazar Sub-Division.

(ii) Md. Nesar Ali [absconded]

Accused Md. Nesar Ali [75], son of late Forjan Mia and late Joygun Bibi of Village-Jamura, Police Station-Rajnagar, District-Moulvibazar was born on 12.04.1939 [according to his NID]. Prosecution alleges that during the war of liberation in 1971, he was an active worker of Muslim League; that he joined the local Razakar Bahini as its commander and that he carried out atrocious activities around the localities under Rajnagar Police Station of the then Moulavibazar Sub-Division.

(iii) Yunus Ahmed

Accused Yunus Ahmed [71], son of late Suruj Mia and late Nabura Bibi of Village-Sonatiki, Police Station-Rajnagar, District [now]- Moulavibazar was born on 12.02.1943 [according to his NID]. In 1971, during the war of liberation he was an active member of local Razakar Bahini, prosecution alleges. At present he is a supporter of Jamat-E-Islami.

(iv) Md. Ujer Ahmed Chowdhury

Accused Md. Ujer Ahmed Chowdhury [63] , son of late Abdur Nur Chowdhury and late Ruhena Begum Chowdhury of Village-Goyashpur, Police Station-Rajnagar, District- Moulvibazar, at present Village-Kalenga, Deorachhora, Police Station-Rajnagar,

District[now] Moulvibazar was born on 10.09.1951 [according to his birth certificate]. Prosecution alleges that he was a worker of Muslim League; that during the war of liberation in 1971, he being an active member of locally formed Razakar Bahini carried out atrocious activities around his locality.

(v) Mobarak Mia [absconded]

Accused Mobarak Mia [66], son of late Alkas Mia and late Mohibunnesa Chowdhury of Village-Mushuria [Uttar Nandiura], Police Station-Rajnagar, District-Moulvibazar was born on 12.05.1949 [according to his birth certificate]. Prosecution alleges that during the war of liberation in 1971, he was an active member of locally formed Razakar Bahini and was engaged in carrying out heinous criminal acts constituting the offences of confinement, abduction, torture, arson and murder.

V. Procedural History of the Case

27. The investigation Agency of the Tribunal constituted under section 8 of the Act of 1973 initiated investigation by appointing Hari Debnath as Investigation Officer pursuant to information recorded as complaint register no.37 dated 12.10.2014, in respect of commission of offences enumerated in section 3(2) of the Act of 1973 allegedly perpetrated by the five accused persons.

28. During investigation, the IO prayed for arrest of the accused persons on 13.10.2015 through the Chief Prosecutor. The Tribunal

on hearing the application issued warrant of arrest against all the five accused persons. Accordingly, accused Yunus Ahmed and Md. Ujer Ahmed Chowdhury were arrested on 13.10.2015 in execution of WA issued. Other accused went into hiding.

29. The IO on permission of the Tribunal vide its order dated 15.11.2015 interrogated the accused Yunus Ahmed and Md. Ujer Ahmed Chowdhury at the safe home of the Investigation Agency on 18.11.2015 and 19.11.2015 respectively.

30. The IO submitted its report together with documents collected and statement of witnesses, on conclusion of investigation, before the Chief Prosecutor on 12.01.2016. Afterwards, the Chief Prosecutor, on the basis of the report and documents submitted therewith by the Investigation Agency, on completion of investigation, submitted the 'Formal Charge' under section 9(1) of the Act of 1973 on 20.3.2016 before this Tribunal against the accused (1) Al-Badar Commander Shamsul Hossain Tarafdar @ Ashraf, (2) Razakar Commander Md. Nesar Ali, (3) Razakar Yunus Ahmed, (4) Razakar Commander Nesar Ali and (5) Razakar Mobarak Mia as there have been sufficient materials in support of their culpability and participation in committing the commission of the offences of crimes against humanity and genocide during the period of War of Liberation in 1971 around

the locality under police station Rajnagar of the then Moulavibazar Sub-Division, as narrated in the formal charge

31. The 'formal charge' submitted discloses that the accused persons allegedly participated, facilitated and had complicity in the commission of the alleged diabolical offences by launching systematic attack directing civilian population and they appear to have had allegedly acted in furtherance of common purpose and design in accomplishing such offences, being part of JCE and therefore, all the 05[five] accused persons have been prosecuted jointly as permissible under Rule 36 of the Rules of Procedure, 2010 of this Tribunal-1.

32.. Thereafter, on 09.6.2016 the Tribunal, under Rule 29(1) of the Rules of Procedure [ROP], took cognizance of offences as mentioned in section 3(2) (a)(c)(g)(h) of the Act of 1973 having found *prima facie* case in consideration of the documents submitted together with the Formal Charge, statement of witnesses submitted by the prosecution. At this stage, it was found that three accused persons could not be arrested yet and as such the Tribunal by its order directed the enforcement agency to submit report in execution of warrant of arrest issued at pre-trial stage against the three accused persons.

33. On getting the report in execution of WA it appeared that the three accused Shamsul Hossain Tarafdar @ Ashraf, Md. Nesar Ali

and Mobarak Mia remained absconded and thus for holding trial in *absentia*, the Tribunal on 24.7.2016 ordered publication of notification in 02 national daily newspapers as required under law. After publication of such notification asking the above three accused persons to surrender before this Tribunal within the time-frame mentioned therein the Tribunal proceeded to keep up the proceedings in *absentia* against them and fixed the date for hearing the charge framing matter.

34. Tribunal at the same time appointed Mr. Mujahidul Islam Shaheen, Advocate to defend the three absconding accused as State defence counsel, at the cost of the Government. Prosecution was directed to provide the copy of formal charge to the appointed state defence counsel.

35. On hearing about charge framing matter, the Tribunal framed charges on three counts against the all six accused persons and charges on two counts against three accused persons on 08.12.2016. The charges so framed were read over and explained in Bangla to the accused Yunus Ahmed and Md. Ujer Ahmed Chowdhury present on dock, as brought from prison when they pleaded not guilty and claimed to be tried according to law. The charges so framed however could not be read over and explained to the three other accused persons as they remained absconded.

36. In course of trial prosecution adduced in all 15 witnesses including the Investigating Officers [IO] and of them 14 witnesses have been examined intending to substantiate the arraignments brought in the charges framed. One witness [P.W.14] has been tendered and defence declined to cross-examine him. Defence however duly cross-examined all the witnesses examined. At a stage of trial, prosecution by submitting an application under section 19(2) of the Act of 1973 prayed for receiving the statement of one witness Rosharaj Bhattacharya in evidence as he died during trial. Tribunal on hearing both sides allowed the prayer with an observation that the statement of this witness reduced in writing by the IO during investigation shall be received in evidence. The IO proved the statement of the said witness which has been permitted to be received in evidence as Exhibit-4

37. On closure of prosecution evidence, defence refrained from adducing and examining any witness. And thus, date was fixed for placing summing up. Finally, both parties advanced their respective summing up which got ended on 20.11.2017. The Tribunal then kept the case CAV, for delivery and pronouncement of its judgment and sent the accused Yunus Ahmed and Md. Ujer Ahmed Chowdhury @ Ashraf to prison with direction to produce them on call.

VI. Summing up [Argument]

Summing up by the Prosecution

38. Mr. Sultan Mahmud the learned prosecutor in placing summing up drawing attention to the evidence tendered submitted that the accused persons were the notorious members of locally formed Razakar Bahini and they actively collaborated with the Pakistani occupation army in carrying out criminal activities directing unarmed civilians. Testimony of witnesses examined who are the locals under Rajnagar Police Station were familiar with the identity of the accused persons beforehand as notoriety of the accused persons made them widely known around the locality. Thus, the uncontroverted testimony of witnesses in this regard and recognizing them when they accompanied the group of attackers at the crimes sites proves that the accused persons belonged to Razakar Bahini, despite absence of any document, the learned prosecutor added.

39. The learned prosecutor also submitted that the papers forming part of the 'prosecuting documents volume' [page 33,35,36,39 and 40] also lends assurance as to accused persons membership as those demonstrates that four accused were prosecuted under The Collaborators Order, 1972.

40. The learned prosecutor then started arguing on commission of offences and participation and complicity of the accused

therewith. However, argument so placed may be well addressed while each charge will be adjudicated independently.

41. Mr. Abdus Sobhan Tarafdar the learned counsel defending the accused Yunus Ahmed submitted that this accused was not a Razakar and prosecution failed to prove it by adducing any document whatsoever. Even this accused was not prosecuted under The Collaborators Order, 1972 which indicates his non-involvement with the offences alleged. Now he has been prosecuted for malafide purpose under the Act of 1973.

42. It has been further submitted by the learned defence counsel that the prosecution relied upon the narrative made in the book titled *Ómtj tU MYnZ`w* [Exhibit-3, relevant page 126] but the person 'Inus Mia' as narrated therein is not the present accused Yunus Ahmed. The person 'Inus Mia' as narrated in the said book is one Yunus Ahmed of village Gobindapur who already died.

43. In addition to above submission, the learned defence counsel also argued to negate complicity of this accused with the arraignments brought against him which may be well addressed at the time of adjudicating each charge independently.

44. Mr. Mujahidul Islam Shaheen the learned counsel engaged for accused Ujer Ahmed Chowdhury and also as the state defence counsel defending the three absconding accused submitted that

these accused had to face prosecution under The Collaborators Order, 1972 for the offences including the killing Danu. And as such they cannot be prosecuted and tried again for the ‘same offence.

45. The learned defence counsel next drawing attention to the oral testimony tendered by the prosecution witnesses argued that the prosecution could not prove participation and complicity of these accused persons with the commission of any of offences alleged. However, the argument advanced on each charge may be well addressed by taking it into account while the charges will be adjudicated.

Reply on part of the Prosecution

46. On rebuttal, the learned prosecutor submitted that the case is not rested solely on the narratives made in the book titled *Ómłj tU MynZıó*; that in absence of full particulars it cannot be said that the person ‘Inus Mia’ as narrated in the book is the person named Yunus Ahmed of village Gobindapur as claimed by the defence. It has been further submitted that due to lack of complete particulars even the narrative made in the said book is excluded the other evidence proves it beyond reasonable doubt that the accused Yunus Ahmed was a Razakar and had acted as a co-perpetrator in committing the offences.

47. The learned prosecutor next submitted that admittedly the four accused persons, excepting accused Yunus Ahmed were prosecuted under The Collaborators Order, 1972 for the offences including the criminal acts narrated in charge nos. 1 and 2. The relevant papers showing it have been annexed with the prosecution documents volume. Therefore, they now cannot be prosecuted again as it would be barred by the doctrine of 'double jeopardy', defence claimed. But the papers do not demonstrate that these four accused were acquitted or convicted for the same offence after trial, the learned prosecutor submitted. Defence failed to bring any relevant paper or document to show that they were acquitted 'after trial'. Thus, mere earlier prosecution even for the same offence itself alone cannot be taken into account for providing the benefit of the doctrine of 'double jeopardy'.

48. On the issue of JCE [basic form] the learned prosecutor drew attention to observations made in this regard in earlier cases of the Tribunals submitted that all the accused persons incurred equal liability for the offences of which they have been charged with as they consciously acted in joint criminal enterprise intending to execute the common purpose and design. The notion of JCE [basic form] in fact refers to section 4(1) of the International Crimes (Tribunals) Act, 1973. Their act and conduct provided substantial contribution, assistance and facilitation in committing

the actual commission of killings. It is immaterial to prove accused persons' physical participation in all phases of the event.

VII. Whether the accused persons belonged to locally formed Razakar Bahini, an auxiliary force created to collaborate with the Pakistani occupation army in 1971 during the war of liberation.

49. Prosecution alleges that the accused persons were engaged in committing the offences under adjudication which happened in 1971 during the war of liberation, in exercise of their membership in Razakar Bahini, an auxiliary force.

50. The burden to prove it lies upon the prosecution. At the same time it is to be noted that mere failure to prove it 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'. The International Crimes (Tribunals) Act, 1973 permits to prosecute even an 'individual' or 'group of individuals' for the offences as enumerated in the Act. That is to say, mere failure to prove the affiliation of the accused persons with any such auxiliary force does not readily diminish their involvement with the alleged offence.

51. Mr. Sultan Mahmud the learned Prosecutor submitted that the fact of accused persons' affiliation with any such auxiliary force may be well proved even by the testimony of witnesses examined

who had practicable reason of knowing them beforehand, chiefly for the reason of their notoriety around the locality.

52. The learned prosecutor further submitted that admittedly the accused persons excepting the accused Yunus Ahmed were prosecuted under The Collaborators Order, 1972 for the criminal acts carried out in 1971 directing the innocent civilians and their property. The papers forming part of the volume of prosecution document [**page 33, 35, 36, 39 and 40 of the volume**] shall adequately demonstrate that the accused Shamsul Hossain Tarafdar @ Ashraf [Absconded], Md. Nesar Ali [absconded], Md Ujer Ahmed Chowdhury and Mobarak Mia [absconded] were Razakars, the learned prosecutor added.

53. In the case in hand, we find that there has been no authoritative list to show accused persons' affiliation with the Razakar Bahini, true. But it is to be kept in mind that it is indeed a challenging task of collecting documentary evidence necessary for proving arraignment and complicity of the accused therewith particularly long more than four decades after the nation achieved its independence. With the lapse of long passage of time and for obvious reasons documents related to their status and notorious activities might have been deliberately destroyed.

54. It appears that prosecution, to prove this fact relies upon oral testimony of witnesses the locals under the Rajnagar Police

Station. The alleged offences happened in the locality under the said police station. All the accused are admittedly the residents of the locality under the same Police Station.

55. In 1971 Razakar Bahini was created to collaborate with the Pakistani occupation army in carrying out brutal atrocious activities directing the civilian population, to further policy and plan. It is now settled. Naturally, a member of such militia force became well known to the locals for his notorious acts and it may thus be proved even by oral testimony of the witnesses particularly who experienced and observed the acts related to the commission of horrific offences alleged. We consider that there can be no bar to rely solely upon oral testimony in determining a particular fact.

56. The learned counsel Mr. Abdus Sobhan Tarafdar defending the accused Yunus Ahmed, after concluding his argument, submitted a death certificate of one Yunus Ahmed of village Gobindapur and prayed to take it into judicial notice. The learned counsel also submitted that 'Inus Mia' [BbQ ugq!] as narrated in the book titled *Ôwmtj tU MYnZ'v : ZvRjy tqvnrq\$ Ó* [relevant page of the book 126, Exhibit-3] is the said Yunus Ahmed of village Gobindapur who was a Razakar and he already died.

57. In view of above submission, the Tribunal notes that the defence was supposed to submit document and list of witnesses at

the time of commencement of trial as required under section 9(5) of the Act of 1973. But it was not done. However, the Tribunal ordered to keep the said paper with the record.

58. Understandably, the learned defence counsel attempted to show that the present accused Yunus Ahmed was not a Razakar and he is not 'Inus Mia' as described in the above book. But in absence of complete particulars there can be no room to deduce that the man who has been named in the said book was one Yunus Ahmed of village Gobindapur who already died.

59. The author of the alleged book might not have been able to collect accurate information in narrating the detail particulars of a person, due to various reasons. The narratives made therein do not appear to have been sourced and thus cannot be termed as authoritative and authenticated. Defence also could not prove by adducing evidence whatsoever that 'Inus Mia' as narrated in the above book was Yunus Ahmed of village Gobindapur. Thus, relying upon deficient information the person 'Inus Mia' cannot be said to be the man named Yunus Ahmed of village Gobindapur, as contended by the learned defence counsel.

60. Additionally, the IO has not opted to depend solely upon the narrative made in the book titled *Ómŕj tU MYnZ"v Ó* in recommending prosecution of accused Yunus Ahmed. On holding complete

investigation following provisions laid down in the Act of 1973 and the ROP, 2010 by visiting the sites and examining the witnesses including the victims and relatives of victims the IO on getting *prima facie* materials in support of arraignments against the five accused including the accused Yunus Ahmed son of late Suruj Mia and late Nabura Bibi of Village Sonatiki, Police Station Rajnagar, District [now] Moulvibazar submitted the 'report', recommending prosecution.

61. Now, mere ignorance the IO expressed in his cross-examination that whether 'Inus' Mia' [as narrated in the book titled *ওঁমত্জ তু MYnZ'v]* was the son of Najir Uddin of village Gobindapur under Police Station Rajnagar of the Moulvibazar Sub-Division does not by itself lead to say that 'Inus Mia' as named in the said book is not the present accused Yunus Ahmed. Additionally, we are to see whether the accused Yunus Ahmed was one of perpetrators of the offences alleged on integrated evaluation of evidence tendered and not on the sole basis of the narrative of the book titled *ওঁমত্জ তু MYnZ'v*.

62. Defence case [of accused Yunus Ahmed] as has been extracted from the trend of cross-examination of P.W.s and the P.W.15 the IO that the accused Yunus Ahmed was not the 'Inus Mia' as narrated in the book titled *ওঁমত্জ তু MYnZ'v*. Thus, the burden lied upon the defence to prove it. But no document or evidence

whatsoever has been submitted by the defence in this regard. It just drew attention to a paper showing death of one Yunus Ahmed of village Gobindapur.

63. We therefore cannot agree with the defence averment. Defence failed to prove that instead recommending prosecution against 'Inus Mia' a resident of another village the present accused Yunus Ahmed who was not a Razakar has been recommended for prosecution.

64. The book titled *Ówmtj tU MYnZ'vÓ* does not narrate detail particulars of 'Inus Mia' and thus there can be no room to say that the said 'Inus Mia' was a resident of village Gobindapur. Merely for the reason of difference of name's spelling it cannot be deduced that the present accused Yunus Ahmed was not a Razakar.

65. The above plea could have been agitated even at the stage of hearing on charge framing matter seeking discharge of this accused, on the ground being agitated now. But it was not done.

66. Next, mere reason that the four accused excepting this accused Yunus Ahmed were prosecuted under The Collaborators Order, 1972 for the criminal acts perpetrated in 1971 during the war of liberation cannot by itself leads to the conclusion that this accused Yunus Ahmed was not a Razakar. Therefore, we are not with the

submission advanced by the learned counsel defending the accused Yunus Ahmed. In the case in hand, we are to resolve this issue chiefly on oral testimony tendered, weighing its value and truthfulness.

67. Mr. Mujahidul Islam Shaheen the learned counsel engaged for accused Ujer Ahmed Chowdhury and as state defence counsel for three other absconding accused submitted that these accused persons were previously prosecuted for the criminal acts narrated in charge nos. 1 and 2 under the Collaborators Order 1972. Now, they cannot be prosecuted and tried again for the 'same offence'.

68. The learned defence counsel advanced above submission drawing attention to the relevant papers forming part of prosecution documents volume [page 33,35,36,39 and 40] showing lodgment of cases against these four accused under The Collaborators Order, 1972.

69. It seems that above submission has been agitated for taking the benefit of the doctrine of double jeopardy. But before we resolve this issue, it transpires patently from the above papers that the four accused were engaged in committing criminal acts in 1971 directing the civilian population, in exercise of their membership in locally formed Razakar Bahini.

70. The above gets assurance from the oral testimony of the prosecution witnesses. We have found it revealed that all the

accused were the residents of villages nearer to those of the witnesses. Thus, the P.W.s knew them beforehand and thus they were quite capable of recognizing the accused persons accompanying the group in launching alleged attacks as narrated in the charges.

71. The admitted documents forming part of prosecution documents volume have made it unerringly proved that four accused persons, excepting accused Yunus Ahmed were prosecuted under The Collaborators Order, 1972 for the offences they committed, in exercise of their membership in Razakar Bahini. Now, let us resolve the issue taking it together with the oral testimony of witnesses, the locals under Rajnagar Police Station into account.

72. In cross-examination of P.W.01 and P.W.03 defence merely suggested that the accused were not with the group of perpetrators in committing the criminal acts they testified. But it has not been suggested that they did not know the accused persons and they had no reason of knowing them beforehand.

73. We have found from the version of P.W.02 and P.W.04 that the accused persons the notorious Razakars were the residents of their locality and used to move around bazaar and presumably this was the reason of knowing the accused persons beforehand. This version remained unshaken in cross-examination.

74. P.W.06 the daughter of victim of the event narrated in charge no.02 also echoed the same version. According to P.W.06 she knew the accused persons beforehand as they used to move to the house of Nasir Ali of village Rajapur, the Chairman of local peace committee through the road besides their [P.W.06] house.

75. In cross-examination of P.W.06 done on part of the accused Ujer Ahmed Chowdhury and three absconding accused it has been transpired that the house of peace committee chairman was about half kilometer far from that of their[P.W.06] own. It rather suggests the conclusion that such activities of the accused persons made the P.W.06 familiar with the accused persons and their affiliation with the locally formed Razakar Bahini.

76. P.W.10 Shanta Dhar Chowdhury a direct witness to the event of attack as narrated in charge no.05. He [P.W.10] had occasions of seeing the accused moving at Munshi Bazaar very often and as such he knew them beforehand. It could not be refuted by the defence

77. Rather, it transpires from the version made in reply to defence question put to him{P.W.10] that the villages Gaeshpur, Bagajora and Masuria were about one and half kilometers, two kilometers and one and half kilometers respectively far from their house.

78. That is to say, the accused persons were the residents of P.W.10's neighbouring locality. It gets corroboration from the evidence of P.W.11 Chanu Dhar Chowdhury, a direct witness to the event narrated in charge no.05. Thus, naturally the P.W.10, P.W.11 and the locals had fair occasion of knowing the accused persons and their activities. Defence could not bring anything in cross-examination of P.W.12 that the accused were not Razakars and he had no reason of knowing them beforehand.

79. On totality of evidence tendered in respect of affiliation of the accused persons with the locally formed Razakar Bahini it reveals patently that the accused were seen moving very often around the locality and bazaar and as such the witnesses had fair occasion of knowing them beforehand. This rational reason of knowing the accused persons beforehand remained uncontroverted.

80. Besides, Razakars became known around their locality for their notoriety. In 1971 during the war of liberation, the Razakars had to maintain close nexus and affiliation with the Pakistani occupation army stationed in their locality, in exercise of their membership in Razakar Bahini, it may safely be presumed. Nexus and affiliation with Razakar Bahini which was created to collaborate with the Pakistani occupation army became anecdote, especially for its notoriety around their locality. This logical proposition together with the oral evidence suggests the

conclusion that all the five accused were associated with the locally formed Razakar Bahini.

81. Papers forming part of the prosecution documents volume [page 33,35,36,39 and 40 of the volume] together with the uncontroverted oral testimony of competent witnesses, the residents of the locality under the same Police Station indisputably prove that all the accused persons were the notorious Razakars of the locality under Police Station Rajnagar of the then Moulavibazar Sub-Division and had nexus with the Pakistani occupation army stationed in Moulavibazar.

82. Papers forming part of the prosecution documents volume [page 33,35,36,39 and 40 of the volume] also speak a lot. It appears that number of cases was lodged against the accused Ujer Ahmed Chowdhury and Md. Nesar Ali which is fair indicia of their dominance and potential position over the locally formed Razakar Bahini. In cross-examination of P.W.13 Ranjit Bhattacharya it rather stands affirmed that accused Md. Nesar Ali was a Razakar Commander of Uttarbagg Union.

VIII. Prosecution under the Act of 1973 is now malafide as the accused could have been prosecuted and tried under The Collaborators Order 1972

83. Mr. Abdus Sobhan Tarafdar the learned counsel defending the accused Yunus Ahmed submitted that this accused could have been prosecuted and tried under The Collaborators Order 1972, if

actually he had committed the offence alleged by way of collaborating with the Pakistani army. Now this accused has been falsely implicated in this case.

84. In view of above submission, we reiterate that The Collaborators Order 1972 was a different legislation aiming to prosecute the persons responsible for the offences enumerated in the schedule thereof. It will appear that the offences punishable under the Penal Code were scheduled in the Collaborators Order 1972. While the 1973 Act was enacted to prosecute and try the ‘crimes against humanity’, ‘genocide’ and other system crimes committed in violation of customary international law and the laws of war.

85. Thus, first there is no room to characterize the offences underlying in The Collaborators Order 1972 to be the same offences as specified in the Act of 1973 and second, prosecuting the accused now under the Act of 1973 is not barred for the reason that he was not prosecuted under The Collaborators Order, 1972.

86. In the case in hand, the accused Yunus Ahmed is alleged to have committed or aided and abetted or had complicity to the perpetration of the offences enumerated in the 1973 Act, in the capacity of his membership in Razakar Bahini formed locally. It is to be noted that an individual cannot be relieved from being

prosecuted for the crimes committed in violation of customary international law even after long lapse of time and even it is found that he was not prosecuted under The Collaborators Order, 1972.

87. Therefore, we are disinclined to agree with the defence argument that merely for the reason that since the accused was not brought to justice under the Collaborators Order 1972 now he is immune from being prosecuted under the Act of 1973 and now he has been prosecuted for malafide purpose.

IX. Defence plea of Doctrine of Double Jeopardy in respect of the events narrated in charge nos. 1 and 2.

88. Drawing attention to the papers related to cases lodged under The Collaborators Order, 1972 [prosecution documents volume page nos.33, 35,36,39 and 40] the learned counsel Mr. Mujahidul Islam Shaheen defending accused Ujer Ahmed Chowdhury and three absconding accused, as state defence counsel submitted that these accused were not made accused in the cases lodged over the event as narrated in charge no.4 and 5 and thus now the testimony implicating these accused with the event of killing narrated therein is not reliable. The accused could have been prosecuted under The Collaborators Order, 1972 if they really were involved with those crimes in any manner.

89. Mr. Mujahidul Islam Shaheen further submitted that the accused persons were previously prosecuted for the criminal acts

constituting the offences narrated in charge nos. 1 and 2 [present case] under The Collaborators Order 1972 and thus they cannot be put on peril again for the 'same offence' and thus they are entitled to exoneration from these two charges. The doctrine of double jeopardy provides this protection to the accused persons, the learned defence counsel argued.

90. It is true that the Article 35(2) of the Constitution of Bangladesh prohibits prosecution and punishment for twice for the 'same offence'. But on mere reading of the preamble of The Collaborators Order, 1972 it cannot be said that the offences punishable under it are qualified to be the 'offences' as enumerated in the Act of 1973.

91. In the case in hand, first there has been no relevant paper before us which may conclusively demonstrate that the four accused were prosecuted for the criminal acts constituting the offences narrated in charge no. 1 and 2. Second, the defence did not take effort to satisfy by adducing any relevant document that these four accused got acquittal or convicted after trial for the offences scheduled in The Collaborators Order, 1972. The papers forming part of prosecution documents volume upon which defence contention is based do not show that the cases under The Collaborators Order of 1972 were disposed of after trial.

92. Additionally, defence does not seem to have suggested, as specific defence case to any of witnesses including the relatives of victims of the events narrated in charge no.1 and 2 that the four accused got acquittal after trial in the cases under The Collaborators Order, 1972.

93. The Collaborators Order, 1972 was a piece of legislation aiming to prosecute and try the persons responsible for the offences enumerated in the schedule thereof. The offences punishable under the Penal Code were scheduled in The Collaborators Order, 1972. While the Act of 1973 was enacted to prosecute and try the ‘crimes against humanity’, ‘genocide’ and other ‘system crimes’ which are recognised as international crimes committed in violation of customary international law.

94. Thus, there is no scope to characterize the offences underlying in The Collaborators Order, 1972 to be the ‘same offences’ as specified in the Act of 1973. Tribunal-2 observed, in resolving the issue of 'double jeopardy', in the case of **Md. Abdul Alim [Judgment 09 October 2013, para 103]** that ---

“Additionally, the offences enumerated in the Act of 1973 are quite distinct from those scheduled in the Order of 1972. The Tribunal, in determining the issue of ‘double jeopardy’, is concerned with offences or crimes as clearly

refer to the Act of 1973 and not the Collaborators Order 1972”.

95. Bangladesh Constitution contains a provision [Article 35(2)] that deals with the issue of ‘double jeopardy’ (also known as *ne bis in idem*). This principle essentially means that a person should not be tried or punished twice for the ‘same offence’. But in the case in hand, we see that these four accused were merely prosecuted under a different legislation for the offences punishable under the Penal Code, and not for the crimes punishable under the Act of 1973.

96. Ingredients of offences punishable under the Penal Code are not identical to those of offences punishable under the Act of 1973. If it is so, it cannot be deduced that the accused persons are now being prosecuted and tried for the ‘same offences’.

97. In view of above discussion, we are in unmistakable disposition that these four accused cannot have the shield of the principle of double jeopardy as enshrined in Article 35(2) of the Constitution. It has been depicted from the papers forming part of prosecution documents volume that these four accused were merely prosecuted under The Collaborators Order, of 1972 and in the end not tried and acquitted or punished.

98. Therefore, we are disinclined to accept the proposition that since these four accused were freed, without trial from the

prosecution initiated under The Collaborators Order, 1972 they are now immune from being prosecuted under the Act of 1973, even if it accepted that the accused were so prosecuted under The Collaborators , Order of 1972 for the 'self same criminal acts.'

X. General Considerations Regarding the Evaluation of Evidence in a case involving the offences of Crimes against Humanity, genocide

99. The accused persons who were the members of 'auxiliary force' as defined in section 2(a) of the Act of 1973 have been charged for the offences enumerated in section 3(2) of the Act of 1973. The offences for which they have been indicted were 'system crimes' committed in violation of international humanitarian law in the territory of Bangladesh in 1971.

100. The present case so far as it relates to the alleged facts of criminal acts constituting the alleged offences is predominantly founded on oral evidence presented by the prosecution. Mostly the victims and witnesses who allegedly experienced the facts materially related to the principal events came on dock to testify.

101. We reiterate that the case relates to trial of internationally recognised crimes committed in violation of customary international law. The alleged offences were committed in context of war of liberation in 1971. Section 23 of the Act of 1973 provides that provisions of the Criminal Procedure Code, 1898(V of 1898), and the Evidence Act, 1872(I of 1872), shall not apply

in any proceedings under the Act of 1973. 23. Section 19(1) of the Act provides that the Tribunal shall not be bound by technical rule of evidence and it shall adopt and apply to the greatest possible extent non technical procedure and may admit any evidence which it deems to have probative value.

102. In the case in hand, we are to keep the provision of section 23 together with section 19 of the Act of 1973 in mind. Thus, the task of determination of culpability of a person accused of offences enumerated in section 3(2) of the Act of 1973 involves a quite different jurisprudence.

103. Proof of all forms of criminal responsibility, through participation in any manner can be given by direct or circumstantial evidence. It is now settled jurisprudence. It is now settled too that an individual may participate to the actual commission of the principal crime by his act or conduct, before or midst or after the crime committed.

104. The Tribunal notes that context of committing such crimes and totality of its horrific contour prevailing in war time situation naturally leaves little room for the people to witness the criminal acts forming part of attack. Besides, due to lapse of long passage of time it may not always be reasonable to expect the witness to recall every detail with precision.

105. In the case in hand, prosecution depends mostly on testimony made by the witnesses before the Tribunal. It is to be noted that the testimony of a single witness on a material fact does not, as a matter of law, require corroboration. The established jurisprudence makes it clear that corroboration is not a legal requirement for a finding to be rendered.

106. However. Onus squarely lies upon the prosecution to establish accused's presence, acts and conducts forming part of attack resulted in commission of the offences of crimes against humanity and genocide as enumerated in section 3(2) of the Act of 1973 for which they have been arraigned.

107. The evolved international criminal jurisprudence forces us to keep it in mind too that an insignificant discrepancy does not tarnish witness's testimony in its entirety. Any such discrepancy needs to be contrasted with surrounding circumstances and testimony of other witnesses.

108. Inconsistency itself should not be the sole consideration to exclude the entire evidence, particularly on material fact, cannot be excluded. The ICTR Appeal Chamber laid its view that "the presence of inconsistencies within or amongst witnesses' testimonies does not per se require a reasonable Trial Chamber to reject the evidence as being unreasonable" [**Muhimana, (Appeals Chamber), May 21, 2007, para. 58**].

109. Appraisal of the evidence is to be made on the basis of the totality of the evidence presented in the case before us. The Tribunal, however, is not obliged to address all insignificant inconsistencies, if occur in witnesses' testimony.

110. We consider it jurisprudentially appropriate and 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.

111. In dealing with the offence of crimes against humanity which is known as 'group crime' it would be immaterial to argue that the accused was not the actual perpetrator or he himself physically participated to the commission of the criminal acts. It is to be determined how the accused's act or conduct or prohibited act formed part of systematic attack directed against the civilian population that resulted in perpetration of crimes as enumerated in section 3(2) of the Act of 1973 were committed. Prosecution even is not required to identify the actual perpetrator. This has been now a settled proposition.

112. It is now also settled that hearsay evidence is admissible in determining the material facts related to the principal event of crimes. But mere admission of hearsay evidence does not render it

carrying probative value. Such hearsay evidence is to be weighed in context of its credibility, relevance and circumstances.

XI. Adjudication of Charges

Adjudication of Charge No.01

[Killing of Danu Mia of village Baligaon and committing other offences of abduction, confinement, torture and other inhuman act]

113. Charge: On 22 November, 1971 at about 10:00 A.M all the five accused Shamsul Hossain Tarafdar, Ujer Ahmed Chowdhury, Nesar ALi, Yunus Ahmed and Mobarak Mia being accompanied by 25/30 armed Razakars and 20/25 Pakistani army by launching attack at the house of Danu Mia and his two neighbours Samed Ullah and Taju Mia carried out destructive activities, looted households, tortured inmates, finding no freedom fighters there and then had picked up Danu Mia on forcible capture and took him away to the army camp in Moulavibazar where he was kept detained.

On the following day i.e on 23 November, 1971 at about 10:00 A.M the accused Razakars being **accompanied by 15/20 armed Razakars** by launching attack at the house of Harendra Bhattacharya apprehended Kandarpa Babu and Samru who were taken to army camp set up at PTI, Moulvibazar wherefrom later on they were set at conditional liberty.

The accused Razakars later on demanded ransom money from sons of detained Danu Mia and on receiving it they on 04 December took Danu Mia's sons with them to Moulavibazar and handed them over to the Pakistani army at Chadnighat, Moulvibazar where they were subjected to torture. **Victim Danu Mia was killed by the army men on 05.1.21971** and after independence they found the decomposed body of Danu Mia on the bank of the river Manu.

All the five accused Shamsul Hossain Tarafdar, Ujer Ahmed Chowdhury, Nesar Ahmed, Yunus Ahmed and Mobarak Mia have been charged for participating, contributing, facilitating and complicity in the commission of offences of abduction, confinement, torture, other inhuman act and murder as crimes against humanity as enumerated in section 3(2)(a)(g)(h) of the Act of 1973 which are punishable under section 20(2) of the said Act for which the accused persons have incurred liability under section 4(1) of the said Act.

Evidence of Witnesses Examined

114. Prosecution, aiming to prove the event narrated in this charge involving the offences of abduction, confinement, torture and murder as crimes against humanity and how the accused persons participated and facilitated in committing those offences examined as many as 06 witnesses as P.W.01, P.W.02, P.W.03,

P.W.04, P.W.05 and P.W.09. Of these six witnesses two [P.W.01 and P.W.02] are the sons of the victim Danu Mia, prosecution contends. Before we weigh and evaluate the evidence in arriving at decision we consider it expedient to focus on what has been testified by the above six witnesses, on material particulars.

115. P.W.01 Md. Aaur Rahman Madhu [59] is a resident of village-Baligaon under Police Station-Rajnagar of the then Sib-Division Moulvibazar. In 1971 he was student of class VIII. He testified the facts relevant to the crimes as have been brought in the charge no.01 involving the offences of killing Danu Mia, his father and also the offences of abduction, confinement , torture and other inhumane acts committed in conjunction with the attack alleged.

116. P.W.01 stated that in the mid night of 20 November 1971 Syed Mohsin Ali [now dead] the sub-sector commander of freedom fighters along with more than hundred freedom fighters came to their house when his [P.W.01] father arranged their staying at their house and also at the houses of neighbours Samed Ullah and Taju Mia. On 21 November,1971 his [P.W.01] father got information from secret source that the Razakars became aware of the staying of freedom fighters at their house and as such in night his father made the freedom fighters shifted to safe place.

117. P.W.01 went on to state too that on 22 November at about 10:00/10:30 AM Razakar commander accused Nesar Ali, Al-Badar commander accused Shamsul Hossain Tarafdar @ Ashraf, Razakar accused Yunus Ahmed, Razakar accused Md. Ujer Ahmed Chowdhury, Razakar accused Md. Mobarak Mia being accompanied by 25/30 accomplice Razakars and 20/25 Pakistani army men arrived at their village by two vehicles and keeping the vehicles at the opening of village road they raided their house when he[P.W.01], his father and his elder brother had been at house. The army men, Razakars and Al-Badar then asked his [P.W.01] father whether any freedom fighter came to their house. With this his [P.W.01] father replied in negative but the army men and Razakars then tying them up took at the courtyard and started beating them and one Razakar charged bayonet to his left hand and right leg that resulted in injury. Then keeping them guarded under some Razakars and army men the other Razakars and army men at about 11:00/11:30 A.M moved to the house of their neighbour Samed Ullah and at the same time the Razakars and army men under whose guard they were kept detained started destructing and looting households of their house.

118. P.W.01 next testified that finding no freedom fighter at the house of Samed Ullah the Razakars and army men carried out looting there and set the house of Samed Ullah on fire and they also had severely beaten two elderly inmates Mobarak Mia and

Jalal Mia and then there from they moved to the house of Taju Mia, one of their [P.W.01] neighbours where they carried out looting the households, finding no freedom fighter there.

119. P.W.01 next stated that at about 03:00 P.M on the same day the army men and Razakars took away his [P.W.01] father on forcible capture to Moulvibazar army camp and they set their house on fire. On the way to Moulvibazar army camp the Razakars and army men had attacked one Harendra Chandra's house at their neighbouring village Nandiura and set it on fire as they did not find any freedom fighter there. On the following day he[P.W.01] knew that at about 10:00/11:00 P.M the Razakars by attacking Harendra Bhattacharya's house set it on fire and apprehending two inmates Kandarpa Bhattacharya and Shamsuddin @ Chandu Mia there from took them away . Later, on condition of providing information about the freedom fighters Kandarpa Kumar Bhattacharya got release and came back home.

120. P.W.01 also testified that on 30 November at about 02:00/02:30 P.M the five accused persons he already mentioned came to their house and demanded Taka 5000 from his[P.W.01] elder brother Matiur Rahman in exchange of which they would make his [P.W.01] father released. With this they requested the Razakars to come four days later and thus the five accused again came to their house on 04 December in evening when they

realized taka 5000 from his elder brother Matiur Rahman and took him [P.W.01], his elder brother and uncle Haris Mia with them to the army camp at Chadnighat, Moulvibazar for returning his [P.W.01] father back. After arrival at the army camp the accused told them that the army men would release his [P.W.01] father and they quitted. Then they got undressed as asked by the Pakistani army men, in fear of death and compelled them to remain hanged with a mango tree nearby the camp. At a stage Indian fighter plane started bombing in Moulvibazar and with this the army went into hid inside bunkers and they then managed to escape and returned back home.

121. P.W.01 also added that on 06 December he knew from one Soab Ali[kept detained with his father at the army camp] of their neighbouring village that the Pakistani army on 05 December at about 12:00/01:00 PM gunned down 84 civilians detained at the army camp to death and he[Soab Ali] somehow managed to escape. On 18 December, after the independence achieved they traced the dead body of his father on the bank of the river Manu and buried it at their family graveyard.

122. In cross-examination defence suggested P.W.01 that the accused persons were not with the group when it launched attack at their house; that the accused persons did not promise to make his [P.W.01] father's release in exchange of money; that the

accused persons and their accomplices did not take them at the Chadnighat army camp and that the accused persons did not belong to Razakar Bahini or Al-Badar Bahini and they were not concerned with the event he testified. P.W.01 denied it blatantly. Defence however does not seem to have made effort in refuting the facts materially related to the principal offence as testified by the P.W.01

123. P.W.02 Md. Motiur Rahman [61] is the elder son of victim Danu Mia. In 1971 he was a student of class X of Khalagaon Karimpur High School. He testified how the accused being accompanied by Pakistani occupation army and accomplice Razakars by launching attack tortured the inmates of their family, carried out devastating activities and finally took away his father on forcible capture.

124. P.W.02 stated that his London resident father came to their native village at Khaligaon on 14 January, 1971 to expend leave. After the war of liberation ensued his father started encouraging the local youths and elders of the village to join the war of liberation and used to keep constant contact with the freedom fighters.

125. P.W.02 went on to state that on 20 November, 1971 at about 11:00/12:00 in night hundreds of freedom fighters led by sub-sector commander Syed Mohsin Ali came to their house when his

father arranged their staying at their house and also at the house of Samed Ullah and Taju Mia, their neighbours. On 21 November his [P.W.02] father came to know through secret source that the Razakars became aware of the fact of staying of the freedom fighters at their house and with this later on at about 11:00 in night his father made shifting of freedom fighters at secure place.

126. P.W.02 next stated that on the following day i.e on 22 November [1971] at about 10:00/10:30 A.M a group formed of 25/30 Razakars and 20/25 Pakistani army men raided their house. He [P.W.02] could recognise Al-Badar commander accused Shamsul Hossain Tarafdar @ Ashraf, Razakar commander accused Md. Nesar Ali, Razakar accused Md. Ujer Ahmed Chowdhury, Razakar accused Yunus Ahmed and Razakar accused Mobarak Mia accompanying the group as they belonged to their locality and were known for their notoriety and they used to move at the same bazaar. At the time of launching such attack he [P.W.02], his younger brother Ataur Rahman Madhu [P.W.01], his father, mother and cousin brothers had been at the house. Then Razakars asked his [P.W.092] father whether any freedom fighter came to their house. His father replied in negative and then the Razakars entering inside the room dragged out his mother, looted households and tied up him, his father, younger brother Ataur Rahman [P.W.01]. Then keeping them guarded by the five accused Razakars and army men the other Razakars and army men

moved to the house of Samed Ullah where finding no freedom fighter they banged two elders Mobarak and Jalal Mia[both are now dead] and set their house on fire. Therefrom those Razakars and army men then moved to the house of Taju Mia and carried out looting and set the house on fire as they did not get trace of any freedom fighter there. Then at about 03:00 P.M those Razakars and army men returning there from set their house on fire and started taking away his father forcibly seeing which his [P.W.02] younger brother Madhu [P.W.01] started crying and then the Razakars smacked him charging bayonet and then eventually took away his father with them towards Moulvibazar army camp, by an army vehicle.

127. P.W.02 also testified that on 30 November [1971] the five accused persons coming to their house demanded taka 5000 as ransom. Afterwards, on 04 December [1971] the accused persons again came to their house and received the ransom money and took him, his younger brother and uncle Haris Mia with them to Moulvibazar Chadnighat army camp and leaving them near the camp the accused persons quitted. Then the army men of the said camp made them undressed and compelled to remain hanged with a mango tree at the camp. At that time the Indian fighter plane started shelling in Moulvibazar town and thus the army men went into hid inside the bunkers and it made them space to escape there from.

128. Finally, P.W.02 testified that on 06 December, 1971 they went to Soab Ali of their village who returned back from captivity at the army camp and had learnt from him that the army men had killed 84 civilians including his[P.W.02] father detained at the army camp on 05 December[1971]. On 18 December after the independence achieved they moved to Moulvibazar along with freedom fighters and found his father's decomposed body on the south bank of the river Manu and they buried it at their family graveyard.

129. In cross-examination, in reply to question put to him on part of the accused Yunus Ahmed P.W.02 stated that he lodged a case with Rajnagar Police Station over the event of his father's killing on 15.04.1972 accusing the five accused persons as he mentioned including Sajid Mia, Barik Mia and Akaddas Master [who are now dead] who were involved with the event. He however could not say the fate of the said case.

130. P.W.02 denied the suggestion put to him that what he testified implicating accused Yunus Ahmed with the event was untrue and tutored; that this accused was not with the group formed of Razakars and army when it had attacked their house; that this accused was not involved with the act of demanding and taking the ransom money and that this accused was not with the group which took them to Moulvibazar army camp.

131. On cross-examination on part of accused Md. Ujer Ahmed Chowdhury and three absconding accused P.W.02 stated that the distance of villages Gaeshpur, Bagajura and Masuria from their house was about 07 kilometers, 1.5 kilometers and about 02 kilometers respectively. It has been suggested to P.W.02 that these four accused were not with the group in launching attack at their house; that they did not demand and received ransom for releasing his father and that what he testified implicating these four accused with the event he testified was untrue and tutored and groundless. P.W.02 denied it manifestly.

132. Defence does not appear to have made any effective attempt intending to rebut the facts materially related to the event that ended in killing detained Danu Mia along with 83 civilians detained at the same army camp, as testified by the P.W.02.

133. P.W.03 Md. Khalilur Rahman [60] was a neighbour of the victim Danu Mia. In 1971 he was a student of class IX. Corroborating the P.W.01 and P.W.02 the sons of the victim he [P.W.03] testified how the attack [as narrated in charge no.01] was carried out in taking away Danu Mia on forcible capture.

134. P.W.03 stated that few days after the war of liberation ensued Danu Mia who was a London resident came back to his native village and started persuading the local youth to get engaged in the

war of liberation, by getting in touch with them. On 20 November, 1971 in the mid night hundreds of freedom-fighters led by commander Syed Mohsin Ali[a former Minister and now dead] got sheltered at the house of Danu Mia, Samed Ullah and Taju Mia. On the following day i.e on 21 November, 1971 Danu Mia came to know that the Razakars became aware of staying of the freedom fighters at his house and others' houses and thus he made them shifted to a secure shelter at their neighbouring village- Poitara.

135. P.W.03 next stated that on 22 November, 1971 at about 10:00/10:30 accused Al-Badar commander Shamsul Hossain Tarafdar @ Ashraf and Razakar commander Md. Nesar Ali being accompanied by 30 Razakars and 25/30 Pakistani army men arrived at the road of their village Baligaon by two vehicles wherefrom they came to the house of Danu Mia on foot and asked him whether the freedom fighters took shelter at his house. Danu Mia replied in negative and with this the Razakars and Al-Badars tied him and his two sons Aatur Rahman [P.W.01] and Motiur Rahman [P.W.02] up with rope and keeping them under guard of some Razakars and army men the rest of Razakars and army men moved to the house of Samed Ullah where they seeing big size cooking vessels guessed that freedom-fighters took shelter there and then they started beating two inmates Jalal Mia and Mobarak Mia [both are now dead], looted households.

136. P.W.03 stated that he had been at their house when the Razakars and army men had attacked Samed Ullah's house which was about 100/125 yards far. P.W.03 also stated that the house of Danu Mia was about 20/25 yards far from their house.

137. P.W.03 went on to state that on the same day at about 01:00/01:30 P.M a group formed of Razakars and army men had attacked the house of Taju Mia and finding no freedom fighter there they looted households and set the house on fire and then at about 03:00 P.M the group returning back set the house of Danu Mia on fire and took away Danu Mia with them towards Moulvibazar, setting his two sons released.

138. In relation to facts happened subsequent to taking away Danu Mia on forcible capture P.W.03 stated that on 30 November, 1971 he heard from Matiur Rahman the son of victim Danu Mia that the Razakars as he named demanded taka 5000 as ransom for securing his father's release. On 04 November he [P.W.03] also heard from Matiur Rahman that these Razakars later on receiving the ransom money took Motiur Rahman, Aaur Rahman, the sons of Danu Mia and Haris Mia with them expressing assurance to give Danu Mia back.

139. P.W.03 further stated that on 05 December at about 05:00 he learnt that the army men on that day at about 12:00 noon had

gunned down Danu Mia to death at a place nearby Moulvibazar army camp. On 18 December Danu Mia's decomposed body was recovered from the bank of the river Manu and it was buried after taking at home.

140. In cross-examination, on part of the accused Yunus Ahmed, P.W.03 stated in reply to question put to him that at the time of the event [attack] he, his mother, two aunties [who are now dead] and his younger brother had been at their house and his father and uncles were not at home; that Danu Mia was the husband of his [P.W.03] cousin sister Begum Diljan Bibi [now dead].

141. P.W.03 denied the suggestion put to him by the defence that accused Yunus Ahmed was not with the Razakars, Al-Badars and Pakistani army; that this accused was not involved with the event he narrated; that he did not observe the event he testified; that he did not hear anything from Motiur Rahman and that what he testified implicating this accused was untrue and tutored.

142. Defence however does not seem to have made any attempt to dislodge what has been testified in examination-in-chief by the P.W.03 particularly in relation to launching attack , carrying out devastating activities and raking away Danu Mia on forcible capture which ended in his killing. It transpires too that no suggestion on part of defence has been put to P.W.03 that he had

no reason of recognizing this accused and Danu Mia was not shot to death by the army men after keeping detained at the army camp in Moulvibazar.

143. In cross-examination on part of the accused Ujer Ahmed Chowdhury and three absconded accused it has been simply denied what the P.W.03 testified about the event and complicity of these accused therewith . P.W.03 denied the suggestion put to him that these accused did not belong to Razakar or Al-Badar Bahini ; that the attack was carried out by the group formed only of the Pakistani occupation army men and that what he testified implicating these accused was untrue and tutored.

144. P.W.04 Horo Proshad Bhattacharya [60] a resident of village Nandiura under Police Station Rajnagar of the then Sub-Division Moulvibazar testified facts related to the attack as narrated in charge no.01. In 1971 he was SSC examinee.

145. P.W.04 stated that on 22 November, 1971 at about 3/4 P.M he had been at their house when he saw arriving of two army vehicles at the place Bhoirabtola near their house from the end of Munshi bazaar. He then also saw 15/16 Pakistani army men and 15/16 Razakars heading towards their house and with this he [P.W.04], his parents and inmates went into hiding inside a bush to the north of their house wherefrom they observed that Pakistani

army men being accompanied by accused Razakar Shamsul Hossain Tarafdar @ Ashraf, accused Razakar Md. Nesar Ali, accused Razakar Md. Ujer Ahmed Chowdhury, accused Razakar Mobarak Mia, accused Razakar Yunus Ahmed and their accomplice Razakars searching for freedom fighters entering their house , looting households and beating two domestic aids Paresh [now dead] and Jogai [now sick] and taking Paresh to their vehicles wherefrom he was spared. Paresh later on disclosed them that he [Paresh] saw the accused Shamsul sitting beside Danu Mia of village Baligaon at the army vehicle, P.W.04 added.

146. P.W.04 next stated that at about 01:00 A.M, day after 22 November, 1971 those Razakars again came to their house when they went into hiding inside a nearby bush and then the Razakars set their house on fire when their neighbour Kandarpa Kumar Bhattacharya attempted to extinguish the fire when he was taken away on forcible capture towards Rajnagar Police Station. On the following day Kandarpa Kumar Bhattacharya came back home from whom he came to know that in the preceding night Samru Mia and Barada Nandi were also taken away by Razakars and finally they were set at liberty on condition of providing information about the freedom-fighters to the Pakistani occupation army.

147. In respect of reason of knowing the accused persons P.W.04 stated that the accused persons used to move around then village and markets very often when he [P.W.04] had occasion of meeting them and as such he knew them beforehand.

148. On cross-examination, on part of accused Yunus Ahmed P.W.04 stated in reply to question put to him that his father had lodged a case with Rajnagar Police Station immediate after the independence achieved, over the event happened at their house. P.W.04 has been suggested that he could not recognize this accused; that he went into hiding not inside a bush but elsewhere; that the accused Yunus Ahmed was not involved with the event he testified and that what he testified was untrue and tutored.. P.W.04 denied these defence suggestions put to him.

149. In cross-examination on behalf if accused Ujer Ahmed Chowdhury and three absconded accused P.W.04 stated that the bush inside which he went into hiding still exists; that Samru Mia and Baroda Nandi were the residents of their neighbouring village Majidpur; that inmates of their family went into hiding wherever they could when the Pakistani army men came to their house. It has been suggested this P.W.04 that these accused were not Razakars; that they were not affiliated with the event he narrated; that he could not recognise any of these accused and that what he

testified implicating these accused was untrue and tutored. P.W.04 denied it.

150. P.W.05 Shamsuddin @ Samru Mia [70] is a resident of village Majidpur under Police Station Rajnagar of the then Moulvibazar Sub-Division. He testified that fact of taking him away to Rajnagar Police Station along with his neighbour Baroda Nandi. He stated that on 22 November, 1971 at about 12:00 night he seeing the house of one Harendra of their neighbouring village Nandiura under ablaze he and his neighbour Baroda Nandi attempted to rush there intending to extinguish the fire but on their way some Razakars apprehending them took away to Rajnagar Police Station along with Kandarpa Babu where they were subjected to beating. He and Baroda Nandi were then kept detained inside the lock up and on the following day they were sent to Moulvibazar army head quarters. Later on, they the three detainees got release there from on condition of providing information to the Pakistani army about the freedom fighters and thus they returned back home, P.W.05 added.

151. Defence declined to cross-examine the P.W.05, presumably he has not stated anything implicating any of accused persons with the facts he testified. However, the facts so testified in examination-in-chief seem to be materially related to the event of attack as narrated in charge no.01.

152. P.W.09 Farasath Ali [62], the Chairman of NRB Bank is the brother of Najabat Ali one of victims of the event narrated in charge no.04. He testified what he heard about the event. He is a freedom fighter.

153. P.W.09 testified what he heard from Soab Ali, a survived detainee of village Gaeshpur. P.W.09 stated that on 07 December in the afternoon he met Soab Ali who disclosed that Pakistani army made him [Soab Ali] and 70/80 detainees stood in a line at Moulvibazar army camp and fired gun shots. But he somehow got survived and the other detainees were killed. Najabat Ali, Abdul Basit, Danu Mia, Dr. Jamini Mohon Dev were also gunned down to death on 05 December,1971 at Moulvibazar army camp and his[P.W.09] sister's husband Abdur Rahim miraculously survived—Soab Ali disclosed.

Finding with Reasoning on Evaluation of Evidence

154. This charge involves the attack that resulted in commission of the offences of abduction, confinement, torture, other inhuman act, and the event of attack ended in killing of Danu Maia who was taken away on forcible capture. The group formed of all the five accused Shamsul Hossain Tarafdar, Md. Ujer Ahmed Chowdhury, Md. Nesar Ali, Yunus Ahmed and Mobarak Mia, 25/30 armed Razakars and 20/25 Pakistani army.

155. Mr. Sultan Mahmud the learned prosecutor argued that the event of attack as narrated in this charge ended in killing the detained victim Danu Mia after taking him to the army camp in Moulvibazar. In all six [06] witnesses have been examined to substantiate this charge. Of them P.W.01 and P.02 are the sons of the victim who had occasion of seeing the first phase of attack launched by the group formed of army men and the accused persons and their accomplice Razakars. P.W.03, P.W.04 and P.W.05 are the direct witnesses to facts materially relevant to the attack. P.W.09 a freedom-fighter and the brother of Najabat Ali, a victim of the event as narrated in charge no.04 heard the event of killing Danu Mia from a survived victim. His hearsay evidence thus being admissible carries probative value. Defence could not refute what has been testified by the P.W.s on material particulars.

156. The learned prosecutor further argued that the culpable act of accompanying the group the accused persons substantially contributed and facilitated the commission of the principal offence the killing of detained Danu Mia who was a potential organiser of the war of liberation. Defence does not dispute the event of forcible capture of Danu Mia and his killing. It merely denied what has been testified by the P.W.s. But mere denial of version made in examination-in-chief does not diminish the credence thereof.

157. Mr. Abdus Sobhan Tarafdar submitted that the accused Yunus Ahmed was not a Razakar and not involved with the criminal acts forming the attack as alleged in the charge no.01. The evidence tendered by the prosecution does not relate to this accused, as he is not the Razakar 'Inus Mia' as narrated in the book titled *০৩৩৩ ৩৩ ৩৩৩৩* [prosecution documents volume page no. 33, 35, 36, 37 and 39], relied upon by the prosecution.

158. Mr. Mujahidul Islam Shaheen defending the accused Md. Ujer Ahmed Chowdhury and three other absconding accused that the evidence tendered by the witnesses is not reliable as the same suffers from inconsistencies; that these accused were not Razakars and the witnesses had no reason of recognizing them and as such evidence implicating these accused does not inspire credence.

159. To establish the arraignment brought in this charge no.01 the prosecution requires proving that—

- (a) Attack was launched on at the house of Danu Mia, Taju and Samed Ullah by the group formed of army men, accused persons and their accomplice Razakars;
- (b) In conjunction with this phase of attack Danu Mia was forcibly captured, the group had carried out destructive activities and looted households of Danu Mia, Taju and Samed Ullah;
- (c) Detained Danu Mia was taken away to the army camp where he was kept confined for couple of days, till his killing;

- (d) During detention of Danu Mia at army camp the accused obtained ransom money in the name of securing release of the victim;
- (e) That sons of the victim and their uncle were subjected to torture when they were taken to the army camp by the accused for getting the victim released ;
- (f) That the detained victim's fate was ended with the act of his killing by gunning down him to death along with other detainees by the army on **05.12.1971**.

160. Who was the victim Danu Mia? Why he and his two neighbours Taju Mia and Samed Ullah became target of the systematic attack? Why the group of attackers had carried out destructive activities at their houses? These pertinent questions need to be focused indispensably as the same are related to the backdrop of the attack launched.

161. We have got it from the unimpeached corroborative version of P.W. 01 and P.W.02, the sons of Danu Mia that just one day before the attack was launched hundreds of freedom-fighters led by Syed Mohsin Ali [now dead] the sub-sector commander got protected at the houses of Danu Mia and his two neighbours Taju Mia and Samed Ullah, in the mid night of 20 November 1971. This fact is materially related to the backdrop of the criminal mission of the gang.

162. P.W.02 the son of Danu Mia testified that after the war of liberation ensued, his father [Danu Mia] started encouraging the

local youths and elders of the village to join the war of liberation and used to keep constant contact with the freedom-fighters. Defence does not appear to have disputed.

163. Arranging shelter of hundreds of freedom-fighters by Danu Mia, particularly just few days back the nation achieved its independence, as testified by the P.W.01 and P.W.02 the direct witnesses and the undenied fact that Danu Mia started encouraging the local youths and elders of the village to join the war of liberation and used to keep constant contact with the freedom-fighters cumulatively lead to believe it that Danu Mia was indeed a committed and heroic organizer of the war of liberation around his locality.

164. What happened next to arranging shelter of hundreds of freedom-fighters? Version of P.W.01 and P.W.02 the key witnesses to the event narrated in this charge no.01 proves that eventually on the following day i.e on 21 November, 1971 the fact of freedom-fighters' staying as arranged by their father Danu Mia got leaked and thus on the following day, in the night Danu Mia managed shifting of the freedom-fighters to some other safe place. Defence neither denied nor impeached it in any manner.

165. Before we look to the intent and purpose of launching attack at the houses of Danu Mia and his neighbours Taju Mia and

Samed Ullah we consider it expedient to reiterate that the Tribunal [ICT-2] observed in the case of *Kamaruzzaman* based on sourced information that Jamat-E-Islami was thus indulged in indiscriminate massacre of their political opponents belonging to Bengali nation, in the name of liquidating ‘*miscreants*’, ‘*infiltrators*’ for which they were using Razakars, Al-Badar comprising with the workers of Islami Chatra Sangha [ICS], its student wing [***Muhammad Kamaruzzaman, ICT-BD case No.03 of 2012, Judgment 09 May 2013, para 601***]

166. In the case of *Ali Ahsan Muhammad Mujahid* the Tribunal [ICT-2] observed [ICT-BD Case No. 04 of 2012, Judgment 17 July 2013, para 163] that –

“The freedom-fighters and pro-liberation Bengali people were treated as ‘*miscreants*’. Even reward was announced for the success of causing their arrest or to provide information about their activities. Objective of such announcement was to wipe out the pro-liberation Bengali civilians to resist and defy the war of liberation which was the core policy of the Pakistani occupation armed forces.”

167. A report titled *ÔmiKv̄ii m̄x̄v̄š̄: `ḡuzKviđ` i t̄m̄lZvi ev Leṭii Rb̄*” *cj̄-vi f`lqv n̄te0* published on 25 November 1971 in **The Daily**

Pakistan [১৯৭১ সালে] demonstrates it patently that it, pursuant to a government press note, classified the ‘miscreants’ in five categories as below and encouraged to combat them in exchange of reward:

১. স্বাধীনতা আন্দোলনের বিরুদ্ধে কাজ করা

K. Z_vKw_Z gypewnbxi ibqigZ m`m, Z_vKw_Z gypewnbx fizfz mnv`Kvixiv|

L. t`Qiq vet`vht` i Lv`, hibevnb I Ab`vb` `e` mieivnKvix|

M. t`Qiq vet`vht` i Avkq`vbKvix|

N. vet`vht` i Obdigvi0 ev evZ@vKia#c hviv Kvr Kti Ges

O. Z_vKw_Z gypewnbx m`uik2 bvkKzigj-K vj dtjU, c`vutjU c`vizi tjLK ev c`kvkK|

[Source: Sangbadpatre Muktijuddher Birodhita: Ekattorer Ghatakder Jaban Julum Sharajantra: Edited by Dulal Chandra Biswas: Bangladesh Press Institute: March 2013 Page 324]

168. The freedom-fighters and pro-liberation Bengali people were thus treated as ‘miscreants’ by the Pakistani occupation army. Even reward was announced for the success of causing their arrest or to provide information about their activities. Thus, objective of such announcement was to wipe out the pro-liberation Bengali civilians to resist and defy the war of liberation which was the core policy of the Pakistani occupation armed forces.

169. In the case in hand, we have found that the accused persons belonging to Razakar Bahini a ‘paramilitary arm’ to the Pakistan

Army acted to further policy and plan of annihilating the Bengali pro-liberation civilians, nationalist intellectuals, civilians belonging to Hindu community and freedom-fighters [whom they called '*miscreants*']. The above 'government press note' offers this indisputable conclusion.

170. Admittedly, Moulvibazar became free on 08 December, 1971. The events of attacks as narrated in all the charges framed were carried out just few days prior to the victory of Bengali nation about to happen and when the freedom-fighters entered the localities. Presumably, presence of hundreds of freedom-fighters, in such situation, made the devilish Pakistani occupation army and their local collaborators extremely aggressive against the pro-liberation civilians and thus they forming group launched systematic attack at the houses of Danu Mia and his neighbours Taju Mia and Samed Ullah. Launching organised attack at their houses and carrying out destructive activities, beating inmates, looting valuables certainly offer the conclusion that the perpetrators got information about straying of freedom-fighters there and they intending to execute the plan of combating the freedom fighters had launched the attack.

171. Who were the perpetrators and how the attack was launched? The unimpeached evidence of P.W.01 and P.W.02, the sons of victim Danu Mia tends to prove it unerringly that it was the armed

gang formed of Pakistani occupation army, the accused Razakars and their accomplices which launched such attack.

172. Presumably, the reason of launching attack was to get the freedom-fighters captured there from but on failure the gang carried out aggressive and destructive activities directing the non-combatant civilians who sided with the freedom fighters. Facts unveiled from evidence tendered suggest to this conclusion. It is true that there is no requirement to show that the victims were linked to any particular side. We are to chiefly determine whether the attack was carried out targeting civilians violating an absolute prohibition of customary international law.

173. P.W.03, a neighbour of the victim testified that the group formed of accused Al-Badar commander Shamsul Hossain Tarafdar @ Ashraf and Razakar commander Md. Nesar Ali being accompanied by 30 Razakars and 25/30 Pakistani army men arrived at the road of their locality wherefrom they came to the house of Danu Mia on foot when Danu Mia, on being grilled replied in negative about the freedom-fighters' whereabouts and then Danu Mia and his two sons [P.W.01 and P.W.02] were tied up. This criminal act as testified by the P.W.01 and P.W.02 remained uncontroverted. Defence however simply denied that the accused persons were not with the gang at the crime site.

174. It is evinced from the corroborative version of the P.W.01, P.W.02 and P.W.03 that in conjunction with the attack some of Razakars and army men moved to the house of Samed Ullah and Taju Mia, their neighbours [where the freedom-fighters got sheltered just one day back] and carried out looting households and tortured the inmates Jalal Mia and Mobarak Mia [both are now dead] as they did not find trace of freedom-fighters there.

175. Defence however does not seem to have made any attempt to dislodge what has been testified in examination-in-chief by the P.W.01 and P.W.02 particularly in relation to launching attack, carrying out devastating activities at the houses of Danu Mia and his neighbours Taju Mia and Samed Ullah by the group of army men being accompanied by the accused persons and their accomplice Razakars. Defence, by cross-examining them could not bring any indication which may lead to disbelieve that these witnesses had fair and relational reason of knowing the accused persons beforehand.

176. In narrating criminal acts happened in conjunction with the attack at about 3/4 P.M P.W.04 stated that he saw a group of 15/16 Pakistani army men and 15/16 Razakars heading towards their house when he [P.W.04], his parents and inmates went into hiding inside a bush to the north of their house wherefrom they observed that Pakistani army men being accompanied by the

accused persons and their accomplice Razakars searching for freedom-fighters entering their house , looting households and beating two domestic aids Paresh [now dead] and Jogai [now sick] and taking Paresh forcibly to their vehicles wherefrom he was however spared and Paresh later on disclosed them that he [Paresh] saw the accused Shamsul sitting beside Danu Mia of village Baligaon in the army vehicle, P.W.04 added.

177. The above version of P.W.04 proves that Danu Mia was taking away forcibly by army vehicles and the accused Shamsul Hossain Tarafdar being a potential Razakar was found present with the group. Defence could not bring anything by cross-examining this P.W.04 that he had no reason of knowing this accused and other accused persons or Paresh[now dead] had no occasion of seeing it. Thus, hearsay testimony of P.W.04, on this pertinent fact, carries value and inspires credence.

178. P.W.01 and P.W.02, the sons of the victim Danu Mia consistently testified that on 22 November at about 10:00/10:30 AM Razakar commander accused Nesar Ali, Al-Badar commander accused Shamsul Hossain Tarafdar @ Ashraf, Razakar accused Yunus Ahmed, Razakar accused Md. Ujer Ahmed Chowdhury, Razakar accused Md. Mobarak Mia being accompanied by 25/30 accomplice Razakars and 20/25 Pakistani army had attacked their house. It also transpires from the evidence

of P.W.02 that the accused persons belonged to their locality and were known for their notoriety and they used to move at the bazaar of their locality.

179. The above remained uncontroverted. Defence simply denied that the accused were with the group of perpetrators. With this the fact of launching attack becomes affirmed. Mere denial as to presence of the accused persons with the group at the crime site does not *ipso facto* diminish the testimony tendered in this regard, in absence of anything which may prompt to disbelieve their evidence.

180. The above unshaken evidence also tends to confirm it that accused Shamsul Hossain Tarafdar @ Ashraf and accused Nesar Ali were in domineering position of the locally formed Razakar Bahini and they played substantial role to execute the common object by carrying out the attack and knowing the consequence the accused persons accompanied the Pakistani occupation army and their accomplice Razakars.

181. In view of above, it thus has been proved beyond reasonable doubt that the accused Shamsul Hossain Tarafdar @ Ashraf and accused Nesar Ali and their accomplice Razakars, the other accused persons as well in exercise of their membership in locally formed Razakar Bahini were actively and culpably associated with

the gang of perpetrators consciously and knowing consequence of their act and conduct being part of collective criminality.

182. Now, let us see what happened next to launching attack at the house of Danu Mia and his two neighbours. It has been found proved from the evidence of P.W.04 that the group came by two vehicles which were made parked at a place and the attackers came to their house on foot. On the way of returning back from the crime sites the group also carried out destructive activities and took one Paresh forcibly to the vehicles parked where he saw accused Shamsul Hossain Tarafdar sitting in the vehicle besides the victim Danu Mia---it is also patently evinced from the uncontroverted testimony of P.W.04. This fact materially related to the act of detaining Danu Mia from his house lends assurance to the fact of accompanying the group of perpetrators by the accused persons.

183. It stands proved from the evidence of P.W.04 that Danu Mia was so taking away by army vehicles, on forcible capture from his house, by carrying out first phase of the attack. The act of taking away Danu Mia by detaining him unlawfully eventually led to his killing, after keeping him in protracted captivity at the army camp in Moulvibazar for couple of days.

184. Launching attack has been proved. Defence does not dispute it. Evidence tendered on it remained unimpeached. Defence

simply denied accused persons affiliation with the group and presence at the site. The first phase of attack ended in forcible capture of Danu Mia and devastating activities carried out at the houses of Danu Mia and his two neighbours. Till this phase of attack the five accused were with the group, it stands proved.

185. The planned attack was calculated to combat and capture of freedom-fighters who got entered around the locality just one day back. Finding no target available the gang eventually took away Danu Mia with them on forcible capture as he was the man who arranged the shelter of freedom-fighters. It stands proved from uncontroverted testimony of P.W.01 and P.W.02, the two direct witnesses.

186. In conjunction with the aggressive attack the gang carried out destructive activities also at the houses of Samed Ullah and Taju Mia when they looted households, burnt down the houses, tortured the inmates and such prohibited horrific criminal acts were carried out in search of freedom fighters. But finding no freedom-fighter there the gang, vandalized the houses of Samed Ullah and Taju Mia. We found it proved from unimpeached evidence of P.W.04.

187. It also depicts from the evidence of P.W.04 Horo Proshad Bhattacharya, a resident of village Nandiura and P.W.05 Shamsuddin @ Samru Mia , a resident of village Majidpur that

they and their neighbour Kandarpa Kumar Bhattacharya were apprehended by the group of Razakars accompanied by the accused persons, by launching attack on the following day. It was accomplished intending to locate the freedom-fighters --the facts forming chain offer this conclusion.

188. Those three detained civilians were first taken to Rajnagar Police Station, on forcible capture and then at the army camp in Moulvibazar. Later on, they got released there from on condition of providing information to the Pakistani army about the freedom fighters. Defence does not dispute it and in no way it has been controverted.

189. The above fact too proves that the targets of the perpetrators were to effect capture of the freedom-fighters and the civilians who actively sided with them and that the accused persons were culpably associated with the Pakistani occupation army stationed in Moulvibazar, to further the common object.

190. What did happen subsequent to taking away Danu Mia to the army camp in Moulvibazar? Naturally, it was not practicable to see or know what really happened to the victim Danu Mia in detention. Evidence of P.W.01 and P.W.02 demonstrates that few days later the accused persons demanded ransom giving hope of ensuring release of detained Danu Mia. The sons and relatives of

the victim responded to such unlawful demand, naturally to save the life of their dear father and on 04 December, 1971 the accused persons took P.W.01, P.W.02 [two sons of the victim] and their uncle to the army camp where they were eventually detained and subjected to torture, and at a stage they managed to escape and returned back home. The accused persons in exercise of their potential and culpable affiliation with the army camp obtained financial gains in a trickery and deceiving way from the relatives of victim, we conclude.

191. Victim Danu Mia was let detained at the army camp for couple of days till he was killed. Substantial contribution and culpable facilitation and aid the accused provided to the Pakistani occupation army stationed in Moulvibazar army camp suggest the legitimate conclusion that the accused persons had conscious ‘concern’ and ‘nexus’ with all the phases of the attack which ended in killing of Danu Mia.

192. In what context the offences were committed? We are to see it. The accused persons, as it appears deliberately and sharing common purpose selected the victims, the pro-liberation civilians to be targeted. The crimes happened in war time situation.

193. It is thus the ‘*context*’ that transforms an individual’s act or conduct into a crime against humanity and it may be validly presumed that the accused being aware of this context,

participated in the commission of crimes by his culpable act or conduct. In the case in hand, it has been proved that the crimes under adjudication were *related* to the attack on a civilian population, occurred in war time situation.

194. We reiterate that if the specific offences of 'Crimes against Humanity' which were committed during 1971 are tried under 1973 Act, it is obvious that they were committed in the **'context'** of the 1971 war of liberation. This 'context' itself is sufficient to prove the existence of a *'systematic attack'* on Bangladeshi self-determined population in 1971.

195. The entire population of a participial geographical entity need not be targeted to satisfy the requirement of 'directing a civilian population'. In this regard we may recall the observation of the ICTY Appeals Chamber that:

“The use of the word ‘population’ does not mean that the entire population of the geographical entity in which the attack is taking place must have been subjected to that attack. It is sufficient to show that enough individuals were targeted in the course of the attack, or that they were targeted in such a way as to satisfy the Chamber that the attack was in fact directed against a civilian ‘population,’ rather than against a limited and randomly selected number of individuals.”

**[Kordic and Cerkez, (Appeals Chamber),
December 17, 2004, para. 95]**

196. The means and system the group of perpetrators used in the course of the attack, the identity of the victims, the discriminatory nature of the attack, the nature of the crimes committed in its course and the status of the accused persons and their affiliation with a militia force, as unveiled are sufficient to conclude that the attack was ‘directed against civilian population’. Here it is immaterial to see as to how many civilians were targeted of such attack. Devastating activities, grave breach of normal human life, causing mental and physical harm, unlawful detention and finally the brutal killing cumulatively impel that the attack was ‘systematic’ and ‘directed against civilian population’ of a particular geographical area. And such attack was carried out just at the fag-end of the war of liberation when the Bengali nation was about to achieve its long cherished independence.

197. It was not likely for the gang chiefly formed of Pakistani troops to identify the houses of Danu Mia, Taju Mia and Samed Ullah, the potential pro-liberation civilians without the assistance of local collaborators belonging to Razakar Bahini. It makes the fact strengthen too that accused persons by accompanying the troop enabled them to identify the target of atrocities to be committed and thus the act of accompanying the troop by the accused persons is considered to have had substantial contribution

and assistance to the actual commission of the crimes, in course of first phase of the attack directed against the civilian population.

198. Thus, cumulative evaluation of evidence as above offers the irresistible conclusion that the accused persons were knowingly part of the 'collective criminality' in carrying out criminal mission and prohibited destructive activities against civilians which facilitated detention of the victim Danu in the army camp in Moulvibazar; that the accused had close and culpable nexus with the army stationed in Moulvibazar; that the accused Md. Ujer Ahmed Chowdhury and accused Md. Nesar Ali were in dominating position of Razakar Bahini and that the accused were the members of the gang who aided Pakistani occupation forces in locating the site and people to be targeted. The killing phase was not distanced from the criminal acts done in accomplishing forcible capture of the victim Danu Mia.

199. It may thus be lawfully deduced that intending to wipe out the victim was so forcibly captured and detained in army camp and in perpetrating the act of his abduction and unlawful detention of the victim the accused persons were 'participants' in JCE [basic form] .

200. The accused has not been arraigned to physically participate in the act of killing the victim Danu Mia, true. But since the killing was the upshot of the first phase of the attack that resulted

in forcible capture of the victim and since the accused were actively participated in carrying out this phase of attack, knowing the consequence of their act and conduct which substantially facilitated the Pakistani army in detaining the victim the accused incurred liability also of effecting the act of killing.

201. The accused persons were thus aware of the ‘common purpose’ of the criminal mission. 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.

202. The liability mode contained in section 4(1) of the Act of 1973 refers to ‘common plan of collective criminality’ which corresponds to JCE’. Therefore, the accused persons, as ‘participants’ were involved in ‘committing’ the crimes perpetrated, in conjunction with the founding phase of the organized attack and thereby aided, facilitated and contributed the accomplishment of the act of killing of detained Danu Mia, sharing common intent.

203. Appeals Chamber of the International Criminal Tribunal for the former Yugoslavia [ICTY] has noted,

“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.”

[Prosecutor v. Tadic (Case No. IT-94-1-A), Judgment, 15 July 1999, para. 191]

204. If an accused is not physically present when the crime takes place may still be an accomplice. It is now well settled that ‘direct contribution’ does not necessarily require the participation in the ‘physical commission’ of the illegal act. That participation in the commission of the crime does not require an actual physical presence or physical assistance to the actual perpetrator.

205. In view of above settled jurisprudence, the accused persons are equally responsible for the killing of Danu Mia whose forcible capture was executed with the substantial contribution and aid of the accused persons. The accused persons thus need not be shown to have had physical participation in the act of killing. This mode of liability need not involve the physical commission of a specific crime by all the members of JCE but may take the form of assistance in, or contribution to, the execution of the common purpose [**Stakic’ (IT-97-24-A), ICTY Appeals Chamber, 22 March 2006, para. 64**].

206. Totality of evidence impels that the plan was to annihilate the detained victim Danu Mia a brave organiser of the war of liberation. And with intent to execute such plan the group of perpetrators also carried out considerable violence, mistreated the civilians, looted valuables, inflicted grave mental harm as well. The accused persons were culpably associated and concerned with all those criminal acts forming part of ‘attack’, being the members of JCE. Thus, ‘once a participant in a joint criminal enterprise shares the intent of that enterprise, his participation may take the form of assistance or contribution with a view to carry out the common plan or purpose [*Krnojelac* (IT-97-25-A), Appeals Chamber, 17 September 2003, para. 81].

207. Accused persons thus assisted and guided the Pakistani army in approaching towards the crimes sites where they perpetrated devastating destruction of property belonging to civilian population, we conclude. The ‘attack’ directed against civilians resulted in beating, looting and setting houses on fire causing grave detriment to normal and peaceful occupation and livelihood of defenceless civilians constituted the offence of ‘other inhuman act’. Such deliberate destructive activities were carried out not for any necessity.

208. The Pakistani army was naturally not familiar with the topography and the people of the locality to be attacked and thus it

had to take aid even in marching towards the crime sites. Who aided them in making their move? The group of army obviously had to borrow idea and assistance from their local collaborators particularly belonging to Razakar Bahini, an auxiliary force, in carrying out the criminal mission, we may safely presume.

209. The accused persons have been indicted for abetting, facilitating and contributing to the actual commission of the offence of ‘murder’ as crime against humanity which is known as ‘system crime’ and not isolated crime. An individual even for his single act or conduct, prior, amid or subsequent to the commission of the offence may be held responsible for such ‘system crime’, if such act or conduct had substantial contributing effect on the commission of offences by the principal perpetrators.

210. Let us have a look, though not obligatory, to the jurisprudence settled in respect of ‘abetting’ and ‘aiding’ the principals in committing the offence of crimes against humanity. The **ICTY** Trial Chamber, in the case of **Milorad Krnojelac** has observed

“It must be demonstrated that the aider and abettor carried an act which consisted of practical assistance, encouragement or moral support to the principal offender. The act of assistance need not have actually caused the act of the principal offender, but it must have had substantial effect on the commission of the

crime, by the principal offender. The act of assistance may be either an act or omission, and it may occur before, during or after the act of the principal offender.”

[ICTY Trial Chamber, IT-97-25-T, Prosecutor v. Milorad Krnojelac, Judgment 15 March 2002, paragraph 88]

211. The evidence presented demonstrates that the accused persons were knowingly with the group of perpetrators; the Pakistani army and they were quite aware of the substantial likelihood of the consequence of their act of assistance and aid and conduct that eventually contributed to the commission of killing, torture and indiscriminate destructive doings, in conjunction with the ‘attack’. Combined effect of such act of assistance, providing moral support and facilitation qualifies accused persons’ ‘participation’ as ‘aider’ even to the commission of the principal offence the killing of captured Danu Mia by the Pakistani occupation army.

212. It is evinced too that the perpetrators, in conjunction with the attack, caused harm by looting and burning properties belonged to civilians. Indisputably there had been malicious intent behind such destructive activities, violating recognised fundamental rights of civilians. And it was committed intending to intimidate the family inmates to get whereabouts of freedom fighters and presumably, on failure, the gang had picked up Danu Mia finding him available at home at the relevant time.

213. Destruction of civilians' property by launching attack indubitably had detrimental effect on individuals' fundamental right to maintain normal and smooth livelihood and thus it caused enormous mental harm to the victims. The civilians were non combatants. The object of such destructive activities was to terrorize the innocent civilians, which eventually constituted the offence of 'other inhuman act

214. Their act and conduct, as found from evidence, amid first phase of the attack launched in accomplishing forcible capture of the victim followed by his killing make them responsible even for the principal offence which occurred later on, as potential accessories

215. We do not find any reason to exclude the pertinent evidence tendered by the witnesses including P.W.01, P.W.02 which provides irresistible indication of accused persons' 'concern' and 'participation' to the criminal acts leading to the phase of keeping the victim Danu Mia in captivity at the army camp and then accomplishing the act of gunning him down to death, the upshot of the attack that started in getting victim's forcible capture, with the participation, aid and assistance of the accused persons .

216. It is evinced that the total event consisted of phases. The final phase was the execution phase with which the event ended.

Accused are found to have had physically present at the phase of attack in accomplishing forcible capture of victim Danu Mia. According to settled jurisprudence any act or conduct of an individual amid or prior to or after the accomplishment of the event of principal offence indisputably makes him responsible for the principal act under the doctrine of JCE [basic form], and thus an individual need not be revealed to have participation in all phases of the event.

217. The act of forcible capture was the first phase of the whole and chained criminal enterprise of which the accused were part as they consciously and culpably participated in the founding phase of the attack that resulted in forcible capture and detention of the victim Danu Mia, sharing common object.

218. By using the yard-stick of probability and on due appreciation of the intrinsic value of evidence presented before us, in respect of facts materially related to the principal event, we arrive at a finding that the prosecution has been able to prove beyond reasonable doubt that the accused Shamsul Hossain Tarafdar, Ujer Ahmed Chowdhury, Nesar Ali, Yunus Ahmed and Mobarak Mia, by their act and conduct forming part of attack directed against non-combatant civilians were the participants in the JCE for the offences for which they have been charged with, Therefore, they are found criminally liable under section 4(1) of

the Act of 1973 for substantially abetting, participating, contributing, facilitating and for complicity in the commission of offences of ‘**abduction**’, ‘**confinement**’, ‘**other inhuman act**’ and ‘**murder**’ as crimes against humanity as enumerated in section 3(2)(a)(g)(h) of the Act of 1973 which are punishable under section 20(2) of the said Act for which the accused persons have incurred liability under section 4(1) of the said Act.

Adjudication of Charge NO.02

[Killing of Dr. Jamini Mohan Dev of village Rajapur and abduction, confinement and torture of two civilians and the offence of other inhuman act]

219. Charge: On 25.11.1971 accused Razakar commander Md. Nesar Ali, Razakar Yunus Ahmed and Razakar Md. Ujer Ahmed Chowdhury being accompanied by **10/12 armed Razakars** by launching attack at the house of Abdul Mannan at village Rajapur under Police Station Rajnagar forcibly captured Moinul Bakht and Abdul Hannan and then headed towards the house of Dr. Jamini Mohon Dev taking those two detainees with them. At the house of Dr. Jamini Mohon Dev the accused and their cohorts had carried out looting and forcibly captured Dr, Jamini Mohon Dev and then the accused took those three detainees to the army camp at Moulvibazar Government College and handed them over to the army. 7/8 days later three detainees along with others were taken at the field of the college and they were made stood in a line. Moinul Bakht and Abdul Hannan however got release on

condition to provide the information about the freedom fighters to the army. Detained Dr. Jamini Mohon Dev was however killed there by gun shot.

Therefore , the three accused Ujer Ahmed Chowdhury, Nesar Ali and Yunus Ahmed have been charged for participating, contributing, facilitating and complicity in the commission of offences of abduction, confinement, torture, other inhuman act and murder as crimes against humanity as enumerated in section 3(2)(a)(g)(h) of the Act of 1973 which are punishable under section 20(2) of the said Act for which the accused persons have incurred liability under section 4(1) of the said Act.

Three accused Md. Nesar Ali, Razakar Yunus Ahmed and Razakar Md. Ujer Ahmed Chowdhury have been arraigned in this charge involving the offences of abduction, confinement, torture, other inhuman act and murder as crimes against humanity. Prosecution, in support of the arraignment brought in this charge, relies upon three witnesses who have been examined as P.W.05, P.W.06 and P.W.07. Of them P.W.06 Kalpana Rani Paul is the daughter of the victim Dr. Jamini Mohon Dev and P.W.07 Abdul Hannan witnessed the act of detaining Dr. Jamini Mohon Dev at the army camp, on forcible capture as he [P.W.07] was also kept in captivity at the same army camp. Now let us first see what the P.W.s have stated in relation to the event of attack.

Evidence of Witnesses Examined

220. Prosecution, intending to prove this charge examined two witnesses. Both of them are direct witnesses to the facts materially related to the principal offence of murder of Dr. Jamini Mohon Dev. P.W.07 Abdul Hannan was also taken away forcibly along with the victim and kept detained at the same army camp in Moulvibazar for couple of days, the charge alleges. Prosecution also relied upon the statement of witness Rosharaj Bhattacharya made to the IO as the same has been permitted to be received in evidence under section 19(2) of the Act of 1973, due to his death during trial. Now let us see what the P.W.s testified in Tribunal.

221. P.W.06 Kalpana Rani Paul [60] is a resident of village Barahal under Police Station Rajnagar of District Moulvibazar. In 1971 she was a student of class X of Uttarbag Bimalaharan High School. P.W.06 is a direct witness to the act of forcible capture of her father that happened by launching attack at their house, as narrated in charge no.02.

222. P.W.06 stated that her father was LMF doctor. In 1971 she used to stay at her father's government quarter of Uttarbag Indreswar Chiktasaloya. On 25 November, 1971 after the dusk Razakar commander accused Md. Nesar Ali, Razakar accused Ujer Ahmed Chowdhury, Razakar accused Yunus Ahmed, Razakar Dudu Mia[now dead] and their 10/12 accomplice

Razakars came to their house taking the detained freedom fighters Moinul Bakht of village-Fakirtola and Hannan of village-Rajapur with them. The Razakars then apprehended her father when she [P.W.06] attempted to escape through the window but the Razakars apprehended her too, looted gold ornaments and money. She [P.W.06] and her mother appealed the Razakars to set her [P.W.06] father released but accused Nesar Ahmed told that her father was engaged in providing medical treatment to the freedom fighters and as such he would be handed over to the Pakistani army. Then the accused and their accomplice Razakars took away her father and two detained freedom fighters to the army camp and since then they did not have any trace of her father.

223. P.W.06 next stated what she heard about the fate of her father. She stated that after the independence achieved, they heard from one Soab Ali of village-Gaeshpur who got release from the army camp that on 05 December, 1971 the army men had gunned down her father, Najabat Ali, Badsha Mia and other persons detained at the army camp to death.

224. P.W.06 further stated that later on Moinul Bakht and Hannan on getting release from the army camp also disclosed that her [P.W.06] father, Najabat Ali, Badsha Mia and other civilians detained at the army camp were shot to death. Now the freedom

fighters Moinul Bakht has been staying in Canada and freedom fighter Hannan has been in country.

225. In respect of reason of knowing the accused persons P.W.06 stated that the accused persons used to move to the house of Nasir Ali of village Rajapur, the Chairman of local peace committee through the road besides their house and as such she knew them beforehand. Freedom-fighters Moinul Bakht and Hannan used to visit her [P.W.06] father to receive treatment and thus she knew them since prior to the event.

226. In cross-examination by the accused Yunus Ahmed P.W.06 stated in reply to question put to her that she sued at Rajnagar Police Station over the event of 25 November, 1971 against the present accused persons. She however could not recollect whether the present accused Yunus Ahmed was named as one of accused in that case. P.W.06 denied the suggestion put to her that this accused was not involved with the event she testified and that what she testified implicating this accused was untrue and tutored.

227. Defence however simply denied what has been narrated in relation to the event in examination-in-chief. Any effort does not seem to have been made on part of defence intending to dislodge the material facts testified. The reason of knowing the accused beforehand as testified remained even undenied.

228. In cross-examination done on part of the accused Md. Ujer Ahmed Chowdhury and absconding accused Md. Nesar Ali and others P.W.06 stated, in reply to question put to her, that the house of peace committee chairman Nasim Haji was about half kilometer far from that of their own. Nasim Haji very often, coming to their house, used to coerce and threat her father. P.W.06 denied the suggestion that these accused were not Razakars and they did not accompany the group while it came to their house. Defence simply denied what has been narrated in examination-in-chief. But it does not appear to have made attempt to refute what has been narrated in examination-in-chief, on material particulars.

229. P.W.07 Abdul Hannan [65] is a freedom fighter and a resident of village Rajapur under Police Station Rajnagar of the then Sub-Division Moulvibazar. He is one of victims of the event narrated in charge no.02.

230. P.W.07 stated that in 1971 he was a student of intermediate class of MC College Sylhet. In the month of May, 1971, after the war of liberation ensued, he went to Lower Haflong Training camp in India to receive training to join the war of liberation. Therefrom, after receiving training he in the first part of November, 1971 came back to his locality along with his freedom-fighter cousin brother.

231. P.W.07 next stated that on 25 November, 1971 he and Moinul Bakht had been at the neighbouring house of his maternal uncle Mannan. On that day after the dusk accused Nesar Ali, Yunus Ahmed, Ujer Ahmed Chowdhury being accompanied by 10/15 accomplices attacking his maternal uncle's house forcibly captured him and Moinul Bakht and then taking them with them they moved towards the house of Dr. Jamini Mohon Dev's government residence wherefrom the Razakars apprehended Dr. Jamini Mohan Dev, snatched away gold ornaments from Kalpana Rani [P.W.06] the daughter of Dr. Jamini Mohon Dev and also looted households. Then the Razakars without responding to the appeal of wife and daughter of Jamini Mohon Dev to set him at liberty took him along with them [P.W.07 and Moinul Bakht] away on forcible capture to Moulvibazar army camp where they two were kept detained in a room and Dr. Jamini Mohon Dev was kept in captivity in another room and they were subjected to torture.

232. P.W.07 also testified that on 05 December, 1971 he and Moinul Bakht along with 10/12 detainees were taken at the field bringing them out of the camp and made them stood in a line. He also saw many other detainees including Dr. Jamini Mohon Dev, Najabat Ali, and Badsha Mia were brought there from captivity at the army camp. At a stage, an army officer told them that they would be spared if they agreed to provide information with them

about the freedom-fighters. With this he [P.W.07], Moinul Bakht and some other detainees by putting signature on an undertaking accordingly got release and thus on the way back from the field they heard frequent gun firing. 6/7 days after returning back home they heard from Kalpana Rani [P.W. 06] that she also became aware that her father was shot to death, after taking to the army camp.

233. P.W.07 also stated that Najabat Ali [detainee] was the son of the compounder of Dr, Jamini Mohon Dev and Badsha [detainee] was a known football player in their locality and thus he [P.W.07] could recognise them when they were taken at the field.

234. In respect of reason of knowing the accused persons P.W.07 stated that the accused persons used to move around Munshi Bazaar very often and thus he knew them beforehand.

235. In cross-examination done on behalf of accused Yunus Ahmed P.W.07 stated , in reply to question put to him, that he could not say whether Kalpana Rani lodged any case in 1972 over the event he[P.W.07] testified. Next, the P.W.07 blatantly denied the defence suggestions that he did not know the accused Yunus Ahmed; that this accused never visited the Munshi Bazaar; that this accused was not engaged in the event committed; that this accused was not a Razakar and that what he testified implicating this accused was malafide and tutored.

236. No attempt seems to have been made on part of this accused to refute what has been testified in examination-in-chief in relation to the facts chained to the principal offence.

237. On cross-examination done on part of accused Ujer Ahmed Chowdhury and absconding accused Md. Nesar Ali and others P.W.07 stated, in reply to question put to him, that he knew Razakar Dudu Mia [now dead] of village Gaeshpur and that he could recognise Soab Ali of village Gaeshpur, Najabat Ali of village- Nayatila and Badsha Mia, during his [P.W.07] captivity at the Pakistani army camp.

238. Then the defence simply denied what has been narrated by this P.W.07 in examination-in-chief. No effort has been made to dislodge the version made therein, it appears. P.W.07 denied the defence suggestions that these accused were not Razakars; that they were not present when the event of attack happened he testified; that he did not know the accused and that what he testified implicating the accused was untrue and baseless.

239. Rosharaj Bhattacharya is a hearsay witness to the event narrated in this charge. His statement made to the IO has been received in evidence under section 19(2) of the Act of 1973, on prayer of prosecution as he died during trial. The statement received in evidence [Exhibit-4] demonstrates that after the

independence this witness Rosharaj Bhattacharya heard from the wife and daughter of Dr. Jamini Mohon Dev how the group formed of Razakars and accused persons led by Razakar commander Nesar unlawfully detained Dr. Jamini Mohon Dev and took him away to Moulvibazar where he was killed on 05 December, 1971

Finding with Reasoning on Evaluation of Evidence

240. In view of the arraignment brought in this charge it appears that on 25.11.1971 the group formed of three accused Md. Nesar Ali, Razakar Yunus Ahmed and Razakar Md. Ujer Ahmed Chowdhury being accompanied by their 10/12 cohort Razakars launched attack first at the house of Abdul Mannan at village Rajapur under Police Station Rajnagar wherefrom two civilians Moinul Bakht and Abdul Hannan [P.W.07] were forcibly captured. The gang then taking the two detainees with them headed towards the house of Dr. Jamini Mohon Dev wherefrom he along with two detainees were forcibly taken away to the army camp in Moulvibazar. Few days later, detained Moinul Bakht and Abdul Hannan [P.W.07] got release but Dr. Jamini Mohon Dev and other detainees were shot to death by the army men. Thus, the attack ended in killing Dr. Jamini Mohon Dev, the charge framed also alleges.

241. The indictment chiefly rests upon testimony of P.W.06 Kalpana Rani Paul, the daughter of Dr. Jamini Mohon Dev and P.W.07 Abdul Hannan, one of detainees. They are direct witnesses to the act of unlawful capture of the three civilians including Dr. Jamini Mohon Dev.

242. Mr. Sultan Mahmud the learned prosecutor in arguing on this charge involving the killing of Dr. Jamini Mohan Dev submitted that three accused Nesar Ali, Ujer Ahmed Chowdhury and Yunus Ahmed have been indicted in this charge. In all 02 witnesses, including the daughter of the victim, have been examined to establish the arraignment brought against the accused. P.W.06. Kalpana Rani the daughter of the victim and another survived detainee P.W.07 Abdul Hannan, a freedom-fighter testified consistently the fact of detaining the victim Dr. Jamini Mohon Dev, at the army camp in Moulvibazar, on forcible capture.

243. Their unimpeached testimony demonstrates that the three accused persons were with the group at the time of attack and they were responsible for the accomplishment of the principal offence as they substantially contributed and facilitated the actual perpetrators in committing the principal crime, the killing. P.W.06 and P.W.07 are natural and direct witnesses whose version could not be refuted in any manner by cross-examining them.

244. Mr. Abdus Sobhan Tarafdar reiterated what he submitted in respect of charge no.01. He submitted that the accused Yunus Ahmed was not a Razakar and not involved with the criminal acts forming the attack as alleged in the charge no.02.

245. Mr. Mujahidul Islam Shaheen the learned engaged counsel defending the accused Md. Ujer Ahmed Chowdhury and as state defence counsel defending the absconding accused Shamsul Hossain Tarafdar @ Ashraf, Mobarak Mia and Md. Nesar Ali chiefly submitted that these accused were prosecuted under The Collaborators Order, 1972 for the event of abduction and killing of Dr. Jamini Mohon Dev. The daughter [P.W.06] of the victim admits it. Now they cannot be prosecuted again for the same offence.

246. The above submission rather provides assurance as to involvement and complicity of accused Ujer Ahmed Chowdhury and Md. Nesar Ali with the offences described in this charge. In our preceding deliberation we have already rendered our reasoned finding as to applicability of the principle of double jeopardy, as agitated. We thus now refrain from repeating discussion on the matter. Thus, now it is required to adjudicate whether the attack alleged was launched that resulted in abduction of three civilians and whether they were kept detained at the army camp in Moulvibazar and eventually few days later two of detainee's got

release when Dr. Jamini Mohon Dev was shot to death along with other detainees.

247. It has been divulged from the evidence adduced that the first phase of attack involved the act of forcible capture of P.W.07 Abdul Hannan and Moinul Bakht by the gang formed of Razakars accompanied by the three accused persons. Why P.W.07 Abdul Hannan and Moinul Bakht were targeted? P.W.07 is a freedom-fighter. We have found from the version made by P.W.07 that after receiving training in Lower Haflong Training camp in India he along with his freedom fighter cousin brother came back to his locality in the first part of November, 1971. Defence did not attempt to refute it, by cross-examining the P.W.07.

248. Defence simply denied what has been narrated by this P.W.07 in examination-in-chief in respect of forcible capture of him and Moinul Bakht. No attempt has been made to dislodge this pertinent version, it appears. It has been merely suggested to the P.W.07 that the accused were not Razakars; that they were not present when the event of attack happened, as testified by him; that he did not know the accused persons. P.W.07 denied it.

249. In absence of anything contrary, the version made by P.W.07 in respect of detaining him and Moinul Bakht rather stands affirmed in cross-examination. Thus, mere denial as to presence of

the accused with the gang itself does not diminish the truthfulness of the version made by P.W.07.

250. Besides, P.W.07 knew the accused persons beforehand as they used to move around Munshi Bazaar very often and it remained uncontroverted. Thus, his testimony made in respect of seeing and recognizing the accused Md. Nesar Ali, Razakar Yunus Ahmed and Razakar Md. Ujer Ahmed Chowdhury with the group of attackers inspires credence.

251. What happened next to apprehending Abdul Hannan [P.W.07] and Moinul Bakht? Testimony of P.W.07 Abdul Hannan, an unarmed civilian detained in conjunction with the first phase of attack demonstrates that the gang taking him and other detainee Moinul Bakht headed towards the residence of Dr. Jamini Mohan Dev where P.W.07 had occasion of observing the unlawful acts carried out there by the accused persons and their accomplices.

252. It stands proved from the uncontroverted testimony of Abdul Hannan[P.W.07] , a direct witness that the group of Razakars, in course of second phase of attack apprehended Dr. Jamini Mohan Dev, snatched away gold ornaments from Kalpana Rani [P.W.06] the daughter of Jamini Mohon Dev and also looted valuables.

253. The act of carrying out such unlawful and prohibited acts remained unimpeached. Evidence of P.W.07 also depicts that then the gang of Razakars defying the appeal of wife and daughter of Dr. Dr. Jamini Mohon Dev to set him at liberty took him along with them [P.W.07 and Moinul Bakht] away on forcible capture to Moulvibazar army camp where they two were kept detained in a room and Dr. Jamini Mohon Dev was kept in captivity in another room and they were subjected to torture there.

254. The above version of P.W.07 gets consistent corroboration from the evidence of P.W.06 Kalpana Rani Paul, the daughter of Dr. Jamini Mohon Dev. At the time of launching attack P.W. 06 had been at her father's government residence and thus she saw her father was being taken away forcibly by the Razakar commander accused Md. Nesar Ali, Razakar accused Ujer Ahmed Chowdhury, Razakar accused Yunus Ahmed, Razakar Dudu Mia [now dead] and their 10/12, entering their house taking the detained freedom fighters Moinul Bakht and Hannan [P.W.07] along with them.

255. P.W.06 thus witnessed the act of taking away her father Dr, Jamini Mohon Dev, on forcible capture, refusing their appeal along with two detained non-combatant freedom-fighters Moinul Bakht and Hannan [P.W.07].

256. Statement of witness Rosharaj Bhattacharya made to the IO which has been received in evidence, on prayer of prosecution under section 19(2) of the Act of 1973, as he died during trial gets corroboration from what has been testified by the P.W.06. Rosharaj Bhattacharya is a hearsay witness and he heard the event later on from P.W.06 and the wife of the victim Dr. Jamini Mohon Dev. It was natural and thus his statement received in evidence [Exhibit-4] which demonstrates that the group of attackers led by Razakar commander accused Md. Nesar Ali detained Dr, Jamini Mohon Dev and took him away to Moulvibazar where he was killed on 05 December, 1971

257. Why Dr. Jamini Mohon Dev was so taken away on forcible capture? It transpires from the testimony of P.W.06 that freedom-fighters Moinul Bakht and Hannan [P.W.07] used to visit her father to receive treatment. It remained uncontroverted. Thus, presumably the three accused and their accomplices, sharing common purpose by launching attack apprehended the civilians who actively sided with the war of liberation and the accused persons on procuring their capture handed them over at the army camp in Moulvibazar, we conclude it indisputably. .

258. Version tendered by the P.W.07, one of detainees goes to demonstrate patently that ten days later, after taking them at the army camp in Moulvibazar they along with Dr. Jamini Mohon

Dev and some other detainees including Najabat Ali and Badsha Mia [victims of the event narrated in charge no.04] were taken at the field bringing them out of the camp the army men made them stood in a line. At a stage, an army officer told them that they would be spared if they agreed to provide information with them about the freedom-fighters. With this P.W.07, Moinul Bakht and some other detainees by putting signature on an undertaking accordingly got release and thus on the way back therefrom they heard frequent gun firing. Defence does not seem to have made any effort to controvert this pertinent fact related to the commission of the principal crime.

259. Presumably, P.W.07 and some of detainees readily agreed on such condition to save their own lives. Frequent gun firing from the end of the field the killing site just the released detainees had left the field, as testified by P.W.07 unerringly proves that the other detainees including Dr. Jamini Mohon Dev who were brought there from the camp were gunned down to death. Others have not been heard from since their abduction or since they were handed over at the army camp in Moulvibazar. It also lends assurance that the other detainees taken at the field also were shot to death, as testified by the P.W.07.

260. Dead body of the victim Dr. Jamini Mohon Dev could not be traced. But it does not diminish the fact of killing. The crime

committed was not isolated one. It happened in context of war of liberation. The facts and circumstances forming a compatible chain are sufficient to prove the killing. In this regard we recall the observation made by the ICTY in the case of *Brdjanin*, that –

‘.....Proof beyond reasonable doubt that a person was murdered does not necessarily require proof that the dead body of that person has been recovered. [T]he fact of a victim’s death can be inferred circumstantially from all of the evidence presented.....’

[*Brdjanin*, (Trial Chamber), September 1, 2004, para. 385]

261. Detaining the victim Dr. Jamini Mohon Dev from his house and then handing him over at the army camp together amounted to the ‘joint action’ of the Pakistani occupation army stationed in Moulvibazar and the accused and their cohorts belonging to Razakar Bahini.

262. The whole event which ended in killing happened in concert with each other, in the implementation of common purpose which the accused persons shared consciously, it is evident.

263. It is to be noted that Pakistani occupation army and militia force like Razakar and Al-Badar were created to share and materialize identical objective, to further policy and plan. Thus, it cannot be said at all that the accused persons were not responsible for the killing of victim Dr. Jamini Mohon Dev who was

unlawfully abducted by the group of Razakars accompanied by the three accused persons.

264. It is evinced that the accused persons were physically engaged in handing Dr. Jamini Mohon Dev and two other detainees including P.W.07 over at the army camp, by causing their forcible capture. It happened by a group of Razakars led by Razakar commander Md. Nesar Ali when two other accused Ujer Ahmed Chowdhury and Yunus Ahmed were with the gang.

265. Handing over Dr. Jamini Mohon Dev and two other captured non-combatant freedom-fighters including P.W.07 at the Army camp in Moulvibazar and keeping them detained there as testified by the P.W.07 could not be shaken by the defence. Besides, the fact of detaining them at the army camp does not appear to have been disputed by the defence.

266. The learned defence counsels argued that the accused persons did not participate physically in accomplishing the act of keeping the captured civilians detained at the army camp and the killing that was perpetrated by the army men and as such they did not incur liability for the principal crime.

267. We cannot agree with the defence argument. It is to be borne in mind that the killing was the upshot of the chain of acts forming part of the systematic attack happened prior to the execution of the

principal crime. The fact and circumstances unveiled suggest concluding that the accused persons had subjective state of mind as they were aware that the resulting crime, the killing was a possible consequence of the execution of the JCE and they actively participated with that awareness in abducting Dr. Jamini Mohon Dev.

268. True that two other detainees including the P.W.07 got release from the army camp. The reason as stated by P.W.07 is that he along with some other detainees was set at liberty on condition of providing information about freedom-fighters to the army. However, subsequent release of two other detainees from the army camp alone does not lead to conclude that the intent of the accused persons, in abducting and handing Dr. Jamini Mohon Dev over at the army camp was not to facilitate his killing.

269. The fact remains proved that eventually detained Dr. Jamini Mohon Dev was brutally killed along with other detainees by the army men, after keeping in protracted captivity at the army camp. Defence does not dispute it. The event of killing was the end result of his unlawful abduction in accomplishing which the accused persons were consciously and physically engaged which was inevitably chained to the commission of the principal crime, the killing and as such the accused persons cannot evade the

responsibility of substantially contributing and facilitating the commission of the act of killing.

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

271. What we see in the case in hand? If we keep the provision of section 23 together with section 19 of the Act of 1973 in mind it would be clear that the task of determination of culpability of a person accused of offences enumerated in section 3(2) of the Act of 1973 involves a quite different jurisprudence. Proof of all forms of criminal responsibility, through participation in any manner can be given by direct or circumstantial evidence. It is now settled jurisprudence.

272. Here, the facts and circumstances together impel to the conclusion that the accused persons and their cohorts had a common state of mind and naturally it was foreseeable to them

that the execution of JCE [basic form] will lead to the commission of one or more other crimes as enumerated in the Act of 1973.

273. The accused persons did not physically participate in accomplishing the killing of detained Dr. Jamini Mohon Dev, true. But their criminal acts done to secure forcible capture of the victim and handing him along with two other detainees over at the army camp in Moulvibazar indisputably offers the conclusion that the accused provided significant contribution and facilitation to the killing, the principal crime. In this regard we recall the observation of the **ICTY Appeal Chamber** in the case of **Kvocka** that—

“A contribution of an accused person to the JCE need not be, as a matter of law, necessary or substantial, but it should at least be significant contribution to the crimes for which the accused is found responsible.”

[Kvocka, ICTY Appeal Chamber, Judgment, paras 97-98]

274. In view of above it may safely be concluded that ‘participation’ of the accused persons in carrying out criminal activities lasted for an extensive period, till handing the victim over at the army camp which became more directly involved in maintaining the functioning of the enterprise and thus the accused persons were engaged in the entire event as co-perpetrators. The accused persons thus can be held criminally responsible for the crime alleged if they are found that they, by their acts or conducts,

were ‘concerned with the killing’. The act and conduct the accused persons played at the first phase of attack obviously made them ‘concerned’ with the murder of detained victim.

275. Criminal responsibility may be imputed to all participants within the common enterprise where the risk of death occurring was both a predictable consequence of the execution of the common design to which the accused persons were conscious part.

276. The accused persons, for their mode of engagement in carrying out the first phase of the attack till handing over the victim at the army camp are considered to have had participation even in the commission of the principal offence of murder, happened later on. This proposition finds support from the view set by the ICTY Trial Chamber in the case of **Tadic [Prosecutor v. Du[Ko Tadi]** , Case No. IT-94-1-T, judgment 7 May 1997, paragraph 690,691]

277. The accused persons were not the actual perpetrators of the killing, true. But they by their act and conduct substantially facilitated its commission by the army men. They were concerned and engaged in the collective criminality, being consenting part in the JCE. It is to be noted that physical presence or participation to the actual commission of the principal offence is not indispensable

to incur culpable responsibility. It has been observed in the case of *Tadic*, that :

“Actual physical presence when the crime is committed is not necessary . . . an accused can be considered to have participated in the commission of a crime . . . if he is found to be ‘concerned with the killing.’”

[Trial Chamber: ICTY, May 7, 1997, para. 691]

278. It is seen that the attack was directed against limited number of pro-liberation non-combatant civilians. But it does not take the criminal acts done out of ambit of ‘systematic attack’ directed against ‘civilian population’. It is to be noted here that the offence of murder as crime against humanity need not be carried out against a multiplicity of victims, if it is proved that such offence was the upshot of ‘systematic attack’. The appeal Chamber of **ICTR** has observed in the case of *Nahimana, Barayagwiza and Ngeze* that---

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

[Nahimana, Barayagwiza and Ngeze, November 28, 2007, para. 924]

279. The Tribunal reiterates that the history says that the local collaborators, especially belonging to an auxiliary force like

Razakar or Al-Badar actively aided the Pakistani occupation army in accomplishing the mission of wiping out pro-liberation Bengali civilians in 1971 during the war of liberation.

280. The crime under adjudication occurred in the ‘**context**’ of the 1971 war of liberation. This ‘context’ itself is sufficient to prove the existence of a ‘*systematic attack*’ on Bangladeshi self-determined population in 1971. It is the ‘*context*’ that transforms an individual’s act or conduct into a crime against humanity and it may be validly presumed that the accused persons being aware of this context, participated in JCE in committing the crimes by their deliberate culpable act or conduct.

281. Act of looting valuables and causing degrading treatment to the inmates in taking the victim Dr. Jamini Mohon Dev away on forcible capture defying their appeal indisputably inflicted grave mental suffering to the family inmates of the victim. Such acts committed in violation of laws of war and customary international law rather constitutes the offence of ‘other inhumane act’.

282. We are persuaded to conclude that ‘other inhuman acts’ reasonably and logically encompasses the ‘*coercive acts*’ which are injurious for one’s physical or mental wellbeing. Deliberate act of mental violence that caused intense mental distress and mental anguish to the relatives of the victim, carried out in

conjunction with the attack of course can be qualified as an offence of 'other inhumane act' as crimes against humanity.

283. Additionally, keeping two other non-combatant freedom-fighters including P.W.07 in protracted captivity at the army camp set up in Moulvibazar Government College of course inflicted untold anguish and immense mental panic to the detainees which constituted the offence of 'other inhuman act'.

284. On integrated evaluation of evidence adduced thus leads us to the conclusion that the prosecution has been able to prove it beyond reasonable doubt that the accused Md. Nesar Ali, Yunus Ahmed and Md. Ujer Ahmed Chowdhury who belonged to *militia force* Razakar Bahini being accompanied by 10/12 armed Razakars had carried out the systematic attack that eventually resulted in unlawful detention of victim Dr. Jamini Mohon Dev at the army camp and later on his brutal killing. The accused persons consciously acted in JCE, sharing common purpose and they incurred liability even of the act of killing as co-perpetrators.

285. Therefore, the accused Md. Nesar Ali, Yunus Ahmed and Md. Ujer Ahmed Chowdhury are found criminally liable under section 4(1) of the Act of 1973 for substantially abetting, participating, contributing, facilitating and for complicity in the commission of offences of '**other inhuman act**', '**abduction**',

‘**confinement**’, and ‘**murder**’ as crimes against humanity as enumerated in section 3(2)(a)(g)(h) of the Act of 1973 which are punishable under section 20(2) of the said Act for which the accused persons have incurred liability under section 4(1) of the said Act.

Adjudication of Charge No.03

[The offences of abduction, confinement, torture and other inhuman act committed at the village Uttarbag]

286. Charge: That on 27 November, 1971 at about 07:00 A.M the accused Razakar Md. Nesar Ali, Razakar Yunus Ahmed and Razakar Md. Ujer Ahmed Chowdhury being accompanied by their accomplice Razakars by launching attack abducted Monoronjon Bhattacharya, his son Monindra Bhattacharya from their house at village Uttarbag under Police Station Rajnagar of the then Moulvibazar Sub-Division, looted households tortured them severely. In conjunction with the attack the accused and their cohorts also forcibly captured Rosharaj Bhattacharya and his brother Ranjit Bhattacharya who was later on released. The three detained persons were then taken to Nasib Ali the convener of local peace committee where they were subjected to torture keeping in detention. On grilling there by the Pakistani army the detainees however got release on condition to provide information about the freedom fighters.

Therefore, the accused Ujer Ahmed Chowdhury, Nesar Ali and Yunus Ahmed have been charged for participating, contributing, facilitating and complicity in the commission of offences of abduction, confinement, torture and other inhuman act as crimes against humanity as enumerated in section 3(2)(a)(g)(h) of the Act of 1973 which are punishable under section 20(2) of the said Act for which the accused persons have incurred liability under section 4(1) of the said Act.

Evidence of Witnesses Examined

287. Prosecution intending to prove the arraignment brought in this charge relies upon the evidence of P.W.13, the brother of victim Rosharaj Bhattacharya and the statement made by Rosharaj Bhattacharya to the IO, as has been received in evidence under section 19(2) of the Act of 1973, as this witness died during trial. Prosecution however tendered another witness [P.W.14] adduced. Now, let us see what has been testified by the P.W.13.

288. P.W.13 Ranjit Bhattacharya [77], the brother of one of victims Rosharaj Bhattacharya testified what he observed in respect of the attack that resulted in forcible capture of his brother, cousin brother and son of his cousin brother. P.W.13 stated that on 27 November, 1971 at about 09:00 A.M accused Ujer Ahmed and accused Nesar Ali being accompanied by a group of Razakar attacking their house committed looting and then they detained

him [P.W.13], his brother Rosharaj Bhattacharya, cousin brother Monoronjon Bhattacharya and Monindra Bhattacharya the son of his [P.W.13] cousin brother and taking them started moving towards the house of Nasib Ali [now dead], the convener of Uttarbog Union Peace Committee. On the way he [P.W.13] was released and the rest three detainees were taken away.

289. P.W.13 also stated that on his way of returning back to home he [P.W.13] at about 09:30/10:00 A.M saw 10/12 army men heading towards the house of Nasib Ali. On the same day at about 01:00/01:30 P.M Monoronjon Bhattacharya and Monindra Bhattacharya returned back home from the house of Nasib Ali and they could not say whether his [P.W.13] brother Rosharaj Bhattacharya would return back. At about 04:00/5:00 on the same day Rosharaj Bhattacharya [now dead] came back home and disclosed that the Pakistani army and Razakars set him at liberty on condition of providing information about the freedom-fighters.

290. Finally, P.W.13 stated that he could know the two accused persons beforehand as they were the residents of their locality.

291. In cross-examination P.W.13 stated in reply to defence question that Nasib Ali's house was about one kilometer far from that of their own; that accused Md. Nesar Ali was the Razakar commander of Uttarbog Union. Defence suggested this P.W.13

that what he testified implicating the two accused was untrue and tutored and that the accused persons were not engaged in carrying out the alleged criminal acts.

292. P.W.14 Md. Bajid Miah [70] a resident of village Uttarbagg has been tendered and defence [accused Yunus Ahmed] declined to cross-examine him.

293. Victim Rosharaj Bhattacharya died during trial and thus on prayer on part of the prosecution his statement made to the IO has been received in evidence under section 19(2) of the Act of 1973. His statement demonstrates that accused Ujer Ahmed Chowdhury, Nesar Ali, Yunus Ahmed and their cohort Razakars attacking their house on 27 November, 1971 in the morning took him and two others away on forcible capture to the house of Nasib Ali , the convener of local peace committee where they were subjected to severe torture and at a stage an army captain present there talked with him in English who eventually set them the three detainees released on condition of providing information about the freedom-fighters and thus they returned back home just before the dusk and disclosed the event to his younger brother Ranjit[P.W.13] and others.

Finding with Reasoning on Evaluation of Evidence

294. Mr. Sultan Mahmud the learned prosecutor in placing argument on this charge drew attention to the evidence of P.W.13 the sole witness who has been examined in support of this charge involving the offence of abduction, confinement and torture caused to his brother and two relatives. P.W.13 is a direct witness to the act of the accused persons forming part of attack that resulted in taking away the victims to the house of Nasib Ali, the convener of the local peace committee, on forcible capture. Defence could not dislodge the version made by this P.W.13 on material particulars. It also stands proved that the three accused had culpable nexus with the Pakistani occupation army stationed in Moulvibazar.

295. It has been further argued that mere absence of corroboration one's testimony cannot be kept aside if it inspires credence. The prohibited acts of the accused persons and their accomplices causing physical and mental harm to the civilians detained constituted the offence of 'other inhumane act' as well.

296. Mr. Abdus Sobhan Tarafdar the learned counsel defending the accused Yunus Ahmed submitted that testimony of the P.W.13 does not speak of complicity of the accused Yunus Ahmed with the alleged event. His testimony suffers from contradictory to what has been stated by one alleged victim Rosharaj Bhattacharya

to the IO, on material particulars which creates reasonable doubt as to engagement of accused Yunus Ahmed in committing the criminal acts forming the attack as alleged in the charge no.03. Prosecution failed to prove this accused's complicity with the alleged offence, in any manner.

297. Mr. Mujahidul Islam Shaheen drawing attention to the testimony of P.W.13 and the statement [Exhibit-4] of one victim Rosharaj Bhattacharya made to the IO submitted that the version of P.W.13 is glaringly inconsistent to what has been stated by Rosharaj Bhattacharya on material particular and such inconsistency creates reasonable doubt as to involvement of the accused Md. Ujer Ahmed Chowdhury and Md. Nesar Ali with the alleged event of abduction and confinement.

298. The Tribunal notes that this charge involves the criminal act of unlawful capture of three Hindu civilians and taking them away to the house of the convener of the local peace committee wherefrom they eventually got conditional release on intervention of a Captain of Pakistani occupation army.

299. Three accused have been indicted in this charge, Prosecution relied upon P.W.13 and also on the statement of one victim Rosharaj Bhattacharya made to the IO as the same has been received in evidence under section 19(2) of the Act of 1973, as he

died during trial. However, we consider it expedient to evaluate the testimony of P.W.13 together with the statement of said Rosharaj Bhattacharya.

300. P.W.13 Ranjit Bhattacharya is the brother of victim Rosharaj Bhattacharya [died during trial]. He [P.W.13], as it transpires, witnessed how his brother and two others were taken away on forcible capture from their house. The charge framed indicts three accused Ujer Ahmed Chowdhury, Md. Nesar Ali and Yunus Ahmed for the criminal acts carried out.

301. But according to testimony of P.W.13 two accused Ujer Ahmed Chowdhury and Md. Nesar Ali were with the group. He[P.W.13] did not implicate the accused Yunus Ahmed with the offence committed, in any manner. Although, the statement of victim Rosharaj Bhattacharya made to the IO [received in evidence under section 19(2) of the Act of 1973] demonstrates that three accused Ujer Ahmed Chowdhury, Md. Nesar Ali and Yunus Ahmed were with the group when it carried out the attack that resulted in unlawful detention of three Hindu civilans and taking them away to the house of Nasib Ali, the convener of local peace committee.

302. That is to say, P.W.13, coming on dock, did not depose anything as to presence and complicity of accused Yunus Ahmed

with the alleged criminal act. It is not consistent with the statement of victim Rosharaj Bhattacharya [Exhibit-4], true.

303. But simply for the reason of such inconsistency the version of P.W.13 so far as it relates to unlawful detention, taking away three civilians to the house of Nasib Ali, the convener of local peace committee shall not go on air. At best it can be deduced that participation and involvement of accused Yunus Ahmed with the commission of the criminal acts is rather reasonably doubtful benefit of which shall go in his favour.

304. We have found from testimony of P.W.13 that first on the same day in the afternoon two detainees Monoronjon Bhattacharya and Monindra Bhattacharya returned back home from the house of Nasib Ali and they could not say whether Rosharaj Bhattacharya would return back.

305. It also reveals from testimony of P.W.13 that on the same day at about 04:00/ 5:00 the other detainee Rosharaj Bhattacharya [now dead] came back home and disclosed that the Pakistani army and Razakars set him at liberty on condition of providing information about the freedom-fighters.

306. In view of version made by the P.W.13 two of three detainees got release first in the afternoon on the same day from the house of Nasib Ali, the convener of local peace committee and next in

the evening on the same day another detainee Rosharaj Bhattacharya got conditional release from captivity.

307. But statement [Exhibit-4] of Rosharaj Bhattacharya made to the IO narrates that all the three detainees got release together in the evening, on the same day.

308. That is to say, there has been inconsistency about the time of releasing the detainees from captivity, true. But there has been no inconsistency about the fact that all the three detainees eventually got release from captivity on the same day.

309. We are not with the argument advanced by the learned counsel defending the accused Ujer Ahmed Chowdhury and Md, Nesar Ali that such inconsistency has diminished the testimony of P.W.13 in its entirety.

310. It is to be noted that with the lapse of long passage of time one's memory is faded. In narrating any traumatic event occurred more than four decades back witness coming on dock may not be able to sketch the exact or detail precision of the event. Keeping it in mind we are to concentrate on the core essence of what has been testified.

311. Here, we have found that the act of unlawful capture of three civilians, taking them away to the house of Nasib Ali, the convener of local peace committee, keeping them detained there

and eventually setting them at liberty on condition to provide information about the freedom-fighters remained uncontroverted in cross-examination.

312. In view of above discussion, it has been proved beyond reasonable doubt that a group of Razakars accompanied by accused Md. Ujer Ahmed Chowdhury and Md. Nesar Ali, by launching attack unlawfully captured three Hindu civilians from their house at village Uttarbag under Police Station Rajnagar of the then Moulvibazar Sub-division. The event happened just 19 days prior to the nation achieved its independence.

313. Presumably, the Pakistani occupation army and their local collaborators belonging to auxiliary force opted to target the Hindu civilians as they strongly sided with the freedom-fighters and thus even at the fag end of the war of liberation when the victory was eminent they got enthused to inflict a death-blow by coercing and intimidating the unarmed pro-liberation civilians. This was the intent of causing unlawful capture and detention of three Hindu civilians and the attack was carried out by a group of Razakars accompanied by two accused Ujer Ahmed Chowdhury and Md. Nesar Ali.

314. The evidence of P.W.13 and statement of Rosharaj Bhattacharya [Exhibit-4] together impels the conclusion that the detainees were grilled at the house of Nasib Ali, the convener of

local peace committee and finally, one Captain of Pakistani occupation army present there facilitated their release on condition of providing information about freedom-fighters. This fact could not be refuted by the defence and it also proves close and culpable nexus of the accused persons with the Pakistani occupation army.

315. Detaining and confining a protected civilian for no valid purpose, in war time situation is prohibited indeed. The pattern of the attack in procuring capture of the civilians obviously created horror and coercion among the victims and their relatives. It indisputably caused mental harm and anguish to the detainees. In addition to it, remaining in captivity at the house of the local peace committee convener and the act of grilling them there added further mental harm to the detainees, we may safely infer it. It has been affirmed in cross-examination of P.W.13 that accused Md. Nesar Ali was the Razakar commander of Uttarbag Union. It forces to the conclusion that this accused and accused Ujer Ahmed Chowdhury another potential Razakar were the key persons in designing the attack.

316. All those acts together formed part of systematic attack to which the accused Ujer Ahmed Chowdhury and Md. Nesar Ali were conscious part. It has been found from facts and circumstances revealed that the accused Md. Ujer Ahmed Chowdhury and Md. Nesar Ali along with their cohorts physically

participated in accomplishing the act of abduction of three Hindu civilians and keeping them in captivity. Therefore, they cannot evade responsibility of causing mental harm to the victims constituting the offence of 'other inhuman act', although eventually the victims got conditional release on the same day on intervention of an army captain.

317. We cannot agree with the learned prosecutor that since the statement of one victim Rosharaj Bhattacharya made to the IO states about complicity of accused Yunus Ahmed the same can be acted upon in finding him responsible for the offence. Provision contained in section 19(2) of the Act permits to receive such statement in evidence of the witness died during trial, true. But it is to be borne in mind that defence does not get opportunity to cross-examine the description made in such statement. Thus, it cannot, we are of the view, override the testimony made on oath before the Tribunal.

318. We have found it from evidence of P.W.13 a direct witness that accused Yunus Ahmed was not with the group while it launched the attack. Thus, we are constrained to conclude that the prosecution failed to prove the arraignment against the accused Yunus Ahmed and accordingly he cannot be held guilty of the offence brought in this charge.

319. Therefore, on rational analysis of evidence tendered we arrive at a decision that the accused Ujer Ahmed Chowdhury and Md. Nesar Ali, are found criminally liable under section 4(1) of the Act of 1973 for substantially abetting, participating, contributing, facilitating and for complicity in the commission of offences of ‘**other inhuman act**’, ‘as crimes against humanity as enumerated in section 3(2)(a)(g)(h) of the Act of 1973 which are punishable under section 20(2) of the said Act for which the accused persons have incurred liability under section 4(1) of the said Act.

Adjudication of charge no.04

[Killing Md. Najabat Ali and Md. Abdul Basit @ Badsha of village Dakhkhin Kholagram[Noyatola] and committing other offences as crimes against humanity]

320. **Charge:** On 29.11.1971 a group formed of accused Shamsul Hossain Tarafdar, Ujer Ahmed Chowdhury, Nesar Ali, Yunus Ahmed and Mobarak Mia, 100/150 Pakistani occupation army and armed Razakars by launching attack at village Dakhkhin Kholagram[Noyatola] under Rajnagar Police Station unlawfully picked up NAP leader Najabat Ali, student union leader Abdul Basit @ Badsha and his brother Abdul Kadir, looted households and set them on fire and then they took away the three detained civilians to Rajnagar Police Station where they were subjected to torture in detention..

On the same day in the evening the accused persons and their cohorts started moving towards Moulvibazar taking the three detainees with them by a vehicle and on the way detained Abdul Kadir was dropped from the vehicle at a place 'Langurpul', guessing him dead due to torture. The two other detainees were handed over to the Pakistani army stationed at Moulvibazar army camp.

On 08.12.1971 Moulvibazar became free and thus the relatives on search discovered the decomposed bodies of two detainees Najabat Ali and Badsha at a place south to Moulvibazar College and same were then buried.

Therefore, the accused Shamsul Hossain Tarafdar, Ujer Ahmed Chowdhury, Nesar Ahmed, Yunus Ahmed and Mobarak Mia have been charged for participating, contributing, facilitating and complicity in the commission of offences of abduction, confinement, torture, other inhumane act and murder as crimes against humanity as enumerated in section 3(2)(a)(g)(h) of the Act of 1973 which are punishable under section 20(2) of the said Act for which the accused persons have incurred liability under section 4(1) of the said Act.

Evidence of Witnesses Examined

321. Two witnesses have been examined as P.W.08 and P.W.09 to prove this charge. Of them P.W.08 is a direct witnesses as he is

one of three detainees and he had occasion of seeing what happened till the act of taking the detainees towards the army camp in Moulvibazar. Another witness i.e. P.W.09 is a hearsay witness. Victim Najabat Ali was his [P.W.09] brother. Before we evaluate the testimony let us first see what the P.W.s have testified.

322. P.W.8 Md. Abdul Kader [70] a resident of village Dakhkhin Khalagram [Nayatila] under Police Station Rajnagar of the then Sub-Division Moulvibazar is a direct witness to facts related to the offences arraigned in charge no.04. In 1971 he was 26/27 years old.

323. P.W.08 Md. Abdul Kader stated that on 29 November, 1971 in the early morning about 100/150 Pakistani army and Razakars accompanied by accused Shamsu, Nesar Ali, Ujer Ahmed, Yunus Ahmed and Mobarak Mia by launching attack at their house apprehended his brother freedom fighter Abdul Basit @ Badsha and started chanting --*গণতন্ত্র চাই, গণতন্ত্র চাই* [got the freedom fighter, got the freedom fighter]. He[P.W.08] was tied up too when he came out of the room and then the army men and Razakars had beaten him and his brother, looted household and set their house on fire.

324. P.W.08 next stated that he saw their neighbour Najabat Ali detained too in front of their [P.W.08] house when the Pakistani army and Razakars were taking him and his brother away with them. He also saw the house of Najabat Ali in ablaze. Then the Pakistani army and Razakars took them three at the local Munshi Bazaar where they handed them over to other Razakars who then took away them at Rajnagar Police Station where keeping them in the lock-up they were subjected to torture and after the dusk the Pakistani army and Razakars came there and ordered to take them at the army camp. With this the Razakars he [P.W.08] already named[accused persons] and the Pakistani army men made them ascended on their vehicle when he was severely kicked that resulted in fracture of his left-chest bone and he became fainted. With this the Pakistani army and Razakars had left him at a place near Langurpul, guessing him dead and Najabat Ali and Badsha Mia were taken to Moulvibazar army camp. In the night when he[P.W.08] got back his sense he somehow returned back home and received medical treatment from Sikander Ali[now dead], the father of Najabat Ali[detainee].

325. P.W.08 went on to state that 7/8 days later he knew from Soab Ali of village Gaeshpur that his[P.W.108] brother Abdul Basit @ Badsha and Najabat along with many other detainees were killed by the Pakistani army. Later on, on extensive search on 09 December, 1971 they discovered the decomposed body of

Najabat Ali and his brother Badsha at a place south to Moulvibazar Government College.

326. Finally, P.W.08 stated that the accused persons were the residents of their neighbouring locality and they used to come at local bazaar when he [P.W.09] had occasion of meeting them.

327. In cross-examination by accused Yunus Ahmed P.W.08 stated that the house of Sikander the father of Najabat [victim] was at the west to their house; that he did not lodge any case over the event of killing his brother and he could not say whether any of their family lodged any such case. Defence suggested P.W.08 that accused Yunus Ahmed was not involved with the event he narrated in any manner; that no event happened he testified and that what he narrated was untrue and tutored. P.W.08 denied it.

328. In cross-examination by the accused Md. Ujer Ahmed Chowdhury and three absconding accused P.W.08 stated in reply to question put to him that Matiur Rahman[now dead] the Chairman of their Union and Abdul Bari and Dudu Mia[both are now dead] of village Gaeshpur were Razakars and that no army camp existed in Rajnagar Thana. P.W.08 also stated that Bagajura village was about one and half-two kilometers far from their village and the village Masuria was about one kilometer away from their house.

329. P.W.08 denied the defence suggestion that he did not know these accused; that they did not come to their village in 1971; that they were not associated with the commission of event he narrated; that they were not Razakars and that what he testified was untrue and tutored. P.W.08 manifestly denied it.

330. P.W.09 Farasath Ali [62], the Chairman of NRB Bank is the brother of Najabat Ali one of victims of the event narrated in charge no.04. He testified what he heard about the event. He is a freedom fighter. In 1971 he was a first year student of Intermediate class of Sylhet Government College.

331. P.W.09 stated that in the mid of May, 1971 he joined Nishain Youth camp in Assam State, India for receiving freedom fighters training. On getting information from NAP President Peer Habibur Rahman [now dead] that Razakars and army men had killed numerous Hindu civilians of Pachgaon under Rajnagar Police Station on 07 May, 1971 he came to Munshi Bazaar locality under Police Station Rajnagar and arranged shelter of co-freedom-fighters around their locality. He [P.W.09] used to move around the locality of Rajnagar, Moulvibazar, Kulaura and Sylhet secretly and used to communicate information about the activities of Razakars, Al-Badars and Pakistani army to the secret cell of freedom fighters set up in Sylhet.

332. P.W.09 also stated that on 01/02 December, 1971 at about 11:00 A.M one of their secret informers provided him a slip containing information that his[P.W.09] brother Najabat Ali was taken away on forcible capture and their house was burnt down. He then came to their house on 06 December and found their house burnt down and knew from his father that his brother was taken away by a group of Razakars and army men accompanied by Mobarak[accused] of village Masuria, Ujer[accused] of village Gaeshpur, Dudu Mia[now dead], Barik Mia[now dead], Matiur Ragman[now dead], Yunus[accused] of village Sonatika, Nesar Ali[accused] of village Jamura, Shamsul Hossain Tarafdar[accused] of village Bagajora and other Razakars and Pakistani army by launching attack at on 29 November, 1971 at dawn and burnt down their house by setting it on fire. Ujer Ahmed entered inside a room of their house and coming out he told to army men, showing a grenade, that it was found inside the room. Then on order of an army officer Razakars and army men carried out looting and destruction.

333. P.W.09 next stated his father also disclosed that in conjunction with the attack Pakistani army apprehended their neighbours Abdul Basit Badsha, his younger brother Abdul Kader and then they took them and Najabat Ali, on forcible capture, to Rajnagar Police Station where they were subjected to torture by Razakars and army men. On the same day, after the dusk when the

detainees were taking towards Moulvibazar from Rajnagar Police Station by a vehicle the detainee Abdul Kader was thrown out at a place of Lungurpul Bridge, guessing him dead resulting from torture. The two detainees were taken to the army camp in Moulvibazar.

334. P.W.09 went on to state that on 06 December , 1971 in the evening he rushed to Abdul Kader's house and heard from him about detention of his[P.W.09] brother and others. Najabat Ali and Badsha were freedom fighters, P.W.09 added.

335. P.W.09 also testified what he heard from Soab Ali, a survived detainee of village Gaeshpur. P.W.09 stated that on 07 December in the afternoon he met Soab Ali who disclosed that Pakistani army made him [Soab Ali] and 70/80 detainees stood in a line at Moulvibazar army camp and fired gun shots. But he somehow got survived and the other detainees were killed. Najabat Ali, Abdul Basit, Danu Mia, Dr. Jamini Mohon Dev were also gunned down to death on 05 December,1971 at Moulvibazar army camp and his[P.W.09] sister's husband Abdur Rahim miraculously survived—Soab Ali disclosed, P.W.09 added. On 07 December, 1971 after the dusk said Abdur Rahim came to their [P.W.09] house when he disclosed that on 29 November 1971 when the attack was launched at their house he [Abdur Rahim] managed to flee away. On 30 November, Barik Mia [now dead],

Chairman of Munshi Bazaar local Peace Committee told him that Najabat Ali and Abdul Basit would get release if he [Abdur Rahim] surrendered at Moulvibazar army camp and then Abdul Barik took him at the army camp where he got fell down when the detainees were gunning down to death by the army men and thus he [Abdur Rahim] survived.

336. P.W.09 finally stated that on 08 December 1971 Moulvibazar became free and on 10 December, 1971 he along with his relatives found the decomposed dead bodies of Najabat Ali and Abdul Basit at the south of Moulvibazar College and they buried them there. The accused persons were the residents of their locality and thus he knew them beforehand.

337. In cross-examination by accused Yunus Ahmed P.W.09 stated that he joined the Nishain Youth camp in Assam State, India about 15/16-20 May, 1971 and that excepting seeing his brother's dead body what he stated was hearsay. P.W.09 stated that he could not say whether his father lodged any case over the event of killing with Rajnagar Police Station. P.W.09 denied the defence suggestion that no event he testified happened; that the accused Yunus was not involved with the event he narrated and that what he testified implicating this accused was untrue and tutored out of local rivalry.

338. On cross-examination by accused Ujer Ahmed Chowdhury and the absconding accused persons P.W.09 stated that the name of his brother martyr Najabat Ali finds place in the books published narrating freedom fight around their localities; that no one told him that his [P.W.09] brother was detained by the Pakistani army along with Chatra League leader Rafique. P.W.09 denied the defence suggestions that even after the independence achieved accused Ujer Ahmed Chowdhury continued staying at his own home; that these accused were not Razakars and they did not come to their house with the gang; that he did not hear the event he testified; that he did not go to Moulvibazar to locate his brother's dead body and that what he testified was untrue, keeping the truth hidden. P.W.09 also stated that the villages Bagajora, Masuria and Gobindapur were nearer to their village

Findings with Reasoning on Evaluation of Evidence

339. Mr. Sultan Mahmud the learned prosecutor submitted that this charge involves the offence of killing two pro-liberation civilians Najabat Ali and Badsha. All the five accused have been arraigned for the brutal offences committed. Two witnesses have been examined in support of this charge. One of them P.W.08 is a direct witness to the act of forcible capture of two victims along with whom he [P.W.08] was also taking away from Rajnagar Police Station. From the unimpeached evidence of P.W.08 it shall

divulge that the three detainees were first taken at Rajnagar Police Station, on forcible capture where they were subjected to torture in captivity and then two detainees were taken to the army camp in Moulvibazar. P.W.08 later on knew that 7/8 days later his brother Abdul Basit @ Badsha and Najabat Ali were shot to death by the army men. The evidence tendered proves that the accused persons were with the group, with intent to further plan and policy and thus culpably and substantially facilitated and contributed to the commission of annihilation of the detained victims, two pro-liberation civilians, the learned prosecutor added.

340. Mr. Abdus Sobhan Tarafdar defending the accused Yunus Ahmed reiterated the submission he made in respect of charge nos.01, 02 and 03. Not the present accused Yunus Ahmed was a Razakar but another Yunus Ahmed of village Gobindapur belonged to Razakar Bahini and was involved with the offences alleged, the learned defence counsel added.

341. Mr. Mujahidul Islam Shaheen the learned counsel defending the other four accused persons including the accused Md. Ujer Ahmed Chowdhury submitted chiefly questioning truthfulness of testimony of witnesses examined in support of this charge. He also submitted that these accused persons were not involved with the commission of alleged crimes; that they were not Razakars. They were prosecuted under The Collaborators Order, 1972 for

the offences scheduled therein and they could have been prosecuted under The said Order of 1972 if really they were involved in committing the offences for which now they have been charged with.

342. The charge framed states that the event of attack happened in phases and ended in killing two detained civilians-- Najabat Ali and Abdul Basit @ Badsha. Another detainee P.W.08 Md. Abdul Kader, the brother of Abdul Basit @ Badsha got somehow escaped when the three were taking towards the army camp by vehicle and returned back home. P.W.09 the brother of victim Najabat Ali heard the event from P.W.08 and his father as well.

343. Prosecution is required to prove that the three non-combatant civilians were apprehended by the group formed of army men, accused persons and their accomplice; that the attack was systematic and directed against civilian population; and that the accused persons had acted in JCE, sharing common purpose that resulted in killing of two detainees, few days later after keeping them in captivity for couple of days at the army camp in Moulvibazar.

344. P.W.08 Md. Abdul Kader is the key witness to the event of attack that resulted in forcible capture of three civilians including him. It transpires from testimony of P.W.08 that a group formed

of about 100/150 Pakistani occupation army and Razakars accompanied by accused Shamsul Hossain Tarafdar, Md. Nesar Ali, Ujer Ahmed Chowdhury, Yunus Ahmed and Mobarak Mia by launching attack at their house on 29 November, 1971 in the early morning apprehended him [P.W.08] and his brother freedom-fighter Abdul Basit @ Badsha and started chanting --*ওগুণ্ড চিবিলু, গুণ্ড চিবিলু* [got the freedom fighter, got the freedom fighter].

345. The above piece of pertinent version of P.W.08 remained unshaken. Thus, it may be legitimately concluded that the non-combatant civilians who sided with the war of liberation were the target of the systematic attack and they were unlawfully detained as identified by the accused persons who rather had acted as the key catalyst in this regard.

346. Testimony of P.W.08 also depicts that the army men and Razakars had beaten him and his brother, looted household and set their house on fire. Defence could not impeach the criminal acts and presence of the accused persons with the gang of attackers, as testified. Besides, there has been nothing which may reasonably taint what has been narrated by the P.W.08 in respect of this phase of attack and participation of the accused persons therewith.

347. The Pakistani army men, for obvious reason, were not at all familiar with the locality and the identity of pro-liberation

civilians to be targeted and attacked. Presumably, the act of carrying out the mission of the criminal enterprise directing civilian population would not have been possible without the active and culpable assistance and aid of the accused persons belonging to Razakar Bahini. The accused persons belonging to auxiliary force Razakar Bahini thus knowingly and consciously contributed and facilitated to cause the forcible capture of these two civilians.

348. What happened next to forcible capture of P.W.08 and his brother Badsha? Another victim Najabat Ali was his [P.W.08] neighbour. Defence does not dispute it. It has been divulged from testimony of P.W.08 that after causing their detention he saw their neighbour Najabat Ali detained too in front of their [P.W.08] house and then the Pakistani army and Razakars were taking him, his brother and Najabat Ali away with them.

349. The gang, in conjunction with the attack also set the house of Najabat Ali in ablaze, P.W.08 witnessed it. In this way the gang got three civilians forcibly captured by launching attack at their houses and also looted households and destructed the house by setting those on fire. Such destructive activities were indeed to spread terror and coercive situation.

350. Conducting the attack and committing criminal acts of destruction of civilian's property does not seem to have been refuted. Defence simply suggested the P.W.08 that the accused persons were not with the group.

351. It would be relevant to reiterate that it already stands proved that the accused persons were engaged in Razakar Bahini and became known around the locality for their notoriety. Additionally, it is admitted that excepting accused Yunus Ahmed the four accused persons were prosecuted under The Collaborators Order, 1972 which is an unfailing indicia as to notoriety of those accused persons.

352. It is to be noted that already in our preceding deliberation on this matter we have rendered finding that there has been nothing to show that these four accused got acquitted or convicted, after trial in the cases initiated under The Collaborators Order, 1972. Besides, defence does not claim that these four accused persons now have been prosecuted for the 'same offence' or for the same set of criminal acts.

353. In view of above now mere putting suggestion that the accused persons were not with the group of perpetrators does not make their presence and the conscious assistance they provided the gang in committing the offence unbelievable. Rather, the

admitted fact of being prosecuted under The Collaborators Order, 1972, as discussed above lends strength to what has been testified by the P.W.08 in respect of accompanying the army men in launching the attack.

354. How the gang dealt with the three detainees? We have found from testimony of P.W.08, one of detainees that the Pakistani army and Razakars took them three first at the local Munshi Bazaar where they handed them over to the group of other Razakars who then took them at Rajnagar Police Station where they were subjected to torture keeping in the lock-up. After the dusk the Pakistani army and Razakars came there and ordered to take them at the army camp in Moulvibazar.

355. On such order the accused Razakars and the Pakistani army men then destined to the army camp in Moulvibazar taking the three detainees on their vehicles when he [P.W.08] was severely lashed out by boot that resulted in fracture of his left-chest bone and he became fainted. With this the Pakistani army and Razakars had left him [P.W.08] at a place near Langurpul, guessing him dead and Najabat Ali and Badsha Mia were taken to Moulvibazar army camp.

356. Defence could not controvert this piece of crucial version involving another phase of the attack involving the act of taking

away the detained three victims to the army camp in Moulvibazar. On the way, leaving one of detainees, guessing dead indisputably proves that he [P.W.08] was subjected to severe torture in Rajnagar Police Station.

357. The above also proves that the accused persons were with the Pakistani army men while the detained three victims were taking towards the army camp in Moulvibazar on vehicle, from Rajnagar Police Station. It also suggests concluding that the accused persons being part of the enterprise were physically engaged in accomplishing the act of unlawful taking away the detained victims to the army camp, sharing common purpose.

358. It is depicted from evidence of P.W.08 that the villages of which the accused persons were residents were nearer to their house. Thus, it was practicable of knowing them beforehand. Besides, a reasonable trier of fact shall opt to deduce that the notoriety of the accused persons made them known around the locality.

359. What happened to P.W.08 when he was abandoned at a place near Langurpul, guessing him dead? P.W.08 stated that in the night when he[P.W.08] got back his sense, he somehow returned back home and received medical treatment from Sikander Ali[now dead], the father of Najabat Ali[detainee].

360. P.W.09 Farasath Ali, brother of victim Najabat Ali is a freedom fighter. He came to Munshi Bazaar locality under Police Station Rajnagar and arranged shelter of co-freedom-fighters around their locality and started moving around the locality of Rajnagar, Moulvibazar, Kulaura and Sylhet secretly and used to communicate information about the activities of Razakars, Al-Badars and Pakistani army to the secret cell of freedom fighters in Sylhet. Defence could not refute it in any manner.

361. P.W.09 is a hearsay witness to the event. On 01/02 December, 1971 he became aware about the forcible capture of his brother Najabat Ali through one of secret informers. He [P.W.09] then came to their house on 06 December, 1971 and found their house burnt down and knew from his father that his brother [Najabat Ali] was taken away by a group of Razakars and army men accompanied by accused Mobarak Mia, Ujer Ahmed Chowdhury, Yunus Ahmed, Md. Nesar Ali, Shamsul Hossain Tarafdar, other Razakars and Pakistani army by launching attack on 29 November, 1971 at dawn when they burnt down their house.

362. Hearsay testimony of P.W.09 also manifests that the accused Ujer Ahmed Chowdhury, in conjunction with the attack entered inside a room of their house and coming out he told to army men, showing a grenade, that it was found inside the room. Such

culpable act of accused Ujer Ahmed Chowdhury was intended to imbue the gang in detaining the elder brother of P.W.09. The two victims were freedom-fighters. But at the time of apprehending them they were non-combatant and thus obviously had right to remain protected under the international humanitarian law and the laws of war.

363. The accused persons, as it reveals too, were extremely antagonistic to the un-armed freedom-fighters. Such culpable attitude and deliberate act substantially facilitated an army officer to make an order in carrying out looting and destruction of households.

364. It also transpires that on 06 December, 1971 the P.W.09 heard the event of detaining the victims including his brother also from Abdul Kader [P.W.08]. P.W.09 became aware about the fact of killing his brother Najabat Ali and Badsha from one Soab Ali, a survived detainee who also disclosed that Pakistani army made him [Soab Ali] and 70/80 detainees stood in a line at Moulvibazar army camp field and fired gun shots that resulted in killing of numerous detainees including Najabat Ali, Abdul Basit @ Badsha, Danu Mia [victim of charge no.01], Dr. Jamini Mohon Dev [victim of charge no.02]. The barbaric massacre happened just few days prior to the victory the nation achieved, after nine-month long bloody war of liberation.

365. Abdur Rahim is the husband of P.W.9's sister. P.W.09 also heard from Abdur Rahim that on 30 November, 1971 Barik Mia [now dead], Peace Committee Chairman of Munshi Bazaar told him that Najabat Ali and Abdul Basit would get release if he [Abdur Rahim] surrendered at Moulvibazar army camp and then Abdul Barik took him at the army camp where he got fell down when the detainees were gunning down to death by the army men and thus he [Abdur Rahim] survived.

366. We may assume that Abdur Rahim, a relative of a victim opted to respond the proposal of peace committee chairman believing it as a last effort to get the victims Najabat Ali and Badsha released as prompted by the local Peace Committee Chairman in a trickery way .

367. It has already been settled that in a case under the Act of 1973 'hearsay evidence' is admissible and it may be taken into consideration if supported by other evidence. The phrase 'other evidence' includes relevant facts, circumstances and testimony of ocular witnesses.

368. Hearsay evidence of P.W.09 is admissible and the Tribunal can act on it in arriving at decision on fact in issue, provided it carries reasonable probative value. This view finds support from

the principle enunciated in the case of *Muvunyi* which is as below:

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

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

369. In the case in hand, testimony of P.W.09 who heard the event from his father and two other survived detainees including the P.W.08. Such hearsay testimony, in view of facts and circumstances revealed carries value. It gets corroboration as well from the evidence of P.W.08, the direct witness to the event of attack, till significant phase.

370. The hearsay testimony of P.W.09 gets corroboration from the testimony of P.W.08 a direct witness so far as it relates to the act of taking away the victims to the army camp in Moulvibazar on forcible capture. The killing of Najabat Ali and Badsha remained undisputed. It may be justifiably deduced on evaluation of evidence adduced that the victims were subjected to torture as well in captivity. And just at the fag end of the war of liberation the Pakistani army deliberately wiped out the victims and other civilians detained at the same army camp.

371. The accused persons belonging to the Razakar Bahini played significant role in contributing and facilitating the detention of the victims at the army camp that ended in their brutal killing. It has been found that the accused persons were actively engaged in taking away the detained victims to the army camp from Rajnagar Police Station.

372. It is now settled pursuant to international criminal jurisprudence that hearsay testimony is not inadmissible *per se* in a trial under the Act of 1973. Its probative value is to be evaluated taking other relevant facts and circumstances into account and the other evidence may lend corroboration to the hearsay evidence.

373. The case deals with the offences of crimes against humanity. This type of crime is known as 'group crime' or 'system crime' and not an isolated offence punishable under the normal Penal law. In committing crimes against humanity the person accused of such crime may not have physical participation. But his act or conduct--- amid, prior or subsequent to the event, lawfully makes him responsible for the offence committed by others, if his act or conduct is found to have had substantial effect and contribution on the commission of such crime. It is now settled jurisprudential proposition.

374. In the case in hand, there has been evidence of a level of systematic or coordinated enterprise in abducting and detaining non-combatant individuals and as such the attack was systematic. Given the context and pattern, all the criminal acts as proved were thus not isolated and the same formed part of attack that eventually resulted in horrific killing of detained civilians constituting the offence of crimes against humanity.

375. 'System crime' or 'group crime' committed in war time situation in fact is the upshot of series of acts and activities and an individual may not have participation to all phases of the event. It was not practicable, due to horrific situation prevailing in 1971, to witness or experience all the phases of a particular event. He might have had opportunity to see or know or experience a particular phase or act or conduct of the accused forming part of systematic attack that eventually resulted in the commission of principal crime.

376. Naturally, there has been no evidence as to the act of killing as it happened at the site under control of the Pakistani occupation army stationed in Moulvibazar army camp. The camp was set up in Moulvibazar College and the college field was chosen as the killing site. Defence does not dispute it.

377. It stands proved that the annihilation phase of the detained victims happened at the site under absolute control of the Pakistani occupation army stationed at the camp set up in Moulvibazar College. Thus, reasonably no individual had occasion of witnessing the entire appalling event causing death of numerous civilians. .

378. We have found from the evidence of P.W.09, the brother of Najabat Ali, one of victims that on 08 December 1971 Moulvibazar became free and on 08 December, 1971 he [P.W.09] along with his relatives found the decomposed dead bodies of Najabat Ali and Abdul Basit at the south of Moulvibazar College and they buried them there.

379. The above uncontroverted crucial version also lends assurance that the mass annihilation happened in the field of Moulvibazar College where the army camp was set up.

380. The detained victims might not have faced the tragic fate if they were not brought to the army camp in Moulvibazar. Act of conscious assistance of the accused persons in taking the detained victims at the army camp in Moulvibazar rather substantially facilitated their protracted captivity followed by brutal annihilation. The facts forming a consistent chain suggest the conclusion that voluntary conduct of the accused persons as

depicted from the evidence presented was inevitably directed towards the commission of the principal crime as it substantially facilitated commission of the killing by the actual perpetrators, the army men.

381. Specific direction is not included as an element of aiding and abetting. It is now settled. However, act of practical encouragement and abetment the accused persons provided consciously was specifically directed towards assisting the principals, the army men in committing the killing. Thus, we safely conclude that such assistance had a substantial effect on the commission of the principal crime, the killing perpetrated by the army men.

382. Accused persons' explicit and culpable act in procuring coercive capture of three civilians and confining them at Rajnagar Police Station together with their subsequent act of accompanying the group in taking away the detained victims to Moulvibazar army camp, as found proved, forming part of attack leading to the act of killing, the principal offence indicates beyond reasonable doubt that the accused persons were knowingly 'concerned' even with the ending phase of the event, causing death of two victims, as 'participants'.

383. The accused persons did not physically participate in accomplishing the actual act of killing, true. It happened few days later after bringing the victims at the army camp in Moulvibazar. But the participation of the accused persons till bringing the victims at the army camp was indeed explicit and it substantially assisted the Pakistani occupation army in keeping the victim in captivity. And the accused persons kept them engaged till this phase of the event. It offers the valid inference that the accused persons had acted agreeing the criminal intention to act intending to execute the common design of the enterprise.

384. It is to be noted that *Tadic* Appeal Judgment of 1999 [ICTY] is widely recognized as the first formal recognition of the JCE. The first category of JCE refers to cases where all co-accused possess the same criminal intention to act pursuant to the common design. This type of JCE constitutes the basis of the doctrine, as the participants in the enterprise may be held criminally liable for acts they did not commit but they agreed to commit in a collective sense.

385. The act and conduct of the accused persons forming part of attack lead to the conclusion that they had acted having a firm mindset to collaborate with the principals, the army men stationed at the camp in Moulvibazar. Thus, their act as has been found proved as narrated by P.W.08 unerringly mirrors that they

intended to facilitate the principals in committing the offence of killing unarmed civilians and in this way the accused persons aided and abetted the accomplishment of killing the detainees, we conclude.

386. Integrated evaluation of evidence adduced thus leads us to the conclusion that the prosecution has been able to prove it beyond reasonable doubt that the accused Shamsul Hossain Tarafdar, Md. Ujer Ahmed Chowdhury, Md. Nesar Ali, Yunus Ahmed and Mobarak Mia, in exercise of their significant membership in locally formed Razakar Bahini substantially participated and contributed the group of attackers in forcibly abducting the three civilians and also acted in JCE, sharing common purpose and they incurred liability even of the act of killing of two detainees as co-perpetrators.

387. Therefore, the accused Shamsul Hossain Tarafdar @ Ashraf [absconded], Md. Ujer Ahmed Chowdhury, Md. Nesar Ali [absconded], Yunus Ahmed and Mobarak Mia [absconded] are found criminally liable under section 4(1) of the Act of 1973 for participating, abetting, substantially contributing, facilitating and for complicity in the commission of offences of ‘**abduction**’, ‘**confinement**’, ‘**torture**’ and ‘**murder**’ as crimes against humanity as enumerated in section 3(2)(a)(g)(h) of the Act of 1973 which are punishable under section 20(2) of the said Act for

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

Adjudication of Charge No.05

[Killing 14 civilians belonging to Hindu religion of village Kholagram constituting the offence of genocide and the offences of other inhuman act]

388. Charge: On 29.11.1971 at about 06:00 A.M, after carrying out the attack as narrated in charge no.04 the accused Shamsul Hossain Tarafdar, Md. Ujer Ahmed Chowdhury, Nesar Ali, Yunus Ahmed and Mobarak Mia forming part of the group of 100/150 Pakistani army and armed Razakars by launching attack at the house of Shashanka Shekhar Ghosh looted households and carried out devastating activities and set the house on fire.

In conjunction with the attack by attacking the house of Surjo Kumar Dhar forcibly captured (1) Aurabinda Dhar, (2) Sukesh Ranjan Dhar, (3) Akhil Ranjan Dhar and (4) Nishi Ranjan Dhar and looted the households and set the house on fire. The group accompanied by the accused persons also forcibly captured (5) Jatindra Mohon Ghosh, (6) Bijoy Das and (7) Babul Dev and then apprehended (8) Shushitol Dhar, (9) Shatadal Dhar, (10) Shemol Dhar, (11) Shajal Dhar, the sons of Shruti Dhar from their house and they also detained (12) Protap Purakaiosta, (13) Khirod Dev and (14) Parimal Das from the neighbouring house.

In conjunction with the attack the accused persons and their accomplices looted the households of Shruti Dhar and destructed the worship pavilion of Hindu religion.

Then first the **three** detainees Shatadal Dhar, Shajal Dhar, Shushitol Dhar were killed by gunshot and charging bayonet inside a small house situated in the north gate. Next, the other **three** detainees Bijoy Das, Sukesh Ranjan Dhar and Jatindra Mohon Ghosh were shot to death near the south gate of the house. Then the **five** detainees Nishi Ranjan Dhar, Protap Purakaiosta, Akhil Ranjan Dhar, Shemol Dhar, Babul Dev were shot to death there and finally the rest **three** detainees Khirod Dev, Parimal Das and Aurabinda Dhar were gunned down to death at the east side of open place of the house of Shruti Dhar. The perpetrators left the site at about 11:00 A.M. The large scale killing was with intent to destroy, in whole or in part, the Hindu religious group. On the following day the bodies of victims were buried at the place east-north sides of the house.

Therefore, the five accused Shamsul Hossain Tarafdar @ Ashraf, Md. Ujer Ahmed Chowdhury, Md. Nesar Ali, Yunus Ahmed and Mobarak Mia have been charged for participating, contributing, facilitating and complicity in the commission of offences of 'genocide' as enumerated in section 3(2)(a)(c) (g)(h) of the Act of

1973 and the offences of abduction, confinement, torture, other inhuman act and murder as crimes against humanity as enumerated in section 3(2)(a)(g)(h) of the Act of 1973 which are punishable under section 20(2) of the said Act for which the accused persons have incurred liability under section 4(1) of the said Act.

Evidence of Witnesses Examined

389. In order to substantiate this charge prosecution adduced three witnesses who have been examined as P.W.10, P.W.11 and P.W.12. Prosecution asserts that these three witnesses are the relatives of victims and direct witnesses to the facts materially related to the appalling event of mass killing. Before we weigh and appraise the testimony that made let us first see what they have narrated on oath in Tribunal.

390. P.W.10 Shanta Dhar Chowdhury [60] is the son of Shatadal Dhar Chowdhury, one of victims of the event of mass killing as narrated in charge no.05. He is a direct witness to the facts materially related to the event. In 1971 he was a student of class IX.

391. P.W.10 stated that on 29 November, 1971 in the morning a group formed of more than hundred of Razakars Pakistani army by launching attack at the house of their neighbour Shashanka Ghosh wherefrom they apprehended Jatindra Mohon Ghosh and

then they came to their [P.W.10] house taking detained Jatindra Mohon Ghosh with them tying him up. Razakars Yunus Ahmed, Ujer Ahmed Chowdhury, Mobarak Mia, Nesar Ali, Shamsul Hossain Tarafdar were with the gang. Those Razakars then brought Nishi Ranjan Dhar, Aurabinda Dhar, Akhil Ranjan Dhar, Sukesh Ranjan Dhar, Bijoy Das and Babu Dev to their [P.W.10] house on forcible capture from their old house. At that time he, his brother Subhash, father, grand-father Protap Purakaiosta, Uncle Shushitol Dhar, Uncle Shajal Dhar and domestic aid Khiron Dev and Parimal Das had been at their house. The Razakars and army tying them all up made seated at the courtyard .Pakistani army men had kept their house guarded staying at the gate of their house. Razakars and army men devastated worship pavilion and looted households.

392. P.W.10 further stated that at a stage, Pakistani army and Razakars apprehended Shatadal Dhar, Shushitol Dhar and Sajal Dhar from a room adjacent to the north gate of their house and shot and bayoneted them to death.

393. P.W.10 also stated that next the Pakistani army and Razakars gunned down Sukesh Ranjan Dhar, Bijoy Das and Jatindra Mohon, Nishi Ranjan Dhar, Protap Purakaiosta, Akhil Ranjan Dhar, Shyamal Dhar, Babul Dev, Aurabinda Dhar, Khirod Dev, Parimal Das to death at different places of their house.

394. P.W.10 next stated that on that day at about 02:30 the Pakistani army and Razakars had left the site taking him[P.W.10] and his brother Subhash with them and at Munshi Bazaar they were set at liberty after they were beaten and thus they returned back home when they found their house in ablaze. They then also found Nishi Ranjan and Babul dev alive despite they were the victims of gun firing. Nishi Ranjan died 2/3 days later and Babul Dev died in India when he was under treatment there, after the independence achieved. In the night he along with his mother, brothers and sisters took shelter at the house of their neighbour Upendra Ghosh. On the following day they buried the bodies of their relatives on the bank of the pond besides their house.

395. Finally, P.W.10 stated that the accused persons used to move at Munshi Bazaar very often when they had occasion of seeing them and as such he knew them beforehand.

396. In cross-examination done on part of accused Ujer Ahmed Chowdhury and three absconding accused P.W.10 stated in reply to question put to him that the villages Gaeshpur, Bagajora and Masuria were about, one and half kilometers, two kilometers and one and half kilometers respectively far from their house. P.W.10 denied the defence suggestion that Akaddas Master, peace committee chairman Barik Mia, local UP members and non-Bengali labourers of tea-garden committed the event he testified;

that he did not witness the event; that these accused were not involved with the event and that he did not know them beforehand.

397. In cross-examination by the accused Yunus Ahmed P.W.10 stated in reply to defence question that Dudu Mia of village Gaeshpur was also with the Razakars while they launched attack at their house; that 10/12 Razakars were with the gang of Pakistani army at the time of the attack. He however could not say whether his uncle Samarendra Dhar Chowdhury lodged any case over the event, after independence achieved.

398. P.W.11 Chanu Dhar Chowdhury [59] is one of relatives of victims of the mass killing occurred at their house in 1971. He is a direct witness to the event of attack. In 1971 he was 14 years old and a student of class VIII.

399. P.W.11 stated that on 29 November, 1971 at about 7/8 A.M he had been staying in front of the north gate of their house when he saw a group of hundreds of army men and Razakars being accompanied by Razakar accused Ujer Ahmed, Yunus Ahmed, Nesar, Shamsul Hossain and Mobarak coming at their house. With this he[P.W.11] along with his mother and others went into hiding at the house of Ayub Peer of their neighbouring village, going out through the south gate of their house.

400. P.W.11 next stated that about one hour later, after they took shelter at the house of Ayub Peer, they heard heavy gun firing from the end of their house which was about one hundred *haat* [two haat is equal to one yard] far. On hearing gun firing they came out and saw fume of fire from the end of their old house.

401. P.W.11 went on to state that at about 03:00 P.M during their staying at the house of Ayub Peer they heard from the locals that the Pakistani army had left their house. Then they came back to their house and entering through the south gate thereof they found bullet hit dead bodies of Bijoy Das, Sukesh Ranjan Dhar and neighbour Jatindra Mohon Ghosh. They also found bullet hit dead bodies of Protap Purakaiosta, Akhil Dhar, Shyamal Dhar, Aurabinda Dhar, Parimal Das, Khirod Dev, Shushitol Dhar his [P.W.11] Uncles Shatadal Dhar and Shajal Dhar lying scattered at different places of their house. They found Nishi Ranjan Dhar and Babul Dev lying receiving bullet injuries and thus the villagers took them for medical treatment. They remained sheltered at the house of their neighbour Upendra Ghosh. 2/3 days later bullet injured Nishi Ranjan Dhar died and Babul Dev succumbed to injuries in India when he went there for treatment. On the following day he, Suvash, Shanta, Arun Dhar [P.W.12] and villagers buried the dead bodies on the bank of the pond adjacent to their house.

402. Finally, P.W.11 stated that the accused persons were the residents of their neighbouring villages. He had occasion of seeing them very often at Munshi Bazaar and as such he knew them beforehand.

403. On cross-examination done on behalf of accused Md. Ujer Ahmed Chowdhury and three absconding accused P.W.11 denied the defence suggestion that one Nesar Ali of village Medini Mohol was a Razakar; that these accused were not with the group while it had attacked their house; that he did not know these accused beforehand and that these accused were not Razakars.

404. In cross-examination done on part of the accused Yunus Ahmed P.W.11 stated in reply to defence question that the house of Ayub Peer was about one hundred yards south to that of Upendra Ghosh; that his [P.W.11] father Samarendra Dhar was not at home on the day of the event happened, he went to the house of his [P.W.11] maternal grand-father on the preceding day. Further suggestion has been put to P.W.11 that the accused Yunus Ahmed was not with the group of army and Razakars at the time of accomplishing the event he testified; that Yunus Ahmed was not a Razakar and that what he testified was untrue. P.W.11 denied it patently.

405. P.W.12 Arun Chandra Dhar [66] is one of relatives of the victims. In 1971 he was SSC examinee. He is a direct witness to the attack launched at their house.

406. P.W.12 stated that on 29 November 1971 in the morning while he was standing on the bank of pond of their house he saw a group of about 100 Pakistani army and Razakars being accompanied by Razakars Ujer, Afaj [now dead], Yunus, Nesar, Shamsul and Mobarak heading towards the house of their neighbour Shashanka Ghosh an elderly politician and an organizer of war of liberation.

407. P.W.12 also stated that few minutes later, he [P.W.12] observed the army and Razakars taking out Jatindra Mohon Ghosh tying him up and moved towards the old house of Suriti Mohon Dhar wherefrom Sukesh Ranjan Dhar, Akhil Ranjan Dhar, Aurabinda Dhar and Nishi Ranjan Dhar were apprehended and then they were taken to the new house of Suriti Dhar along with Bijoy Das and Babul forcibly captured from the road. He [P.W.12] could see all these remaining in hiding.

408. Next, P.W.12 also stated that few minutes later he heard gun firing from the end of new house of Suriti Dhar and then he also saw some army men and Razakars taking Subhash Dhar and Shanta Dhar apprehended from their new house towards their old

house. Then he [P.W.12] saw fume from the end of the old house of Shushitol Dhar. 10/15 minutes later he[P.W.12] saw the army men and Razakars taking Subhash and Shanta away towards Munshi Bazaar when he[P.W.12] saw the new house of Shushitol Dhar in ablaze.

409. In stating what happened next P.W.12 narrated that at about 01:30/02:00 P.M when the locality became calm he returned back home and then moved to the house of Shushitol Dhar where he found Shanta Dhar, Subhash Dhar and Chanu Dhar[P.W.11] lamenting. He found dead bodies of Shushitol Dhar, Shyamal Dhar, Shajal Dhar, Jatindra Mohon Ghosh, Sukesh Ranjan Dhar, Bijoy Das, Protap Purakaiosta, Khirod Dev, Parimal Das, Aurabinda Dhar and Shatadal Dhar lying scattered at places of the house of Shushitol Dhar.

410. P.W.12 also saw Nishi Ranjan Dhar and Babul Dev lying in injured condition and they were then treated by village doctor. But Nishi Ranjan Dhar succumbed to injuries two days later and another injured Babul Dev died in India when he was undergoing treatment there. On the following day they buried the bodies on the bank of the pond of their house, P.W.12 stated.

411. In cross-examination by the accused Yunus Ahmed P.W.12 stated that he could not say whether Samarendra lodged any case

over the event he testified; that Samarendra Dhar was the son of Suriti Dhar; that their house was about 200 yards far from the house where the event happened. P.W.12 denied the defence suggestion that this accused was not affiliated with the event he narrated; that this accused was not Razakar and that what he testified was untrue out of rivalry.

412. On cross-examination on part of the accused Ujer Ahmed Chowdhury and three absconding accused P.W.12 stated that in 1971 some non-Bengali labourers used to work at Karimpur tea-garden and they used to come very often at Munshi Bazaar. P.W.12 however denied the defence suggestion that these accused were not involved with the event he testified; that he did not see the event; that he was not at his home at the relevant time; that the event of the attack was carried out by the gang of Pakistani army and non-Bengalis and no Razakar was involved with it and that these accused were not Razakars.

Findings with Reasoning on Evaluation of Evidence

413. Mr. Sultan Mahmud the learned prosecutor in arguing on this charge submitted that all the five accused have been indicted for the offence of genocide as brought in this charge. They being accompanied by the army and other Razakars had launched attack directing the Hindu religious group with intent to destroy it, in whole or in part. The gang of attackers carried out mass killing at

the houses of the victims that resulted in horrendous death of 14 Hindu civilians.

414. The learned prosecutor next submitted that in all three witnesses have been adduced to substantiate this charge and they have been examined as P.W.10, P.W. 11 and P.W.12. All of the three witnesses are direct witnesses to the facts materially related to the barbaric attack. Deliberate and culpable presence and complicity of the accused persons at the crime sites as testified by the P.W.s could not be controverted in any manner by cross-examining them. Defence could not bring anything contrary to what has been narrated by these witnesses. There has been no reason whatsoever to disbelieve them.

415. Mr. Abdus Sobhan Tarafdar reiterating the submission he already made in respect of other charges submitted that the accused Yunus Ahmed was not a Razakar; that the witnesses had no reason of knowing this accused beforehand and that he was not involved with the offences alleged.

416. Mr. Mujahidul Islam Sheen defending the accused Ujer Ahmed Chowdhury and three absconding accused questioning credibility of witnesses examined submitted that the testimony they made suffers from inconsistency; that it was not practicable for them to recognize the accused persons; that they had no reason

of knowing the accused persons; that these accused were not involved with the attack alleged and that the attack was carried out by the group of Pakistani occupation army.

417. The Tribunal notes that the accused persons have been charged for the offence of murder as ‘crime against humanity’ or in the alternative for the offence of ‘genocide’ as enumerated in section 3(2) of the Act of 1973, according to the charge framed. For holding the accused persons criminally responsible for the arraignment brought against them prosecution requires proving that—

- (a) A co-ordinated and joint attack was launched at the houses of civilians belonging to Hindu community of village Kholagram, on the date and time ;
- (b) Accused persons consciously and knowingly accompanied the group at the crime site;
- (c) Accused persons being part of the joint enterprise participated, aided, abetted and facilitated the commission of barbaric massacre directing the civilians of a protected group and its normal livelihood;
- (d) The attack resulted in brutal killing of 14 Hindu civilians and devastating activities by looting household, destructing worship pavilion;

- (e) The organized criminal act that resulted in killing numerous Hindu civilians was intended to destroy the Hindu community, in whole or in part.

418. On 29 November, 1971 at about 06:00 A.M a group formed of 100/150 Pakistani occupation army, Razakars and the accused persons had launched attack at the house of Shashanka Shekhor Ghosh and the new house of Shruti Dhar of village Kholagram under Police Station Rajnagar. Admittedly, Pakistani army got stationed at Moulvibazar College by setting its camp there. No army camp existed in the locality under Rajnagar Police Station— it is admitted too. Indisputably it may legitimately be concluded that the members of locally formed Razakar Bahini provided active assistance to and culpably collaborated with the Pakistani occupation army coming from Moulvibazar in launching the attack. The site attacked was Hindu dominated area. Defence does not dispute it.

419. Admittedly, Moulvibazar became free on 08 December, 1971. Just nine days before the horrific mass killing happened directing the civilians belonging to Hindu community, by launching a co-ordinated attack intending to execute the joint mission that eventually resulted in killing of 14 Hindu civilians, the charge framed alleges. Defence could not impeach the event of mass killing, on evaluation of evidence it is manifested.

420. The Tribunal notes that the crimes occurred more than four decades back, in 1971 and as such memory of live witness may naturally have been faded. Invaluable documents could have been destroyed. Collecting and organizing evidence was a real challenge for the prosecution.

421. The evidence produced by the prosecution in support of its respective case was mainly testimonial. The witnesses examined in support of this charge directly experienced the dreadful events and material facts they have narrated before the Tribunal and the trauma they sustained naturally could have an impact on their testimonies.

422. P.W.10 one of teen family inmates presumably somehow got survived and had occasion of witnessing the atrocities carried out. There has been no reason of disbelieving him. It may be inferred validly that the notoriety of the accused persons and potential position of some of them made them known to the locals and such P.W.10 could recognize them accompanying the gang, when it launched the attack.

423. Specific defence case as suggested to P.W.10 on part of accused Ujer Ahmed Chowdhury and three absconding accused is that one Akaddas Master, peace committee chairman Barek Mia, local UP members and non-Bengali labourers of a tea-garden

committed the event. But this specific defence case could not be substantiated by any kind of evidence. Besides, this defence case as suggested inspires no credence as it stands affirmed in cross-examination that 10/12 Razakars were with the gang at the crime site.

424. P.W.10 saw the accused Razakars Yunus Ahmed, Ujer Ahmed Chowdhury, Mobarak Mia, Nesar Ali and Shamsul Hossain Tarafdar accompanying the gang in causing forcible capture of one victim Jatindra Mohon Ghosh, Nishi Ranjan Dhar, Aurabinda Dhar, Akhil Ranjan Dhar, Sukesh Ranjan Dhar, Bijoy Das and Babu Dev, on forcible capture from their old house.

425. P.W.11, a relative of victims saw the act of launching attack by the gang accompanied by the accused persons, they knew beforehand. In conjunction with the attack he [P.W.11] and some inmates went into hiding wherefrom they saw their house in ablaze; one hour later heard heavy gun firing. Defence could not impeach it in any manner

426. Accused persons were the residents of their [P.W.11] neighbouring villages and he had occasion of seeing them very often at Munshi Bazaar. We, in absence of anything contrary, cannot turn down this reason of knowing the accused persons beforehand.

427. It is also depicted from evidence of P.W.11 that about one hour later, after they took shelter at the house of Ayub Peer, they heard heavy gun firing from the end of their house which was about one hundred *haat* [two *haat* is equal to one yard] far. On hearing gun firing they came out and saw fume of fire from the end of their old house.

428. It is also found from the evidence of P.W.11 that after the gang had left the site he and other came back home and found bullet hit bodies of his relatives lying scattered. 02 bullet hit victims died later on—one 2 days later and another died in India when he was undergoing treatment there.

429. Event of attack does not seem to have been denied and impeached. Defence could not bring anything to show that not the present accused Yunus of village Sonatika was Razakar and he was with the gang. Defence by cross-examining P.W.11 could not controvert what he testified. There has been no rational reason of disbelieving P.W.11.

430. The above version of P.W.11 materially related to the commission of the principal crimes indisputably prove that mass killing and devastating activities were carried out by the gang of attackers which P.W.11 naturally could not see but hearing

frequent gun firing from the end of the site, after he went into hiding amply proves of commission of the massacre.

431. Presence of accused persons at the crime site with the gang forces us to conclude that the accused persons had played active and culpable role in accomplishing the joint mission of mass killing.

432. The material fact unveiled from above piece of pertinent version of P.W.11 is sufficient to prove the commission of mass killing and devastating activities carried out by the gang accompanied by the accused persons and their cohort Razakars whom he[P.W.11] saw moving at the site to be attacked.

433. P.W.12, a direct witness to the attack stated that on 29 November 1971 in the morning while he was standing on the bank of the pond of their house he saw a group of about 100 Pakistani army and Razakars being accompanied by Razakars Ujer, Afaj [now dead], Yunus, Nesar, Shamsul and Mobarak heading towards the house of their neighbour Shashanka Ghosh, an elderly politician and an organizer of war of liberation.

434. The above version of P.W12 remained uncontroverted and it once again proves that the accused persons were with the gang of attackers. Presumably, the accused being stayed with the group

consciously at the crime site intended to provide assistance, contribution and facilitation in identifying the civilians to be targeted.

435. We found further from evidence of P.W.12 that few minutes later, he [P.W.12] observed the army and Razakars taking out Jatindra Mohon Ghosh tying him up and moved towards the old house of Suriti Mohon Dhar wherefrom Sukesh Ranjan Dhar, Akhil Ranjan Dhar, Aurabinda Dhar and Nishi Ranjan Dhar were apprehended and then they were taken to the new house of Suriti Dhar along with Bijoy Das and Babul forcibly captured from the road. He [P.W.12] could see all these remaining in hiding.

436. Defence could not bring anything by cross-examining P.W.12 that it was not feasible of seeing the act of detaining the victims as he stated. Thus, and taking the above version together with other material facts unveiled we are constrained to say that the above version of P.W.12 inspires credence.

437. P.W.11 and P.W.12, the direct witnesses to the facts materially related to the event of mass killing corroborates each other as they witnessed that attack, devastating activities by setting the house on fire, destructed the Hindu worship pavilion and they heard heavy gun firing which indicate unerringly that instantly after effecting forcible capture of the Hindu civilians the

gang gunned them down to death. The act of killing stands undisputed.

438. Due to horrific situation existed in conjunction with the attack it was not practicable of seeing as to who had killed which civilian. It has been proved from the fact unveiled in testimony of the witnesses that after the gang had left the site they found dead bodies lying at places of the houses of Suriti Dhar.

439. P.W.10 , P.W.11 and P.W.12 consistently testified that after the gang had left the site they returned back home and found dead bodies of Shushitol Dhar, Shyamal Dhar, Shajal Dhar, Jatindra Mohon Ghosh, Sukesh Ranjan Dhar, Bijoy Das, Protap Purakaiosta, Khirod Dev, Parimal Das, Aurabinda Dhar and Shatadal Dhar lying scattered at places of the house of Shushitol Dhar. They also saw Nishi Ranjan Dhar and Babul Dev lying in injured condition and of them Nishi Ranjan Dhar succumbed to injuries two days later and another injured Babul Dev died in India when he was undergoing treatment there.

440. The above post attack fact as has been proved from consistent evidence of P.W.10, P.W.11 and P.W.12 leads to conclude that the gang deliberately carried out its mission of killing Hindu civilans.

441. It could not be possible for the army to accomplish the offence without collaboration and active assistance of Razakars. Defence failed to prove that only the army men or the army men being accompanied by Biharis working at Karimpur tea garden had committed the crimes. Defence failed to discredit the presence of the accused persons with the group at the crime site. On total evaluation of evidence tendered leads to the conclusion that the accused persons remained at the crime site till the event ended in mass killing. The accused persons had acted as a 'pack of wolves' in collaborating with the Pakistani occupation army with extreme ferocity in carrying out appalling activities directing the Hindu religious community of village Kholagram.

442. Thus, we find it proved that a group formed mainly of Pakistani occupation army being accompanied by the accused persons and their cohort Razakars, by launching organised attack perpetrated the killing of numerous Hindu civilians, looted valuables, destructed the worship pavilion and terrorize normal livelihood of a particular group or community. The crime site was Hindu dominated. The victims annihilated belonged to Hindu community. Why the group opted to attack the Hindu populated site? What was its intent? Was the killing a crime of genocide?

443. Tribunal notes that a crime of genocide is proven if it is established beyond reasonable doubt, firstly, that the acts as listed in the Act of 1973 was committed and secondly, that the act was

committed against a specifically targeted national, ethnical, racial or religious group, with the 'specific intent' to destroy, in whole or in part, that group. At the same time it is to be noted that the Genocide Convention is part of customary international law.

444. The mass killing occurred in war time situation in 1971. Target was the Hindu community of a particular geographical area. 'Intent' is a constitutive element of the crime of genocide. We are to see whether the intent of the perpetrators were culpable as they knew or should have known that the act of attack would destroy, in whole or in part, the Hindu religious group.

445. The offence of genocide does not happen; it is made. The evidence made it clear that the intention of the gang was to wipe out a particular religious group, in part and through such horrific act the gang intended to intimidate and leave a message for the civilians of a particular religious group who sided with the war of liberation.

446. The nation endured an intense form of genocide in 1971, during the war of liberation. The appalling 'operation search light' launched on 25 March, 1971 was the beginning of genocide which included targeted elimination of protected civilians on discriminatory grounds. The barbaric event happened at village Kholagram that resulted in killing of 14 Hindu civilians is a

fragmented picture of heinous atrocities committed throughout the territory of Bangladesh in 1971 during the war of liberation directing civilians belonging to Hindu civilians.

447. In 1971 during the war of liberation, the Pakistan government and the military formed number of auxiliary forces such as the Razakars, the Al-Badar, the Al-Shams etc, essentially to act as a team with the Pakistani occupation army in identifying and eliminating all those who were perceived to be pro-liberation, individuals belonging to minority religious groups especially the Hindus, political groups belonging to Awami League and Bengali intellectuals and unarmed civilian population of Bangladesh. This is now undisputed history.

448. The attack directing the Hindu community of village Kholagram under Police Station Rajnagar of the then Sub-Division Moulvibazar that resulted in systematic barbaric mass killing of numerous civilians and causing devastating activities as narrated in this charge no.05 is a fragmented depiction of 'genocide' carried out in 1971 during the war of liberation, in the territory of Bangladesh.

449. 'Intent' is a mental state of an individual which is not explicit. It may be well inferred from number of facts and circumstances. Thus, 'genocidal intent' may be inferred from the

pattern and extent of the attack. It has been divulged from evidence tendered that in conjunction with the attack the gang armed with weapons, being culpably assisted by the accused persons and their accomplice Razakars looted household, torched the houses of Hindu civilians and destructed worship temple of Hindu locality.

450. The Genocide Convention seeks to protect the right to life of human groups. This characteristic makes the offence of genocide an exceptionally grave crime and distinguishes it from other serious group crimes as the perpetrators select their victims because of their membership of a specific community of religious group. Genocide is an offence which denies the right of existence of a particular human group.

451. The attack full of such terrible prohibited acts indisputably caused grave mental harm and trauma to the survived relatives of victims and their normal livelihood as the same were detrimental to fundamental rights of civilians and the customary international law. Carrying out mass killing and wanton destruction directing the Hindu civilians belonging to a particular religious group is enough to proof that then intent of the perpetrators was to destroy this group, in whole or in part.

452. Who were the actual perpetrators? There has been no indication from the evidence adduced in this regard. We reiterate that the criminal jurisprudence does not require the prosecution to prove the impracticable. All that it requires is to establishment of such a degree of probability that a man of prudence may, on its basis, believe the existence of a fact in issue. Thus, often legal proof is nothing more than a prudent man's estimation as to the probabilities of the case.

453. The above proposition finds support from the principle enunciated in the case of **Akayesu [ICTR]** which is as below:

“A person may be tried for complicity in genocide even where the principal perpetrator of the crime has not been identified, or where, for any other reasons, guilt could not be proven.”

[ICTR Trial Chamber, September 2, 1998, para. 531: See also Musema (ICTR Trial Chamber, January 27, 2000, para.174].

454. It is now well settled that complicity to commit genocide refers to all acts of assistance or encouragement that have substantially contributed to, or have had a substantial effect on, the completion of the crime of 'genocide'. Culpable presence intending to provide assistance and moral support to the squad is sufficient to prove 'complicity' of the accused with the perpetrations of the crime of 'genocide'.

455. Keeping the intimidating and dreadful situation full of intense horror extended at the time of launching the attack in mind, we are constrained to conclude that it was not practicable of seeing as to which accused killed which victim and how.

456. But since the accused persons did not keep them distanced from the gang of armed Pakistani army, and remained present with it at the crime site till the attack ended in mass killing, it may safely be inferred that all the accused were knowingly 'concerned' and part of the enterprise in accomplishing the criminal acts constituting the offence of 'genocide' as their intent was to destroy the normal livelihood of the Hindu community.

457. The phrase 'intent to destroy' does not refer actual destruction of a protected community. The pattern and extent of attack and the number of civilians annihilated extend an unerring perception about the 'intent' of the perpetrators. It is to be kept in mind too that the phrase 'in part' requires the intention to destroy a considerable number of individuals who were part of the protected group.

458. It is now settled that proof of a state of mind of an accused may be inferred and the inference must be the only reasonable inference available on the evidence. Large scale killing of members of Hindu religious group was activated as a direct means of destroying the group, other acts or series of acts, also calculated

to the destruction of the group, we conclude. All these acts together, happened in context of the war of liberation in 1971, mirror the ‘specific intent’ of the perpetrators. This view finds support from the observation of **ICTY Appeal Chamber** in the case of *Jelusic* that--

“As to proof of specific intent, it may, in the absence of direct explicit evidence, be inferred . . . from a number of facts and circumstances, such as the general context, the perpetration of other culpable acts systematically directed against the same group, the scale of atrocities committed, the systematic targeting of victims on account of their membership of a particular group, or the repetition of destructive and discriminatory acts.”

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

459. The pattern of group of perpetrators, number of Pakistani occupation army, targeting Hindu dominated locality, selecting Hindu civilians, destroying worship pavilion, looting livelihoods, killing 14 Hindu civilians and the total time the perpetrators took to complete its joint criminal mission obviously suggest to the irresistible inference that the ‘specific intent’ of the attackers was calculated to destroy the Hindu religious group, in part.

460. The offence of 'genocide' does not necessarily imply the immediate destruction of a protected group but it aims at the destruction of the essential foundations of the life of the group, with the aim of annihilating it.

461. The Statute of 1973 provides that genocide can be committed by 'causing serious bodily or mental harm' to the members of a religious [protected] group, with intent to destroy, in whole or in part. That attack was rather an organized criminal mission against the targeted Hindu religious group.

462. It would not be wrong to deduce that principal motive of genocidal perpetrators and the bystanders are alike. The act of stripping the victims of their valuables and property – either by looting it outright or by burning down their dwellings and destructing their worship sanctuary appears as act constituting the offence of genocide. All such prohibited acts committed together in conjunction with the attack, as found in the case in hand convincingly prove that the intent of the perpetrators was not only to annihilate numerous Hindu civilians but to destroy the religious group they belonged, either whole or in part.

463. In the case in hand, the deliberate devastating activities like arson, looting valuables, destroying the worship temple and indiscriminate killing of numerous civilians belonging to Hindu

religious group cumulatively caused gross and long-term disadvantage to ability of relatives of victims to lead a normal and constructive life. The accused persons remained with the group of attackers till it ended execution of its plan, it stands proved.

464. The event happened just few days prior to Moulvibazar got freed. At the fag-end of the war of liberation the Pakistani occupation army being substantially aided by their collaborators belonging to Razakar Bahini inflicted a death-blow directing the Hindu religious group that resulted in killing of 14 Hindu civilians.

465. The above leads to the conclusion that the act of killing of 14 civilians of Hindu religious group, by launching organized attack constituted the offence of 'genocide' as enumerated in section 3(2)(c)(i)(g)(h) of the Act of 1973. Further, the mass killing and devastating activities carried out in conjunction with the attack undeniably caused 'serious mental harm' to the survived relatives of victims which also constituted the offence of genocide as specified in section 3(2)(c) (ii)(g)(h) of the Act of 1973 as the event in its entirety caused grave disadvantage to the relatives of victims and the survived members of the group. In this regard we recall the observation of the **ICTY** made in the case of **Krstic** which is as below:

“Serious harm need not cause permanent and irremediable harm, but it must involve harm that goes beyond temporary unhappiness, embarrassment or humiliation. It must be harm that results in a grave and long-term disadvantage to a person’s ability to lead a normal and constructive life.”

[Krstic, (Trial Chamber), August 2, 2001, para. 513]

466. All the accused persons deliberately and culpably aided, abetted, assisted the army men they accompanied in accomplishing the commission of crimes. It would not be possible to locate and identify the site and civilians belonging to Hindu religious group without the practical assistance of the accused persons, the members of the locally formed Razakar Bahini.

467. A person can commit a crime not only ‘as an individual’, but also ‘jointly with another person’ or ‘through another person’, It is now jurisprudentially settled that the notion of perpetratorship is based on the assumption that whoever contributes any cause to the commission of a crime, regardless of how close to or distant the cause is from the final result, must be considered as co-author of the crime.

468. It is not necessary to identify by name the direct perpetrator(s) of the crime committed. The accused persons

remained with the group at the crime site. The conduct of the accused persons at the crime site, in conjunction with the attack, was gravely culpable and it leads us to conclude that they were quite aware of the substantial likelihood that a crime would be committed when the attack occurred. The accused's culpable presence at the scene of the crime can thus indispensably be a factor in indicating their *mens rea*.

469. The accused persons in exercise of their membership in the locally form Razakar Bahini substantially assisted the Pakistani occupation army the actual perpetrators in launching attack taking them at the Hindu populated village Kholagram and substantially facilitated forcible capture of the Hindu civilians to be killed. And the accused persons did it consciously and knowing the consequence, as part of the criminal enterprise. In this way the accused persons substantially aided and abetted the squad in accomplishing the large scale killing. It is to be noted here that—

“Aiding and abetting genocide refers to all acts of assistance or encouragement that have substantially contributed to, or have had a substantial effect on, the completion of the crime of genocide.”

[Blagojevic and Jokic, (Trial Chamber), January 17, 2005, para. 777]

470. By killing 14 members of the targeted group, the perpetrators did not thereby only manifest their extreme hatred against the Hindu community to which the victims belonged but also knowingly committed the act as part of a wider-ranging intention and goal of destroying the Hindu religious group of which the victims were members.

471. The act and conduct of the accused persons amounted to tacit approval and encouragement of the horrific crime as such conduct substantially contributed to the commission of mass killing directing a particular religious group.

472. Presence of accused persons with the group at the crime site chiefly formed of army men demonstrates that they were not only perfectly aware of the discriminatory nature of the joint mission but also that they knowingly encouraged and assisted it. The accused persons by providing active and practical assistance and aid to the army men shared the goal of destroying in part or in whole the Hindu religious group knowing that they were contributing to or through their acts might be contributing to the partial or total destruction of the group.

473. Individual criminal responsibility can arise when several individuals with a common purpose embark on criminal activity that is then carried out either jointly or by some members of this

plurality of persons. Anyone who contributes to the criminal activity in order to carry out a common criminal purpose may be held criminally liable. This mode of liability is referred to as 'joint criminal enterprise' (JCE- basic form). All co-perpetrators, acting pursuant to a common purpose, possess the same criminal intent and all of them are liable for the crimes committed under the theory of JCE [Basic Form].

474. The accused persons were part of the group chiefly formed of Pakistani occupation army which was capable of acting jointly and in reciprocal coordination. The requirement of an organised action stresses the substantial connections among JCE affiliates. In the case in hand, we see that the accused persons acted pursuant to a common design, possessing the same criminal intention which was calculated to cause deliberate destruction of Hindu community of a particular geographical area.

475. It stands proved from the number of facts and circumstances unveiled in evidence tendered that the principal offence of large scale killing was the upshot of joint criminal action among members of a criminal enterprise. Accused persons' contribution as has been found was manifestly decisive which together with their connection with the Pakistani occupation army, in exercise of their membership in Razakar Bahini, we are convinced to

conclude that their participation in carrying out the attack was significant enough to demonstrate their membership in JCE.

476. In view of above discussion made on integrated evaluation of evidence adduced we arrive at a decision that the prosecution has been able to prove beyond reasonable doubt that all the five accused remaining present at the crime site with the squad formed chiefly of Pakistani occupation army participated, assisted, substantially contributed in committing the large scale killing of Hindu civilians together with devastating activities causing serious mental harm to the members of the group and relatives of victims with intent to destroy the group, in part constituting the offence of 'genocide' as enumerated in section 3(2)(c)(i)(ii)(g)(h) of The International Crimes (Tribunals) Act, 1973

477. Therefore, the accused Shamsul Hossain Tarafdar[absconded], Md. Ujer Ahmed Chowdhury, Md. Nesar Ali [absconded], Yunus Ahmed and Mobarak Mia [absconded] are found criminally liable under section 4(1) of the Act of 1973 for participating, abetting, substantially contributing, facilitating and for complicity in the commission of offences of 'genocide' as enumerated in section 3(2)(c)(i)(ii)(g)(h) of the International Crimes (Tribunals) Act of 1973 which are punishable under section 20(2) of the said Act for which the accused persons have incurred liability under section 4(1) of the said Act.

XII. Conclusion

478. Admittedly, four accused Shamsul Hossain Tarafdar, Md. Ujer Ahmed Chowdhury and accused Md. Nesar Ali were prosecuted under The Collaborators Order, 1972 which irresistibly indicates their active membership in the locally formed Razakar Bahini and also their involvement in carrying out criminal activities around the locality, in violation of laws of war and customary international law in 1971. We have already rendered our reasoned finding that all the five accused including the accused Yunus Ahmed were affiliated with the locally formed Razakar Bahini.

479. In the case in hand, on rational and integrated evaluation of evidence provided by the prosecution, we have already concluded that all the five charges have been found proved. Five accused persons have been found criminally responsible for the offences narrated in charge nos. 1, 4 and 5. In respect of **charge no.2** three accused persons Md. Ujer Ahmed Chowdhury, Md. Nesar Ali and Yunus Ahmed and in respect of **charge no.3** two accused persons Md. Ujer Ahmed Chowdhury, Md. Nesar Ali have been found criminally responsible for the crimes narrated therein as they were ‘concerned’ as ‘participants’ and had also abetted, facilitated and substantially contributed to the commission of those offences.

480. It has been found proved that the event of attacks that resulted in abduction, confinement and murder of non-combatant civilians and large scale killing of Hindu civilians as narrated **in charge nos. 1, 4 and 5** were carried out by the group formed chiefly of Pakistani occupation forces being accompanied and substantially assisted and guided by all the five accused persons and their cohorts.

481. No army camp existed in Rajnagar Police Station locality. Thus, we have found it that launching attacks directing selected civilians of particular locality would not have been possible without the substantial contribution and assistance on part of the accused persons who were affiliated with the locally formed Razakar Bahini.

482. The accused persons knowingly and agreeing with the common purpose of the squad remained physically and actively engaged with it till significant phase of attacks which eventually ended in killing of detained pro-liberation civilians.

483. The event of attack that resulted in killing potential pro-liberation civilians [narrated in charge no. 2] was carried out by the group formed of Razakars being accompanied by the five accused persons. It has been found proved that in procuring forcible capture of victim and two other civilians the accused

persons had played culpable and key role and they abetted, substantially contributed and facilitated their unlawful detention at the army camp which eventually ended in brutal killing of one detainee Dr. Jamini Mohon Dev.

484. The attack as narrated in charge no.3 was launched by a group of local Razakars led by accused Md. Ujer Ahmed Chowdhury and Md. Nesar Ali – it stands proved. The attack resulted in forcible capture and detention of three pro-liberation Hindu civilians.

485. It has been found proved that accused Md. Ujer Ahmed Chowdhury and accused Md. Nesar Ali were in dominating position of the local Razakar Bahini. Thus, it has been safely inferred that under their culpable guidance and encouragement the other accused and accomplice Razakars became imbued to remain with the group of army when it carried out attacks [**as narrated in charge nos. 1, 4 and 5**] as accessories, knowing consequence of their act.

XIII. Verdict on Conviction

486. For the reasons set out in our Judgment and having considered all evidence and arguments, we find—

All the five accused (1) Shamsul Hossain Tarafdar @ Ashraf [Absconding], (2) Md. Nesar Ali [absconding], (3) Yunus Ahmed, (4) Md. Ujer Ahmed Chowdhury and (5) Mobarak Mia [absconding]

Charge No.1: GUILTY of substantially abetting, participating, contributing, facilitating and for complicity in the commission of offences of **‘abduction’, ‘confinement’, ‘other inhuman act’** and **‘murder’** as crimes against humanity as 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 and they be convicted and sentenced under section 20(2) of the said Act.

Three accused (1) Md. Nesar Ali[Absconded], (2) Yunus Ahmed and (3) Md. Ujer Ahmed Chowdhury

Charge No.2: GUILTY of substantially abetting, participating, contributing, facilitating and for complicity, by their culpable act and conduct forming part of attack, in accomplishment of the criminal acts constituting the offences of **‘other inhuman act’, ‘abduction’, ‘confinement’,** and **‘murder’** as crimes against humanity as enumerated in section 3(2)(a)(g)(h) of the Act of 1973 and thus all the three accused persons incurred criminal liability under section 4(1) of the Act of 1973 and they be convicted and sentenced under section 20(2) of the said Act.

Two accused (1) Md. Ujer Ahmed Chowdhury and (2) Md. Nesar Ali [Absconded]

Charge No.3: GUILTY of ‘participating’, substantially ‘contributing’ and ‘aiding’ and also for complicity, by their culpable act and conduct forming part of attack, in accomplishment of the criminal acts constituting the offence of ‘**other inhuman act**’, ‘as crimes against humanity as enumerated in section 3(2)(a)(g)(h) of the Act of 1973 and thus these two accused persons incurred criminal liability under section 4(1) of the Act of 1973 and they be convicted and sentenced under section 20(2) of the said Act. **AND** accused **Yunus Ahmed** is found **NOT GUILTY** of the offence of which he has been indicted in this charge and be acquitted thereof.

Five accused Shamsul Hossain Tarafdar [Absconded], Md. Ujer Ahmed Chowdhury, Md. Nesar Ali [Absconded], Yunus Ahmed and Mobarak Mia [Absconded]

Charge No.4: GUILTY of participating, abetting, substantially contributing, facilitating and for complicity, by their culpable act and conduct forming part of attack, in accomplishment of the criminal acts constituting the offences of ‘**abduction**’, ‘**confinement**’, ‘**torture**’ and ‘**murder**’ as crimes against humanity as enumerated in section

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

Five accused Shamsul Hossain Tarafdar [Absconded], Md. Ujer Ahmed Chowdhury, Md. Nesar Ali [Absconded], Yunus Ahmed and Mobarak Mia [Absconded]

Charge No.5: GUILTY of participating, abetting, substantially contributing, facilitating, by their culpable act and conduct forming part of attack, in accomplishment of the criminal acts constituting the offences of ‘**genocide**’ as enumerated in section 3(2)(c)(i)(ii)(g)(h) of the Act of 1973 and thus these five accused persons incurred criminal liability under section 4(1) of the Act of 1973 and they be convicted and sentenced under section 20(2) of the said Act.

XIV. Verdict on sentence

487. Mr. Sultan Mahmud the learned prosecutor concluded his argument by submitting that the accused persons deserve highest punishment as they actively collaborated with the Pakistani occupation army stationed in Moulvibazar in carrying out premeditated and systematic attack that resulted in commission of the offence of murder of unarmed civilians.

488. The learned prosecutor further submitted that the accused persons actively participated in committing the large scale killing directing the civilians of Hindu community with intent to destroy it, in whole or in part constituting the offence of 'genocide'. The accused persons were concerned with the commission of offences as narrated in the charges deliberately and knowingly, in exercise of their affiliation with the locally formed Razakar Bahini.

489. Overall magnitude of the crimes proved leaves no room to award sentence other than the maximum punishment. Taking it into account as an aggravating factor only the highest sentence would be just and appropriate to punish those crimes[as narrated in charge nos. 1,2,4 and 5] for which the accused persons have been found guilty, the learned prosecutor added.

490. On contrary, Mr. Abdus Sobhan Tarafdar the learned counsel defending the accused Yunus Ahmed simply submitted that prosecution failed to prove the accusation brought against this accused; that this accused did not belong to Razakar Bahini and that he deserves acquittal.

491. Mr. Mujahidul Islam Shaheen the learned counsel defending the accused Md. Ujer Ahmed Chowdhury and three absconding accused as state defence counsel submitted, in brief, that these accused deserve acquittal as the arraignment brought against them

could not be proved beyond reasonable doubt by reliable evidence.

492. The Tribunal notes that commission of offences as specified in the Act of 1973 itself portrays enormity, gravity and diabolical nature of the crimes. We reiterate that in awarding sentence, the Tribunal, must eye on the nature and magnitude of the offences committed, their scale, the role of the convicted accused that he had played and mode of his participation to the perpetration of the crimes proved.

493. The prime objectives of awarding sentence in case involving serious crime which shocks the humankind is to impose an appropriate, adequate, just and proportionate sentence commensurate with the nature, extent and gravity of the crime and the manner in which the crime is committed. A sentence therefore must always reflect the inherent level of gravity of a crime.

494. The crimes which have been found proved were not isolated crimes. Those were 'group crimes' or 'system crimes' committed in context of war of liberation in 1971, by launching systematic attack directing the unarmed civilian population and Hindu religious group.

495. It has been found proved that all the five accused persons consciously and actively aided, abetted, assisted and substantially facilitated the Pakistani occupation army in committing the horrific atrocious acts constituting the offence of murder, large scale killing of Hindu civilians, massive destruction of civilians' normal livelihood [**as narrated in charge no.05**].

496. It also stands proved that all the five accused persons actively and culpably aided, abetted , assisted and substantially contributed to the actual commission of killing of civilians detained on forcible capture by launching attack [**as narrated in charge nos. 01,02 and 04**]. The first phase of attacks to which the accused persons were physically engaged facilitated the captured victims' detention at the army camp. Without the active assistance of the convicted accused the purpose of the actual perpetrators could not have been executed.

497. The accused persons thus by procuring forcible capture of civilians[**victims of charge nos. 01,02 and 04**] , sharing common intent, substantially facilitated and abetted the execution of the ending phase of the event that resulted in killing the detainees which was rather the common purpose of the joint mission.

498. It has been found proved too that the accused persons physically acted in getting Dr. Jamini Mohon Dev forcibly

captured from his house and handed him over at the army camp where he was kept in captivity till he was shot to death [**charge no.02**]. The act of the accused persons proves their close and culpable nexus with the Pakistani occupation army stationed in Moulvibazar.

499. It is now jurisprudentially settled that gravity of offence is the 'litmus test' in determination of an appropriate sentence to be awarded. Gravity of offence is determined by weighing the inherent gravity of the crime and the form and degree of participation of the accused in accomplishing the crime.

500. In assessing gravity of the offences we are to take some factors into account and those are the role played by the accused in the commission of the crime, the degree of the suffering and impact of the crime for the immediate victims, vulnerability and number of victims and the pattern of the attack that resulted in commission of the crimes.

501. Notoriety the accused persons had shown in participating and substantially contributing to the actual perpetration of 'large scale killing' of 14 Hindu pro-liberation civilians [**charge no.05**] enhances liability of participants.

502. The manner in carrying out the joint mission of indiscriminate killing of Hindu civilians, destructing worship

pavilion [**charge no.05**] by the squad formed of Pakistani occupation army and the accused persons exceeded even the limit of extreme notoriety. It is hard to believe indeed that the accused persons were the men of slightest humanity and kindness. Any degree of punishment would not be enough to heal the wounds of the survived relatives of victims of the event of mass killing [**charge no.05**]. Magnitude of the event intensely shocks the humankind.

503. The trial of monstrous and barbaric crimes like ‘genocide’ as enumerated in the Act of 1973 even long more than four decades after those occurred not only ensures lawful space of coming out from the culture of impunity but also creates an sphere of knowing the truth – the truth that horrific ‘genocide’ was committed by the Pakistani occupation army and their notorious local collaborators in the territory of Bangladesh in 1971, during the nine-month war of liberation. This truth must generate youthquake to go ahead with the spirit of the war of liberation through knowing in exchange of what extent of sacrifice the nation achieved its independent motherland---**Bangladesh**.

504. Accused Md. Ujer Ahmed Chowdhury and Md. Nesar Ali are found to have had dominant position over the locally formed Razakar Bahini. We have already rendered reasoned finding that such dominance of these two accused persons inevitably imbued the other accused persons and their cohort Razakars to remain

culpably engaged in carrying out the designed massacre that resulted in killing of numerous civilians belonging to Hindu religious group. It together with the pattern and magnitude of the crimes committed [**charge no.05**] indisputably aggravates the level of criminal responsibility of the accused Md. Ujer Ahmed Chowdhury and Md. Nesar Ali.

505. The accused persons have been prosecuted and tried for the appalling atrocities perpetrated in 1971, during the war of liberation. Neither the Act of 1973 nor the Rules define the factors which may be taken into account by the Tribunal in mitigation of a sentence. Besides, we reiterate that mitigating circumstances relates to assessment of sentence and in no way derogates from the gravity of the crime. It mitigates punishment, not the crime. Even advanced age of an accused does not readily warrant some mitigation of the sentence. His advanced age with other factors thus carries very limited weight in mitigation.

506. In view of above discussion and considering the nature and proportion to the gravity of offences and also keeping the factors as discussed above into account we are of the view that justice would be met if the accused (1) Shamsul Hossain Tarafdar @ Ashraf [Absconding], (2) Md. Nesar Ali [absconding],(3) Yunus Ahmed, (4) Md. Ujer Ahmed Chowdhury and (5) Mobarak Mia [absconding] 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 accused—

- (1) **Shamsul Hossain Tarafdar alias Ashraf [absconded]** , son of late Attor Mia Tarafdar [Manto Mia] and late Abiza Bibi of Village- Bagajora, Police Station-Rajnagar, District-Moulvibazar, at present Village-Kornigram, Police Station-Rajnagar, District[now]- Moulvibazar,
- (2) **Md. Nesar Ali[absconded]** , son of late Forjan Mia and late Joygun Bibi of Village-Jamura, Police Station-Rajnagar, District[now]- Moulvibazar,
- (3) **Yunus Ahmed** , son of late Suruj Mia and late Nabura Bibi of Village-Sonatiki, Police Station-Rajnagar, District [now]- Moulvibazar,
- (4) **Md. Ujer Ahmed Chowdhury** , son of late Abdur Nur Chowdhury and late Ruhena Begum Chowdhury of Village-Goyashpur, Police Station-Rajnagar, District[now]- Moulvibazar, at present Village-Kalenga, Deorachhora, Police Station Rajnagar, District[now]- Moulvibazar, **AND**
- (5) **Mobarak Mia[absconded]** , son of late Alkas Mia and late Mohibunnesa Chowdhury of Village-Mushuria [Uttar Nandiura], Police Station- Rajnagar, District[now]- Moulvibazar----

are held guilty of offences of '**abduction**', '**confinement**', '**other inhuman act**' and '**murder**' as crimes against humanity as enumerated in section 3(2)(a)(g)(h) of the International Crimes (Tribunals) Act, 1973 as listed **in charge no.01** and they be convicted accordingly and sentenced thereunder to suffer imprisonment for life till normal death under section 20(2) of the said Act.

The three accused Md. Ujer Ahmed Chowdhury, Md. Nesar Ali[Absconded] and Yunus Ahmed are found guilty of the offences of '**other inhuman act**', '**abduction**', '**confinement**', and '**murder**' as crimes against humanity as enumerated in section 3(2)(a)(g)(h) of the International Crimes (Tribunals) Act, 1973 as narrated **in charge no.02** and they be convicted accordingly and sentenced thereunder to suffer imprisonment for life till normal death under section 20(2) of the said Act.

Two accused Md. Ujer Ahmed Chowdhury and Md. Nesar Ali [Absconded] are found guilty of the offence of '**other inhuman act**', 'as crimes against humanity as enumerated in section 3(2)(a)(g)(h) of the International Crimes (Tribunals) Act, 1973 as narrated **in charge no.03** and they be convicted accordingly and sentenced thereunder to suffer imprisonment for five[05] years under section 20(2) of the said Act.

AND accused Yunus Ahmed is found not guilty of this charge [charge no.03] and he be acquitted thereof.

All the five accused Shamsul Hossain Tarafdar@ Ashraf [Absconded], Md. Ujer Ahmed Chowdhury, Md. Nesar Ali[Absconded], Yunus Ahmed and Mobarak Mia[Absconded] are found guilty of the offences of **'abduction', 'confinement', 'torture'** and **'murder'** as crimes against humanity as enumerated in section 3(2)(a)(g)(h) of the International Crimes (Tribunals) Act, 1973 as narrated **in charge no.04** and they be convicted accordingly and sentenced thereunder to suffer imprisonment for life till normal death under section 20(2) of the said Act.

All the five accused Shamsul Hossain Tarafdar @ Ashraf [Absconded], Md. Ujer Ahmed Chowdhury, Md. Nesar Ali [Absconded], Yunus Ahmed and Mobarak Mia[Absconded] are found guilty of the offence of **'genocide'** as enumerated in section 3(2)(c)(i)(ii)(g)(h) of the International Crimes (Tribunals) Act, 1973 as narrated **in charge no.05** . Therefore, for the crimes listed **in charge no.05—**

Accused Shamsul Hossain Tarafdar @ Ashraf [Absconded], Yunus Ahmed and Mobarak Mia [Absconded] be convicted accordingly and sentenced thereunder to suffer imprisonment for life till normal death under section 20(2) of the said Act. **AND**

Accused Md. Ujer Ahmed Chowdhury and Md. Nesar Ali [Absconded] be convicted and '**sentenced to death**' thereunder and they be hanged by the neck till they are dead, under section 20(2) of the International Crimes (Tribunals) Act, 1973.

However, as the convicted accused Md. Ujer Ahmed Chowdhury and Md. Nesar Ali [Absconded] have been condemned to '**sentences of death**', as above [as listed in charge no.05], the '**sentence of imprisonment for life**' as awarded above in respect of charge nos. 01, 02 and 04 and the sentence of 05[five] years imprisonment in respect of charge no.03 will get merged into the '**sentences of death**' as awarded above to these two convicted accused.

The sentence of '**imprisonment for life**' and **sentence of 05[five] years imprisonment** awarded as above shall be carried out under section 20(3) of the Act of 1973 and shall commence from the date of this judgment as required under Rule 46(2) of the Rules of Procedure, 2010 [ROP] of the Tribunal-1[ICT-1]. The sentence of **imprisonment** so awarded above shall run concurrently.

The convicted accused Md. Ujer Ahmed Chowdhury and Yunus Ahmed [present on dock as brought from prison] be sent to the prison with conviction warrant accordingly.

Since the convicted accused Md. Nesar Ali has been absconding the '**sentence of death**' as awarded to him as above shall be executed after causing his arrest or when he surrenders 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 convicted accused persons 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 Shamsul Hossain Tarafdar @ Ashraf [**Absconded**], Md. Nesar Ali [**absconded**] and Mobarak Mia [**absconded**]

The Secretary, Ministry of Home Affairs and the Inspector General of Police [IGP] are hereby directed to initiate effective and appropriate measure for ensuring the apprehension of the convicted absconding accused Shamsul Hossain Tarafdar @

Ashraf [**Absconded**], Md. Nesar Ali [**absconded**] and Mobarak Mia [**absconded**].

Let certified copy of this judgment be provided to the prosecution and the convicted accused Md. Ujer Ahmed Chowdhury and Yunus Ahmed free of cost, at once.

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

Let a copy of this judgment together with the conviction warrant of the convicted accused Md. Ujer Ahmed Chowdhury and Yunus Ahmed be sent to the District Magistrate, Dhaka for information and necessary action.

Justice Md. Shahinur Islam, Chairman

Justice Amir Hossain, Member

Judge Md. Abu Ahmed Jamadar, Member