

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

**ICT-BD Case No. 02 OF 2011**

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

**The Chief Prosecutor**

**Versus**

**Salauddin Quader Chowdhury**

**Present:**

**Mr. Justice A.T.M. Fazle Kabir, Chairman**

**Mr. Justice Jahangir Hossain, Member**

**Mr. Justice Anwarul Haque, Member**

**Date of delivery of Judgment 01<sup>st</sup> October, 2013.**

**Prosecutors:-**

Mr. Golam Arif Tipu, Chief Prosecutor

Mr. Syed Haider Ali

Mr. Rana Das Gupta

Mr. Zead-Al- Malum

Mr. Sultan Mahmud

Mr. A.K.M. Saiful Islam

Mr. Abdur Rahman Howlader

Ms. Tureen Afroz

Ms. Nurjahan Begum Mukta

Ms. Rezia Sultana Begum

Mr. Taposh Kanti Baul.

**Defence Counsels:-**

Mr. A.H.M. Ahsanul Huq Hena

Mr. A.K.M. Fakrul Islam

Mr. Muhammad Huzzatul Islam Khan

Ms. Salma Hye-(State defence counsel)

**Judgment****(Under section 20(1) of the Act XIX of 1973)****I. Introduction:-**

**01.** This Tribunal (ICT-1) has been lawfully constituted as a domestic judicial forum for the purpose of holding trials relating to internationally recognised crimes, such as, crimes against humanity, genocide and other class offences committed during the War of Liberation in 1971. Bangladesh Parliament enacted the International Crimes (Tribunals) Act in 1973 (hereinafter referred to as “the Act”) to provide for the detention, prosecution and punishment of persons for genocide, crimes against humanity, war crimes and other crimes under International law, committed in the territory of Bangladesh during the War of Liberation, particularly between 25 March to 16 December, 1971.

**02.** On behalf of both the parties the learned prosecutors and defence counsels raised some legal issues and factual aspects relating to historical background of War of Liberation, characterization of international crimes, commencement of proceedings, charges framed, and the laws applicable to the case for the purpose of determining criminal liability of the accused.

## **II. Commencement of proceedings:-**

**03.** On the basis of investigation report submitted by the Investigation Agency, the learned Chief Prosecutor filed formal charge along with documents in the Tribunal on 14.11.2011 as required under section 9(1) of the Act against accused Salauddin Quader Chowdhury. On perusal of the formal charge along with documents submitted by the prosecution, cognizance of offences as specified in section 3(2) of the International Crimes (Tribunals) Act, 1973 was taken on 17.11.2011 against accused Salauddin Quader Chowdhury. The accused filed an application on 30.11.2011 praying for cancelling the Vokatnama executed by him in favour of his counsels and that prayer was allowed with a permission to conduct his own case personally. The prosecution submitted its documents in the office prescribed for the accused but he refused to receive those documents for the preparation of the defence case. By the order dated 12.12.2011, this Tribunal appointed Mr. Badiuzzaman, Advocate of the Supreme Court of Bangladesh at the expense of the Government to defend the accused as per provision of section 12 of the Act. The newly engaged State defence counsel was asked to receive prosecution documents to prepare defence case and he was also permitted to consult with the accused in the jail custody by the order dated 19.12.2011. The accused filed a series of applications one after another to delay the proceeding but those applications were disposed of in accordance with law. Charge framing date was fixed on 15.01.2012, on that date accused submitted that he would argue

his case without taking any assistance of the State-defence counsel. The accused started shouting in the court room and created untoward disturbance for which he was warned by the Tribunal. As per submission of the accused, the appointment of Mr. Badiuzzaman as State defence counsel was cancelled and Mr. Ahsanul Huq Hena, a newly appointed counsel by the accused, was permitted to conduct his case. After hearing the learned lawyers of both the parties on charge framing matter and on perusal of formal charge and documents, the Tribunal framed 23 charges against accused Salauddin Quader Chowdhury on 04.04.2012 under section 3(2)(a), 3(2)(c), 3(2)(g) and 3(2)(h) read with section 4(1) of the Act which are punishable under section 20(2) of the Act.

04. The charges framed were read over and explained to the accused on dock to which he pleaded not guilty and claimed to have fair justice and thus trial was commenced.

### **III. Historical Background:-**

05. In 1971, during the War of Liberation of Bangladesh, atrocities in a large scale, crimes against humanity, war crimes and genocide were committed by Pakistani forces, auxiliary forces and their associates which resulted the birth of Bangladesh as an independent country. It was estimated that during nine-month long war, about three million people were killed, nearly a quarter million women were raped, and over 10 million people were deported to India causing brutal persecution upon them.

**06.** 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 two-nation theory was propositioned on the basis that India will be for Hindus while Pakistan will be a state for the Muslims. This theory culminated into the creation of Pakistan which was comprised of two geographically and culturally separate areas to the east and the west of India. The western zone was eventually named West Pakistan and the eastern zone was named East Pakistan, which is now Bangladesh.

**07.** Ever since the creation of Pakistan, the Pakistan Government adopted discriminatory policies backed by its bureaucracy and Army to rule over the people of East Pakistan that caused great disparity in every field including education, welfare, health, armed services, civil bureaucracy, economic and social developments. One of the first patently discriminatory and undemocratic policies of the Government of Pakistan was manifested when 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 recognised as a state language thus marking the beginning of language movement that eventually turned to the movement for greater autonomy and self-determination and eventually independence. Numerous Bangalees sacrificed their lives to realise Bangla as a state language. Since then, the people of East Pakistan started thinking of their

own emancipation and started a political movement for getting provincial autonomy for East Pakistan.

**08.** In the general election of 1970, the Awami League under the leadership of Bangabandhu Sheikh Mujibur Rahman won 167 seats out of 300 seats of the National Assembly of Pakistan and thus became the majority party of Pakistan. Of the 300 seats, 169 were allocated to East Pakistan of which Awami League won 167 demonstrating an absolute majority in the Parliament. Despite this overwhelming majority, Pakistan government did not hand over power to the leader of the majority party as democratic norms required. As a result, movement started in this part of Pakistan and Bangabandhu Sheikh Mujibur Rahman in his historic speech of 7th March, 1971 called on the people of Bangladesh to strive for independence if people's verdict is not respected and power is not handed over to the leader of the majority party. On 26th March, following the onslaught of "Operation Search Light" by the Pakistani military on 25th March, Bangabandhu declared Bangladesh independent immediately before he was arrested by the Pakistani authorities.

**09.** With this declaration of independence, the war to liberate Bangladesh from the occupation of Pakistan military began that ended on 16th of December, 1971 with the surrender of all Pakistani military personnel present in Bangladesh before the Joint Indian and Bangladeshi forces in Dhaka. In the War of Liberation that ensued, all people of East Pakistan wholeheartedly supported and participated in the call to free Bangladesh but

a small number of Bangalees, Biharis, other pro-Pakistanis, as well as members of a number of different religion-based political parties joined and/or collaborated with the Pakistan military to actively oppose the creation of independent Bangladesh. Except those who opposed, Hindu communities like others in Bangladesh, supported the Liberation War which in fact drew particular wrath of the Pakistani military and their local collaborators, who perceived them as pro-Indian and made them targets of attack, persecution, extermination and deportation as members belonging to a religious group.

**10.** As a result, 3 million (thirty lakh) people were killed, more than 2(two) lakh women raped, about 10 million (one crore) people deported to India as refugees and million others were internally displaced. It also saw unprecedented destruction of properties all over Bangladesh.

**11.** To prosecute their policy of occupation and repression, and in order to crash the aspiration of the freedom-loving people of an independent Bangladesh, the Pakistan government and the military set up number of auxiliary forces such as the Razakars, the Al-Badr, the Al-Shams, the Peace Committee etc, essentially to collaborate with the military in identifying and eliminating - all those who were perceived to be sympathized with the liberation of Bangladesh, individuals belonging to minority religious groups especially the Hindus, political groups belonging to Awami League and other pro-Independence political parties, Bangalee intellectuals and civilian population of Bangladesh. The truth about the nature and extent of the atrocities and crimes perpetrated during the period by the Pakistani military

and their allies became known to the wider world through independent reports by the foreign journalists and dispatches sent home by the diplomatic community in Dhaka.

**12.** The road to freedom for the people of Bangladesh was arduous and torturous, smeared with blood, toil and sacrifices. In the contemporary world history, perhaps no nation paid as dearly as the Bangalees did for their emancipation.

**13.** Pursuant to Bangabandhu's Declaration of Independence, a provisional government-in-exile was formed on April 17, 1971 in Mujibnagar with Bangabandhu as the President of Bangladesh. In his absence, Syed Nazrul Islam was the Acting President and Tajuddin Ahmed was the Prime Minister who coordinated the operations to expel the occupying Pakistani forces and to liberate Bangladesh.

**14.** In order to bring to justice the perpetrators of the crimes committed in 1971, the International Crimes (Tribunals) Act, 1973 was promulgated. However, no Tribunal was set up and no trial took place under the Act until the government established this International Crimes Tribunal on 25th of March 2010.

#### **IV. Brief account of the accused:-**

**15.** Accused Salauddin Quader Chowdhury is the eldest son of late Fazlul Quader Chowdhury who was born on 13 March, 1949 at Chittagong. His father was the General Secretary of Muslim League of Chittagong since



before partition of India in 1947. Late Fazlul Quader Chowdhury was one of the Ministers in the Cabinet of President Ayub Khan in 1962 and subsequently he became the Speaker of the National Assembly of Pakistan. In the General Election of 1970, late Fazlul Quader Chowdhury being the President of Convention Muslim League contested the said election but he was defeated. While Pakistan army launched "Operation Search Light" in Bangladesh in the night following 25 March 1971, the father of the accused formed para-Militia Bahinies in collaboration with Pakistan-army to resist the independence of Bangladesh. Accused Salauddin Quader Chowdhury and his father joined their hands with Pakistan-army and auxiliary forces to commit crimes against humanity and genocide in Chittagong area during the War of Liberation in 1971. Accused actively participated in the killing of unarmed Hindu people of Chittagong in a large scale and also committed offences of abduction, torture, looting, deportation, genocide and all other atrocities during the War of Liberation of Bangladesh in collaboration with Pakistan army, Razakars, Al-Badrs and Al-shams. For anti-liberation role, accused Salauddin Quader Chowdhury was attacked by throwing grenade on 20 September, 1971 by the Freedom-Fighters causing injuries on his person. Thereafter, he left this Country for his misdeeds and he came back to Bangladesh in 1974. He joined the politics at Chittagong and he was elected Member of Parliament (M.P.) for five times being the candidate of different political parties, namely, Muslim League, Jatio Party, N.D.P. and BNP since 1979 to 2008. The accused and his father used their own residence

named “Goods Hill” situated at Chittagong town as torture centre and he as self-declared Brigadier used to conduct operations under his leadership in different places of Chittagong.

## **V. Jurisdiction of the Tribunal:-**

16. The International Crimes (Tribunals) Act, 1973 has empowered the Tribunal to prosecute and punish not only the armed forces but also the perpetrators who belonged to auxiliary forces or who committed the offence(s) as an individual or a group of individuals and no where in the Act, it has been said that without prosecuting the armed forces (Pakistani) an individual or group of individuals having any other capacity specified in section 3(1) of the Act cannot be prosecuted. Rather it is manifested in section 3(1) that even any person if he is prima facie found criminally responsible for the offences specified in section 3(2) of the Act can be brought to justice. Moreover, the provisions of section 4(1) and 4(2) of the Act are the guiding principles for fixing up liability of a person or in the capacity of superior command responsibility, if any offences committed specified in section 3(2) of the Act.

17. Thus, the Tribunals set up under the Act are absolutely domestic Tribunals but empowered to try internationally recognized crimes committed in violation of customary international law.

## **VI. Consistency of ICT Act, 1973 with other statutes on international Crimes:-**

**18.** Section 3(2)(a) of International Crimes (Tribunals) Act, 1973 ( as amended in 2009) defines the crimes against Humanity in the following manner:

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

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

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

Special Court for Sierra Leone, 2002 (Sierra Leon Statute) although share common spirit, do differ in legal technical nitty-gritty.

## **VII. The Rome Statute: Article-7**

### **Crimes against humanity**

21. For the purpose of this Statute, “crime against humanity” means any of the following acts when committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack:

- (a) Murder;
- (b) Extermination;
- (c) Enslavement;
- (d) Deportation or forcible transfer of population;
- (e) Imprisonment or other severe deprivation of physical liberty in violation of fundamental rules of international law;
- (f) Torture;
- (g) Rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, or any other form of sexual violence of comparable gravity;
- (h) Persecution against any identifiable group or collectivity on political, racial, national, ethnic, cultural, religious, gender as defined in paragraph 3, or other grounds that are universally

recognized as impermissible under international law, in connection with any act referred to in this paragraph or any crime within the jurisdiction of the Court;

- (i) Enforced disappearance of persons;
- (j) The crime of apartheid;
- (k) Other inhumane acts of a similar character intentionally causing great suffering, or serious injury to body or to mental or physical health.

### **The ICTR Article 3: Crimes against Humanity**

**22.** The international Criminal Tribunal for Rwanda shall have the power to prosecute persons responsible for the following crimes when committed as part of a widespread or systematic attack against any civilian population on national, political, ethnic, racial or religious grounds:

- (a) Murder
- (b) Extermination;
- (c) Enslavement;
- (d) Deportation;
- (e) Imprisonment;
- (f) Torture;
- (g) Rape;
- (h) Persecutions on political, racial and religious grounds;

- (i) Other inhumane acts.

### **THE ICTY. ARTICLE 5**

**23.** The International Criminal Tribunal shall have the power to prosecute persons responsible for the following crimes when committed in armed conflict, whether international or internal in character, and directed against any civilian population:

- (a) murder;
- (b) extermination;
- (c) enslavement;
- (d) deportation;
- (e) imprisonment;
- (f) torture
- (g) rape
- (h) persecutions on political, racial and religious grounds;
- (i) other inhumane acts.

### **ICT BD**

**24.**                   **3. (1)** A Tribunal shall have the power to try and punish any individual or group of individuals, or any member of any armed, defence or auxiliary forces, irrespective of his nationality, who commits or has committed, in the territory of Bangladesh , whether before or after the commencement of this Act, any of the crimes mentioned in sub-section (2).

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

**Elements differ in the different statutes.**

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

**Case laws:**

26. In February 1995, the Prosecutor of the ICTY indicted Dusko Tadic for war crimes and crimes against humanity. Tadic challenged the ICTY's jurisdiction over crimes against Humanity, Tadic argued that the definition of crimes against humanity did not conform to contemporary International law, which required such crimes to be committed in an international armed conflict. In its decision on the Defense Motion for Interlocutory Appeal on Jurisdiction ("Tadic Decision on Jurisdiction"), the Appeals Chamber of the ICTY rejected this argument by affirming that crimes against humanity can even be committed in peacetime: the Trial Chamber of the ICTY ("ICTY

Trial Chamber”) reaffirmed that although Article 5 of the ICTY statute required a nexus with armed conflict, such a requirement is unnecessary under international law. The ICTY Trial Chamber also noted that Article 5 required crimes against humanity to be committed under a second set of circumstances, that is, the acts must be “directed against any civilian population. The ICTY Trial Chamber interpreted the term “ANY CIVILIAN POPULATION” “as having three elements. First, the civilian population must be “specifically identified as a group by the perpetrators of these acts. Although the ICTY Trial Chamber does not articulate the bases for such as identification, this interpretation suggests that the ICTY Trial Chamber accepted the need for a discriminatory motive. The other two components raised by the ICTY Trial Chamber are that the crimes must be “organized and systematic” and “of a certain scale and gravity”. The ICTY Trial Chamber’s approach in reading these elements into the meaning of “any civilian population” is a novel one. The ICTY Trial Chamber also appeared to require both elements to be present, rather than accepting them as alternative conditions.

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

**28.** Next, the ICTY Trial Chamber noted that a crime against humanity must be widespread or demonstrate a systematic character. However, as long as there is a link with the widespread or systematic attack against a civilian



population, a single act could qualify as a crime against humanity. As such, an individual committing a crime against a single victim or a limited number of victims might be recognized as guilty of a crime against humanity if his acts were part of the specified context identified above.

**29.** So it appears that though the ICTY statute requires the crime to be taken place in an armed conflict, the tribunal holds that armed conflict is not necessary. And though the statute did not require the crime to be taken place as a part of widespread or systematic attack, the tribunal holds that the term ‘any civilian population’ instead of ‘any civilian people’ indicates that the crime to be taken place as a part of widespread or systematic attack on civilian population. Court’s language the “population” element is intended to imply crimes of a collective nature and thus exclude single or isolated acts. Thus the emphasis is not on the individual victim but rather on the collective, the individual being victimized not because of his individual attributes but rather because of his membership of a targeted civilian population. This has been interpreted to mean, as elaborated below, that the acts must occur on a widespread or systematic basis that there must be some form of a governmental, organizational or group policy to commit these acts and that the perpetrator must know of the context within which his actions are taken, as well as the requirement that the actions be taken on discriminatory grounds.

**30.** The above paragraph and the structure of the opinion made it clear that the ICTY Trial Chamber viewed the term “population” as having three

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

### **31. Law in the international crimes tribunal Bangladesh:**

(1) existence of armed conflict is not necessary though it is admitted that there was an armed conflict in 1971.

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

(3) Widespread or systematic: Our law does not require the attack to be part of a widespread or systematic attack. But as discussed in Tadic case by ICTY the word civilian population indicates that the attack to be a part of widespread or systematic attack. It is now well-settled that the attack in

Bangladesh in 1971 was widespread and systematic in nature. Tadic case elaborately discussed what constitutes an attack widespread and systematic.

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

**32.** The International Crimes Tribunals, Act, 1973, Bangladesh defines crimes against humanity in the following manner:

“3.(1) A Tribunal shall have the power to try and punish any individual or group of individuals, or any member of any armed, defence or auxiliary forces, irrespective of his nationality, who commits or has committed, in the territory of

Bangladesh , whether before or after the commencement of this Act, any of the crimes mentioned in sub-section(2).

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

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

**33.** (1) Crime against humanity can be committed even in peace time; existence of armed conflict is , by definition, not mandatory. Neither in the preamble nor in the jurisdiction sections of the Act was it mentioned that crime against humanity requires the existence of an armed conflict. Indiscriminate attack on civilian population based on their political, racial, ethnic or religious identity can be termed as crime against humanity even if it takes place after 1971. For example, minority oppression in 2001 was a pure example of crime against humanity. However, no one denies the fact that there was an armed conflict in 1971.

**34.** (2) Though the statute of the Tribunal does not explicitly requires the attack to be a part of systematic or widespread attack against the civilians, the very term “ any civilian population” instead of civilian people

indicates the plurality of the attack and thus implies that the attack to be part of a systematic or widespread attack against civilian (Tadic case for references). However the term ‘ systematic and widespread’ is a disjunctive, rather than cumulative requirement. The Rome statute and the ICTR statute provide that the attack must be part of a systematic or widespread attack against civilians. That means the existence of either systematic or widespread attack is enough to qualify crime against humanity.

**35.** (3) “Widespread” refers to the large-scale nature of the attack which is primarily reflected in the number of victims. “Systematic” refers to the organized nature of the acts of violence and the “ non-accidental repetition of similar criminal conduct on a regular basis.” Widespread is quantitative while systematic is qualitative.

**36.** (4) The “population” element is intended to imply crimes of a collective nature and thus exclude single or isolated acts. Thus, the emphasis is not on the individual victim but rather on the collective, the individual being victimized not because of his individual attributes but rather because of his membership of a targeted civilian population. This has been interpreted to mean that the acts must occur on a large scale basis (widespread) or, that there must be some form of a governmental, organizational or group policy to commit these acts (systematic, targeted) and that the perpetrator must know of the context within which his actions are taken (knowledge and intent), and finally that attack must be committed on discriminatory grounds in case of persecution.

37. (5) The attack must be directed against any civilian population. The term “civilian population” must be interpreted broadly and refers to a population that is predominantly civilian in nature. A population may qualify as “civilian” even if non-civilians are among it, as long as it is predominantly civilian. The presence within a population of members of armed resistance groups, or former combatants, who have laid down their arms, does not as such alter its civilian nature.

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

### **VIII. Procedural History:**

39. On the basis of a complaint, registered at serial no. 3 of the Complaint Register dated 26.07.2010, the Investigation Agency established under the Act completed investigation of the case and the investigation officer

submitted report to the learned Chief Prosecutor. On perusal of the investigation report, statement of witnesses and the documents collected during investigation, the prosecutors prepared the Formal Charge and submitted the same on 14.11.2011 in the office of the Tribunal. Upon receipt of the Formal charge along with documents, this Tribunal on perusal of those documents took cognizance of offence on 17.11.2011 against accused Salauddin Quader Chowdhury for the commission of offences as specified in section 3(2) of the Act. The accused was already in custody in connection with another criminal case pending in the subordinate court. As per order of the Tribunal, Salauddin Quader Chowdhury was produced before this Tribunal on 24.11.2011 as the sole accused of this case. During trial of the case, the accused filed series of applications on different dates before the Tribunal, some of them praying for staying proceeding of the case, some of them praying for cancelling his Vokalotnama and allow him to conduct his own case, some of them praying for permission for attending sessions of the Parliament, some of them filed challenging jurisdiction of the Tribunal and appointment of its Judges, some of them praying for release on bail, some of them praying for reviewing the important orders repeatedly, some of them praying for application of the Code of Criminal Procedure and Evidence Act in this case knowing fully well that application of those two statutes has been forbidden by section 23 of the Act, and some of them filed with intent to delay the disposal of the case. However, this Tribunal disposed of all the aforesaid applications in accordance with law after giving him opportunity

of being heard. On several occasions, the engaged counsels of the accused were given permission to meet and consult with the accused inside the Jail Custody as privileged communications.

## **IX. Special feature of laws and rules applicable to trial procedure:-**

40. The proceedings before the Tribunal shall be guided by the International Crimes (Tribunals) Act, 1973 and the Rules of Procedure, 2010 (hereinafter referred to as “the ROP”) formulated by the Tribunal under the powers given in section 22 of the Act. Section 23 of the Act prohibits the applicability of the Code of Criminal procedure, 1898 and the Evidence Act, 1872. The Tribunal is authorized to take into its judicial notice of facts of common knowledge and some official documents which are not needed to be proved by adducing evidence (section 19(3) and (4) of the Act). The Tribunal may admit any evidence without observing formality, such as reports, photographs, newspapers, books, films, tape recordings and other materials which appear to have probative value (section -19(1) of the Act). The Tribunal shall have discretion to consider hearsay evidence too by weighing its probative value as per Rule-56(2) of the ROP. The defence shall have right to cross-examine prosecution witnesses on his credibility and to take contradiction of the evidence given by him as per Rule -53(ii) of the ROP. The accused deserves right to conduct his own case or to have assistance of his counsel (section-17 of the Act). The Tribunal may release



an accused on bail subject to conditions as imposed by it as per Rule-34(3) of the ROP. The Tribunal may, as and when necessary, direct the concerned authorities of the Government to ensure protection, privacy, and well-being of the witnesses and victims as per Rule-58-A of the ROP.

## **X. Witnesses adduced by the Parties:-**

**41.** The prosecution submitted a list of 133 witnesses along with Formal Charge and other documents, while the defence submitted a voluminous list of 1153 witnesses for obvious reasons which need not be expressly disclosed. At the time of trial, the prosecution examined total 41 witnesses including seizure list witnesses and the investigation officer. On the other hand, this Tribunal by exercising power under Rule-51A(2) of the ROP, allowed the defence to examine maximum number of 5 witnesses out of listed 1153 witnesses.

**42.** The defence examined only 4 witnesses to prove the defence plea. Accused Salauddin Quader Chowdhury deposed himself as D.W.1 for 9(nine) working days while the learned Prosecutor cross-examined him for only 2(two) working days. The defence took several adjournments for producing the rest D.Ws. and ultimately examined 3 more defence witnesses and thereby examination of defence witnesses was closed for want of further witnesses.

## **XI. The way of adjudicating charges found against the accused.**

43. We perused the formal charge, documents and the statement of witnesses upon which the prosecution intended to rely upon and carefully considered the submissions of the learned lawyers of both the parties on charge matter. Having considered the submissions of both the parties and all the documents, we found sufficient ground to presume that the accused has committed offences described under section-3(2)(a), 3(2)(c), 3(2)(g) and 3(2)(h), read with section 4(1) of the Act and accordingly as many as 23 charges were framed against accused Salaudding Quader Chowdhury on 04.04.2012 which were read over and explained to him to which he pleaded not guilty and claimed to have fair justice.

### **Defence case**

44. The defence case, as it appears from the testimony of accused Salauddin Quader Chowdhury (D.W.1) that he was born on 13.03.1949 in the district of Chittagong. He got admitted in Fauzdarhat Cadet College in 1960 and also studied at Sadiq Public School at Bhawalpur. He was also a student of Notre Dame College, Dhaka University and Punjab University. He was never a member of any student's political organizations, but he actively participated in the anti-Ayub movement in 1969. He along with his friends of Student League and Student Union actively participated in the grand rally of Dhaka Race Course on 7 March 1971 which was addressed by Bangubandhu Sheikh Mujibur Rahman.

45. In the night following 25 March 1971, the Pakistan army started mass killing and atrocities in Dhaka City. Then he left Dhaka on 29 March 1971 for Karachi. He got admitted in Punjab University in final year honours in Political Science. He along with his friends made a pleasure trip to Murree for 3 weeks and came back to Lahore. In the month of October, 1971, he along with a group of friends motored to London from Lahore by road. He joined Lincoln's inn. He was not in Bangladesh from 29 March, 1971 to till 20 April 1974. As such, all the charges brought against him involving with crimes against humanity and genocide during the War of Liberation are false, fabricated and motivated. He was elected M.P. for six times by the people of Chittagong. He was not present in Bangladesh during the War of Liberation. He is innocent.

## **XII. Backdrop and context of the War of Liberation**

46. The backdrop and context of the commission of untold barbaric atrocities in 1971, during the War of Liberation of Bangladesh is the outcome of oppression and disparity between Bangalee nation and the Pakistani Government that pushed the Bangalee nation for self determination and eventually for freedom and emancipation. The War of Liberation started following the "Operation Search Light" in the night following 25 March, 1971 and lasted till 16 December 1971 when Pakistani occupation forces surrendered. The Pakistani armed forces in order to implement their organizational policy and plan they created some paralleled forces namely, Razakar Bahini, Al-Badr Bahini, Al-Shams, and Peace Committee as

auxiliary forces which provided supports, assistance, and substantially contributed and also physically participated in the horrendous atrocities in the territory of Bangladesh. It is the fact of common knowledge that thousands of incidents happened throughout the country as a part of organised and planned attack. Target was pro-liberation Bangalee civilian population, Hindu Community, pro-Liberation political groups, freedom-fighters and finally the intellectuals of the country.

47. Before going into discussion of the evidence on record, we consider if convenient to address legal issues regarding charges framed which were agitated at the time of summing up the arguments by the learned lawyers of both the parties.

### **XIII. Summing up the prosecution case by the prosecutors.**

48. Mr. Syed Haider Ali with Mr. Ziad-Al-Malum, Mr. Sultan Mahmud and Ms. Tureen Afroz, the learned Prosecutors made submissions on facts and law points in support of the prosecution case. At the very outset, Mr. Sultan Mahmud, the learned Prosecutor gave a brief portrayal of historical background that had enthused the Bangalee Nation to the movement of self-determination which eventually got the shape of the War of Liberation in 1971. In order to resist the War of Liberation the Pakistan army all of a sudden launched "Operation Search Light" in the night following 25 March in Dhaka City causing killing of unarmed thousands of civilians and massive

destruction with the organizational support mainly from Jamaat-e-Islami, its student wing Islami Chhatra Sangha, pro-Pakistan political parties and other auxiliary forces manned by Jamaat-e-Islami.

**49.** It is submitted that accused Salauddin Quader Chowdhury is the eldest son of Late Fazlul Quader Chowdhury who was the President of Convention Muslim League and after crack-down on 25<sup>th</sup> March, the accused and his father joined their hands with Pakistan occupation forces and formed para Militia Bahinies to resist independence of Bangladesh and to commit crimes against humanity and genocide in Chittagong area during the War of Liberation . It is further submitted that some prosecution witnesses have made hearsay statement on some material facts which cannot be excluded as the same is admissible in evidence in the trial process of international crimes. It is further contended that the Tribunal is not bound by technical rules of evidence and it shall accord in its discretion and due consideration to “hearsay evidence” on weighing its probative value (Rule-56(2) of the ROP).

**50.** It is further submitted that the prosecution has examined as many as 41 witnesses of whom some eye witnesses have testified as to direct participation of the accused in the commission of crimes against humanity and genocide and as such prosecution has successfully proved at least 17 charges out of 23 beyond reasonable doubt.

**51.** Lastly, it is submitted that the accused has taken a plea of Alibi to the effect that during War of Liberation he was not present in the soil of

Bangladesh but the defence hopelessly failed to prove the said plea on the face of corroborative evidence adduced by eye witnesses of the occurrences.

#### **XIV. Summing up of defence case by the counsels.**

**52.** Mr. A. H.M. Ahsanul Huq Hena with Mr. A.K.M. Fakrul Islam, the learned defence counsels in course of summing up the defence case has taken pain in raising some pertinent legal issues. It is submitted that 40 years delay in prosecuting the accused remained unexplained and such inordinate and unexplained delay have created doubt in the fairness of the proceeding against the accused. It is submitted that inclusion of the words “any individual or group of individuals” in section 3(1) by amendment of the Act of 1973 in 2009 has been purposefully made with intent to prosecute the accused as he had no political identity in 1971. It is submitted that admittedly the Act No. IX of 1973 was passed by the Parliament of Bangladesh and the present Government has created this Tribunal as a domestic Tribunal and as such international laws, rules and decisions of foreign courts are not applicable in the case of the Tribunal.

**53.** It is further submitted that prosecution has relied upon some hearsay evidence which are inadmissible in evidence, unless the person is examined from whom the witness heard the occurrence, no reliance can be placed upon such evidence. The learned counsel referred to the decisions reported in DLR (1992)(HC) 83 and 1984, S.C.C (Criminal) 68 in support of his contention.

54. It is submitted that accused Salauddin Quader Chowdhury is a very popular leader of Chittagong district who has been elected Member of Parliament for 6 times by the people of his locality and as such this criminal prosecution against the accused is the product of political rivalry and motivation. It is also submitted that the Act of International Crimes (Tribunals) was enacted in 1973 but the alleged offences were committed in 1971 and as such those offences can not be tried under the Act giving retrospective effect. It is further submitted that prosecution has filed some certified copies of some criminal cases which show that there were many accused persons in those charge sheets but this case has been filed against only Salauddin Quader Chowdhury which speaks that this case has been filed with intent to victimize the accused politically. Lastly, it is submitted that accused Salauddin Quader Chowdhury left this country on 29 March 1971 for Pakistan and returned to Bangladesh in 1974 and this plea of alibi has been successfully proved by 4 defence witnesses including the accused himself and as such the accused is entitled to get an order of acquittal.

## **XV. Reply of prosecution to the argument made by the defence.**

55. In reply to the submissions on legal points, it is submitted by the learned Prosecutor that already this Tribunal has resolved the agitated issues by giving its findings in the order dated 04.04.2013 passed on framing of charges.

56. It is submitted that there is no limitation in bringing criminal prosecution particularly when it relates to international crimes committed in violation of customary international law. It is submitted that inclusion of the words “any individual or group of individuals” in section 3(1) of the Act of 1973 by way of amendment in 2009 was made with intent to bringing every perpetrator to justice and that amendment was done long before initiation of this proceeding and as such it cannot be said that said amendment of section 3(1) was done aiming at the accused for prosecution. It is submitted that under section 3(2) of the Act, the offences of abetment, conspiracy, planning and complicity are independent in character and as such there is no legal bar in prosecuting a person who acted to facilitate the commission of crimes even without bringing the principal perpetrators to justice.

## **XVI. Discussion and decision:**

57. Before discussing the charges brought against the accused, we consider it expedient to address some of the legal issues upon which the learned counsel for the defence drew our attention.

### **Tripartite Agreement and immunity to 195 Pakistani war criminals:-**

58. It is not acceptable to say that no individual or member of auxiliary force as stated in section 3 of the Act can be brought to justice under the Act for the offence (s) enumerated therein for the reason that 195 Pakistani war criminals belonging to Pakistan Armed Forces were allowed to evade justice on the strength of ‘tripartite agreement’ of 1974. Such agreement was an



‘executive act’ and it cannot create any clog to prosecute member of ‘auxiliary force’ or “any individual or member of group of individuals” as the agreement showing forgiveness or immunity to the persons committing offences in breach of customary international law was derogatory to the existing law i.e the Act enacted to prosecute those offences.

**59.** It is settled that the jus cogens principle refers to peremptory principles or norms from which no derogatory is permitted, and which may, therefore, operate a treaty or an agreement to the extent of inconsistency with any such principles or norms. We are thus inclined to pen our conclusive view that the obligation imposed on the state by the UDHR and the Act is indispensable and inescapable and as such the Tripartite Agreement which is an ‘executive act’ cannot liberate the state from the responsibility to bring the perpetrators of atrocities and system crimes into the process of justice.

**60.** As a state party of UDHR and Geneva Convention, Bangladesh cannot evade obligation to ensure and provide justice to victims of those offences and their relatives who still suffer the pains sustained by the victims and as such an ‘executive act’ (tripartite agreement) can no way derogate this internationally recognized obligation. Thus, any agreement or treaty if seems to be conflicting and derogatory to jus cogens (compelling laws) norms does not create any hurdle to internationally recognized state obligation.

61. Next, the Act is meant to prosecute and punish not only the armed forces but also the perpetrators who belonged to ‘auxiliary forces’, or who committed the offence as an ‘individual’ or member of ‘group of individuals’ and nowhere of the Act says that without prosecuting the armed forces (Pakistani) the person or persons having any other capacity specified in section 3(1) of the Act cannot be prosecuted. Rather, it is manifested from section 3(1) of the Act that even any person (individual or member of group of individuals), if he is prima facie found individually criminally responsible for the offence(s), can be brought to justice under the Act. Therefore, the argument that since the main responsible persons (Pakistan Army) have escaped the trial, on the strength of the tripartite agreement providing immunity to them, the next line collaborators cannot be tried is far-off to any canons of criminal jurisprudence.

62. Therefore, we are of the view that the ‘tripartite agreement’ is not at all a barrier to prosecute civilian perpetrator under the Act. Thus, we also hold that the Act was not enacted only for holding trial of 195 Pakistani war criminals, rather it has jurisdiction under section 3(1) of the Act to try armed forces, auxiliary forces, an individual or group of individuals for the commission of offences specified under section 3(2) committed in Bangladesh before and after commencement of the Act.

**Amendment of section 3(1) of the Act in 2009-**

**63.** It is submitted by the learned counsel appearing on behalf of the accused that since the subsequent amendment brought in 2009 of the Act of 1973 by inserting the words ‘individual’, or ‘group of individuals’ in section 3(1) carries ‘prospective effect’, in reality, the present accused cannot be prosecuted in the capacity of an ‘individual’ or a superior for the offences underlying in the Act which is admittedly ‘retrospective’. Since such amendment has not been expressly given retrospective effect interpretation stands that the amendment is prospective.

**64.** At the out set, it is to be noted that it is rather admitted that even under retrospective legislation (Act enacted in 1973) initiation to prosecute crimes against humanity, genocide and system crimes committed in violation of customary international law is quite permitted. It is further to be noted that the ICTY, ICTR, SCSL and the judicial bodies backed by the UN have been constituted under their respective retrospective Statutes. Only the ICC is founded on prospective Statute.

**65.** We are to perceive the intent of enacting the main Statute together with fortitude of section 3(1). At the same time we cannot deviate from extending attention to the protection provided by the Article 47(3) of the Constitution to the Act which was enacted to prosecute, try and punish the perpetrators of atrocities committed in 1971 during the War of Liberation. The legislative modification that has been adopted by bringing amendment in 2009 has merely extended jurisdiction of the Tribunal for bringing the perpetrator to book if he is found involved with the commission of the

criminal acts even in the capacity of an ‘individual’ or member of ‘group of individuals’. It is thus validly understood that the rationale behind this amendment is to avoid letting those who committed the most heinous atrocities go unpunished. This is the intent of bringing such amendment.

66. It may be further mentioned here that the words ‘individual’ or member of ‘group of individuals’ have been incorporated both in section 3 of the Act and in Article 47(3) of the Constitution of the Peoples Republic of Bangladesh by way of amendments in 2009 and 2011 respectively. The right to move the Supreme Court for calling any law relating to internationally recognised crimes in question by the persons charged with crimes against humanity and genocide has been taken away by the provision of Article 47A(2) of the Constitution. Since the accused has been prosecuted for offences recognized as international crimes as mentioned in the Act he does not have right to call in question any provision of the Act or any of amended provisions thereto. Thus, we hold that the application of prospectiveness or retrospectivity as to amendment to section 3 and subsequent amendments of the Act raised by the accused is quite immaterial to him in consideration of his legal status and accordingly the defence objection is not sustainable in law, particularly in the light of Article 47(3) and Article 47A of the Constitution.

#### **Delay in bringing prosecution**

67. From the point of morality and sound legal dogma, time-bar should not apply to the prosecution of human rights crimes. Neither the Genocide

Convention of 1948, nor the Geneva Convention of 1949 contains any provision on statutory limitation to war crimes and crimes against humanity. General Assembly Resolution No. 2391(XXIII) of 26 November 1968 provides protection against even any statutory limitation in prosecuting crimes against humanity, genocide etc. Thus, criminal prosecutions are always open and not barred by time limitation.

**68.** It may be cited here that the Second World War was concluded in 1945 but still the Nazi War Criminals are being prosecuted. Similarly, the trial of international crimes committed during Chilean revolution in 1973 is still going on. In Cambodia during polpot regime, international crimes were committed in the year 1975 to 1978 but due to internal conflicts and lack of political will, the then government could not start prosecution against perpetrators in time. The Royal Government of Cambodia waited 25 years for attaining a strong political will, thereafter in association with the United Nations, they established a Hybrid Tribunal and thus trial against the perpetrators was started in 2003 which is still going on. In fact, the criminal prosecution as regards international crimes is always open and not barred by any time-limit. The Sovereign immunity of Slobodon Milosevic of Serbia, Charles Taylor of Liberia and Augusta Pinochet of Chile, as head of the states could not protect themselves from being detained and delayed prosecution for committing genocides, crimes against humanity and war crimes.

69. In view of the above settled position and in the absence of statutory limitation, only the delayed prosecution does not preclude prosecutorial action to adjudicate the culpability of the perpetrators of core international crimes. It requires strong public and political will together with favourable and stable political situation for holding such trial. Therefore, justice delayed is no longer justice denied, particularly when the perpetrators of core international crimes are brought on the process of justice. However, delay may create a doubt but such matter is addressed after taking all the factual circumstances into consideration.

70. Section 3(1) of the Act of 1973 was amended in 2009 by incorporating the phrase ‘any individual’ or ‘group of individuals’ with intent to broaden the jurisdiction of the Tribunal so that both armed and non-armed persons can be brought to justice. We do not hesitate to hold that after amendment of section 3(1) of the Act, it has become immaterial to determine whether the accused was a member of any student organization or political party for the purpose of holding trial against him under the Act. Now, law stands that any person or group of persons or their superiors whether armed forces or not can be prosecuted on the charge of offences as specified in section 3(2) of the Act.

## **XVII. Adjudication of charges**

71. With regard to factual findings, the Tribunal is required only to make findings of those facts which are indispensable to the determination of guilt

on a particular charge. It is a settled jurisprudence that it is not necessary to refer to every phrase pronounced by a witness before this Tribunal. Keeping it in mind, we shall evaluate the main part of testimony relied upon to prove a particular charge.

72. On plain reading of the provision of section 19(1) of the Act of 1973, it is understood that the technical rules of evidence is not applicable to the proceeding before the Tribunal, it can admit any thing in evidence without observing any formality. Even hearsay evidence is not inadmissible perse and the Tribunal in exercise of its discretion, may act on such hearsay evidence after weighing its probative value together with other circumstances and relevant facts.

### **Adjudication of charge Nos. 9,13,15, 16, 21 and 22**

#### **[Committing the offences of crimes against humanity and genocide]**

73. At the very out set, Mr. Sultan Mahmud, the learned Prosecutor frankly submitted that as many as 23 charges have been framed against the accused but the prosecution could not produce not a single witness to prove charge nos. 9,13,15,16, 21 and 22 due to non availability of the concerned witnesses.

74. In view of above submissions made by the learned Prosecutor, we are led to hold that the prosecution has failed to prove the aforesaid 06 charges brought against the accused for want of evidence.

## **Adjudication of Charge No. 01**

### **[committing the offences of crimes against humanity and genocide against seven unarmed civilians]**

75. **Summary charge:** On 4<sup>th</sup> April or 5<sup>th</sup> April, 1971 at about 9.00 p.m in order to destroy in whole or in part the Hindu community, one of the followers of accused, named Abdus Sobhan informed him at Goods-Hill about the meeting of some persons held in the house of one Motilal Chowdhury at Ramjoy Mohajan Lane. Being eldest son of Fazlul Quader Chowdhury, the accused along with a group of Pakistani army riding on two trucks went to the house of Motilal Chowdhury and abducted un-armed seven civilians including Motilal Chowdhury and took them to Goods-Hill residence. Out of seven persons Sunil was chopped by dagger but subsequently he was let off considering his tender age and the remaining six persons were inhumanly tortured to death in presence of the accused. Thus the accused has been charged for the physical participation and also for substantially contributing to the actual commission of offence of acts of abduction and torture as crimes against humanity and killing the members of religious group by directing attack against the Hindu civilian population as specified in section 3(2)(a), 3(2)(c)(i) and 3(2)(h) of the Act.

### **Discussion of Evidence:**

76. P.W.18 Debobrota Sarker has testified that after 25<sup>th</sup> March, 1971 he along with his father and family members went to their house in Adhar Manik and on 4<sup>th</sup> or 5<sup>th</sup> April, 1971 probably on Saturday his father along



with his uncle and another one went to their residence at Khatungonj in Chittagong town to bring back his Zethu (elder uncle Motilal Chowdhury). On the following day some people brought bloodstained Sunil to their village house at Adhar Manik disclosing that his father along with six unarmed Hindu persons were abducted and took them to Goods-Hill by the Pakistani Army with the help of one Abdus Sobhan who informed them about their presence at Khatungonj residence. Considering the tender age, Sunil was released by army and then he returned to Khatungonj residence where he was again assaulted by Abdus Sobhan with sharp cutting kirich (dagger) with an intention to finish him since he was the eye-witness of the said occurrence. He has further deposed that his father and five other persons had ever come back from Goods-Hill. On the day of Sunil's return around 11.00 p.m or 11.30 p.m, two men came from Oli Mia's Hut and they informed that the accused Salauddin Quader Chowdhury ordered that none of the male-seed would remain alive in their village. Upon hearing the same, mass people of the village left their homesteads and took shelter in the neighboring Buddhist people's houses and temples. Subsequently most of them left village for taking shelter in India.

77. In cross-examination he has replied that the day on which his father went to bring his Zethu (elder uncle) back, was Saturday and Sunil used to be permanent cook in his Zethu's house at Khatungonj and Sunil was taken back to their village home from Khatungonj by Shampan. He has further replied that he heard the occurrence from Sunil while depicting the material

facts to his grandfather. Injured Sunil was taken to the doctor by his grandfather as well. This witness has further responded that his grandfather's house at North Gojrah, was plundered on 11<sup>th</sup> April, 1971 and for which they left his maternal grandfather's house for going to Benajury School.

**Evaluation of evidence and finding:**

78. In order to prove this charge prosecution has examined only one witness named Debobrato Sarkar (P.W. 18) who has told in evidence that on 4/5 April 1971 probably on Saturday his father along with six others unarmed Hindu civilians were abducted and took them to Goods Hill with the help of one Abdus Sobhan from their Khatoongonj residence. One of them named Sunil being tender age was released by army but his father and others ever came back from Goods Hill. Victim Sunil told that the accused had ordered that no male member would be allowed to remain alive in the village. On hearing the same, people of the village left their homesteads for taking shelter in the neighbouring Buddhist people's houses and temples and subsequently most of them left the village for taking refuge in India. Having gone through this evidence we find no complicity of him in abducting seven unarmed Hindu civilians or killing them at the inspiration of the present accused except a sentence that no male seed to be remained alive, uttered by the accused. The learned defence counsel has argued that the evidence of P.W-18 lacks of corroboration and as such it is not safe to rely upon it. It is evident from the testimony of P.W. 18 that two men coming to his house informed that accused Salauddin Quader Chowdhury had ordered that no

male member would be allowed to remain alive in the village. But identity of those two persons has neither been disclosed nor any other person has come forward to corroborate the testimony of P.W. 18. The evidence adduced by P.W. 18 is found to be purely hearsay and uncorroborated testimony and as such no person can be held guilty on the basis of such hearsay and uncorroborated evidence as it has no probative value. Therefore, it is evident that prosecution has failed to produce any reliable evidence to connect the accused with the commission of offences of crimes against humanity and genocide as specified in the above charge. Ms. Tureen Afroz, the learned Prosecutor by referring to decisions of the ICTY Chamber in Simic, Tadic and Zaric (2003) has submitted that there is no need to corroborate hearsay evidence and as such hearsay evidence can be accepted as reliable evidence.

In consideration of our social value and human behavior we failed to accept the above submission of the learned prosecutor. In the above context it is our considered opinion that it is very much unsafe to convict a person on the basis of uncorroborated single hearsay evidence. Thus, we hold that the prosecution has failed to prove charge no. 1 beyond reasonable doubt.

### **Adjudication of Charge No. 02**

**[Committing the offence of genocide at Maddhaya Gohira Hindu Para]**

**79. Summary charge:** On 13<sup>th</sup> April, 1971 at about 6.30/8.00 a.m. accused Salauddin Quader Chowdhury along with his accomplices and Pakistani Army went to Maddhaya Gohira Hindu Para under P.S. Rawjan, District-Chittagong and brought the unarmed Hindu people in the courtyard of the house of Dr. Makhon Lal Sharma and then Pakistani Army opened fire on them, and as a result Poncha Bala Sharma, Sunil Sharma, Joti Lal Sharma and Dulal Sharma were killed at the spot and Dr. Makhon Lal Sharma died after 3/4 days, and Joyonta Kumar Sharma was seriously injured. Thus the accused has been charged for commission of offences as specified in section 3(2)(c)(i) and (ii) of the Act.

**Discussion of evidence:**

**80.** P.W. 3 Sirajul Islam alias Siru Bangalee has stated that he heard from Captain Karim that on 13<sup>th</sup> April from morning to evening accused Salauddin Quader Chowdhury in collaboration with the Pakistani Army attacked and massacred in the Hindu villages namely, Gohira, Sultanpur, Jogotmollopara, Unsatturpara and neighbouring places only out of religious grudge.

**81.** P.W. 3 in cross-examination has stated that Captain Karim was killed in the month of September, 1971. He has denied the defence suggestion that Captain Karim did not tell him the occurrence what he has stated in his examination-in-chief. He has also denied the defence suggestion that he has deposed falsely against the accused.

**82.** P.W. 6 Advocate Nirmol Chandra Sharma has deposed that on 13<sup>th</sup> April, 1971, he along with his family members were planning to leave their village Maddhaya Gohira in the morning since the Pakistani Army had crossed the Hathajari defence line on 12<sup>th</sup> April. At that time, it was announced from the mike of their local mosque that the Hindus must not leave their houses, otherwise their houses would be plundered and nothing would happen to them. Having heard that announcement, they became confident and started to have their breakfast and at the end of their breakfast, accused Salauddin Quader Chowdhury along with armed Pakistani soldiers came into their house and called them out. He has further deposed that he then came out with other members of his family and he was ordered to put his hands up. Realizing the gravity of the situation, he did not take any steps against the soldiers and his family members started to cry and hold the legs of two soldiers so that they spare their lives. Then the soldiers ordered them to go inside their house. Subsequently, accused Salauddin Quader Chowdhury and the Pakistani soldiers dragged his uncle Dr. Makhon Lal Sharma out in the courtyard and all other members of their family came out as well and started to cry and requesting the accused and the soldiers to spare their lives. At that time, they were ordered to stand in line and after that, to sit down facing the west, while the accused along with the armed soldiers were standing in the courtyard facing the east. P.W.6 has further deposed that subsequently, they started to fire at them and he, as soon as, heard the first shot, tilted down on the soil and heard them firing twice and

he also heard his family members' groaning around him. He saw that the accused along with the soldiers were going towards the east and he found that his mother Poncha Bala Sharma, nephew Dulal Sharma, younger brother Sunil Sharma and uncle Joti Lal Sharma were dead while others including his uncle Dr. Makhon Lal Sharma was grievously injured who died after a few days and his father Joyonto Kumar Sharma was also seriously injured. His another brother Bimol Sharma having heard the sound of firing arrived there at that moment and he became dumb witnessing the atrocities in the courtyard, then he (P.W.6) and his said brother left the house and took shelter in Gurudwara village under Hathajari police station and returned back to their house in the evening. Having returned to their house he found his father and uncle Dr. Makhon Lal Sharma still alive and groaning and all other injured persons dead. P.W. 6 has also deposed that they could only put some water in front of his father who ordered them to leave the place at once. After that they took shelter in the house of Danu chacha, a neighbour, whose house or family was not attacked, who helped them to leave the area at dawn by placing two tupis (cap) on their heads and teaching them Kalema, so that they could say that they were going to namaz (prayer) and they were muslims on the way if anyone would ask. He has further deposed that thereafter, they left the country and went to India to take refuge in the refugee camps and he got training over there and returned back to participate in the Liberation War.

**83.** P.W.6 in cross-examination has stated that he was conscious when the firing took place and the accused along with the soldiers stayed in their house for about 15/20 minutes, and that it was not raining on 13<sup>th</sup> April and it was around 7.00/7.30 p.m. when he gave his father some water to drink in a ghati (pot). He has further stated that his brother Bimol on 13<sup>th</sup> April in the morning went to a shop at the south for shopping and arrived at the place of occurrence after one hour from the time of occurrence, and that he saw 5 Pakistani Army in his house and he saw them coming on foot from the west side of their house since there was no vehicle around and he saw them getting out through the kacha (muddy) road at the east. He has denied the defence suggestion that he falsely deposed that on 13<sup>th</sup> April his mother Poncha Bala Sharma, brother Sunil Sharma, uncle Joti Lal Sharma and nephew Dulal Sharma were killed by the shots of Army in the place of occurrence. He has also denied the defence suggestion that his father Joyonto Sharma and uncle Dr. Makhon Lal Sharma were not injured by the shots of Army on 13<sup>th</sup> April.

**84.** P.W. 29 Subol has testified that on the day of occurrence he along with his parents were going towards Binajuri for shelter leaving their house, situated at village Maddhaya Gohira, and when they heard gun shots then they immediately took shelter in the nearby bush and waited there for an hour. Later, he went to their house with his father and found Pancho Bala, Sunil, Dulal and Joty Lal dead while Joyonta and Makhon were found injured, and after seeing those dead bodies they left their house.

85. P.W. 29 in cross-examination has stated that the house of deceased Dulal was under Hathajari police station, but he used to live in his maternal uncle's house at Gohira, and that injured Joyonta died after Liberation, and that the place of occurrence was the courtyard. He denied the defence suggestion that no occurrence took place as he stated in his examination-in-chief.

**Evaluation of evidence and finding:**

86. The prosecution has examined as many as 3 witnesses as mentioned above (P.W. Nos. 3, 6 and 29) to prove the charge no. 02 relating to committing the offence of genocide at Maddhaya Gohira Hindu Para. Among these 3 prosecution witnesses, P.W. 6 Advocate Nirmol Chandra Sharma is a star witness as he claimed himself as an eye witness of the alleged occurrence and also one of the victims. He has vividly narrated the occurrence how accused Salauddin Quader Chowdhury along with Pakistani Army on 13<sup>th</sup> April, 1971 brutally killed his mother Poncha Bala Sharma, brother Sunil Sharma, nephew Dulal Sharma and uncle Joti Lal Sharma and injured his father Joyonto Kumar Sharma and his uncle Dr. Makhon Lal Sharma in the courtyard of their house, situated at village Maddhaya Gohira under Rawjan police station. He has stated that at the time of commission of the said atrocities he himself was present at the place of occurrence i.e. in the courtyard of their house and saw the occurrence. P.W. 29 Subol having corroborated the version of P.W. 6 has stated that just immediately after the occurrence he along with his father went to the place



of occurrence and found there Pancha Bala, Sunil, Dulal and Joty Lal dead and Joyonta and Makhon Lal were found injured. P.W. 3 Sirajul Islam alias Siru Bangalee is a hearsay-witness who has indirectly corroborated the alleged occurrence stating that he heard from one Captain Karim that on 13<sup>th</sup> April, from morning to evening accused Salauddin Quader Chowdhury in collaboration with the Pakistani Army attacked and massacred in the Hindu villages namely, Sultanpur, Jogotmollopara, Unsatturpara and neighbouring places including Gohira where the alleged atrocities were committed. P.W. 3 has stated in his cross-examination that said Captain Karim was also killed in the month of September, 1971. In this regard, the prosecution argued that said Captain Karim could not be made a witness as he had been killed much earlier.

**87.** P.W. 3 Sirajul Islam alias Siru Bangalee has stated that Captain Karim told him that the accused's father Fazlul Quader Chowdhury was defeated in the election of the National Assembly of Pakistan held in 1970 against a young candidate nominated by the Awami League and as such accused Salauddin Quader Chowdhury and his father and other members of his family had grudge against the Hindu minority community and out of that grudge they committed the atrocities in those Hindu populated villages.

**88.** Upon scrutiny of the evidence as discussed above, it is evident that on 13<sup>th</sup> April, 1971 in the morning accused Salauddin Quader Chowdhury along with his accomplices accompanied by Pakistani Army went to Maddhaya Gohira under police station-Rawjan, district-Chittagong and then in his

presence the Pakistani Army opened fire on the unarmed Hindu civilian population in the courtyard of the house of Dr. Makhon Lal Sharma pursuant to a pre-arranged plan, and as a result the Hindus namely, Pancha Bala Sharma, Sunil Sharma, Joti Lal Sharma and Dulal Sharma were killed at the spot and Dr. Makhon Lal Sharma and Joyonta Kumar Sharma were seriously injured of whom Dr. Makhon Lal Sharma died after a few days. Having considered all the attending facts and circumstances, we are inclined to hold that it is proved beyond reasonable doubt that accused Salauddin Quader Chowdhury along with Pakistani Army committed the said atrocities with intent to destroy, in whole or in part, the members of Hindu religious group which is genocide, and as such the accused is criminally liable under section 4(1) of the Act, 1973 for substantially contributing the actual commission of the offence of genocide as specified in section 3(2) (c) (i) and (ii) of the Act which are punishable under section 20(2) of the Act.

### **Adjudication of Charge No. 03**

#### **[Committing the offence of murder as crimes against humanity relating to killing of Nutun Chandra Singha]**

**89. Summary charge:** On 13<sup>th</sup> April, 1971 around 9.00 a.m to 10.00 a.m accused Salauddin Quader Chowdhury led the Pakistani Army to Kundeshwari Owsadhalay of Gohira and entered the household of Sree Nutun Chandra Singha who was performing his prayer at that time in the temple, a Hindu religious prayer place, accused Salauddin Quader Chowdhury expressed his view to the Pakistani invading force that he had instruction from his father to kill Nutun Chandra Singha. Upon hearing the

same, the army opened fire at him who fell down sustaining bullet injuries. While Nutun Chandra Singha was trembling, at the same time Salauddin Quader Chowdhury shot him again to confirm his death and thereafter, all of them left the place of occurrence. Upon such allegation accused Salauddin Quader Chowdhury has been charged for physical participation and also for substantially contributing to the actual commission of offence of crimes against humanity as specified in section 3 (2) (a) of the Act.

### **Discussion of evidence:**

The prosecution relies upon the oral evidence of four witnesses and some documentary evidence in support of charge no. 3 which relates to the offence of crimes against humanity under section 3(2)(a) of the Act. P.W. 4 Gouranga Singha and P.W. 14 Gopal Chandra Das are eye witnesses while remaining P.Ws. are hearsay witnesses in the case. Now let us examine what evidence they have furnished before the Tribunal to prove the charge.

**90.** P.W. 4 Gouranga Singha is an eye witness who has deposed that his father, uncles, Nilambar Singha and Nutun Chandra Singha used to live together in Kundeshwari Complex in 1971 and he was one of the members of that joint family. He has further deposed that he used to accompany deceased Nutun Chandra Singha all the time and looked after his household chores. On 13<sup>th</sup> Chaitra he along with one Himangshu Baidya, Brojohari Kormakar and Gopal Das was trying to take Nutun Chandra Singha away from Kundeshwari Complex due to his safety reason but he did not agree to

go anywhere. While they were talking about the aforesaid matter, a military car reached Kundeshwari Complex. Then, accused Salauddin Quader Chowdhury along with other Rajakars and some Pakistani occupation forces (Panjabee) got off from the car. On seeing them he (P.W.4), Monaranjon Singha and Himangshu Baidya escaped towards the jungle on the southern part of the house while Brojahori Karmokar and Gopal Das went into hiding on the first floor of Kundeshwari Complex. At that time the accused and others left the place of occurrence soon after talking some words with Sree Nutun Chandra Singha but they came back again within 10-15 minutes of their initial departure.

**91.** This witness has further testified that he heard the sound of 2/3 gun shots within 1-2 minutes. He along with others thought that it would not be safe to remain there then they had gone towards the south. Thereafter he sent a trusted Muslim named Ahmed Bashor to know about the fate of his uncle Nutun Chandra Singha who after coming back disclosed that his uncle had been killed, whose dead body was lying in front of the temple. On knowing such tragic death, they wrapped the dead body with a blanket (tripal) and kept the same inside of the temple and left the crime scene. Before wrapping the dead body he saw gun shot injuries on the person of Natun Chandra Singha, one injury was in the left side of his face while another in the left chest. Thereafter, they left for India and returned therefrom about 8/10 days immediate after the independence of Bangladesh. Satya Ranjon and Profulla, sons of deceased Nutun Chandra Singha,

returned from India with him and they heard from Brojahori Karmokar that at the time of occurrence Brojahori Karmokar and Gopal Das had gone into hiding on the first floor of the Kundeshwari Complex from where they witnessed that Salauddin Quader Chowdhury along with some Bangalees and Panjabee military entered the house and had left the place after having some talks with uncle Nutun Chandra Singha. Soon after their departure, the accused along with others came back and pulled uncle Nutun Chandra Singha out of the temple and Pakistani army opened brushfire at him while Salauddin Quader Chowdhury shot him two minutes later. Thereafter, they left the place of occurrence. They further heard from Brojahori Karmokar that the dead body of Nutun Chandra Singha was lying there for 2/3 days without cremation. Immediately after the independence of Bangladesh, Satya Ranjan instituted a criminal case against accused Salauddin Quader Chowdhury on the charge of killing of his father Nutun Chandra Singha. He has further deposed that none of them is now alive except himself and Profulla Babu. This witness has identified accused Salauddin Quader Chowdhury in the dock.

**92.** In cross-examination, P.W. 4 has reiterated his version of examination-in-chief as to killing of Nutun Chandra Singha. Nutun Babu used to stay in the ground floor of the building while his two sons namely, Satya Babu and Profulla Babu used to stay on the first floor of the same building. This witness during cross-examination, has disclosed that Satya Babu, son of Nutun Chandra Singha filed a criminal case with Rawjan

Police Station being Rawjan Police Station Case No. 42(1)72 for killing his father Nutun Chandra Singha. He has further corroborated the testimony of P.W. 3 Siru Bangalee in cross-examination that he knows a freedom-fighter named Bivuti of village Chikdai, a neighbouring village to Gohira. That Bivuti gave a vivid description of killing of Nutun Chandra Singha to P.W.3 Siru Bangalee. This witness has described the place of occurrence in reply to a question put to him that the width of Nutun Babu's 1<sup>st</sup> floor's balcony would be 6/7 feet long and his dead body was lying 3/4 feet far from the ground floor's balcony. In reply to a question by the defence, he has told that the army did not go up to the first floor of the Kundeshwari Complex. This witness has further replied that they heard the sound of army vehicle coming from the Rangamati road and as soon as they saw the accused, Mabud and others disembarking from the vehicle, they escaped leaving behind Nutun Chandra Singha in front of his temple. Nutun Chandra Singha used to keep all his money in the ground floor where he lived. The statues of the deities in Nutun Chandra's temple were habited with 60/70 vories of gold on their bodies. Such depositions corroborate with the testimony of P.W.5 about the money and ornaments given by Nutun Chandra Singha to the accused and others when they raided the complex for the first time. In reply to a question put to him by defence, he has told that they were trying to take Nutun Chandra to another house due to safety reason and they had talks with Nutun Chandra Singha standing in front of the temple when army reached there. This witness has further told in cross-examination that army did not see

them but they saw army coming towards and Mabud also did not see them. Immediately after getting off from vehicle by the accused, they went into hiding. This witness has further said in cross-examination that since Nutun Chandra received bullet injury on the left side of his head, the skin of the left side of his head was torn and the army did not go to the first floor of the building on that day. He denied the suggestion that accused did not go to Kundeshwari on that day.

**93.** P.W-14 Gopal Chandra Das as an eye-witness of the occurrence has testified that during the war of liberation he was the Principal of Kundeshwari Girls' College established by Nutun Chandra Singha. About 30 teachers of Chittagong University took shelter in the Kundeshwari Complex but all of them left the complex by 10 April, 1971 except Nutun Chandra Singha. Nutun Chandra Singha did not agree to accept the request made by them for leaving the country due to safety reason rather he told that he would never leave his motherland even at the cost of his life.

**94.** P.W-14 has further testified that he came back to Kundeshwari on the next day to stay with Nutun Chandra. On 13<sup>th</sup> April, 1971, 6/7 persons came to Kundeshwari to meet Nutun Chandra. Among them there were Goranga Singha (P.W-4), Brojahori, Himangshu Baidya and Monoranjon Singha. On hearing the sound of gun shots from the street, P.W-14 himself expressed his view not to stay anymore in the complex. Within a moment, a Pakistani army jeep entered the Kundeshwari Complex and stopped at the outer yard and they got off from the jeep quickly. At that time, all the persons who

were present there identified Salauddin Quader Chowdhury and Mabud by uttering the names who accompanied by Pakistani invading force therein. Soon after their getting down from the jeep, he along with Brojahori Babu went into hiding on the first floor of the Kundeshwari Complex and others took shelter in a bamboo bush situated at the south-west corner behind the Kundeshwari Complex. He has further testified that he and Brojahori witnessed the whole events through the window of Brojahori's room in the first floor. They witnessed that accused Salauddin Quader Chowdhury, a Pakistani army officer, 2/1 army soldiers and 2/1 other Bangalee associates had talks with Nutun Chandra Singha and sometimes after they made departure from there, they got sound of their riding on the jeep and they thought that they became free from any danger. About 8/10 minutes later, they again heard the sound of a vehicle then they again went into hiding in the same room. Thereafter, they saw that Pakistani invading force along with others came back and entered the temple of the Kundeshwari Complex and they dragged Nutun Chandra Singha forcibly out of the temple in the courtyard. They opened fire at him who fell down sustaining bullet injury. This witness has further told that he himself saw Salauddin Quader Chowdhury fired 2/3 rounds of bullet on Nutun Chandra Singha by his pistol or revolver as he had instruction from his father to kill Nutun Chandra and thereafter, accused Salauddin Quader Chowdhury left the crime site after ensuring death of Nutun Chandra who died on the spot. This witness has



also identified the accused in the dock. He denied all the suggestions put by the defence about the manner of causing death of Nutun Chandra Singha.

**95.** P.W-5 Profulla Ranjon Singha, son of deceased Nutun Chandra Singha has testified that his father was killed on 13<sup>th</sup> April, 1971 in between 9.00 a.m. to 9.30 a.m. He has stated that he left the Kundeshwari Complex for taking shelter in India on 11<sup>th</sup> April, 1971 and he was engaged in issuing border pass on behalf of the Government of Bangladesh at Ramgarh border. He heard about his father's killing on 13<sup>th</sup> April, 1971 around 4.00 p.m from Jotish Dhar, Headmaster of Rawjan High School. After the liberation war they returned to Bangladesh and they heard the full description as to how his father was killed by Salauddin Quader Chowdhury and others from both Gouranga Chandra Singh (P.W-4) and Gopal Chandra Das (P.W-14). His version of evidence is identical to what P.W-4 and P.W-14 said, except he added that on the first raid on 13<sup>th</sup> April, 1971, the accused along with Pakistani invading force demanded money and gold ornaments which his father handed over to them and thereafter they left the premises. This witness has further deposed that after coming back from India they had also heard in details about their father's killing from present and former Chairman Didarul Alam Chowdhury. Thereafter they had also heard from Brojahori Karmokar and Principal Gopal Chandra Das about how his father was killed. Before that Gouranga Singha told them about the killing of Nutun Chandra while staying in Kolkata. Brojohori told that when army came to Kundeshwari he saw Salauddin Quader Chowdhury, a self declared

Major or Brigadier, with them. When Gouranga Singha, Himangsu Baidya, Monoranjon Singha, Brojahori Karmokar and Gopal Das tried to convince his father Nutun Chandra to take away, then the army came to their Kundeshwari Complex. By seeing this, three of them went into hiding in a jungle and two escaped themselves on the first floor of the building. This occurrence took place on 13<sup>th</sup> April, 1971 between 9.00 a.m to 9.30 a.m. Brojahori told them that through window of the first floor they saw Salauddin Quader Chowdhury along with the army who demanded money and gold ornaments from his father and accordingly he gave huge amount of money and gold ornaments to them and then they left the scene instantly. 15/20 minutes later they had come back again and they pulled his father out of the temple and kept him standing in front of the temple and he was shot by fire arms. While his father was trembling Salauddin Quader Chowdhury shot him again twice or thrice to confirm his death. His father's dead body remained lying on the spot for three days after the occurrence took place. His father's dead body was cremated with the help of Chairman Amanot Khan and a neighbor named Barua Babu. He has further expressed his view in his deposition that even then they are so un-lucky as they failed to attend at the cremation of his father. Thereafter, his brother Satya Ranjon Singha filed a criminal case being Rawjan Police Station Case No. 41(1)72 with Rawjan Police Station. After investigation police submitted charge sheet against Salauddin Quader Chowdhury and others in that case. He heard that the case was transmitted to Dhaka and the fate of the case is not known to

him. This witness has also stated in his deposition that on 22<sup>nd</sup> April, 1971 he met Professor Dr. Anisuzzaman (P.W-1) at Ramgarh who asked him about his father and then he replied that his father was killed on 13<sup>th</sup> April, 1971 in the hands of accused Salauddin Quader Chowdhury along with Pakistani invading force who pulled his father out of the temple and the incident took place in front of the temple. He has also identified the accused in the dock.

**96.** In cross-examination he has vividly given a description of their Kundeshwari Complex. He has said Kundeshwari Complex was a two storied building. His father used to live in the ground floor while they lived in the first floor of the complex which consists of nine rooms. Of which he had two rooms while his brother Satya Ranjon Singha had also two rooms. His cousin Gouranga Singha and Bivuti Singha used to live in two other rooms and from remaining three other rooms, one was for guests, one for reading room and one for prayer. During cross-examination the defence could not controvert what has been deposed by this prosecution witness on the particular incriminating the accused with the acts related to killing of his father rather he has corroborated the testimony of P.Ws-1, 4, and 14.

**97.** P.W-1 Dr. Anisuzzaman deposed that he heard the facts of killing of Nutun Chandra Singha by Salauddin Quader Chowdhury and Pakistani occupation force from Profulla Ronjon (P.W-5), son of the deceased, on 20<sup>th</sup> April or 22<sup>nd</sup> April, 1971 when they met each other at Ramgarh. He has stated in deposition that after 25<sup>th</sup> March, 1971 a group of teachers including

their family members from Chittagong University took shelter in the Kundeshwari Complex and his family members also included in that group and he met them on 1<sup>st</sup> April, 1971 in Kundeshwari and left there on 2<sup>nd</sup> April, 1971 and went to Ramgarh on 10<sup>th</sup> April in the same year where he stayed till 26<sup>th</sup> April. He heard in details of the fact of incident from P.W-5 when he visited Kundeshwari Complex to express his gratitude to Nutun Chandra Singha's family after return to Bangladesh on 6<sup>th</sup> January, 1972. This witness has also identified the accused in the dock.

**98.** In cross-examination he has reiterated the version which he has stated in his deposition. He has replied that Nutun Chandra's two sons were involved with pro-liberation activities even before the war of independence began. He heard the full description of event of killing of Nutun Chandra from P.W-5 Profulla Chandra Singha, a son of Nutun Chandra Singha.

**99.** P.W-3 Siru Bangalee has stated in chief that he heard the material facts of killing of Nutun Chandra from a freedom-fighter named Bivuti Vushan of Gohira area under Rawjan Police Station (Bivuti Vushan's identification was given by P.W-4 as well). He has testified that Bivuti was in Khagrachari when he entered into Bangladesh from India on 20.10.1971 and Bivuti told him about the conversation held between Nutun Chandra and Pakistani army which he overheard from the branch of a tree near the Kundeshwari Complex. According to him, the army officer became astonished to hear that Nutun Chandra himself considered Pakistan as his motherland and did not want to leave the country and wanted to die if

necessary and after that the officers left the premises. Soon after their departure, accused Salauddin Quader Chowdhury returned with 2/3 soldiers and ordered them in Urdu to kill Nutun Chandra. Salauddin Quader Chowdhury himself shot Nutun Chandra by using 2/3 rounds of bullet after he had fell down on the ground sustaining bullet injury by Pakistan army.

**100.** In cross-examination the above version as to the commission of criminal acts of killing remains totally undisturbed. Defence has simply suggested that being influenced and tutored by prosecution he has given false evidence against the accused in the false case rather this witness has corroborated the testimony of P.Ws-4 and 14 on the material facts of event leading to the killing of Nutun Chandra by accused Salauddin Quader Chowdhury.

**101.** A paper clipping of “Dainik Bangla” dated 13<sup>th</sup> April, 1972 has been marked as exhibit -16 where it reported as under:

“১৩ই এপ্রিল পাকিস্তান বাহিনী কুন্ডেশ্বরী ভবনে প্রবেশ করে। তাদের পথ দেখিয়ে এনেছিল কুখ্যাত ফজলুল কাদের চৌধুরীর বড় ছেলে সালাউদ্দিন (এখন লন্ডনে)। সে পাক হানাদারদের বলে যে বাবার নির্দেশ আছে নতুন চন্দ্র সিং ও তার ছেলেদের মারতে হবে।

ছেলেরা পালিয়ে গিয়েছিল আগেই বাবু নতুন চন্দ্র সিং তখন মন্দিরে প্রার্থনা করছিলেন। সালাউদ্দিন তাকে সেখান থেকে টেনে হেঁচড়ে বাহিরে নিয়ে এসেছিল। তার চোখের সামনে মন্দির উড়িয়ে দিয়েছিল। তারপর তাকে হত্যা করা হয়েছিল নৃশংসভাবে। মেজর ৩টি গুলি করার পরও সালাউদ্দিন রিভলবারের গুলি ছুঁড়েছিল নতুন বাবুর দিকে। তিনি লুটিয়ে পড়েছিলেন তেমনি মুখ খুবরে পড়েছিলেন ৩(তিন) দিন। সেখানে এখনও কালচে রক্তের দাগ চোখে পড়ে।”

**102.** Similar information has been recorded against accused Salauddin Quader Chowdhury by mentioning his name in বাংলাদেশের স্বাধীনতা যুদ্ধ দলিলপত্র, অষ্টম খণ্ড at page 465 which is now a part of historical document of painful birth of independence of Bangladesh.

**103.** The news of killing of Principal Nutun Chandra by accused Salauddin Quader Chowdhury was also published in the “Daily Azadi” dated 03.12.1997. Regarding killing of Nutun Chandra by Salauddin Quader Chowdhury was also published in the Daily “Vorer Kagoj” dated 13<sup>th</sup> April, 2007 which reported that Salauddin Quader Chowdhury shot Nutun Chandra by using three bullets when Nutun Chandra Singha fell down on the ground sustaining bullet injury from the army soldiers.

**Evaluation of evidence and finding:**

**104.** The prosecution has mainly examined two eye witnesses namely Gourango Singha as P.W-4 and Gopal Chandra as P.W-14 to prove the charge. To support and corroborate the evidence of the aforesaid two witnesses the prosecution has adduced and examined 4(four) other witnesses who heard the killing of Nutun Chandra Singha by the accused and others on 13<sup>th</sup> April, 1971 between 9.00 to 10.00 a.m. Prosecution has also submitted some documentary evidence relating to the involvement of the accused published in the news paper as well as historical document and a police case.

**105.** On the other hand, the defence counsel has claimed that the accused has been involved in a politically motivated case. The accused was not involved with the commission of crimes as alleged in the charge as he was

not in the country when the alleged occurrence took place. The defence has further argued that the witnesses examined by the prosecution are not credible after long passage of time.

**106.** It is true that for the reason of long passage of time human memory may be faded or betrayed. Now let us assess what evidence the eye witnesses have provided in support of the instant charge. P.W-4 has testified that he used to accompany his uncle deceased Nutun Chandra Singha all the time and supervise his house-holds chores. On 13<sup>th</sup> Chaitra, when they were talking about leaving of Nutun Chandra Singha a military car reached Kundeshwari Complex wherefrom Salauddin Quader Chowdhury and others including Pakistani occupation forces got off. He along with one another then escaped towards the jungle when Gopal Chandra Das and Brojohari Kormakar went into hiding on the first floor of the Kundeshwari Complex. From where they witnessed that Salauddin Quader Chowdhury along with some Bangalees and Panjabee military entered the complex and had left the place after having some talks with Nutun Chandra Singha. Soon after their departure, accused Salauddin Quader Chowdhury along with others came back and pulled Nutun Chandra out of the temple and Pakistani army opened fire arms at Nutun Chandra Singha while Salauddin Quader Chowdhury shot him two minutes later.

**107.** In cross-examination the above version as to the commission of destructive criminal acts of killing remains totally unshaken. On the contrary, this prosecution witness has reiterated his version of examination-

in-chief that on the day of alleged occurrence Nutun Chandra Singha worn new clothes in the morning. Nutun Babu used to stay in the ground floor of the building while his (Nutun Babu) two sons namely Satya Babu and Profulla Babu were staying on the first floor of the same building. Regarding stay of deceased Nutun Chandra Singha and Satya Chandra has been confirmed in reply to a question put to Profulla Chandra Singha by the defence.

**108.** This witness in cross-examination has confirmed that his brother Satya Babu lodged a criminal case being Rawjan Police Station Case no.42(1) 72 (marked as exhibit-32) regarding killing of his father Nutun Chandra Singha. P.W-14 being an eye witness has given evidence corroborating P.W-4 that he and Brojahori witnessed the whole events through the window of Brojahori's room, the 1<sup>st</sup> floor of the Complex that the accused Salauddin Quader Chowdhury with others had talks with Nutun Chandra Singha, sometimes after their departure from there, they came back and entered the temple of the Kundeshwari Complex fromwhere they pulled out Nutun Chandra Singha forcibly in the courtyard. And they opened fire at him who fell down on the ground sustaining bullet injury. To confirm his death Salauddin Quader Chowdhury used two or three rounds of bullet on Nutun Chandra Singha by his pistol or revolver as he had instruction from his father to kill Nutun Chandra Singha. Here, we find that this version of evidence has corroborated the evidence of P.W-4 by the same tune as they had seen direct participation of the accused in the killing of Nutun Chandra.



Now the pertinent question may be raised from the sensible person why Nutun Chandra Singha was targeted to be killed by the accused under instruction of his father Fazlul Quader Chowdhury. It is crystal clear evidence along with common knowledge that Nutun Chandra Singha was a very popular man in the country, especially in Chittagong, who by giving his efforts established many institutions including school, college and also a renowned Kundeshwari Owshodhalay. His contribution especially to the Hindu communities made him more popular. In the event of any political or social or any election his opinion to the communities was a vital factor which might reflected in defeating the father of the accused in the national election held in 1970. Such revenge caused to be ferocious in the killing of Nutun Chandra Singha by the accused and others. It is evidenced on record that after 25<sup>th</sup> March 1971 when the Liberation War began, many pro-liberation people including around 50 University teachers and their family members took shelter in the Kundeshwari Complex, school and college at the behest of Sree Nutun Chandra Singha. For which he was targeted to be finished forever. P.W-5 Profulla Chandra Singha, son of deceased Nutun Chandra Singha who was not in the crime site at the time of occurrence as he deported to India but he heard about his father's killing on 13<sup>th</sup> April, 1971 around 4.00 p.m from Jyotish Dhar, Head Master of Rawjan High School, at Ramgarh border. He also heard full description of how his father was killed by Salauddin Quader Chowdhury and others from both Gourango Chandra (P.W-4) and Gopal Chandra Dhar (P.W-14) after return from India. His

version of evidence is quite identical to P.W-4. He has also stated in his evidence that his brother filed a criminal case being Rawjan Police Station Case No. 41(1) 72 in which police submitted charge sheet against accused Salauddin Quader Chowdhury and others after conclusion of investigation. In cross-examination this witness has vividly given description of the Kundeshwari Complex in which the occurrence took place. Dr. Anisuzzaman popularly known as Emeritus who as P.W-1 has given evidence regarding killing of Nutun Chandra by Salauddin Quader Chowdhury. This witness along with other University teachers took shelter in Kundeshwari Complex after 25<sup>th</sup> March, 1971 immediate after beginning of the Liberation War which proves that Sree Nutun Chandra Singha as a high social personality used to provide his hands to the men who fall in any danger which caused him targeted. This witness has also supported the evidence of P.W-5 Profulla Chandra that on 20 April or 22 April in 1971 when they met each other at Ramgarh he wanted to know from Profulla about his father then he replied that his father was killed in the hands of accused Salauddin Quader Chowdhury along with Pakistan invading force and others. The description of events of killing of Nutun Chandra Singha as deposed by P.W-1 is quite identical with that of which P.W-5 heard from P.W-14 Gopal Chandra Das and others. P.W-3 Siru Bangalee has also stated that he heard the material facts of killing of Nutun Chandra from a freedom-fighter named Bevuti Bushon of Gohira whose identification has been given by P.W-4 that accused Salauddin Quader Chowdhury ordered Pakistani

soldiers in Urdu to kill Nutun Chandra Singha. Salauddin Quader Chowdhury himself shot at Nutun Chandra by using two or three rounds of bullet after he fell down on the ground sustaining bullet injury by army soldiers. This witness has also corroborated his examination-in-chief and depositions of P.Ws.4 and 14 on the material facts of events leading to the killing of Nutun Chandra by accused Salauddin Quader Chowdhury and thereby the defence has failed to dislodge his version of deposition.

**109.** P.W-18 Debobrato Sarkar while giving his testimony has told before the Tribunal that on 13<sup>th</sup> April 1971 an incident took place on Nutun Chandra Singha. This version of evidence also has confirmed the killing of Nutun Chandra at the time and date as alleged by the prosecution. It has revealed from exhibit-16 that contains the news of killing of Nutun Chandra was published on his first death anniversary which shows the direct complicity of the accused in the killing of Nutun Chandra Singha. Similar involvement of the accused has also been recorded at page 465 in বাংলাদেশের স্বাধীনতা যুদ্ধ দলিলপত্র, অষ্টম খন্ড published in 1984, reported first time in 2003 and further reported in June,2009,which is now a part of historical document.

**110.** Though P.Ws. 1, 3,5 and 18 have been examined as hearsay witnesses by the prosecution but their testimonies have carried reasonable probative value as they had opportunity to know what they have deposed in a same tune relating to the fact of killing of deceased Nutun Chandra by the accused and his accomplices in Kundeshwari Complex. Rule 56(2) of the ROP states that “ The tribunal shall also accord in its discretion due consideration to

both hearsay and non-hearsay evidence, and the reliability and probative value in respect of hearsay evidence shall be assessed and weighed separately at the end of the trial". Therefore, on evaluation of the hearsay evidence we do not find any reason to disbelieve the above mentioned hearsay witnesses by whose testimonies do not appear to have been stained by any flaw. Rather these testimonies have supported the direct evidence adduced by prosecution eye-witness nos. 4 and 14. We do not find anyone who has come forward to testify that Nutun Chandra Singha was not killed on the alleged day between 9.00 to 10.00 A.M, by the perpetrators. It appears from the evidence that a good number of witnesses have identified the accused in the dock as they saw the accused at different crime sites in 1971. Now the question may be raised when the occurrence took place at that time Salauddin Quader Chowdhury was 21 to 22 years old. Since he was not a renowned political figure, how he was identified as Salauddin Quader Chowdhury as claimed by the defence. According to D.W-1 it is an admitted fact that late Fazlul Quader Chowdhury was elected V.P of Carmichael hostel in Calcutta and he served in the highest office in the Federation of Pakistan as acting President and Speaker of the National Assembly of Pakistan. Nevertheless, he was the Prime leader of Convention Muslim League and was elected several times as people's representative from the locality. It is presumed for such reasons his family members were being naturally known to everybody of his locality. At the relevant time the identification of Salauddin Quader Chowdhury being the son of late A.K.M

Fazlul Quader Chowdhury was to be very easier than anything else. So his identification in the crime scene by the witnesses is not improbable or unbelievable. As per defence evidence, accused was involved in helping some pro-independence leaders and press secretary of Bangabandhu, even his father's house at Dhanmondi was used by the then central student leaders to hold meetings for launching anti-Ayub movement. It is interesting to note that as soon as the declaration of Independence was made by Bangabandhu, the accused left for West Pakistan on 29 March, 1971 for taking higher education as claimed by him. It is a fact of common knowledge that after crack down by the Pakistan army in the night following 25<sup>th</sup> March 1971, the whole nation became panic-stricken and was in a fix. In such a critical situation the claim made by the defence that the accused left for West Pakistan on 29<sup>th</sup> March, 1971 creates a reasonable doubt as to its reliability. Such plea of alibi taken by the defence at least goes to prove that the accused was never a supporter of the pro-liberation movement of Bangladesh, rather he was loyal to Pakistani and supporter of Pakistan occupation forces as his father did on that score.

**111.** It is also a fact of common knowledge that pro-liberation Bangalee civilian Hindu Community was the main target of the perpetrators in 1971. It is proved that on 13<sup>th</sup> April, 1971 in the morning the Pakistani army accompanied by accused Salauddin Quader Chowdhury directed the attack on unarmed civilian Nutun Chandra Singha of Kundeshwari Harbal factory and killed him as a part of pre-plan.

**112.** Upon scrutiny of the evidence adduced by P.W-5 it is found that P.W-4 Gorango Singha and P.W-14 Gopal Chandra Das as eye witnesses of the occurrence have categorically proved the active participation of the accused in killing of Nutun Chandra Singha on 13.04.1971. P.W-1 Dr.Anisuzzaman, P.W-3 Siru Bangalee, P.W-5 Profulla Singha ( son of Notun Chandra Singha) and P.W-18 Deborato Sarker as hearsay witnesses have corroborated material facts of the evidence adduced by P.Ws-4 and 14 and as such the hearsay evidence adduced by the witnesses have got probative value. Moreover, old documentary evidence have corroborated the prosecution case in toto. A paper clipping of Dainik Bangla dated 13<sup>th</sup> April,1972 (exhibit-16) produced earlier goes to prove that accused actively participated in the attack directed against Nutun Chandra Singha and he also killed him by revolver shot. Photocopies of Ejahar registered as Rawjan Police Station Case No. 41 dated 29.01.1972 shows that the case was filed against Salauddin Quader Chowdhury and others for killing Nutun Chandra Singha during war of liberation. Besides this, some fact has been recorded at page 465 in Bangladesh Shadinata Judder Dalil patra, 8<sup>th</sup> volume which also corroborates that accused Salauddin Quader Chowdhury was one of the killers of Nutun Chandra Singha.

**113.** We hold that the oral evidence coupled with documentary evidence discussed above, have proved beyond reasonable doubt that accused Salauddin Quader Chowdhury with the help of Pakistani army in a pre-planned way killed civilian Nutun Chandra Singha on 13.04.1971 at

Kundeshwari, Chittagong. He is also found criminally liable for his presence and participation in the killing of Nutun Chandra Singha under section 4(1) of the Act. It is well proved that the accused substantially contributed to the killing of Nutun Chandra Singha as crimes against humanity as specified in section 3(2)(a) of the Act.

### **Adjudication of Charge No. 04**

**[Committing the offence of genocide , and also persecution on religious ground and deportation as crimes against humanity]**

**114. Summary charge:** On 13<sup>th</sup> April, 1971 at about 10.30 to 11.00 a.m. accused Salauddin Quader Chowdhury along with his accomplices and Pakistani Army raided the area of Jogotmollopara belonging to Hindu community and then one of the military men opened fire to the innocent village people assembled in the courtyard of Kiron Bikash Chowdhury, and as a result 32 Hindu people were killed and 3 persons were seriously injured. Besides, the houses were looted and destroyed by fire and some people had to deport to India as refugees to take shelter there. Thus, the accused has been charged for commission of offences as specified in section 3(2)(a), 3(2)(c)(i) and (ii),3(2)(g) and (h) of the Act.

### **Discussion of evidence:**

**115.** P.W. 3 Sirajul Islam alias Siru Bangalee has deposed that he heard from Captain Karim that on 13<sup>th</sup> April from morning to evening accused

Salauddin Quader Chowdhury in collaboration with the Pakistani Army attacked and massacred in the Hindu villages namely, Gohira, Sultanpur, Jogotmollopara, Unsatturpara and neighbouring palces only out of religious grudge.

**116.** P.W. 3 in cross-examination has stated that Captain Karim was killed in the month of September, 1971. He has denied the defence suggestion that Captain Karim did not tell him the occurrence what he has stated in his examination-in-chief. He has also denied the defence suggestion that he has deposed falsely against the accused.

**117.** P.W. 12 Arunangshu Bimol Chowdhury has testified that his village home is situated at Sultanpur, Jogotmollopara, under police station Rawjan, district Chittagong. He used to practise as a doctor at Ranirhat of Rangunia. On the date of occurrence, the Chairman of Rajanagar, Rangunia, Kaikobad Chowdhury having gone to his shop asked him to go along with his family members two miles away from the road. Accordingly, he along with his family members went to his father-in-law's house at Binajuri. He has further testified that two hours after reaching Binajuri, he heard that all the people of Jogotmollopara were killed by gun shots, and he wanted to visit the place and on his way found his sister-in-law (elder brother's wife) Jotsna Bala Chowdhury injured with bullet, and then he brought her to Binajuri where her parents' house was also situated and in the meantime looting was started in Binajuri as well. Thereafter, he went to India along with his family members. After Liberation War, they came back to their village home and



found everything destroyed. P.W. 12 has also testified that during Liberation War, his elder brother Himangshu Bimol Chowdhury, sister-in-law, Nilu Bala Chowdhury, another brother Premangshu Bimol Chowdhury and his wife Jotsna Bala Chowdhury, another brother Shitangshu Bimol Chowdhury, uncle Surendra Bijoy Chowdhury and his wife Charu Bala Chowdhury, another brother Kiron Chandra Chowdhury and many others were killed. He has further testified that those persons were killed in his house, and he also heard that one month after of that killing, another three persons were also killed. There is a monument made in memory of the martyrs who were killed in Jogotmollopara and the names of the martyrs are also written on it. It may be mentioned here that the defence declined to cross-examine this witness.

**118.** P.W. 13 Ashish Chowdhury has stated that on 13<sup>th</sup> April, 1971 his father sent him along with his mother and sisters to his aunt's house at Binajuri village as his father was apprehending military attack on their own house. On the same day, at about 2.00/2.30 p.m. his maternal uncle Arbindu Sing came to that aunt's house and informed them that accused Salauddin Quader Chowdhury along with local Muslim League followers and Pakistani Army had attacked their house and killed by gun shot about 30/35 persons including his (P.W. 13) father Premangshu Bimol Chowdhury, elder brother Ashok Kumar Chowdhury, aunt Monorama Chowdhury, uncle Shitangshu Bimol Chowdhury, cousin brother Shomir Chowdhury and other persons of his family and village, and he also informed them that his (P.W.13) another

aunt Jotsna Bala Chowdhury, neighbour Amolendu Bikash Chowdhury along with many others were also injured after that attack. P.W.13 has further stated that his said maternal uncle, two sisters, mother and he himself went to Baruapara for shelter, and thereafter they went to India as refugees, and after Liberation they came back to their village home and found their houses fully burnt and destroyed and heard from his aunt Jotsna Bala Chowdhury, neighbour Amolendu Chowdhury, uncle Shontosh Ranjan Chowdhury that accused Salauddin Quader Chowdhury along with Muslim League followers and Pakistani Army killed those 30/40 persons by gun shots in their courtyard and his aunt Jotsna Bala Chowdhury, neighbour Amolendu along with other people of their para were injured. He has further stated that he also heard that one month after of the said occurrence, followers of accused Salauddin Quader Chowdhury came to their house and abducted Bijoy Krishno Chowdhury, Bibhuti Bhushon Chowdhury and Hirendra Chowdhury and subsequently killed them in the side of Dabua Khal, and in memory of all those martyrs a monument was made in Jogotmollopara on 18<sup>th</sup> July, 2008 and the names of the martyrs are also written on it. He has also stated that his aunt Jotsna Bala Chowdhury is now bed-ridden.

**119.** P.W.13 in cross-examination has stated that he also heard about the occurrences from his uncle Dr. Arunangshu (P.W.12). He made his statement on 08.04.2011 before the investigation officer who visited their

house 5/6 times. He denied the defence suggestion that he has deposed falsely as being tutored by the prosecution and the witness Profullah.

**120.** Ext. 95 is the statement of the witness Jotsna Bala Chowdhury, who is now dead, recorded by the investigation officer, has been received in evidence by this Tribunal under section 19(2) of the Act, 1973. She has stated in her statement that on 13<sup>th</sup> April, 1971 at about 10.30/11.00 a.m. Pakistani Army came to their para, and sometime before that two Bangalees had come there and brought out her and her husband Kiron Chowdhury along other people of that para from their houses and assembled them in the courtyard of their houses in the name of a peace meeting to be held there. The Pakistani Army having come there suddenly started firing on them, and as a result 30/35 persons along with her husband Kiron Chowdhury were killed and she was also shot at her left rib bone. Besides, her neighbour Amolendu and many others were also injured. She has further stated in her said statement that thereafter her neighbour brother-in-law Arunangshu Bimol Chowdhury (P.W. 12) brought her to her parents' house in Binajuri and thereafter she went to India. She has also stated that at the time of said occurrence accused Salauddin Quader Chowdhury was also with the Army men. The accused and the Pakistani Army also burnt their house when they left the place of occurrence.

**121.** Ext. 29 is a paper clipping of the local daily newspaper, Suprovat Bangladesh dated 04-07-2008, under the caption “৩৭ বছর পর রাউজানের জগৎমল্লপাড়া বধ্যভূমিতে স্মৃতিসৌধ হচ্ছে”. The news contains the incident of the

alleged genocide committed by accused Salauddin Quader Chowdhury and the Pakistani Army on 13<sup>th</sup> April, 1971 in Jogotmollopara where around 47 people were killed and Jotsna Bala Chowdhury were badly injured. And now a monument is going to be made there in the memory of those martyrs. The relevant portion of the said news is quoted below:

“১৯৭১ সালের ১৩ এপ্রিল পাক-হানাদার বাহিনীর হত্যাযজ্ঞের লোমহর্ষক কাহিনী:

রাউজানের সুলতানপুর জগৎমল্লপাড়া গ্রামে ১৯৭১ সালের ১৩ এপ্রিল পাক-হানাদার বাহিনীর সদস্যরা কুন্ডেশ্বরী ঔষধালয়ের প্রতিষ্ঠাতা অধ্যক্ষ নূতন চন্দ্র সিংহসহ পার্শ্ববর্তী এলাকার ৪৭ জন নারী-পুরুষকে লাইন ধরে গুলি করে হত্যা করে। নির্মম এ হত্যাকাণ্ড থেকে বেঁচে যাওয়া ৮৭ বৎসরের বৃদ্ধা জ্যোৎস্না বালা চৌধুরী জানান, '৭১ সালের ১৩ এপ্রিল দুপুর ১২ টার সময় সালাউদ্দিন কাদের চৌধুরীর সহায়তায় পাক-হানাদার বাহিনীর একটি দল এলাকার নারী, পুরুষদের ডেকে এনে জ্যোৎস্না বালা চৌধুরীর স্বামীর ঘরের সামনে লাইন ধরে বসিয়ে নির্মমভাবে গুলি করে হত্যা করে। এতে ৪৭ জন ঘটনাস্থলেই নিহত হয়।

এদের মধ্যে বৃদ্ধা জ্যোৎস্না বালা চৌধুরী ও ৫৫ বৎসর বয়সের বাসিন্দা অমলেন্দু বিকাশ চৌধুরী গুলিবিদ্ধ হয়ে মাটিতে লুটিয়ে পড়েন। হত্যাযজ্ঞ শেষে লাশ ফেলে পাকহানাদার বাহিনীর সদস্যরা চলে গেলে গুলিবিদ্ধ জ্যোৎস্না বালা চৌধুরী ও অমলেন্দু বিকাশ চৌধুরীর জ্ঞান ফিরলে মারাত্মক আহত অবস্থায় তারা দুজনেই কৌশলে পালিয়ে প্রাণে রক্ষা পায়। গুলিতে নিহত ৪৭ জনের লাশ বিকালে পাক সেনারা পুনরায় ফিরে এসে বাড়ির পার্শ্বে মাটিতে গর্ত করে পুতে রেখে চলে যায়।”

### **Evaluation of evidence and finding:**

122. The prosecution has examined as many as 3 witnesses (P.W. Nos. 3, 12 and 13) and produced two documents namely Ext. 95, the statement of witness Jotsna Bala Chowdhury recorded by the investigation officer and

Ext. 29, a paper clipping of daily newspaper, Suprovat Bangladesh, dated 04-07-2008, to prove the charge no. 4 relating to committing the offence of genocide, and also persecution on religious ground and deportation as crimes against humanity. Among said 3 witnesses who have been examined, P.W. 12 Arunangshu Bimol Chowdhury and P.W. 13 Ashish Chowdhury are the members of the victim families. P.W.12 has stated that while he was staying at Binajuri he heard that all the people of Jogotmollopara were killed and when he was going to the place of occurrence, on his way, he found his sister-in-law Jotsna Bala Chowdhury (now dead) injured with bullet, and thereafter he went to India along with his family members. He has also stated that after Liberation War they came to their village home and found every thing destroyed, and during Liberation War his elder brother Himangshu Bimol Chowdhury, sister-in-law Nulu Bala Chowdhury, another brothers Premangshu Bimol Chowdhury, Kiron Chandra Chowdhury and Shitangshu Bimol Chowdhury, uncle Surendra Bijoy Chowdhury and his wife Charu Bala Chowdhury and many others were killed in their house. But P.W. 12 has not specifically implicated the accused with the said atrocities. P.W. 13 Ashish Chowdhury has also stated in line with the evidence of P.W. 12, but he has specifically implicated the accused with the said atrocities. P.W. 13 has stated that on 13<sup>th</sup> April, 1971 at about 2.00/2.30 p.m. he heard from his maternal uncle Arbindu Sing that accused Salauddin Quader Chowdhury along with local Muslim League followers and Pakistani Army had attacked their house and killed by gun shots about 30/35 persons

including his father Premangshu Bimol Chowdhury, elder brother Ashok Kumar Chowdhury, aunt Monorama Chowdhury, uncle Shitangshu Bimol Chowdhury, cousin brother Shomir Chowdhury and other persons of his family and village, and his another aunt Jotsna Bala Chowdhury along with many others were injured after that attack. He has also stated that thereafter they went to India as refugees, and after Liberation, they came back to their village home and found their houses fully burnt and destroyed and also heard from his above mentioned aunt Jotsna Bala Chowdhury (now dead), neighbour Amolendu Chowdhury, uncle Shontosh Ranjan Chowdhury about the atrocities committed in their house on 13-04-1971 as mentioned above. P.W. 3 Sirajul Islam alias Siru Bangalee is also a hearsay-witness who has indirectly corroborated the alleged occurrence implicating the accused stating that he heard from Captain Karim that on 13<sup>th</sup> April from morning to evening accused Salauddin Quader Chowdhury in collaboration with the Pakistani Army attacked and massacred in the Hindu villages namely, Sultanpur, Jogotmollopara, Unsatturpara and neighbouring places. P.W. 3 has stated in his cross-examination that said Captain Karim was also killed in the month of September, 1971.

**123.** Ext. 95 is the statement of the witness Jotsna Bala Chowdhury which has been received in evidence under section 19(2) of the Act, 1973. Having considered the legal aspects of the said statement of a witness, we are of the opinion that the statement of a witness received under section 19(2) of the Act, 1973 alone does not form the basis of conviction, but such statement

may be used as a corroborative evidence to prove a particular occurrence. In the instant case the said statement of the witness, Jotsna Bala Chowdhury, who is now dead, has corroborated the evidence of P.W. Nos. 3, 12 and 13 as discussed above. She was an eye-witness and herself was a victim. She has vividly narrated the alleged occurrence in her statement that on 13<sup>th</sup> April, 1971 at about 10.30/11.00 a.m. Pakistani Army killed about 30/35 persons in their courtyard along with her husband Kiron Chowdhury and injured herself, Amolendu and many others by gun shots, and thereafter she went to India. She has also stated that at the time of occurrence accused Salauddin Quader Chowdhury was also with the Army men. Ext. 29 is the paper clipping of the local daily newspaper, Suprovat Bangladesh, dated 04-07-2008. The news reported in Ext, 29 also corroborates the alleged occurrence and the statement made by the witness Jotsna Bala Chowdhury (Ext. 95) to the investigation officer as discussed above.

**124.** It may be reiterated that the witnesses (P.W. Nos. 3, 12 and 13) examined by the prosecution are all hearsay witnesses. Undeniably hearsay evidence is admissible but it is to be corroborated by other evidence. That is to say, hearsay evidence is to be considered together with the circumstances and relevant material facts depicted. Hearsay evidence is admissible and the court can act on it in arriving at decision on fact in issue, provided it carries reasonable probative value [Rule 56(2) of the ROP]. 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 (ICTY Trial Chamber), September 12, 2006, para 12].

**125.** Upon scrutiny of both oral and documentary evidence and the legal aspects as discussed above, we are inclined to hold that it is proved beyond reasonable doubt that on 13<sup>th</sup> April, 1971 accused Salauddin Quader Chowdhury along with his accomplices and Pakistani Army opened fire on the unarmed Hindu civilian people in the courtyard of Kiron Bikash Chowdhury of village Jogotmollopara and as a result around 30/35 Hindu persons were killed and many persons were badly injured. Besides, the houses were looted and destroyed by fire and some people had to deport to India as refugees to take shelter there. They committed the said atrocities with intent to destroy, in whole or in part, the members of Hindu religious group which is genocide. The act of looting and destroying houses by fire is considered as persecutions as crimes against humanity, and the accused also conspired to commit the said offence and he also had complicity in that offence. Thus, accused Salauddin Quader Chowdhury is criminally liable under section 4(1) of the Act, for substantially contributing to the



commission of the offence of genocide as specified in section 3(2)(c)(i) and (ii), 3(2)(g) and (h) of the Act and also persecutions on religious ground and deportation as crimes against humanity as specified in section 3(2)(a) of the Act which are punishable under section 20(2) of the Act.

### **Adjudication of Charge No.5**

#### **[Committing the offences of genocide and persecution as crimes against humanity at Bonikpara, Sultanpur]**

**126. Summary Charge:** On 13<sup>th</sup> April 1971 around 1.00p.m accused and his accomplices led the Pakistani invading force entered Bonikpara at Sultanpur and opened fire upon unarmed civilian Hindu people pursuant to pre-arranged plan and thereby killed (1)Nepal Chandra Dhar, (2) Monendra Lal Dhar,(3) Opendra Lal Dhar, and (4) Anil Baran Dhar. The houses of Bonikpara were set on fire by the accused who left the scene thereafter and thereby the accused has been charged for physical participation and also for substantially contributing to the commission of offence of genocide as specified in section 3(2)(c)(i) and persecution as crimes against humanity under section 3(2)(a) of the Act.

#### **Discussion of evidence:**

**127.** P.W. 22 Anil Boran Dhar as victim as well as an eye witness of the occurrence has deposed before the Tribunal that on 13<sup>th</sup> April around 1.00/ 1.30 p.m. Salauddin Quader Chowdhury, some followers of his father and Pakistani army personnel entered Bonikpara on chanting slogans and

arriving at their house dragged him along with his father Opendra Lal Dhar from their room to the courtyard.

**128.** At that time his uncles Monendra Lal Dhar and Nepal Chandra Dhar were also present in the courtyard. Perpetrators lined them up in a row and opened fire towards them. They all fell down on the ground but he became senseless instantly. He got his sense back after a long time and he found himself injured in his left hand and left side of his back. He also found his father and two others dead lying on the ground. Then he managed to go to his maternal uncle's house in Fatikchari and got admitted in Chittagong Medical College with the help of Dr. Jafor. Lower part of his elbow was cut off and bullet was taken out from his back during treatment. As a result, he became maimed permanently.

**129.** He subsequently heard that the dead body of his father and two others were buried by some neighbouring Muslims in the mass graveyard situated at the courtyard of Tezendralal Biswas. Upon getting release from hospital he also heard that on 13<sup>th</sup> April similar genocide was committed in Moidha Gohira, Gohira, Biswas para, Kundeshwari, Jogotmollo para and Unsattur para. On that day a neighbour Umesh Chandra Biswas was also killed at his own house. A criminal case was lodged by him with Rawjan police station against accused Salauddin Quader Chowdhury and others. He has identified accused Salauddin Quader Chowdhury in the dock.

**130.** In cross-examination, he has replied that he lodged Rawjan Police Station Case No. 05 dated 05.04.1972 under sections 148/149/302/34 of the

Penal Code against 16(sixteen) persons including accused Salauddin Quader Chowdhury. They were lined up in a row when fire was opened. Monindra Lal Dhar was beside him among the four persons in the row. He cannot say on what part of the bodies of three other persons had been hit, because he became senseless. Those three persons died and he got back his sense around 3.00/4.00 p.m. He has denied the defence suggestions that he did not receive bullet injuries on 13 April, 1971 or he did not see the accused at the place of occurrence on that day.

**131.** P.W. 3 Siru Bangalee has testified that on 13<sup>th</sup> April, 1971 under the leadership of accused Salauddin Quader Chowdhury, Pakistani invading forces committed genocide and persecuted numerous Hindu people targeting religious group in the village of Gohira, Sultanpur, Jogotmollo para, Unsattur para and nearby places. They also looted, plundered houses and committed rape upon abducted young girls on the same day.

**132.** In cross-examination he has replied that he heard from Captain Karim regarding genocide in Rawjan, Sultanpur, Jogotmollo para, Unsattur para, Kundeshwari Complex and abduction of Sheikh Mozaffar and his son.

**133.** The statement of Badal Biswas submitted by the prosecution under section 19(2) of the Act has been marked as exhibit -98. In the said statement Badal Biswas stated that on 13<sup>th</sup> April, 1971 around 1.00 p.m accused Salauddin Quader Chowdhury, Fazlul Quader Chowdhury and some others including Panjabee soldiers with Pakistani flag entered their area chanting slogans as “পাকিস্তান জিন্দাবাদ, ফজলুল কাদের চৌধুরী জিন্দাবাদ ” etc.

Thereafter, they had entered the house of Opendra Dhar, Monindra Dhar, Nepal Dhar and Onil Dhar and brought them out of the house and fired at them. This witness has stated further that Onil sustained severe injury and rest of them died instantly. On seeing this, he along with his brother had gone into hiding in a jungle behind the back of their house. Then the accused went inside their house and killed his ailing father too bringing him out in the courtyard. Being afraid of, they left the place and came back to their house on the following day of the occurrence where they found the dead bodies of Opendra Dhar, Nepal Dhar, Monindra Dhar and his father lying on the ground. He along with his brother buried their father's dead body near on the bank of a pond of their house and then they left for India for taking shelter as refugees.

**Evaluation of evidence and finding:**

134. Upon scrutiny of the evidence discussed above, it is found that P.W. 22 Anil Baron Dhar as a victim and eye witness of the occurrence has testified that on 13 April 1971 at about 1.00/1.30 p.m. accused Salauddin Quader Chowdhury, some followers of his father and Pakistani invading forces entered Bonikpara. These perpetrators lined up them including his father in a row and opened fire at them. They all fell down on the ground and he became senseless instantly. He luckily survived but three others including his father died on the spot. Subsequently, his elbow had been amputated from his hand and a bullet was taken out from his back during his treatment resulting that he became maimed permanently.

**135.** According to the aforesaid evidence, it reveals that the father of P.W-22 along with two others was shot dead on the spot where accused Salauddin Quader Chowdhury was physically present at the time of killing those unarmed civilians.

**136.** We have already settled the issue regarding statement of a witness received in evidence under section 19(2) of the Act in the case of Delowar Hossain Sayeedi. It has been held that no one can be held criminally responsible solely on the basis of such statement of a witness received in evidence under section 19(2) of the Act but such statement may be used as corroborative evidence to prove a particular occurrence.

**137.** On perusal of the statement of Badal Biswas (Exbt. No. 98) received in evidence under section 19(2) of the Act, it is found that this statement has corroborated the evidence adduced by eye-witness P.W. 22 Anil Baran Dhar on material facts of the occurrence.

**138.** P.W. 3 Siru Bangalee is a hearsay witness but he has testified that he heard the occurrence from Captain Karim to the effect that accused with the aid of Pakistan army directed attack on Hindu Community as a religious group at village Sultanpur and other nearby villages with intent to destroy in whole or in part of Hindu Community . Though the evidence of P.W. 3 is hearsay but it carries probative value as it corroborates material facts of the occurrence. He has corroborated the testimony of eye-witness P.W. 22 on material points as to presence and participation of the accused in the commission of offence.

**139.** Mr. Ahsanul Huq Hena, the learned defence counsel has submitted that after the War of Liberation , two murder cases being Rawjan P.S. Case Nos. 4 and 5 dated 05.04.1972 (Exbt. Nos. 32(3) and 32(4)) were filed against Salauddin Quader Chowdhury and others in respect of occurrence of Jogotmollo para and Sultanpur but police submitted final report after investigation and as such the charge No. 5 has been proved false and baseless.

**140.** We do not agree with the submissions made above by the defence counsel. In reply, it can be said that ICT Act of 1973 is a special law dealing with International Crimes namely crimes against humanity, genocide, war crimes and other system crimes and as such any ordinary criminal offence or its investigation report shall not stand as a barrier on the way of holding trial of those special crimes as mentioned above. Accordingly, this prosecution under the Act of 1973 cannot be said to be barred by any doctrine of double jeopardy.

**141.** After assessing the evidence on record, we are inclined to hold that the prosecution has been able to prove this charge No. 5 beyond reasonable doubt that the accused with intent to destroy in whole or in part the members of Hindu community actively participated in the killing of unarmed civilians of village Sultanpur and thereby substantially contributed in the commission of genocide as specified in section 3(2)( c )(i) of the Act.

**Adjudication of Charge No.06:**

**[Committing the offence of genocide at Unsattur para and deportation as crimes against humanity]**

**142. Summary charge:** On 13<sup>th</sup> April, 1971 at about 4.00 to 5.00 p.m. accused Salauddin Quader Chowdhury along with some of his accomplices led the Pakistani Army and attacked Unsattur para, a Hindu populated area, under P.S. Rawjan and brought the local Hindu people to the bank of the pond behind the house of Khitish Mohajan telling them to attend a peace meeting, and after that in presence of the accused, they brush fired upon them and thereby killed Chandra Kumar Paul and 49 others and also unknown 19/20 unarmed civilian persons. Besides, from the said occurrence Januti Bala Paul got gunshot injuries in her waist and the general Hindu people took shelter in India as refugees. Thus, the accused has been charged for commission of offences as specified in section 3(2)( c) (i) and (ii) and 3(2)(a) of the Act.

**Discussion of evidence:**

**143.** P.W. 3 Sirajul Islam alias Siru Bangalee has testified that he heard from Captain Karim that on 13<sup>th</sup> April from morning to evening accused Salauddin Quader Chowdhury in collaboration with the Pakistani Army attacked and massacred in the Hindu villages namely, Gohira, Sultanpur, Jogotmollo para, Unsattur para and neighbouring places only out of religious grudge. They also burnt and looted their houses and took young girls to Pakistani Army for their sexual pleasure.

**144.** P.W. 3 in cross-examination has stated that Captain Karim was killed in the month of September, 1971. He has denied the defence suggestion that Captain Karim did not tell him the occurrence what he has testified in his examination-in-chief. He has also denied the defence suggestion that he has deposed falsely against the accused.

**145.** P.W. 7 Abbas Uddin Ahmed has deposed that he is the sitting Chairman of no. 10 Gujra Union Parishad under Rawjan police station, and in 1971 he was a 1<sup>st</sup> year student of Chittagong Government College, and at that time he used to live in his village home at Unsattur para which is a Hindu populated area and he was co-operating with the freedom-fighters. On 11<sup>th</sup> April, 1971 at about 3.00 p.m. the chief of Muslim League, Fazlul Quader Chowdhury and his sons accused Salauddin Quader Chowdhury and Giasuddin Quader Chowdhury were roaming in their Vox Wagon car. Because of check-post barricade, they asked them to get down off the car, but having not got down they started shouting and left the place. He has further deposed that the next day, on 12<sup>th</sup> April the Chairman of Pahartoli Union Parishad came to Unsattur para and asked Dr. Nironjon Datta Gupto to call back all the Hindus of that village who had already left the place, and later in response to the call of Dr. Gupto the Hindus came back to their village. On the following day, on 13<sup>th</sup> April at about 4.00 p.m. Muktul Hossain, Piaru and Barmar Yousuf came to their village and asked the Hindus to be assembled at one place as their leader would talk to them. At that moment his friend Babul Mali informed him (P.W.7) that Pakistani



Army had already arrived and asked all the Hindus to be assembled near the house of Khitish Mohajon. He then came out of his house with Babul Mali and found 2/3 vehicles of Pakistani Army going towards south, and then they started running towards their respective houses. After going about 200 yards, he (P.W.7) heard a big fire shot and found Babul Mali lying on the road, and just after that he heard the sound of brush firing coming from the south. On the next day in the morning they came to know that Dr. Nironjon Datta Gupto had committed suicide as all the Hindus came back to Unsattur para in response to his request and subsequently all of them were killed. P.W. 7 has also deposed that on 15<sup>th</sup> April he along with his 2/1 friends came to Unsattur para and found there the dead bodies of his friend Babul Mali and his father, and then they went to the house of Khitish Mohajon and found there 60/70 dead bodies and then they entered the said house and found the dead bodies of two pregnant women whose babies almost came out half of their wombs, and then they digged a big hole and buried all the dead bodies therein. He has further deposed that it was told in their locality that accused Salauddin Quader Chowdhury was involved with the said genocide.

**146.** P.W. 31 Sujit Mohajon has stated that on 13<sup>th</sup> April, 1971 he was sitting in the veranda of his house at village Unsattur para along with his father and elder brother, and at that time Pakistani Army along with some Bangalees entered their house and forcefully took his father, elder brother, mother Harilota Mohajon, aunt Manota Mohajon and sister-in-law Minoti

Mohajon to the bank of the pond of Kshitish Mohajon, and they also assembled many other people there. At about 4.30/5.00 p.m. he heard sound of brush firing. When every thing got silent he went to near the pond and found the dead bodies of his father Jogesh Chandra Mohajon and elder brother Ranjit Mohajon lying beside the tube-well, and he also found there another 60/62 dead bodies and her mother Horilota Mohajon with bullet injuries, and then he took her injured mother to Shilpara. After 2/3 days of the said occurrence, the neighbours buried all the dead bodies near the pond. He has further stated that when his mother got improved after 3/4 days, he heard from her that accused Salauddin Quader Chowdhury and his accomplices were present at the place of occurrence when the said atrocities were committed.

**147.** P.W. 31 in cross-examination has stated that after one hour of the occurrence he met his sister-in-law, aunt and sister, and at that time they did not tell him about the occurrence as his mother was injured. The mass killing was committed beside the tube-well which was 100 feet away from their house to the west and the bank of the pond was 150 feet away from the said tube-well. After the occurrence he did not go to the bank of the pond as he could see that place from the tube-well side. He has also stated in cross-examination that his mother died in the year 1990. He has denied the defence suggestion that no occurrence took place at Unsattur para on 13<sup>th</sup> April, 1971.

**148.** P.W. 32 Basanti Gosh has deposed that during Liberation War, 1971, one day when her husband was coming home from bazar, one Bangali and one Pakistani Army came to her house and abducted her husband and took him to the house of Kshitish Mohajon and killed him along with many other people. She has further deposed that after two days, her brother-in-law brought her husband's dead body to their house, and her husband's name is written in the monument made later in the house of Kshitish Mohajon. The defence declined to cross-examine this witness.

**149.** P.W. 37 Chapala Rani has stated that during the Liberation War, 1971, before the day of Chaitra Shankranti, at about 5.00 p.m. Pakistani Army attacked their village Unsattur para, and they took all of them including herself from door to door and then assembled them on the bank of the pond of Satish Mohajon, brother of Kshitish Mohajon. When they started crying, her brother-in-law Beni Madhab told them not to cry as Chairman Mokbul and accused Salauddin Quader Chowdhury were present there with the Pakistani Army. Just after that, Pakistani Army brush fired to them, and then she lost her sense and fell down on the ground. She has further stated that in that occurrence, her brothers-in-law Beni Madhob and Parapodo and her father Satish were killed. At about 7.00 p.m. when she got back her sense, she found her husband senseless, and then she took him to her house with the help of a Muslim neighbour. She has also stated that at the time of occurrence she saw accused Salauddin Quader Chowdhury at the place of occurrence. She has identified the accused in the dock.

**150.** P.W. 37 in cross-examination has stated that 10 years ago her husband died. At the time of occurrence no Muslim was killed at the place of occurrence. Her injured husband was treated by Dr. Aborno Bhatto who gave him a prescription. The houses of Kshitish Mohajon and Sujit Mohajon are situated in the same place. She has also stated that at the time of occurrence, Mokbul was the Chairman of their Union. She has denied the defence suggestion that no occurrence took place on the bank of pond of Kshitish Mohajon. She has also denied the defence suggestion that she did not see the accused at the place of occurrence on the date of occurrence.

**151.** Ext. 96 is the statement of the witness Janoti Bala Paul, who is now dead, recorded by the investigation officer, has been received in evidence under section 19(2) of the Act, 1973. She has stated in her statement that on 13<sup>th</sup> April, 1971, at about 4.00/5.00 p.m. Pakistani Army along with some Bangalis came to their village Unsattur para and took the said villagers, 2(two) persons of Hathhajari, herself, her brother Hemonto and other family members to the northern bank of pond of Kshitish Mohajon and fired shots to them, and then and there she, her brother, brother's father-in-law and her sister-in-law sat down on the ground. Around 60/70 people were killed in that incident. She was shot in her waist, her brother Hemonto's left hand got detached from his body due to fire shot and he died there after some time. She has further stated that it was the Bangalis who brought the Pakistani Army to their village and showed the Hindus, and then the Pakistani Army killed those Hindus. 3/4 days after the occurrence, villagers buried the dead

bodies in the western bank of the pond. At the time of occurrence accused Salauddin Quader Chowdhury was present with the Pakistani Army.

**Evaluation of evidence and finding:**

**152.** The prosecution has examined as many as 5 witnesses (P.W. Nos. 3, 7, 31, 32, and 37) and produced one document namely Ext. 96, the statement of witness Janoti Bala Paul, who is now dead, recorded by the investigation officer to prove the charge no. 06 relating to committing the offence of genocide and deportation as crimes against humanity. Among said 5 witnesses who have been examined, P.W.37 Chapala Rani claims herself as an eye-witness of the alleged occurrence and a victim as well, and as such she is a star witness of this case. P.W.37 has vividly narrated the alleged occurrence stating that at the time of occurrence Pakistani Army attacked their village Unsattur para and they took all of them from their houses including herself and then assembled them on the bank of the pond of Satish Mohajon, brother of Khitish Mohajon, and then Pakistan Army brush fired to them. She has further stated that in that occurrence, her brothers-in-law Beni Madhob and Taraopodo and her father Satish were killed, and she lost her sense and fell down on the ground and her husband also became senseless. She has also stated that at the time of occurrence she saw accused Salauddin Quader Chowdhury at the place of occurrence and she has identified the accused in the dock. In cross-examination, she has denied the defence suggestion that she did not see the accused at the place of occurrence. P.W. 31 Sujit Mohajon is also an eye witness of the alleged

occurrence. He has stated in line with the evidence of P.W.37. He has stated that at the time of occurrence Pakistani Army along with some Bangalis, in presence of him, forcefully took his father, brother, mother, aunt and sister-in-law from their house to the bank of the pond of Kshitish Mohajan, and they also assembled many other people there. At about 4.30/5.00 p.m. he heard sound of brush firing, and then he went to the place of occurrence and found there the dead bodies of his father and elder brother along with another 60/62 dead bodies and he also found her mother Horilota Mohajon with bullet injuries. He has also stated that thereafter he heard from his mother that accused Salauddin Quader Chowdhury and his accomplices were present at the place of occurrence when the said atrocities were committed. In cross-examination, he has stated that his mother died in the year 1990. P.W.7 Abbas Uddin Ahmed, the sitting local U.P. Chairman is also an eye witness of the alleged occurrence. He has also vividly narrated the alleged occurrence as narrated by other eye witnesses, P.Ws. 31 and 37. He saw 60/70 dead bodies at the house of Kshitish Mohajon, and he also saw two dead bodies of pregnant women inside the house of said Kshitish Mohajon whose babies almost came out half of their wombs. He has stated that it was said in their locality that accused Salauddin Quader Chowdhury was involved with the said genocide. P.W. 32 Basanti Gosh has stated that on the date of occurrence one Bangali and one Pakistani Army abducted her husband from their house and killed him at the house of Kshitish Mohajon along with many other people. P.W. 3 Sirajul Islam alias Siru Bangalee has

also stated that on the date of occurrence accused Salauddin Quader Chowdhury in collaboration with the Pakistani Army committed genocide in village Unsattur para along with other villages.

**153.** Upon scrutiny of the oral evidence of the witnesses as discussed above, we find corroboration among their evidence, and most of them are the eye witnesses of the alleged occurrence and some of them have specifically stated that accused Salauddin Quader Chowdhury was present with the Pakistani Army at the place of occurrence when the alleged atrocities were committed. Another witness namely Janoti Bala Paul was a very important witness, but she is now dead, and as such, her statement recorded by the investigation officer has been received in evidence under section 19(2) of the Act, 1973. Having considered the legal aspects of the said statement of a witness, we are of the opinion that the statement of a witness received under section 19(2) of the Act alone does not form the basis of conviction, but such statement may be used as a corroborative evidence to prove a particular occurrence. In the instant case the said statement of the witness Janoti Bala Paul has fully corroborated the evidence of the prosecution witnesses examined by the prosecution. She was an eye-witness and herself was a victim. She has clearly narrated the alleged occurrence as narrated by the other prosecution witnesses as discussed earlier. She has specifically stated in her said statement that at the time of occurrence accused Salauddin Quader Chowdhury was present with the Pakistani Army.

**154.** Mr. Ahsanul Haque Hena, the learned defence Counsel argued that none of the prosecution witnesses stated that the accused himself perpetrated any atrocities, rather some of the witnesses said that the accused only accompanied the Pakistani Army, and as such the accused by so-called mere accompanying the principal perpetrators i.e. the Pakistani Army, did not incur any criminal liability. Per contra, Ms. Tureen Afroz, the learned Prosecutor argued that a person who planned, instigated, ordered, committed or otherwise aided and abetted in the planning, preparation or execution of a crime, shall be individually responsible for the crime. She further argued that the Pakistani Army in a planned way with intent to destroy, in whole or in part, the members of Hindu religious group, committed the barbarous atrocities in Unsattur para on 13<sup>th</sup> April, 1971, and accused Salauddin Quader Chowdhury participated in some way in the said plan and that he intended the aim of the common plan, and as such the accused is criminally responsible for the alleged atrocities committed in Unsattur para.

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

“when any crime as specified in section 3 is committed by several persons, each of such person is



liable for that crime in the same manner as if it were done by him alone.”

**156.** JCE essentially requires the prosecution to prove that a group of people had a common plan, design, or purpose to commit a crime, that the accused participated in some way in the plan and that the accused intended the aim of the common plan. In other words, it may be explained that the basic mode of JCE liability arises when all participants shared the common intent to the concerned crime although only some of them may have physically perpetrated the crime. It is a responsibility for acts agreed upon when making the common criminal plan or purpose.

**157.** P.W. 3 Sirajul Islam alias Siru Bangalee has stated that Captain Karim told him that the accused’s father Fazlul Quader Chowdhury was defeated in the election of the National Assembly of Pakistan held in 1970 against a young candidate nominated by the Awami League, and as such, accused Salauddin Quader Chowdhury and his father and other members of his family had grudge against the Hindu minority community and out of that grudge they committed the atrocities in the Hindu villages including Unsattur para.

**158.** Considering both oral and documentary evidence and the legal aspects as discussed above, we are inclined to hold that it is proved beyond reasonable doubt that on 13<sup>th</sup> April, 1971, at about 4.00 to 5.00 p.m. accused Salauddin Quader Chowdhury along with his accomplices and Pakistani Army with a common plan attacked Unsattur para, a Hindu populated area

and killed 60/70 unarmed Hindu people at the bank of the pond behind the house of Khitish Mohajon and injured seriously many others. Besides, some people had to deport to India as refugees to take shelter there. This act was committed with intent to destroy, in whole or in part, by killing members of Hindu religious group which amounts to genocide by killing and causing serious bodily harm to members of Hindu religious group and deportation by forcing the people to take shelter in a foreign state India as refugees which is deportation as crimes against humanity. Thus, accused Salauddin Quader Chowdhury is criminally liable under section 4(1) of the Act, 1973 for substantially contributing to the commission of the offence of genocide as specified in section 3(2)(c)(i) and (ii) of the Act and also deportation as crimes against humanity as specified in section 3(2)(a) of the Act which are punishable under section 20(2) of the Act.

### **Adjudication of Charge No. 7**

#### **[Committing the offences of crimes against humanity relating to killing of Sotish Chandra Palit of Rawjan Paurashava]**

**159. Summary Charge:** On 14<sup>th</sup> April, 1971 at about 12.00 noon accused along with Pakistani Army entered the house of Sotish Chandra Palit who came out of the house at that time. While he was talking to the Pakistani army accused identified him as a dangerous man asking the Pakistani Army to kill him and accordingly the Pakistan Army shot him death and burnt the dead body along with his house. Thereafter, the other members of Sotish Chandra Palit deported to India for their safety and as such the accused has

been charged for the physical participation and also for substantially contributing to the actual commission of offence of crimes against humanity as specified in section 3(2)(a) and 3(2)(h) of the Act.

### **Discussion of Evidence:**

**160.** P.W. 28 Poritosh Kumar Palit has deposed that after getting information about the killing of Nutun Chandra Singha he went to their own house on 14<sup>th</sup> April, 1971 to see his father's condition. He requested his father to leave the house but his father did not agree to leave it rather his father advised him to move carefully. On the same day, he saw that Salauddin Quader Chowdhury along with Pakistani army were approaching towards their house. Being afraid of, he went into hiding in a nearby bush. He then saw Salauddin Quader Chowdhury standing on the bank of their pond under a tree and he found army men arguing with his father Sotish Chandra Palit. At one stage of their altercations, Salauddin Quader Chowdhury loudly told the army men pointing at his father that "he is a dangerous man, kill him". Upon hearing the same, army asked his father to go inside the house. While his father was turning back to go inside the house then the Pakistani army shot his father twice one after another. Then his father fell down on the ground instantly. Thereafter, Pakistani army brought blankets from inside their house and covered the dead body with the blankets and set fire with the chemical powder on the dead body. He went to his relative's house after the army had left the place. He informed his brother about the killing of his father. One day after the incident his sibling

Priyatosh Palit (late) went to their house and took away ashes and burnt bones of his father. Feeling insecure, they deported to India right after the occurrence. He has identified Salauddin Quader Chowdhury in the dock.

**161.** In cross-examination he has replied that Pakistani invading force stayed in their house for about half an hour. No shouting or hue happened in their locality when Pakistani army came as there was no man in the area. He has shown the place of bush to the investigating officer where he went into hiding. He has also shown the place where his father sustained bullet injury. No man of their locality came to the place of occurrence after killing his father by Pakistan army by gun-shot. This witness has also replied that the bush wherefrom he witnessed the occurrence was 10/15 cubits away from their house. In reply to a question put to him he has told that his father was altercation with the accused and the army men in English though he could not hear the conversation exactly as the accused was 30/40 cubits away from him. He has denied the defence suggestion that he did not see Salauddin Quader Chowdhury at the place of occurrence on that day.

**Evaluation of evidence and finding:**

**162.** Upon scrutiny of the evidence of P.W.-28 Paritosh Kumar Palit, it is evident that he as an eye-witness of the occurrence has narrated how his father was killed by Pakistani army with the help of accused on 14 April 1971 within his sight. He has categorically stated that on the date of occurrence accused Salauddin Quader Chowdhury accompanied by Pakistani army raided their house and at the instance of the accused,

Pakistani army gunned down his father which he saw from a nearby bush of their house. He claims to have seen the occurrence alone as neighbours fled away in fear of their lives P.W. 28, the son of victim was cross-examined by the defence but could not refute the version that at the direct instance of the accused Pakistani army killed his father by gun-shot. It is a settled principle that during war time, a solitary witness is sufficient to prove any crimes against humanity or genocide. It is evident that P.W. 28 is a retired teacher of secondary school and his father Sotish Chandra Palit was a learned man who altercated with Pakistani army in English, so it is predictable that the father of P.W. 28 was targeted for the reason that he was a pro-liberation progressive minded Hindu civilian. It is reasonably undisputed that the Pakistan occupation army and their collaborators committed atrocities in furtherance of plan and policy to wipe out pro-liberation Bangalee civilians.

**163.** On perusal of evidence it is not found that the son (P.W.28) of the deceased Sotish Chandra Palit had enmity with the accused at any point of time before or after incident and as such his evidence remains unshaken. We do not find the defence who could impeach credibility of PW-28 Paritosh Kumar who is an eye witness of the occurrence. His version as to the commission of crime and physical complicity of the accused has not been shaken by any way. The manner, date and the time of the event of killing of Satish Chandra Palit by gun-shot by Pakistani army at the instance and presence of Salauddin Quader Chowdhury has substantially contributed to the commission of murder of Sotish Chandra Palit as crimes against

humanity as specified in section 3(2) (a) of the Act. It is evident on record that the presence of the accused at the crime scene and his active participation in the killing of Sotish Chandra are sufficient to hold the accused liable under section 4(1) of the Act. Considering all aspects, we are inclined to hold that prosecution has successfully proved charge No.7 beyond reasonable doubt. The evidence of solitary witness P.W. 28 is found to be unshaken and credible and as such no corroboration is necessary to prove the charge.

### **Adjudication of Charge No. 08:**

**[Complicity in abduction and murder as crimes against humanity by killing Sheikh Mozaffor Ahmed and his son Sheikh Alamgir]**

**164. Summary Charge:** On 17<sup>th</sup> April, 1971 at about 11.00 a.m. the founder of Chittagong Awami League, Sheikh Mozaffor Ahmed along with his family members while was coming from Rawjan to Chittagong town, reached Khagrachory, Rangamati corner of 3 roads and on the showing of the accused the Army persons present there surrounded the private car of Sheikh Mozaffor Ahmed and brought down him and his son Sheikh Alamgir from the car and took them to the near by Army camp and they were subsequently killed. Thus, the accused has been charged for commission of offences as specified in section 3(2)(a) and 3(2) (h) of the Act.

### **Discussion of evidence:**

**165.** P.W. 3 Sirajul Islam alias Siru Bangalee has deposed that Captain Karim told him that in the middle of April, 1971, the then Chittagong Nagar Awami League leader Sheikh Mozaffor Ahmed and his son Sheikh Alamgir were abducted by accused Salauddin Quader Chowdhury and his accomplices from the corner of 3 roads of Hathhajari police station and subsequently they killed them.

**166.** P.W. 3 in cross-examination has denied the defence suggestion that Captain Karim did not tell him that Sheikh Mozaffor Ahmed and his son Sheikh Alamgir had been abducted by accused Salauddin Quader Chowdhury and his accomplices and they subsequently had killed them. He has also denied the defence suggestion that he has deposed falsely as being tutored by the investigation officer.

**167.** P.W. 11 S. M. Mahbub-ul-Alam has stated that he is a freedom-fighter, and that during Liberation War, one day a son of Sheikh Mozaffor Ahmed having met him informed that his father and brother were abducted by the Pakistani Army on the showing of accused Salauddin Quader Chowdhury and subsequently their whereabouts could not be ascertained.

**168.** P.W. 17 Umme Habiba Sultana has testified that on 17<sup>th</sup> April, 1971, she along with her father-in-law Sheikh Mozaffor Ahmed, her husband Sheikh Alamgir and some other relatives were going back to their own house situated at Chittagong city from her father's house situated at village Yasin Nagar under Rawjan police station, District Chittagong. On the way, at the corner of 3 roads of Hathhajari bus stand, their private car's start

became off, and then some Pakistani Army men present there pushed the car from the back side, and as such the car got started again and was moving forward, but the Army men then and there stopped the car. She has further testified that at that time a jeep having arrived there stopped and then accused Salauddin Quader Chowdhury, his accomplices and some Pakistani Army men got down from the said jeep and stood before their car and then on the showing of the accused the Army men brought down Sheikh Mozaffor Ahmed and Sheikh Alamgir from the car and took them to the nearby Army camp. Since 30/40 minutes were lapsed, they did not come back, she sent her brother-in-law Sheikh Fazlul Haque (now dead) to the Army camp who subsequently came back and informed them that her husband and father-in-law had been arrested and he found the accused in the Army camp. He also informed them that if they do not leave the place immediately, they would also be arrested. Then they left the place leaving the car there and took shelter in the house of her aunt Majeda Begum and 2 days after they came back to their own house at Rahmatgonj, in Chittagong city town and then came to know that her mother Umme Barkat Chowdhurani and elder brother A.K.M. Haider Miah Chowdhury went to Fazlul Quader Chowdhury, father of accused Salauddin Quader Chowdhury, at his Goods Hill's house and requested him to arrange for release of Sheikh Mozaffor Ahmed and his son Sheikh Alamgir to which Fazlul Quader Chowdhury replied that he would ask his son Salauddin Quader Chowdhury about the matter when he would come back to their house. P.W. 17 has also



testified that during Liberation War, 1971 Fazlul Quader Chowdhury and his son Salauddin Quader Chowdhury played an important role in Chittagong in accomplishing the Pakistani Army's goal to commit genocide. Thereafter, her mother and brother again went to Goods Hill several times for release her husband and father-in-law, but after about one month Fazlul Quader Chowdhury told that he will look into the matter, but the matter was solely at the disposal of the accused. She has further testified that since her father-in-law was actively involved with the politics of Awami League, he and his son were killed to make the Chittagong Awami League leaderless. She has identified the accused in the dock.

**169.** P.W. 17 in cross-examination has stated that their car became out of order at the corner of Rangamati, Nazirhat and Chittagong city roads. She heard that the Army camp was set up in a bank building. On 1<sup>st</sup> April, 1971, they went to her father's village home from Chittagong town. The accused arranged to apprehend her father-in-law. She has denied the defence suggestion that no occurrence took place as she has stated in her examination in-chief.

**170.** P.W. 20 Sheikh Morshed Anwar has stated that on 1<sup>st</sup> April, 1971, his father martyr Sheikh Mozaffor Ahmed, brother martyr Sheikh Alamgir and his wife Habiba Sultana (P.W. 17) and other 2/3 relatives took shelter in the house of his brother's father-in-law at Rawjan, and he, his another brother Khorshed and uncle went to their granary situated at village Koigram. Some days after his cousin Anwar and his uncle Ali having come to their said

granary, informed him that his father martyr Sheikh Mozaffor Ahmed and his brother Sheikh Alamgir while they were going back to Chittagong town from Rawjan, the Pakistani Army stopped their car at the corner of 3 roads of Hathhajari and subsequently their car was allowed to go, but the car was not being started, then the Army pushed the car from the back side and then it started and at that moment accused Salauddin Quader Chowdhury along with his accomplices and Army reached there with a jeep and abducted Sheikh Mozaffor Ahmed and Sheikh Alamgir and took them to the nearby Army camp. He also heard the said occurrence from his aunt, sister-in-law, Fazlul Haque and others. Thereafter, his brother's brother-in-law Fazlul Haque was sent to that Army camp who subsequently came back and informed them that Sheikh Mozaffor Ahmed and Sheikh Alamgir were arrested. He has further stated that thereafter his brother's mother-in-law Umme Barkat Chowdhurani (P.W. 17) and her son Haider Mia Chowdhury (now dead) went to Fazlul Quader Chowdhury several times at his Goods Hill house and told him the said occurrence, and then he told them the matter lies with the accused, however he would ask the accused about the matter. Subsequently, Fazlul Quader Chowdhury informed them that Sheikh Mozaffor Ahmed and Sheikh Alamgir might have been killed. He has also stated that on the showing of the accused Pakistani Army abducted Sheikh Mozaffor Ahmed and his son Sheikh Alamgir and took them to the Army camp and subsequently killed them. He has identified the accused in the dock.

171. P.W. 20 in cross-examination has stated that on 1<sup>st</sup> April, 1975 he married P.W.17 Umme Habiba Sultana. The said Army camp was situated in the 1<sup>st</sup> floor of the bank building. He has denied the defence suggestion that he never heard the alleged occurrence and he has deposed falsely as being tutored by the prosecution.

172. Ext. 2 is a newspaper clipping of daily Azadi dated 17-04-1996, Ext. 2/1 is a newspaper clipping of weekly Chattala dated 01-05-1998, Ext. 2/2 is a news paper clipping of daily Azadi dated 17-04-1999, Ext. 2/3 is a news paper clipping of daily Azadi dated 26-03-1998 and Ext. 2/4 is a news paper clipping of daily Prothom Alo dated 21-03-2002. The news reported in those newspapers are almost similar. The said news, in short, is that on 17-04-1971, Sheikh Mozaffor Ahmed and his son Sheikh Alamgir were coming from a relative's house situated at Yasin Nagar under Rawjan police station, and when they reached Hathhajari, accused Salauddin Quader Chowdhury with the help of his accomplices, abducted them therefrom and handed over them to Pakistani Army who took them to the Army camp and then killed them.

### **Evaluation of evidence and finding:**

173. The prosecution has examined as many as 4 witnesses (P.W. Nos. 3, 11, 17 and 20) and produced documents, Ext. Nos. 2, 2/1, 2/2, 2/3 and 2/4 of different news papers which have been discussed above, to prove the charge no. 8 relating to complicity in abduction and murder as crimes against

humanity by killing Sheikh Mozaffor Ahmed and his son Sheikh Alamgir. Among said 4 witnesses, P.W. 17 Umme Habiba Sultana is an important witness as she claimed herself as an eye witness of the alleged occurrence and she was the wife of victim Sheikh Alamgir and daughter-in-law of another victim Sheikh Mozaffor Ahmed. She has vividly narrated the alleged occurrence. She has stated that on 17<sup>th</sup> April, 1971, she along with her father-in-law Sheikh Mozaffor Ahmed, her husband Sheikh Alamgir and some other relatives were going back to their own house at Chittagong town from her father's house situated at village Yasin Nagar under Rawjan police station. On the way, at the corner of 3 roads of Hathhajari bus stand, accused Salauddin Quader Chowdhury, his accomplices and some Pakistani Army men arrived there with a jeep, and on the showing of the accused the Army men brought down Sheikh Mozaffor Ahmed and Sheikh Alamgir from their car and took them to the nearby Army camp. She has further stated that thereafter her mother Umme Barkat Chowdhurani and her elder brother A.K.M. Haider Miah Chowdhury went to Fazlul Quader Chowdhury, the father of the accused, at his Goods Hill's residence and requested him to arrange for release of Sheikh Mozaffor Ahmed and Sheikh Alamgir to which Fazlul Quader Chowdhury replied that he would ask his son Salauddin Quader Chowdhury about the matter, but after about on month, Fazlul Quader Chowdhury told that the matter was solely at the disposal of the accused. She has also stated that since her father-in-law was actively

involved with the politics of Awami League, he and his son were killed to make the Chittagong Awami League leaderless.

**174.** The other P.Ws. i.e. P.W. Nos. 3, 11 and 20 have corroborated the evidence of P.W. 17 Umme Habiba Sultana, though they are not eye witnesses. P.W. 20 Sheikh Morshed Anwar is another son of victim Sheikh Mozaffor Ahmed. He has stated in line with the evidence of P.W. 17. He has stated that his cousin Anwar and his uncle Ali informed him about the alleged occurrence which has been discussed above. He has also stated that on the date of occurrence, on the showing of the accused, Pakistani Army abducted Sheikh Mozaffor Ahmed and his son Sheikh Alamgir and took them to the Army camp and subsequently killed them. P.W. 11 S.M. Mahbub-ul-Alam has stated that during Liberation War, one day a son of Sheikh Mozaffor Ahmed informed him that his father and brother were abducted by the Pakistani Army on the showing of the accused and subsequently their whereabouts could not be ascertained. P.W. 3 Sirajul Islam alias Siru Bangalee having corroborated the evidence of other witnesses has stated that Captain Karim told him that in the middle of April, 1971, the then Chittagong Nagar Awami League leader Sheikh Mozaffor Ahmed and his son Sheikh Alamgir were abducted by the accused and his accomplices from the corner of 3 roads of Hathhajari and subsequently they were killed. The news reports, Exts. 2, 2/1, 2/2, 2/3 and 2/4 of different newspapers, have also corroborated the evidence of the prosecution witnesses as discussed above. It is also stated in those news reports that on 17-04-1971, Sheikh Mozaffor

Ahmed and his son Sheikh Alamgir were coming from a relative's house situated at Yasin Nagar under Rawjan police station, and when they reached Hathajari, accused Salauddin Quader Chowdhury with the help of his accomplices abducted them therefrom and handed over them to the Pakistani Army who took them to the Army camp and then killed them.

175. Upon scrutiny of both oral and documentary evidence as discussed above, we are inclined to hold that it is proved beyond reasonable doubt that on 17<sup>th</sup> April, 1971 at about 11.00 a.m. , Awami League leader Sheikh Mozaffor Ahmed along with his family members while was coming from Rawjan to Chittagong town with a car and reached the corner of 3 roads of Hathhajari, then on the showing of the accused, the Army men present there having abducted, took them to the nearby Army camp and they were subsequently killed. So, it is clear that the accused had direct complicity in abduction and murder as crimes against humanity by killing the said 2 (two) persons. Thus, accused Salauddin Quader Chowdhury is criminally liable under section 4(1) of the Act, 1973 for substantially contributing to the commission of the offences as specified in section 3(2)(a) and 3(2)(h) of the Act which are punishable under section 20(2) of the Act.

### **Adjudication of Charge No.10**

**[Committing the offences of looting and arson as crimes against humanity in the houses of Manik Dhar and Shadhon Dhar]**

176. **Summary Charge:** After 13<sup>th</sup> April, 1971 one day the accused with Pakistani army came to the house of Manik Dhar and looted one Jeep and

rice machine and set fire to the house of local Chairman Shadhon Dhar and thereby the accused has been charged for the physical participation and also for substantially contribution as to the commission of offences of looting and plunder as crimes against humanity as specified in section 3(2)(a) of the Act.

**Discussion of evidence:**

177. P.W-9 Parag Dhar has narrated in his deposition that he along with his family members went to India during the War of Liberation. After coming back from India in late December, 1971 they saw that a Jeep of his father and rice-machine were looted by Razakar, Al-Badr Bahinies. Nothing remained, everything including all furniture were taken away by them. He heard that such looting occurred under the leadership of Fazlul Quader Chowdhury.

He has further stated that he cannot say the name of other persons who took part in the said looting. In cross-examination P.W. 9 admits that whatever he has narrated before this Tribunal, all are hearsay evidence. He has denied the suggestion that he did not say about Fazlul Quader Chowdhury on being tutored by the investigation officer.

**Evaluation of evidence and finding:**

178. Upon scrutiny of the evidence on record, it is found that prosecution has examined only one witness (PW.9) to prove charge no. 10. P.W.9 Parag Dhar did not say anything involving accused Salauddin Quader Chowdhury as to incidence of looting and taking one jeep and a rice-machine away from

the house of Manik Dhar. He did not utter the name of the accused to implicate him with the commission of offence in question. The prosecution has filed a document (Exbt. 32(1)) in respect of Rawjan P.S. Case No. 4 dated 1.3.1972 which appears to have not supported prosecution case. In view of the fact, we are inclined to hold that prosecution has miserably failed to prove charge no. 10.

### **Adjudication of Charge No. 11**

**[Committing the offence of genocide as killing members of a political and religious group and also deportation as crimes against humanity]**

**179. Summary charge:** On 20<sup>th</sup> April, 1971 the Pakistani Army and Rajakars on the direction of accused Salauddin Quader Chowdhury and his father Fazlul Quader Chowdhury jointly made arms attack in Sakhpura village, a Hindu populated area, under P.S. Boalkhali and indiscriminately fired and used bayonet in order to kill the people who had political and religious difference with the accused and they took shelter in the nearby jungle and paddy field and were killed. Later on it was found that names of 76 deceased persons could be identified. As a result of this killing, the remaining people went to different places and many of them deported to India as refugees. Thus, the accused has been charged for commission of offences as specified in section 3(2)(c) (i) and 3(2)(a) of the Act.

### **Discussion of evidence:**



**180.** P.W. 23 Bano Gopal Das has deposed that he is a freedom-fighter. During Liberation War, Pakistani Army with the help of the supporters of Muslim League, headed by Fazlul Quader Chowdhury, and accused Salauddin Quader Chowdhury killed around 300/350 people in the villages of Kadurkhil and Sakhpura. Later, one monument has been made in village Sakhpura and another monument is being made in village Kadurkhil. After that occurrence, many people of that area had to deport to India for taking refuge there. He has further stated that he himself did not see the occurrences held in the villages of Sakhpura and Kadurkhil, but heard from the apprehended Rajakars.

**181.** P.W. 24 Babul Chakraborty Bulbul has stated that during Liberation War, 1971 his age was 20 years and his home is situated at village Sakhpura under Boalkhali police station, District Chittagong. During Liberation War, 1971, from April to 14<sup>th</sup> December, Pakistani Army in collaboration with the Rajakars, the followers of accused Salauddin Quader Chowdhury, committed genocide in their village Sakhpura. The majority people of his village were Hindus. He has further stated that on 20<sup>th</sup> April, 1971 the genocide was first committed in his village, and on that day under the leadership of accused Salauddin Quader Chowdhury, the followers of Muslim League in collaboration with Pakistani Army killed 52 people hiding in the jungle and paddy field near to the Sakhpura Primary School. On that day they also killed his father in their house. Besides his father, Gourango Chowdhury, Bishu Chowdhury, Dibesh Chowdhury, Dharendra

Lal Chowdhury, Monmohon Chakrabarty, Babu Shukendu Bikash Nath, Dr. Modhushudon Chowdhury, Krishno Chowdhury, Nikunjo Chowdhury, Arobindu Roy, Dhononjoy Chowdhury and many others were also killed on the same day. The dead bodies were buried in different mass graveyard. He has also stated that at different times about 300/350 people were killed in his village. In the memory of the said martyrs, a monument has been made in the nearby road of the Sakhura Primary School where the names of 76 martyrs have been written.

**Evaluation of evidence and finding:**

**182.** It appears from the record that the prosecution has examined a good number of witnesses to prove the charges brought against the accused. It is evident that two witnesses (P.W. 23 and P.W. 24) have been examined to prove the charge no. 11 in respect of committing the offence of genocide and deportation as crimes against humanity. P.W. 23 Bano Gopal Das is a hearsay witness as he has stated even in his examination-in-chief that he himself did not see the occurrences held in the villages of Sakhpura and Kadurkhil. He has rather stated that he heard about the said occurrences from the apprehended Rajakars. P.W. 41 Md. Nurul Islam, the investigation officer of this case, has stated in his cross-examination that P.W. 23 did not tell the name of accused Salauddin Quader Chowdhury to him in respect of the said offences committed in Sakhpura and Kadurkhil villages. The other witness, P.W. 24 Bubul Chakraborty Bulbul has not stated specifically that he himself saw the alleged occurrence committed in Sakhpura village. He

has stated that at different times about 300/350 people along with his father were killed in his village Sakhpara. But except P.W. 24 no other eye witness nor any member of the said deceased families has been examined by the prosecution. On the other hand, P.W.24 in cross-examination has stated that he does not know whether he told the name of accused Salauddin Quader Chowdhury to the investigation officer. He cannot remember whether he as the informant lodged the Boalkhali P.S. Case No. 49 dated 28-02-1972 regarding the killing of his father. He cannot remember whether he stated the date of his father's death as 16-05-1971 in that case. He has also stated in cross-examination that he cannot remember whether he inserted the name of accused Salauddin Quader Chowdhury in the first information report of that case. The evidence of P.W. 24 is considered a weak type of evidence as well as uncorroborated one and as such we are of the opinion that the prosecution has failed to prove the charge no.11 beyond reasonable doubt.

### **Adjudication of Charge No.12**

**[Committing the offence of genocide in respect of killing of Bijoy Krishna Chowdhury and two others at Jogotmollo para under Rawjan Police Station]**

**183. Summary Charge:** On 5<sup>th</sup> May, 1971 around 10.30/11.00 a.m the accused led Pakistani army in the village Jogotmollo para. In presence of the accused the Pakistani invading force opened fire and killed Bijoy Krishna Chowdhury Rakhal, Bevuti Bushon Chowdhury and Horendraw Lal Chowdhury with intent to destroy in whole or in part, members of Hindu community as religious group and thereby the accused has been charged

under section 3(2)(c)(i) of the Act for the commission of offence of genocide.

**Discussion of evidence:**

**184.** P.W-3 Siru Bangalee has deposed before the Tribunal that on 13<sup>th</sup> April 1971 with the assistance of accused Salauddin Quader Chowdhury Pakistani occupation force committed genocide upon Hindu community as a religious group in different villages namely Jagotmollo para and Unsattur para and also looted and plundered many houses and also terrorized the civilians severely. In cross-examination P.W. 3 has replied that he heard the aforesaid occurrences from Captain Karim who lost his life during the War of Liberation.

**185.** P.W. 13 Ashish Chowdhury has testified that after coming back from India he heard that Bijoy Krishna Chowdhury, Bevuti Vushon Chowdhury and Horendra Chowdhury were abducted from their houses by the followers of accused Salauddin Quader Chowdhury and they were also killed by them on the bank of Dabura canal. A monument has been established to pay tribute to the memory of them on 18<sup>th</sup> July, 2008. This witness has identified Salauddin Quader Chowdhury in the dock.

**186.** In cross-examination he has replied that his maternal uncle went to the house of his maternal aunt where he narrated the incidents before him and other members of his family. He has also heard the incidents from his uncle Dr. Arunagshu.

**187.** The statement of Jotsna Bala (now dead) has been received as evidence under section 19(2) of the Act which has been marked as Exhibit-95. The statement of Jotsna Bala recorded by the investigation officer goes to narrate that on 13<sup>th</sup> April, 1971 at about 10.30/11.00 a.m army came to their house and indiscriminately killed 30/35 Hindu civilians including her husband Kiran Chowdhury. She also received severe injury. Somehow she managed to leave the country for Subrum in India after her treatment. Later on, she came to know that Salauddin Quader Chowdhury son of Fazlul Quader Chowdhury was with Pakistani army at the time of occurrence.

**Evaluation of evidence and finding:**

**188.** It is the specific case of the prosecution that on 5 May, 1971 Pakistan army accompanied by the accused went to village Jogotmollo para and army killed Bijoy Krishna Chowdhury and two others by gun-shots.

Upon scrutiny of the evidence adduced by P.Ws. 3 and 13 that both are hearsay witnesses. P.W. 3 Siru Bangalee in his deposition and Jotsna Bala in her statement (Exbt. No. 95) did not say anything about the occurrence relating to killing of Bijoy Krishna Chowdhury and two others on 5 May, 1971.

**189.** P.W-13 as hearsay witness has testified that after coming back from India he heard that Bijoy Krishna Chowdhury, Bevuti Chowdhury and Horendra Chowdhury were abducted from their houses by the followers of accused Salauddin Quader Chowdhury and they were subsequently killed by

them on the bank of Dabura canal. But from where and when he got such information, has not been disclosed in his evidence.

**190.** Under the above facts and circumstances, we are led to hold that uncorroborated as well as hearsay evidence adduced by P.W. 13 Ashish Chawdhury is not sufficient to prove the instant charge. No person can be held guilty on the basis of such weak type of evidence. Therefore, the prosecution has failed to prove this charge beyond reasonable doubt.

### **Adjudication of Charge No. 14:**

**[Committing the offences of abduction, confinement, torture and murder of Hanif which are crimes against humanity]**

**191. Summary charge:** On 20<sup>th</sup> May, 1971, at about 4.00 p.m. accused Salauddin Quader Chowdhury along with his accomplice Rajakar members and Pakistani Army went to the house of Md. Hanif, a supporter of Awami League, situated on the bank of Karta Digi of Patherhat under Rawjan police station, and abducted him and took him to Goods Hill. The wife of Md. Hanif and others tried to get release of Hanif with the assistance of Nazma Khatun, a relative of the accused, but she informed that the accused had demanded Tk. 1,000/- for his release. She also informed that Md. Hanif was being tortured by the accused. Ultimately Md. Hanif did not return and was killed. Thus, the accused has been charged for commission of offences as specified in section 3(2)(a) of the Act.

### **Discussion of evidence:**

192. P.W. 30 Md. Nazim Uddin has deposed that on 20<sup>th</sup> May, 1971 they were informed that the Pakistani Army abducted his uncle Md. Hanif. On the following day he along with his maternal grand-father Abdul Quddus and uncle Abdul Karim having gone to his said uncle's house to bring her aunt came to know that Foyez Ahmed, Rajakar Munshi Miah and Pakistani Army had abducted his uncle from their house, and at that time accused Salauddin Quader Chowdhury was present in the vehicle with the Rajakar and Pakistani Army. One Nazma Begum was sent to Goods Hill to get release of Md. Hanif, but she failed. He has further stated that ultimately Md. Hanif did not return.

193. P.W. 30 in cross-examination has stated that whatever he has stated in his examination-in-chief all he heard, and his said aunt Noor Begum is still alive.

**Evaluation of evidence and finding:**

194. It is evident that solitary witness P.W. 30 has been examined to prove the charge no. 14 in respect of committing the offences of abduction, confinement, torture and murder of Md. Hanif. P.W. 30 Md. Nazim Uddin is a hearsay witness as he himself did not see the alleged occurrence, and his said aunt is still alive. He has admitted in cross-examination that whatever he has stated in his examination-in-chief all he heard. It is alleged that the victim Md. Hanif was abducted from the bank of Karta Digi of Patherhat under Rawjan police station. P.W. 30 resides at Madhaim Madrasa under

Hathhajari police station wherefrom he was informed about the alleged occurrence. Though Noor Begum, the wife of said Md. Hanif, is still alive, neither she nor any person of the village of Patherhat wherefrom Md. Hanif was allegedly abducted has come forward to corroborate the occurrence as stated by P.W.30. The evidence of P.W. 30 is considered a weak type of evidence as well as uncorroborated one, and as such, we are inclined to hold that the prosecution has hopelessly failed to prove the charge no. 14 beyond reasonable doubt.

### **Adjudication of Charge No. 17**

**[Committing the offences of abduction, confinement and torture of Nizamuddin Ahmed and two others which are crimes against humanity]**

**195. Summary charge:** On 5<sup>th</sup> July, 1971 at about 7.00/7.30 p.m. accused Salauddin Quader Chowdhury along with 2/3 accomplices and Pakistani Army abducted Nizamuddin Ahmed, Siraj and Wahidul Alam Junu from the house of Jahangir Alam Chowdhury situated at Hajari Lane under Katowali police station and then took them to Goods Hill torture centre and then they tortured them there and then they were kept there upto 9.00 p.m. and thereafter they were taken to the Army camp at Chittagong Stadium. Victim Wahidul Alam Junu was released at one time and the remaining Nizamuddin Ahmed and Siraj were kept till Liberation. Thus, the accused has been charged under section 3(2)(a) of the Act for commission of offences of crimes against humanity.



**Discussion of evidence:**

196. P.W. 15 Nizamuddin Ahmed has testified that he is a journalist by profession and in 1971, he was a 2<sup>nd</sup> year student of H.S.C in the Chittagong Government College. During Liberation War, 1971, he, Sayed Wahidul Alam and Siraj made a group to fight against Pakistani Army, and they chose a half-burnt house at Hajari Lane as their camp. On 5<sup>th</sup> July, they were waiting in their camp for another friend Siddique, but in the evening they suddenly heard sounds of some vehicles and found themselves surrounded by the Pakistani Army along with 3/4 smart young men in civil dress who told them hands up and then tied them and got them in a Army's jeep and then took them to Goods Hill. After reaching Goods Hill, one of the men in civil dress raised his hands with joy and said mission is successful and at that time 15/20 people were found in the lawn of Goods Hill. He has further testified that thereafter they were taken to Fazlul Quader Chowdhury in his drawing room and when he was told about them, he got angry. Then Fazlul Quader Chowdhury hit him (P.W. 15) and instructed others to torture them and thereafter they were separated and he was tortured for 2/3 hours and then he was kept in a small room beside the drawing room. He was again tortured by the people in civil dress from 7.30 p.m. to till midnight. He has further stated that he heard from the conversations of the persons who tortured them that a son of Fazlul Quader Chowdhury was one of the kidnapers who kidnapped them, and subsequently he came to know and heard that the said son was accused Salauddin Quader Chowdhury. At

midnight he was taken to the Goods Hill's garage where he found his two friends seriously injured. On the next day, he was again taken to the torture room and tortured by the people in civil dress and thereafter he along with his said two friends were taken to the Army camp situated at the Chittagong stadium where they were again tortured till 13<sup>th</sup> July, and among them Sayed Wahidul Alam was released from the Army camp, and on 13<sup>th</sup> July in the evening he and his another friend Siraj were taken to cantonment where Major Goznofar also tortured him by his people. P.W. 15 has also testified that thereafter he and Siraj were taken to the prison at about 11.00/12.00 at night and he was there till 18<sup>th</sup> November and then he was released. He has identified the accused in the dock.

**197.** P.W. 15 in cross-examination has stated that Sayed Wahidul Alam is known as Junu Pagla. He was tortured everyday in the cantonment from 6<sup>th</sup> to 13<sup>th</sup>. He has denied the defence suggestion that he was not taken to Goods Hill. He has also denied the defence suggestion that he has deposed falsely.

**198.** P.W. 19 Sayed Wahidul Alam Junu has deposed that during Liberation War, 1971, his age was 17 years and now he is a regular singer of the Chittagong Radio Station. In the month of June, 1971, he along with one Siddique, a freedom-fighter, took shelter in a half-burnt house situated at Hajari Lane, belonged to his brother-in-law Jahangir Alam Chowdhury, and got partial gerila training from the said freedom-fighter and some days after Sirajul Islam Nuru and Nizamuddin participated in the said training. On 5<sup>th</sup> July, 1971 he, Nizamuddin and Sirajul Islam Nuru were waiting in the said

shelter house for Siddique and at about 7.30 p.m., they heard sound of a vehicle and after a short time some Pakistani Army and some local Bangalees entered that house and said hands up and then they tied them and got them in a jeep and then took them to Goods Hill of Fazlul Quader Chowdhury. He has further deposed that after reaching Goods Hill, they were taken to the drawing room of Fazlul Quader Chowdhury who uttered obscene words to them and just after that the people who abducted them started torturing upon them and at that time accused Salauddinn Quader Chowdhury was present in the drawing room and then his friends Sirajul Islam Nuru and Nizamuddin were taken to inside the house when the accused also went there after them. He has also deposed that in this way they were tortured upto 12.00/1.00 at night and thereafter they were taken to the Goods Hill's garage where they were also tortured. On the following day in the evening, they were again taken to Chittagong stadium by the Pakistani Army where they were also tortured and thereafter he was released from the stadium and his friends and others were sent to the Chittagong cantonment. He has further deposed that after a long time he came to know that his friends Sirajul Islam Nuru nad Nizamuddin having been tortured in the cantonment they were sent to prison. He has identified the accused in the dock.

**199.** P.W. 19 in cross-examination has stated that his associate Siddique was killed by Rajakars. Due to torture, his waist-bone was fractured and one tooth was broken down. He has denied the defence suggestion that during

Liberation War he was never taken to Goods Hill nor he was tortured there. He has also denied the defence suggestion that he has deposed falsely as being tutored by the prosecution.

**Evaluation of evidence and finding:**

**200.** Upon scrutiny it appears from the materials on record that the prosecution has examined two witnesses (P.W.15 and P.W. 19) to prove the charge no. 17 relating to committing the offences of abduction, confinement and torture of 3 (three) persons. Among these three victims, P.W. 15 Nizamuddin Ahmed and P.W. 19 Sayed Wahidul Alam Junu themselves having appeared before this Tribunal have deposed supporting the allegations brought against the accused. They have deposed in line with to each other.

**201.** P.W. 15 Nizamuddin Ahmed is a journalist by Profession and in 1971, he was a 2<sup>nd</sup> year student of H.S.C in the Chittagong Government College. P.W. 19 Sayed Wahidul Alam Junu is a regular singer of the Chittagong Radio Station and during Liberation War, 1971 his age was 17 years. It appears that their evidence are corroborative to each other. They have vividly narrated the alleged occurrences in their evidence. They have stated almost in one voice that during Liberation War, 1971, they along with their friend Siraj took shelter in a half-burnt house at Hajari Lane. On 5<sup>th</sup> July, in the evening Pakistani Army along with some civilians entered that house and abducted them therefrom and took them to the Goods Hill belonged to Fazlul Quader Chowdhury, father of accused Salauddin Quader Chowdhury.

They have further stated that they were tortured in the Goods Hill in presence of the accused. On the following day, they were taken to the Army camp situated at Chittagong stadium where they were again tortured by the Pakistani Army. On 13<sup>th</sup> July, P.W. 19 Sayed Wahidul Alam Junu was released from Chittagong stadium camp and P.W. 15 Nizamuddin Ahmed and Siraj were sent to Chittagong cantonment where they were again tortured and then they were sent to prison and after long time they were released from the prison. It is evident that P.W. 15 and P.W. 19 are the eye-witnesses and the victims as well and their evidence are corroborative to each other and both of them have stated supporting the allegations brought against the accused and they have identified the accused in the dock. On the other hand, the defence could not produce any oral or documentary evidence so that we can disbelieve the corroborative evidence given by P.W. 15 and P.W. 19.

**202.** Having considered all the evidence and circumstances as discussed above, we are inclined to hold that it is proved beyond reasonable doubt that during Liberation War, 1971, on 5<sup>th</sup> July in the evening accused Salauddin Quader Chowdhury along with his accomplices and Pakistani Army abducted Nizamuddin Ahmed (P.W. 15), Sayed Wahidul Alam Junu and their friend Siraj from a half-burnt house of Jahangir Alam Chowdhury situated at Hajari Lane and took them to Goods Hill, belonged to Fazlul Quader Chowdhury, father of the accused, and then they tortured them there and then they were confined there, and thereafter they were taken to the

Army camp situated at Chittagong stadium, and among these three victims Sayed Wahidul Alam Junu (P.W. 19) was released at one time and the remaining Nizamuddin Ahmed and Siraj were kept till independence. The accused and his accomplices and the Pakistani Army had a common plan to commit those atrocities and the accused participated in the plan being present with his accomplices and Pakistani Army at the time of the commission of those offences and the accused also intended the aim of the common plan. Thus, accused Salauddin Quader Chowdhury is criminally liable under section 4(1) of the Act, 1973 for substantially contributing to the commission of the offences of abduction, confinement and torture as crimes against humanity as specified in section 3(2)(a) of the Act which are punishable under section 20(2) of the Act.

### **Adjudication of Charge No. 18**

**[Committing the offences of confinement, abduction and torture of victim Md. Saleh Uddin which are crimes against humanity]**

**203. Summary Charge:** In the 3<sup>rd</sup> week of July, 1971 in one morning around 5.30 a.m a close associate of the father of accused and Chairman of Shekarpur Union Parishad Shamsu Mia (now late) with three accomplices went to the house of Abdul Motaleb Chowdhury at village Mohara and kidnapped Md. Saleh Uddin and took him to Goods Hill torture centre by a Pakistani army car. In presence of the accused he was brought down from the car and taken to the first floor of the garage of the adjacent house where he was interrogated and tortured and thereby he became senseless and he was thrown out by a wooden shelf and fell in front of the accused who told

the Pakistani army that no water came out from his eyes what type of torture was made and then accused tortured him and kept him in a room where other tortured people were also seen there. One of them told that he would be taken out soon for murder. Then the accused told that he would now get the result asking the Pakistani army to take him out for killing and he was taken out. Later, by giving bond he was released. Thereby the accused has been charged for the physical participation and also for the substantially contributing to the actual commission of an offence of confinement, abduction and torture as crimes against humanity as specified in section 3(2)(a) of the Act.

**Discussion of evidence:**

**204.** P.W. 8 Saleh Uddin, the victim of the occurrence, has testified that on one day at the end of July, 1971 probably in the 3<sup>rd</sup> week around 5.30/6.00 a.m Shamsu Miah, Chairman of nearby Burishchar Union knocked at his door with three others. He got scared when the door was knocked. He saw that Shamsu Miah's right hand was in his panjabee pocket where a small weapon was kept. Shamsu Miah told him to come out while he was wearing a white shirt and lungi. Being puzzled he started to go with him. After going to 2/3 hundred yards he noticed a military jeep was standby there. When he reached near the jeep, Pakistani soldiers captured his two hands from two sides, pulled him up in the jeep and searched his body. Then Shamsu Mia riding on the jeep took him straight to the Goods Hill, the house of Fazlul Quader Chowdhury. He saw Fazlul Quader Chowdhury sitting in a chair in

the Goods Hill where his elder son Salauddin Quader Chowdhury was present. Fazlul Quader Chowdhury wanted to know in a local language of Chittagong whether he was Saleh-Uddin or not. As he replied, yes, Fazlul Quader Chowdhury said “give him a piece of wood” (Oke takta dau) literal meaning of the words is to beat him. Thereafter, he was taken to upstairs of a garage. Within a few minutes two men entered the room who were known to him, one of them was Hamidul Kabir @ Khoka and another was Sekandar who was locally known as Gana Sekandar for his eye problem. Khoka was famously known as Chief of Al-Shams Bahini. Without saying anything those two men started to give blows upon him right and left. As a result, he sustained severe injuries on his lips and face and he fell down on the floor. There were some stands of cot (used to hang mosquito-net) in the room. At that moment two military men started beating him with those stands. At this stage, he became almost senseless. Then they asked him to tell the names of freedom-fighters and places where arms have been kept. He was lying on the floor in a senseless condition for about half an hour. After sometimes those two soldiers forcefully dragged him in the down stair and kept him standing. Then he saw Salauddin Quader Chowdhury standing at the bottom of the staircase. Salauddin Quader Chowdhury was not satisfied with the torture done by them as tears were not coming out from his eyes. He (the accused) went towards him and slapped him on his face and asked them to take him away. Thereafter, two unknown men took him to the garage situated at the ground floor and beat him with a hosepipe continuously. He



felt that he would not survive lying there senseless for some times. After sometimes a man named Nurul Islam, came there who was known to him previously and one year senior to him and also a student of Bangla department in Chittagong University. He asked him whether any Muslim League member or important person of Mohara village could say anything in his favour. Then he saw a ray of hope as he was very popular in that village. He told the name of two persons namely, Nurul Huda Quadery @ Majja Mia and Badsha Mia Sowdagor respectively. Both of them liked him though they were Muslim leaguers. Then Nurul Islam assured him to talk to Salauddin Quader Chowdhury in this regard. Thereafter, in the late afternoon Majja Mia, Badsha Mia Sowdagor and his student Harun-Or-Rashid Chowdhury rushed to the Goods Hill. Before their departure they had talks with Salauddin Quader Chowdhury certifying P.W. 8 as a brilliant student that he was living in the locality for a long time. In the evening he was taken to the down stairs where Salauddin Quader Chowdhury allowed him to go home at village Mohara subject to verification. Thereafter, he was sent back by a jeep which was used earlier to bring him to Goods Hill.

**205.** In cross-examination this witness has given the location and topography of Goods Hill that it was situated in the middle (hub) of Chittagong town and there were many schools and colleges around the Goods Hill. He has replied that Majja Miah and Badsha Mia were the members of Muslim League by whose recommendation he was released from Goods Hill.

**206.** In reply he has stated that his bones were not broken due to torture made upon him but sustained bleeding injuries on his person. He has testified that while he reached Mohara, many people of the locality came to see him and he also showed his bodily injuries to them. Dr. Mabud provided him treatment. He knew Salauddin Quader Chowdhury since before 1971. He has denied the suggestion that he was not tortured at Goods Hill by the accused and his associates in 1971.

**207.** P.W. 26 Md. Soliman has testified that in the late July, 1971 he came to know that Shamsu Chairman of the adjacent village along with some Rajakars and military jointly took Saleh-Uddin to the Goods Hill. Being informed of the same, one Haroon being the student of victim Saleh Uddin took Badsha Mia Sowdagor and Shamsul Huda Majja Miah to the Goods Hill for releasing his teacher from Goods Hill. On the next day, Saleh-Uddin was brought back to home through discussion with the men of Goods Hill. Thereafter, they went to see him at his house where in the presence of all he (victim) narrated that accused Salauddin Quader Chowdhury and others tortured him at Goods Hill at the instance of Fazlul Quader Chowdhury.

**208.** In cross-examination he has narrated that he heard around 9/10 a.m that military went to Motaleb's house wherein Saleh-Uddin was living as house-tutor since 2/3 years before the war of liberation in 1971. In reply to a question, he has stated that incident took place in the late July but he cannot say the actual date of occurrence. He has denied the defence suggestion that

victim Saleh Uddin was never brought to the “Goods Hill” or he was not tortured by accused Salauddin Quader Chowdhury at Goods Hill.

**209.** P.W. 25 Abu Taher Chowdhury has deposed that all on a sudden he came to know at the end of July that Saleh-Uddin master, house tutor of Motaleb, was apprehended in the dawn by Shamsu Chairman of the adjacent village along with some military and Rajakars and was taken to Goods Hill by a vehicle. As a freedom-fighter he began to think, how to rescue Saleh-Uddin but it was not possible for him. He then requested Badsha Miah Sowdagor and Nurul Quadery, both of them were Muslim League leaders of their village, to rescue Saleh-Uddin. Haroon, a student of Saleh-Uddin along with Badsha Miah Sowdagor and Nurul Huda Quadery went to the Goods Hill on the next day at about 10/11.00 a.m. In the evening two men brought Saleh-Uddin back to his lodging house by a jeep. Upon getting information he and others went to that house where they found Saleh-Uddin in a critical condition, who could not even speak properly. On query he told them that Fazlul Quader Chowdhury wanted to know the informations about the freedom-fighters but he expressed inability to supply the same, then accused Salauddin Quader Chowdhury and his men started to torture him. This witness has identified the accused in the dock.

**210.** In cross-examination, he has replied that Saleh-Uddin was a student of Chittagong University in 1971. Shamsu Mia, Badsha Sowdagor and Nurul Huda Maijja Mia were Muslim Leaguers. Haroon-Or-Rashid Chowdhury, Humayun Chowdhury and another were students of victim Saleh-Uddin.

**211.** P.W. 1 Emeritus Prof. Dr. Anisuzzaman has deposed that some times in 1971 Saleh-Uddin was a student of Chittagong University, was caught by Rajakars for maintaining link with freedom-fighters and taken to Fazlul Quader Chowdhury's Goods Hill where he was kept confined and severely tortured by Salauddin Quader Chowdhury and others. After independence Saleh-Uddin was elected as a Member of Senate of the Chittagong University. During holding a meeting of the Senate, Saleh-Uddin narrated the incident before them. Till then the marks of torture on the person of Saleh Uddin were prominent. At present, he is performing as the Vice-Chancellor of Science and Technology University, Sylhet.

**212.** In cross-examination P.W. 1 has stated that probably in 1983, he and Saleh Uddin both were Members of Senate of Chittagong University and he heard the occurrence of torture from Saleh Uddin. He did not suggest Saleh Uddin to file any case in this regard.

**Evaluation of evidence and finding:**

**213.** Upon scrutiny of the evidence adduced by P.Ws. 1, 8, 25, and 26 it is found that P.W.8 Saleh Uddin is the victim of this case who is now serving as the Vice-Chancellor of Science and Technology University, Sylhet but in 1971 he was a student of Chittagong University and he used to stay in the house of Motaleb at village Mohora. P.W. 8 has categorically stated that probably in the 3<sup>rd</sup> week of July 1971 he was abducted from the house of Motaleb and took him to the Goods Hill, where he was confined and tortured

by the accused himself and his accomplices at the instance of Fazlul Quader Chowdhury only because he did not agree to supply informations about the movements of freedom-fighters. P.W. 8 has testified that while he was confined in Goods Hill, accused Salauddin Quader Chowdhury personally tortured him and at his direction his accomplices mercilessly tortured him causing bleeding injuries on his person. He has further narrated that his two co-villagers known as Muslim Leagers on being informed they rescued him from Goods Hill. He has stated that on being released he was sent to the house of Motaleb at Mohara where he narrated how he was tortured at Goods Hill by the active participation of the accused. P.W. 25 and P.W. 26 have stated that they heard the occurrence from the mouth of victim Saleh Uddin and witnessed injuries on his person after his release from Goods Hill. P.Ws. 25 and 26 have corroborated material points of the occurrence in respect of abduction, confinement, torture and release of the victim. P.W. 26 Solaiman heard the occurrence as well as witnessed the injuries of victim Saleh Uddin caused at Goods Hill, the torture centre and residence of the accused. P.W. 1 Dr. Anisuzzaman has also corroborated the prosecution case to the effect that in 1983 victim Saleh Uddin and he both were the Members of the senate of Chittagong University, at that time one day P.W. 8 Saleh Uddin narrated before him how he was tortured at Goods Hill in 1971 and also showed marks of injuries on his person.

214. On assessment of the evidence adduced by P.Ws. 1, 4, 8, 25 and 26, we find corroboration on material points of the occurrence and we find no reason to disbelieve the evidence adduced by them.

215. It is evident on record that the defence elaborately cross-examined each prosecution witness but could not create any doubt in the charge framed against the accused and thereby has failed to make the prosecution case shaky or unbelievable.

216. In view of the facts as stated above we find that the prosecution has been able to prove charge No. 18 beyond reasonable doubt. It is well proved that accused Salauddin Quader Chowdhury by his participation and conduct he substantially contributed to the commission of offences for abduction, confinement and torture as crimes against humanity as specified in section 3(2)(a) of the Act and therefore, he is criminally liable to be punished under section 20(2) of the Act.

### **Adjudication of Charge No. 19**

**[Committing the offences of murder, abduction, confinement and torture relating to Mahbub Alam and his two brothers]**

217. **Summary Charge:** On 27 July, 1971 at about 8.30 p.m Pakistani occupation forces apprehended Nur Mohammad and Nur Alam from Miabari of Liakat Ali Road and took them to Goods Hill Torture Cell by fastening their bodies with ropes and got information as regards their another brother Mahbub Alam on admission after torture and on that day around 10.00 p.m they took Mahbub Alam from a tea shop of Shahab Mia to Goods

Hill. The accused had taken taka 10,000 to release Nur Mohammad and Nur Alam from the Torture Cell on the next day. On asking about their brother Mahbub Alam, accused informed that he had fallen sick and could not go by walking. Lastly, their brother Mahbub Alam had been killed and as such the accused has been charged for his physical participation and also for substantially contributing to the actual commission of offences of killing, abduction, confinement and torture as crimes against humanity as specified in section 3(2)(a) of the Act.

### **Discussion of evidence:**

**218.** P.W. 35 Kamal Uddin has stated in his deposition that he was at home on 27 July, 1971. Suddenly he got information that neighbouring two brothers namely Nur Mohammad and Nur Alam were taken away by Pakistani occupation force at night. On the next morning he went to their house and knew the facts. On 28th July Nur Mohammad and Nur Alam being injured, came back home. Then he met and heard from them that Pakistani army came to abduct Mahbubul Alam with the help of one Md. Yousuf, but Mahbubul Alam was not found, therefore, they abducted his two brothers instead of Mahbubul Alam and took them to Goods Hill. Thereafter, both of them were taken to their tea shop at Chaktai from where Mahbubul Alam had been apprehended and the three brothers were again taken to Goods Hill and inhumanely tortured them. Nur Mohammad and Nur Alam were subsequently released but Mahbubul Alam was not. They believed that their brother was killed later on.

**219.** In cross-examination this witness has described what structure was on the western and eastern side of Goods Hill. He has also described what things are nearby situated to be seen on climbing up to the Goods Hill. This witness has denied the defence suggestion that three brothers were not abducted as alleged.

**220.** P.W-10 Kazi Nurul Absar has deposed that he was the president of Student Union in Rangunia College Branch. Mahbub Alam became President after him. Both had agreed to prevent Pakistani invading forces from attacking in their area. Mahbub Alam did not stay in their house rather he used to stay in their business shop. Mahbub Alam used to arrange food and shelter of the freedom fighters. Probably in the month of June or July they got tensed as they were not getting any news from Mahbub Alam. In Chandanpura in a friendly chitchat, one of their friends named Aziz Uddin told him that an injured man was staying in their house whose physical structure seemed to be similar to Mahbub Alam. The father's name of Aziz uddin was Dr. Somi Uddin. He also got information that accused Salauddin Quader Chowdhury used to abduct and torture freedom-fighters and Pro-Liberation people in their Goods Hill. And people, who got injured severely, were taken to Dr. Somi Uddin's house to know whether that particular injured person would survive or not. People who had chance to survive, were handed over to the selected people by the accused. And people, who had less chance to survive, were killed by them. The same things happened



in case of Mahbub Alam who could not be traced out after taking him to Goods Hill.

**221.** He has further deposed that a man named Md. Yousuf from neighbouring village of Mahbub Alam, at the beginning of Liberation War, was a freedom-fighter. After being trained, Yousuf surrendered to the Goods Hill at the instigation of his father and subsequently he became an accomplice of the accused. Yousuf Khan along with the accused, Hamidul Kabir Chowdhury, Khoka, Maksud and Ziauddin abducted Mahbub Alam from khatungonj and took him to Goods Hill where he was severely tortured. He further knew from Aziz Uddin that Mahbub did not have skin with his body because of merciless torture in Goods Hill. Mahbub Alam was tortured in a pinned table (Perek) pressing hands with a wood. As a result, he did not have any chance to survive and he could not be traced out till today. In a discussion it was held that an action was to be taken against Salauddin Quader Chowdhury as he was involved in all criminal activities. Accordingly, one day in the late September their group made an attack on Salauddin Quader Chowdhury's car in a pre-planned manner. The attack was made targeting Salauddin Quader Chowdhury in the driving seat as they came to know that usually Salauddin Quader Chowdhury drives his car. On the next day, they had read in the news paper that driver of the vehicle had died while Salauddin Quader Chowdhury sustained severe injury in his leg due to grenade attack.

**222.** In cross-examination this witness has replied that private car was used to run through Aysha Khatun Lane. Mr. Yaar Ali Khan had many vehicles while Dr. Somi Uddin had also a red car. He has also replied that he used to have chitchat with Aziz Uddin. He has further said that he got information from him about Mahbub Alam that Yousuf Khan along with the accused and other accomplices had abducted Mahbubul Alam and took him to Goods Hill where he was severely tortured and subsequently could not be traced out ever.

**223.** P.W-16 Faiz Ahmed Siddique has testified that in the late July, 1971 Mahbub Alam, the then V.P of Student Union of Rangunia College had been apprehended and was taken to Goods Hill where he was severely tortured in a pinned table at the instigation of Salauddin Quader Chowdhury and Syed Ohidul Alam, the then student leader who resigned from Chhatra League and joined Convention Muslim League. He has also narrated that many people were tortured to death in the Goods Hill. This witness heard this incident from late Haroon contractor, the then leader of Convention Muslim League who used to appear at Goods Hill every day. He also heard regarding the abduction, torture and killing of Mahbubul Alam from many people later on. In reply to a question he has told that he knew Mahbub Alam personally.

**224.** P.W-11 S.M Mahbub-ul- Alam has deposed that his friend Kazi Nurul Absar, a freedom-fighter as well as Shelter Master during 1971, informed him about one of his friends Mahbub Alam's incident, who was abducted and killed by severe torture in Goods Hill, especially tortured by a

“perek table.” This information was obtained by Kazi Nurul Absar from another friend named Aziz Uddin, son of Dr. Somi Uddin. People who had been tortured in the Goods Hill, were taken to Dr. Somi Uddin but condition of those tortured people were found serious, those persons would have been killed during that time. He has identified the accused in the dock.

**225.** In cross-examination this witness has replied that he did not go to Goods Hill during the Liberation War. In reply to a question he has said that he received news of torture and killing of Mahbub Alam through his friend Aziz Uddin.

**226.** P.W-27 Dr. A.K. M Shafiullah has stated in his deposition that in 1971 he had been serving in Chittagong Medical College Hospital as an Assistant Registrar at Surgical Unit-1. In late September, 1971 at around 10/11.00p.m he got a call from his ward. Thereafter he reached there within half an hour and found many people including army and police. He further saw Salauddin Quader Chowdhury, son of Fazlul Quader Chowdhury being severely injured lying on a bed of the office room. So far he recalls he (accused) sustained injury in the leg and they gave him necessary treatment. Probably he had undergone treatment for 3/4 days in the hospital. Later he heard that he was taken to Dhaka or abroad for better treatment. This witness has identified the accused in the dock. In cross-examination he has replied that so far he recalls, he gave initial treatment to the accused.

**227.** Exhibits 93, 94, 09, 12 and 10 have been produced by the prosecution in order to prove the presence of accused Salauddin Quader Chowdhury in Bangladesh during the War of Liberation.

**Evaluation of evidence and finding:**

**228.** Upon scrutiny of the evidence adduced by P.Ws-10,11,16,27 and 35 it transpires that all the aforesaid witnesses are hearsay who have no direct knowledge about abduction of Mahbub Alam and his two brothers. They could not say by direct evidence that who abducted and took them to Goods Hill and by whom they were tortured therein. It is found that P.Ws-10,11,16 and 35 had no reliable knowledge about killing and torture of Mahbub Alam. They could not connect the accused with the commission of murder and torture of Mahbub Alam. Their evidence lack of corroboration and reliability.

**229.** These four witnesses have been examined upon hearsay information. For supporting this hearsay evidence, prosecution could have brought two brothers of victim Mahbub Alam as they were allegedly abducted and taken to Goods Hill from where they had been released after abduction of their brother Mahbub Alam but prosecution could not examine none of them to prove the instant charge.

**230.** Another P.W. 27 Dr. A.K.M. Shafiullah has no connection with the allegation of abduction and torture made in charge No.19. As such the evidence of P.W-27 is quite irrelevant to the instant charge.

**231.** On careful evaluation of evidence adduced in support of the charge No. 19 we find that the prosecution has failed to prove the charge beyond reasonable doubt. Therefore, the accused can not be held guilty for the commission of offences as crimes against humanity brought in charge No.19.

### **Adjudication of Charge No. 20**

**[Committing the offences of confinement, torture and murder of Ekhlas Miah which are crimes against humanity]**

**232. Summary charge:** On 27/28<sup>th</sup> July, 1971 at about 3.00/4.00 p.m. Rajakars arrested Ekhlas Miah from in front of the shop of Khoka of village Kadurkhil under Boalkhali police station and took him to Boalkhali C.O. office Rajakar camp and from there he was taken to Goods Hill torture centre under the control of accused Salauddin Quader Chowdhury and then he was tortured there to death. Thus, the accused has been charged under section 3(2)(a) of the Act for commission of offences of crimes against humanity.

### **Discussion of evidence:**

**233.** P.W. 21 Md. Abul Bashor has stated that after Liberation, he heard from Rajakar commander Zaker that in the middle of July, 1971 Rajakars apprehended Ekhlas, a freedom-fighter, from in front of the shop of Khoka and then took him to the Goods Hill and three days after Ekhlas's father, a leader of Muslim League, along with some other Muslim Leaguers having

gone to the Goods Hill brought the dead body of Ekhlās therefrom to their house where he was buried.

**234.** P.W. 33 Mahmud Ali has deposed that at the end of July, 1971 Rajakars came from the C.O. office to the near of the shop of Khoka and found Ekhlās there. When they went to apprehend Ekhlās, he ran out and fell into a pond wherefrom he was apprehended by the Rajakars and taken him to the Rajakar camp in C.O. office. He has further deposed that thereafter the Rajakars took Ekhlās to accused Salauddin Quader Chowdhury's Goods Hill where he died of torture inflicted upon him and after 2/3 days, his father brought his dead body from the Goods Hill and buried him.

**235.** P.W. 33 in cross-examination has stated that he never went to Goods Hill and he does not know under which police station Goods Hill is situated. He has also stated that he did not tell the investigation officer from whom he heard that Ekhlās was taken to the Goods Hill.

**236.** Ext. 97 is the statement of the witness Badsha Miah, recorded by the investigation officer, has been received in evidence under section 19(2) of the Act, 1973. He has stated in his statement that at the beginning of the Liberation War, 1971 Pakistani Army set up their camp at the C.O. office in Boalkhali where Rajakars also stayed. On 27/28<sup>th</sup> July, they 7/8 persons along with Ekhlās saw Rajakars going towards Khoka's shop in Kadurkhil. As soon as they saw the Rajakars, they ran out here and there while Rajakars were also chasing them. When Rajakars chased after Ekhlās, he jumped into a nearby pond. He has further stated that then Rajakars apprehended Ekhlās,

beat him and then took him to the Army camp at C.O. office. Later, in the evening he was taken to the Goods Hill of Fazlul Quader Chowdhury and was killed, and after 3 days his father Jamal Showdagar went to Fazlul Quader Chowdhury and having requested him, he brought the dead body of Ekhlhas to their house and buried him there.

### **Evaluation of evidence and finding:**

237. The prosecution has examined as many as 2(two) witnesses (P.Ws. 21 and 33) and produced one document namely Ext. 96, the statement of the witness Badsha Miah, recorded by the investigation officer to prove the charge no. 20 relating to committing the offences of confinement, torture and murder of Ekhlhas Miah which are crimes against humanity. P.W. 21 Md. Abul Bashor is a hearsay witness as he himself did not see the alleged occurrence. He has stated that after Liberation War, he heard about the occurrence from Rajakar commander Zaker. But the prosecution has not examined said Zaker. P.W. 33 Mahmud Ali has stated in his cross-examination that he did not tell the investigation officer from whom he heard that Ekhlhas was taken to the Goods Hill. So, P.W. 33 himself did not see taking Ekhlhas to the Goods Hill. Neither P.W. 21 nor P.W.33 has stated that at the time of apprehension of Ekhlhas, accused Salauddin Quader Chowdhury was present with the Rajakars who allegedly apprehended him. In other words, neither P.Ws. 21 and 33 nor even the prosecution has alleged that accused apprehended Ekhlhas or he was present at the place of occurrence when he was apprehended. They have also not alleged that the

accused was present in the Army camp or in the Goods Hill when Ekhlas was brought there. Neither P.W. 21 nor P.W. 33 has stated that the accused tortured Ekhlas in any way or killed him.

**238.** Another witness Badsha Miah's statement, recorded by the investigation officer, has been received in evidence under section 19(2) of the Act, 1973. Having considered the legal aspects of the said statement of a witness, we are of the opinion that the statement of a witness received under section 19(2) of the Act alone does not form the basis of conviction, but such statement may be used to prove a particular occurrence. In the instant case, the witness Badsha Miah has not also stated in the statement that accused Salauddin Quader Chowdhury was directly or indirectly involved in committing the alleged offences of confinement, torture or murder of Ekhlas Miah.

**239.** Considering all the evidence, both oral and documentary as discussed above, we are of the opinion that the prosecution has failed to prove the charge no. 20 beyond reasonable doubt.

**Adjudication of Charge No. 23:**

**[Committing the offences of abduction, confinement and torture of Md. Salimullah which are crimes against humanity]**

**240. Summary charge:** On 2<sup>nd</sup> September, 1971 at about 6:15 to 6:30 p.m., the accomplices of accused Salauddin Quader Chowdhury tortured one Hindu employ of Md. Salimullah to which Md. Salimullah objected and he



was threatened for that and then they came with a team of Sindhi Police and took Md. Salimullah to the Goods Hill Torture Centre. After torturing for the whole night, he was released on the next morning. Thus, the accused has been charged under section 3(2)(a) of the Act for commission of offences of crimes against humanity.

**Discussion of evidence:**

**241.** P.W. 2 Md. Salimullah has stated that in 1971 they had a printing press where generally Hindu people worked. On 2<sup>nd</sup> September, 1971 at about 6.00 p.m. he heard that the then Commander of Al-Shams Bahini Hamidul Kabir Chowdhury alias Khoka was beating two of his employees. That Al-Shams Bahini was under the leadership of Fazlul Quader Chowdhury and supervision of accused Salauddin Quader Chowdhury. Then he went to the spot and found Khoka and his accomplices beating two of his Hindu employees to which he objected, and then they took the employees to the Goods Hill riding on a vehicle. He has further stated that then he started walking towards the Goods Hill to rescue his employees, and on the way, Khoka along with Sindhi police came back and picked him up in their vehicle and then took him to Goods Hill. At that time an old tailor aged 70 years voluntarily got into that vehicle to go with him. He later heard that his mother's cousin Mokhlesur Rahman Chowdhury saw the scene of taking him into the vehicle. After reaching Goods Hill, Wahidul Alam and Khoka along with the Sindhi police tortured him brutally. Then Khoka, Wahidul Alam and Saifuddin ordered those Sindhi police to lock him up with the old

tailor into the garage to persecute them. He has also stated that he lost his sense as a result of torture and he got back his sense in the next dawn with the sound of rifles, pistols and bullets. In the morning at about 8.00/8.30 Khoka came to him with his nephew Ishaque and friend Shafiqur Rahman and told him to leave the place, but he asked Khoka to release the old tailor too, but he declined to do so. Later, he came back from the Goods Hill, but he did not find his said employees and the old tailor ever who might have been killed.

**Evaluation of evidence and finding:**

242. On perusal of the materials on record it appears that the prosecution has examined 41 witnesses to prove all the charges brought against the accused. But it is evident that solitary witness P.W. 2 Md. Salimullah has been examined to prove charge no. 23. He has testified that his mother's cousin Mokhlesur Rahman Chowdhury saw the scene of taking him into the vehicle. But prosecution has not examined said Mokhlesur Rahman Chowdhury. P.W. 2 has also testified that in the morning at about 8.00/8.30 Khoka came to him at the Goods Hill with his nephew Ishaque and friend Shafiqur Rahman and told him to leave the place. But the prosecution has not examined any of them, though P.W. 2 has admitted in cross-examination that said Shafiqur Rahman is alive. No employee of P.W.2 nor any local person has been examined by the prosecution to corroborate the evidence of P.W. 2. So, the evidence of P.W. 2 is not corroborated by any other oral or documentary evidence.

**243.** Considering all the facts and circumstances and the evidence on record as discussed above, we are of the opinion that a reasonable doubt arises whether the alleged occurrence took place as alleged and whether the accused was involved with the commission of the alleged offences. So, the prosecution has failed to prove charge no. 23 beyond reasonable doubt.

### **XVIII. Plea of Alibi**

**244.** In the instant case, defence has taken a plea of alibi that accused Salauddin Quader Chowdhury was not in Bangladesh during the War of Liberation in 1971 contending that he left for West Pakistan on 29 March, 1971 and came back to Bangladesh on 20 April, 1974. It may be mentioned here that as per provision of Rule 51 of the ROP, the burden of proof as to plea of alibi shall be upon the defence. But mere failure to prove the plea of alibi by the defence shall not render the accused guilty.

**245.** In order to prove the plea of alibi, the defence has examined 4 witnesses including the accused himself. Accused Salauddin Quader Chowdhury as D.W.1 made a long vivid description of his family history and the role played by his father late Fazlul Quader Chowdhury in the field of politics of this sub-continent. He has testified that he took active part in anti-Ayub movement in 1969 as well as in the non-cooperation movement for the cause of independence of Bangladesh. He has narrated that after the crack-down, the Pakistan army on 25 March, 1971, committed heinous crimes and genocide in the whole of Dhaka City in the state of panic.

**246.** D.W.1 Salauddin Quader Chowdhury, the then pre-liberation hero has surprisingly stated that instead of joining the War of Liberation , he left Dhaka on 29 March 1971 for West Pakistan to take higher education there and he came back to Bangladesh on 20 April, 1974.

**247.** The accused is required to prove the following issues as to prove plea of alibi:

(1) Onus is entirely on the accused to prove the plea of alibi.

(2) The defence is to prove affirmatively that during the War of Liberation in 1971 the accused was continuously staying in West Pakistan since 29 March to 16 December, 1971.

(3) The defence is to prove that the accused was not present in Bangladesh in 1971, at the time when the occurrences took place in Chittagong.

**248.** The defence has examined D.W. 2 Nizamuddin who is a school-friend of the accused and D.W. 3 Qayum Reza Chowdhury is his first cousin and D.W. 4 Abdul Momen Chowdhury is the husband of wife's sister of D.W. 3 Qayum Reza Chowdhury.

**249.** On perusal of the evidence adduced by D.W. Nos. 1-4, it is found that D.W. 1 (accused) claimed to have gone West Pakistan on 29 March, 1971 for getting admission in Panjub University and his two first cousins, D.W. 3 Qayum Reza Chowdhury and Salman F.Rahman and his friend D.W. 2 Nizamuddin visited Karachi in the month of April 1971. D.W. 3 Qayum

Reza Chowdhury has claimed that he dropped Salauddin Quader Chowdhury at Tejgaon Airport on 29 March 1971 for flying to Karachi but while he visited Karachi he could not meet the accused during his stay in West Pakistan. DW.4 Abdul Momen Chowdhury has stated that in 1971, he was posted at Tanzania as 3<sup>rd</sup> Secretary of Pakistan Embassy and with intent to go to East Pakistan, he halted at Karachi for two weeks and at that time one day he went to the office of his batch-mate Asiqur Rahman where he was acquainted with accused Salauddin Quader Chowdhury for the first time. He has stated that he could not visit East Pakistan during the War of Liberation in 1971 for scarcity of PIA ticket at Karachi.

**250.** D.W. 3 Qayum Reza Chowdhury claimed that he met his Bhaiyra (wife's sister's husband) D.W. 4 Abdul Momen Chowdhury in the office of Asiqur Rahman at Karachi while D.W. 4 Abdul Momen Chowdhury testified that during his stay in Karachi at that time D.W. 3 Qayum Reza Chowdhury met him at his residence. The above contradiction as to place of meeting between D.W. 3 and D.W.4 is not ignorable which has, at least, weakened the plea of alibi.

**251.** It is a fact of common knowledge that in the night following 25<sup>th</sup> March 1971, while Pakistan army launched "Operation Search Light" in Bangladesh by killing millions of unarmed Bangalees at that time the Bangalee people who were residing in West Pakistan started to leave the enemy country, i.e. Pakistan at the risk of their lives. Accused Salauddin Quader Chowdhury has testified that he comes of a Muslim family but he is

not a Bangalee and he is a Bangladeshi by choice and not by birth. Since the accused proudly claims that he is not a Bangalee, it can be presumed that the accused as a non-Bangalee might have gone to West Pakistan as his first home during the War of Liberation in 1971. But the fact remains that the defence did not produce any travel or residential documents to show the date of so-called visit to West Pakistan and staying therein during the War of Liberation of Bangladesh. The defence in violation of the provision of section 9(5) of the Act submitted some documents before the Tribunal at the fag end of defence argument and intentionally refrained from proving those documents by recalling defence witnesses. As such the defence has miserably failed to prove its plea by documentary evidence that the accused stayed in West Pakistan during whole period of the Liberation War of Bangladesh.

**252.** Now let us examine the evidence produced by the prosecution to prove that the accused was all along present at his father's residence named "Goods Hill" at Chittogong during the War of Liberation.

**253.** The investigation officer of the case has proved a paper clipping of 'Dainik Pakistan' dated 29.09.1971(Exhibit-10) under the caption " বোম্বার আঘাতে ফজলুল কাদেরের ছেলে আহতঃ গুলিতে ড্রাইভার নিহত". In the said report it has been stated that the miscreants made an attack by throwing bomb on the car wherein son of Fazlul Quader Chowdhury was present. As a result the driver was killed while son of Fazlul Quader Chowdhury sustained severe injury and he was provided treatment in hospital.

**254.** The investigation officer has also proved a fortnightly report (Exhibit-94) of political situation for the second half of September, 1971 from Special Branch, East Pakistan Dacca, prepared on 02.10.1971 by M.M. Hossain, Deputy Inspector General of Police where it was reported in clause No.III as “on 20.09.1971 evening, rebels fired at the car of Salauddin Quader Chowdhury S/O late Fazlul Quader Chowdhury, President, P.M.L at Chandrapara, Chittagong. They also threw a hand grenade in front of the car. Salauddin Quader Chowdhury was injured and his driver was killed.”

**255.** It was reported in the ‘Dainik Pakistan’ dated 29.09.1971 (Exhibit-10) that on sustaining injuries by bomb blasting accused Salauddin Quader Chowdhury was admitted in hospital for treatment. To substantiate the above occurrence, the prosecution has examined one doctor who was on duty in Chittagong Medical College Hospital in 1971. P.W-27 Dr. A.K.M Shafiullah has testified that in 1971 he served in Chittagong Medical College Hospital as an Assistant Registrar at Surgical Unit No.1. He has further stated that in the late September 1971 at around 10.00/10.30 P.M, on getting a call from his ward, he rushed to the hospital and saw there many people including army and police. He also saw accused Salauddin Quader Chowdhury sustaining severe injury in his leg, was lying in a bed. He has further stated that the accused was provided proper treatment from their hospital and thereafter he heard that the accused had been taken to Dhaka or abroad for better treatment. He has identified the accused in the dock. In cross-examination, he has denied the defence suggestion that the accused

was never admitted in Chittagong Medical College Hospital and they did not provide treatment to the accused in the month of September, 1971.

**256.** The prosecution evidence such as report of the Dainik Pakistan (Exhibit-10) and the report of the S.B (Exhibit-94) prepared by DIG of police and the evidence of P.W-27 Dr. Shafiullah are considered as most authenticated and reliable evidence to hold that accused Salauddin Quader Chowdhury was very much present in Bangladesh during the War of Liberation. Thus, the above mentioned unshaken evidence have totally destroyed the plea of alibi taken by the defence.

**257.** Besides the evidence discussed above, the evidence adduced by the eye witnesses deserve special consideration for adjudicating the plea of alibi. On perusal of the evidence adduced by eye-witness such as P.Ws. 2,4,6,7,14,15,17,19,22,24,28,31,32 and 37 have categorically testified before the Tribunal that they saw accused Salauddin Quader Chowdhury accompanied by Pakistan army and Razakars while in order to commit genocide they directed attacks upon unarmed people of Hindu Community of different villages of the locality and some of them saw the accused at Goods Hill while they were abducted and tortured therein. All the aforesaid P.Ws identified the accused on dock as they belong to same locality and they also recognized the accused at the crime sites while he took part in the commission of genocide and crimes against humanity accompanied by Pakistan army and local Razakars. Thus, the prosecution has successfully



proved by documentary and direct evidence that Salauddin Quader Chowdhury was very much present in Chittagong during the War of Liberation in 1971.

**258.** We have also found support in the decision of Aftabuddin -vs- State reported in BCR 1986(AD) 239. Their Lordships have observed on the point of plea of alibi in the following language:-

“ (b)whether the defence plea of alibi supported by evidence or the prosecution evidence to the contrary is to be accepted as true and reliable is entirely for the court to decide. In this case, there is direct evidence from a number of witnesses including the victim P.W-2 that the accused was present on the spot and participated in the assault. If their statements are accepted as true, the plea of alibi will stand rejected.”

**259.** The decision cited above is squarely applicable in the present case. In the instant case also, a good number of eye-witnesses including victims recognized the accused at the place of occurrences during the War of Liberation in 1971. The evidence adduced by those eye-witnesses has been accepted as true and reliable. Thus, we hold that the plea of alibi taken by the defence in the instant case stands rejected.

## **XIX. The demeanour of accused Salauddin Quader Chowdhury as-D.W. 1.**

**260.** It is one of the duties of a trial court to observe the demeanour of a witness during trial because finding of fact is based upon credibility of evidence adduced by a witness and such observation of the trial Court carries much weight in the estimation of the apex court. Accused Salauddin Quader Chowdhury as D.W. 1 has deposed before this Tribunal to prove the plea of alibi taken by him. All the charges of atrocities have been brought against him while he was a student of under graduation course. At present, admittedly the accused is the sitting member of the National Parliament of Bangladesh and he was elected M.P. for 6 times by the people of his locality. It goes without saying that he has been performing as a law-maker and veteran parliamentarian since long. During trial of the case we have observed many things but we like to mention a few traits of the accused which appeared to us unusual and unbecoming:

(a) In the early stage of the trial accused willfully used to violate decorum of the court-room by shouting and thus by the order dated 10.01.2012 he was warned for his unruly behaviour.

(b) After closing every day's proceeding while Judges leave the courtroom as a practice, all the people present in the court-room use to stand to pay respect to the court but the accused remained sitting on his chair, he seldom used to stand at the time of exit of the Judges.

(c) The Tribunal has been set up by the government appointing Judges of the Supreme Court of Bangladesh knowing the fact well, he used to address the Judges of the Tribunal as “Chairman Shaheb” or “Member Shaheb”.

(d) The accused is the sitting lawmaker of the country but his attitude towards judiciary is found to be disrespectful.

(e) The accused is an elected Peoples’ Representative but his art of deliberation, actions and conduct as shown in the court room were not in conformity with rightness, decency and convention of good behaviour.

(f) Everybody should keep in mind, specially the accused as a law-maker should not forget the popular dictum-“Be you ever so high, the law is higher than you”. Needless to mention here that our above observations will in no way affect the merit of the defence case.

## **XX. How many people were killed (Shaheed) during the War of Liberation of Bangladesh in 1971.**

**261.** Mr. Ahsanul Huq Hena the learned defence counsel raised a question-whether there is any death-roll in the hands of the government to show how many people were killed during the War of Liberation.

**262.** From the submissions of both the sides, we can gather it from the facts of common knowledge that during nine months’ war a horrendous atrocities extensively took place all over the country that it was simply impossible to collect actual numbers of killings that took place in Bangladesh. At that time

millions of people were compelled to be displaced, thousands of people within the country were missing, no dead body of those persons were found, 10 million of people reportedly took refuge in India to save their lives. After the War of Liberation, some government and non-government organizations made survey in all over the country to find out actual number of dead persons, injured persons, and also to determine loss of government and private properties. The estimates of those agencies varied to each other for want of reliable information. To arrive at a decision, we may rely upon old documents which have got probative value.

**263.** Now let us peruse some news reporting and books about the total mass killing committed by Pakistan army and their collaborators during the War of Liberation for the purpose of taking judicial notice of it.

**264.** A news report was published in the 'Daily Observer' on 05.01.1972 under the caption "Pak Army killed over 30 lakh people" which is quoted below in relevant part. "The communist party news paper "Pravda" has reported that over 30 lakh persons were killed throughout Bangladesh by Pakistan Occupation forces during the last nine months, reports –ENA."

**Source: Ghulam Azam Case-Exhibit No-120**

**265.** Another news report was published in the 'Daily Azad' on 10 February 1972. The relevant part is quoted below:-

"In a condolence meeting, Dr. Mozaffar Ahmed Chowdhury, the then Vice-Chancellor of Dhaka University firmly declared

that during the War of Liberation, Pakistan occupation forces killed more than 30 lakh people”

**Source: Ghulam Azam Case-Exhibit No-229**

**266.** President Yahya Khan made a comment during struggle for Bangladesh which gives a total picture of genocide committed by the Pakistan Army and their collaborators. President Yahya commented “kill three million of them and the rest will eat out our hands.”

**Source:- Robert Payne-“Massacre”page-50.**

**267.** Muhammad Zafa Iqbal has given a data in his book which is quoted below:

“How many people were killed in Bangladesh is not known for sure there are several different estimates in the media. According to the 1984 world Almanac, it is a million. According to the New York Times (22 December 1972) it is between half to one and a half million. According to the compton’s Encyclopedia and the the Encyclopedia Americana, it is three million (52). The exact number may never be known. In Bangaldesh today, the number is said to be three million.”

**Source:-“History of the Liberation War” page-19 written by Muhammad Zafar Iqbal**

268. On perusal of old documents such as books, articles, news paper reporting of both local and foreign media, government and NGO reports, we are led to hold that during the War of Liberation of Bangladesh in 1971, at least 3 million people were killed by the Pakistan occupation forces and their Collaborators. This number of death-roll has been accepted by the people of Bangladesh as true as it is based on old documents cited above. The facts of killing 3 million people, torture, rape and genocide of Bangladesh in 1971 has become a part of world history, a classic instance of a “fact of common knowledge.”

### **Conclusion:**

269. Mr. Ziad-Al-Malum, the learned Prosecutor has submitted that it is an admitted fact that the accused as D.W-1 has produced 4(four) books in the Tribunal and he has admitted in his cross-examination that a list of War Criminals has been inserted in the book named “ যুদ্ধাপরাধীদের তালিকা ও বিচার প্রসঙ্গ ” (Exhibit-B) in which at page 163, his father’s name and his own name have been written at serial Nos.95 and 98 respectively. It is further submitted that narration of occurrences in the book named “ আমার যুদ্ধ আমার একান্তর ” (Exhibit-C) at page-109-111 and “ বাঙ্গাল কেন যুদ্ধে গেল ” (Exhibit-D) at page 168-169 would prove that accused Salauddin Quader Chowdhury was very much present in Bangladesh in the month of June, 1971 and as such the plea of alibi taken by the defence falls to the ground.

**270.** We have perused those 3(three) books (Exhibit-B, C, D) produced by the defence. It is found from the book (Exhibit-B) at Page-163 that the name of the accused has been written at serial No.98 as one of the war criminals. The narration of occurrence mentioned at the said pages of those two books (Exhibit C and D) go to speak that accused was present in Chittagong during the War of Liberation. It can be presumed from the narration of those books that accused was infact, a war-criminal otherwise his name would not be listed as War-Criminal in the book (Exhibit-B). We have failed to understand what prompted the defence to produce those four books (Exhibits- A, B, C, D) in the Tribunal which have falsified the defence plea of alibi as well as the plea of innocence.

**271.** Mr. A.K.M Fakrul Islam, the learned counsel for the defence has submitted that the offences of crimes against huminity, genocide and war crimes were allegedly committed in 1971 that is why those offences can not be tried by the Act of 1973 giving retrospective effect. In reply, we like to say that the above submission has already been addressed by us in different cases disposed of earlier. We reiterate the same issue that since accused has been charged for the commissioin of crimes against huminity and genocide, etc, his right to call the matter in question has been taken away by Article-47(3) of our constitution.

**272.** It may be noted that retrospective legislation is internationally permitted for prosecuting the perpetrators who committed crimes against huminity, genocide and other class crimes in violation of customary

international law. It is further noted that at present trial of international crimes is being held in different hybrid tribunals such as I.C.T.Y, I.C.T.R, S.C.S.L under their respective retrospective statutes.

**273.** Mr. A.H.M. Ahsanul Huq Hena has submitted that the I.C.T Act of 1973 was enacted by our Parliament and this domestic Tribunal was set up by the government, and as such international jurisprudence is not applicable in the present case.

**274.** In reply, we like to opine that the above submission is not correct one. The preamble of the Act of 1973 reads as follows :-“An Act to provide for the detention, prosecution and punishment of persons for genocide, crimes against humanity, war crimes and other crimes under international law.”Therefore, this Tribunal is undoubtedly a domestic one but it deals with international crimes and as such the trial process of the case is being followed in accordance with the provisions of ICT Act of 1973 and its Rules of Procedure, 2010 made thereunder. Besides this, any other crimes under international law have been incorporated under section 3(2)(f) of the Act. Therefore, this Tribunal is not debarred from applying international legal principles in the trial process to supplement the provisions of the Act in the interest of fair justice.

**275.** Mr. A.H.M Ahsanul Huq Hena has submitted that no local witness has been examined by the prosecution to prove the murder of Mozaffar Ahmed and his son Sheikh Alamgir (charge No.-8) and the evidence of P.W-17



Ummay Habiba is not trustworthy whose evidence has not been supported by any independent witness.

**276.** The above submission made by the defence is not based on evidence on record. It is evident that P.W-17 Ummay Habiba has categorically stated that she was in the car while her father-in-law Mozzafar Ahmed and her husband Sheikh Alamgir were abducted from the car at the instance and presence of accused Salauddin Quader Chowdhury on the date of occurrence and as such the evidence adduced by P.W-17 is found to be most reliable and her evidence has also been corroborated by hearsay witness Nos. 3,11 and 20.

**277.** Accused Salauddin Quader Chowdhury as D.W-1 has claimed that he was a strong supporter of the independence of Bangladesh but he has been illegally brought to justice as he got commitment for the cause of Muslim Ummah.

**278.** Ms. Tureen Afroz has submitted that she has found dual character in Salauddin Quader Chowdhury and she compared him with Grigori Rasputin who was obsessed by religion but also led an uncontrolled sexual life. She went on to submit that after crack-down on 25th March by Pakistan army, the whole nation was struggling for liberation but the accused claimed that he has gone to West Pakistan for taking higher education there and he had claimed that he made a pleasure trip to Maree for three weeks in August and he along with his friends drove to London by road in September 1971 to enjoy a new adventure.

**279.** Ms. Tureen Afroz has further submitted that she never heard that the accused had done anything for the cause of Muslim Ummah and all the statements of the accused manifestly demonstrate that the story of staying in Pakistan is a classic myth depicted by him with intent to get rid of the charges brought against him.

**280.** In consideration of the deposition of D.W.1 and submissions made by the learned prosecutor, we are led to hold that the statements and actions of the accused are found to be full of contradictions and no reliance can be placed upon such contradictory evidence. Moreover, the story of pleasure-trip of 1971 as narrated by the accused (D.W.1) has reminded us a popular proverb:- “while Rome was burning, Nero was dancing”.

**281.** Mr. A.H.M. Ahsanul Huq Hena, the learned Counsel for the defence has incidentally submitted that all most all the prosecution witnesses are a bunch of beggars and vagabonds while all the defence witnesses are men of blue-blood having status in the society and as such the evidence of D.Ws are more reliable and acceptable than that of the prosecution witnesses.

**282.** The above submission made by the learned Counsel is not correct one. The credibility of a witness does not depend upon his social status. Testimony adduced even by a beggar can be considered as best one if the same is found to be relevant and credible. In our society, it is noticed that white collar people are more involved in heinous crimes than that of the poor people.

**283.** Ms. Tureen Afroz lastly submits that all the eye witnesses of the prosecution have testified that they saw accused at the spots accompanied by Pakistan army and Razakars and as such he is liable for joint criminal enterprise (JCE) and this doctrine has been incorroborated in section 4(1) of the Act.

**284.** In the instant case, we have already found that the accused participated in the crimes against humanity and genocide in Chittagong as a member of group of individuals during the War of Liberation in 1971. The provision for fixing up liability for the commission of crimes is quoted below:-

**285.** Section 4(1) of the Act provides “when any crime as specified in section 3 is committed by several persons, each of such person is liable for that crime in the same manner as if it were done by him alone”.

**286.** Upon scrutiny of the evidence on record, as discussed earlier it is well proved by eye-witnesses in determining guilt of the charges that the accused actively participated in the commission of genocide in a large scale with intent to destroy in whole or in part of the Hindu community as a protected religious group under section 3(2)(c) of the Act. It is also well proved by evidence that the accused took part in the attacks directed in a planned way against civilian at his residence Goods Hill and different villages of Chittagong district on different dates causing murder, torture, deportation, looting of goods, setting fire on the houses and shops of unarmed civilians

which fall within the purview of the crimes against humanity, as specified in section 3(2)(a) of the Act.

**287.** On assessment of evidence it is proved beyond reasonable doubt that the prosecution has successfully proved 9 charges out of 23 against the accused. According to guiding principle for fixing up liability as provided under section 4(1) of the Act, the accused is found guilty to the offences mentioned in charge Nos.2,3,4,5,6,7,8,17 and 18 as if those were done by him alone in the capacity of a member of group of individuals.

## **XXI. Verdict on Conviction**

**288.** For the reasons set out in the judgment and having considered all evidence and arguments advanced by both the parties, this Tribunal unanimously finds accused Salauddin Quader Chowdhury guilty and not-guilty in the following charges framed against him.

### **Charge Nos-9,13,15,16,21 and 22.**

The accused is found NOT GUILTY to the offences of abduction, torture, confinement, murder and race-killing as crimes against humanity and genocide as specified in section 3(2)(a) and 3(2)(c ) of the Act of 1973 respectively and he be acquitted thereof accordingly.

### **Charge No. 1**

The accused is found NOT GUILTY to the offences of abduction, torture and race-killing as crimes against humanity and genocide as

specified in section 3(2)(a)(h) and 3(2)(c ) of the Act and he be acquitted from the charge leveled against him.

**Charge No. 2**

The accused is found GUILTY to the offences of killing of a religious group as genocide as specified in section 3(2)( c)(i) and (ii) of the Act of 1973 and he be convicted and sentenced under section 20(2) of the said Act.

**Charge No. 3**

The accused is found GUILTY to the offence of murder as crimes against humanity as specified in section 3(2)( a) of the Act and he be convicted and sentenced under section 20(2) of the said Act.

**Charge No. 4**

The accused is found GUILTY to the offences of persecution on religious ground and deportation as crimes against humanity and offences of genocide as specified in section 3(2)( a) and 3(2)( c)(i) and (ii) and 3(2)(g)(h) of the Act respectively. He be convicted and sentenced under section 20(2) of the said Act.

**Charge No. 5**

The accused is found GUILTY to the offence of killing of a religious group as genocide as specified in section 3(2)(c) (i) of the Act and he be convicted and sentenced under section 20(2) of the said Act.

**Charge No. 6**

The accused is found GUILTY to the offences of killing people of a religious group as genocide and deportation as crimes against humanity as specified in section 3(2)( c)(i) and (ii) and 3(2)(a) of the Act respectively. He be convicted and sentenced under section 20(2) of the said Act.

**Charge No. 7**

The accused is found GUILTY to the offence of murder as crimes against humanity as specified in section 3(2)( a) of the Act and he be convicted and sentenced under section 20(2) of the said Act.

**Charge No. 8**

The accused is found GUILTY to the offences of abduction and murder as crimes against humanity as specified in section 3(2)( a)(h) of the Act and he be convicted and sentenced under section 20(2) of the said Act.

**Charge No. 10**

The accused is found NOT GUILTY to the offences of looting and arson as crimes against humanity as specified in section 3(2)( a) of the Act and he be acquitted thereof accordingly.

**Charge No. 11**

The accused is found NOT GUILTY to the offences of killing people of a religious group as genocide and deportation as crimes against humanity as specified in section 3(2)(c)(i) and 3(2)(a) of the Act and he be acquitted from the said charge.

**Charge No. 12**

The accused is found NOT GUILTY to the offence of killing of religious group as genocide as specified in section 3(2)(c)(i) of the Act and he be acquitted from the said charge.

**Charge No. 14**

The accused is found NOT GUILTY to the offence of murder, abduction, torture and confinement as crimes against humanity as specified in section 3(2)(a) of the Act and he be acquitted from the said charge.

**Charge No. 17**

The accused is found GUILTY to the offences of abduction, confinement and torture as crimes against humanity as specified in section 3(2)(a) of the Act and he be convicted and sentenced under section 20(2) of the said Act.

**Charge No. 18**

The accused is found GUILTY to the offences of confinement, abduction and torture as crimes against humanity as specified in section 3(2)(a) of the Act and he be convicted and sentenced under section 20(2) of the said Act.

**Charge No. 19**

The accused is found NOT GUILTY to the offences of murder, abduction, confinement and torture as crimes against humanity as specified in section 3(2)(a) of the Act and he be acquitted from the said charge.

**Charge No. 20**

The accused is found NOT GUILTY to the offences of murder, torture and confinement as crimes against humanity as specified in section 3(2)(a) of the Act and he be acquitted from the said charge.

**Charge No. 23**

The accused is found NOT GUILTY to the offences of abduction, confinement and torture as crimes against humanity as specified in section 3(2)(a) of the Act and he be acquitted thereof accordingly.

**XXII. Verdict on sentence**

289. Mr.Zead-Al-Malum, the learned prosecutor lastly submits that the prosecution has successfully proved that accused Salauddin Quader Chowdhury in a planned way participated in the commission of crimes against humanity and genocide in different occurrences took place in Chittagong during the War of Liberation of Bangladesh in 1971 and as such he prays for awarding the highest sentence i.e. death to the accused for his direct participation and presence in the barbaric atrocities committed by him and his accomplices.



**290.** We have already found in our foregoing discussions that the accused is guilty to the offences relating to crimes against humanity and genocide mentioned in 9(nine) charges being charge nos.2, 3, 4, 5, 6,7, 8 , 17 and 18 in the commission of those offences as specified in section 3(2) of the ICT Act of 1973.

**291.** On perusal of both oral and documentary evidence it is found that the prosecution has successfully established that the accused was very much present in Chittagong during the War of Liberation and he actively participated in the horrendous atrocities committed by him in collaboration with Pakistan army and Razakars on unarmed civilians with intent to destroy in whole or in part of Hindu population as a religious group, thereby he committed offences of genocide and crimes against humanity.

**292.** At the instance of the accused and by his active participation, Pakistan occupation army launched an attack at Kundeswary Harbal Factory and killed its proprietor Nutun Chandra Singha as listed in charge no. 3, committed genocide at village Sultanpur targeting Hindu population as a religious group as listed in charge no. 5, committed genocide at village Unsattor para targeting the Hindu population as a religious group as listed in charge no. 6, and he also in collaboration with Pakistan army abducted and killed a leader of Awami League named Sk. Mozaffar Ahmed and his son Sk. Alamgir as listed in charge no. 8.

**293.** It is evident on record that the accused committed genocide by his active participation in different places of Chittagong targeting to wipe out

Hindu population as a religious group by launching systematic attack in a large scale with the aid of Pakistan army and also killed unarmed civilians creating reign of terror in the locality. As a result, millions of people were compelled to leave the country and took refuge in India during the War of Liberation of Bangladesh.

**294.** In the foregoing discussions on charge matters, it is well-proved that the accused actively participated by his presence in the commissions of crimes against humanity and genocide as listed in charge nos. 3,5,6 and 8 which undoubtedly has formed an 'aggravating factor'. Thus, we are of the unanimous view that the accused deserves the highest punishment as provided under law for committing such gravest crimes which also tremble the collective conscience of mankind.

**295.** Since the prosecution has successfully proved 9(nine) charges being nos. 2,3,4,5,6,7,8,17 and 18 beyond reasonable doubt, we do hereby render the following order on sentences.

Hence it is,

### **ORDERED**

that Accused Salauddin Quader Chowdhury son of Late Fazlul Quader Chowdhury of Goods Hill, Rahamat Gonj, Police Station-Kotwali, District-Chittagong and House No-28, Road No-10/A, Dhanmondi, Residential Area, Police Station Dhanmondi, District- Dhaka, being a member of group of individuals is held guilty to the offences mentioned in 9

(nine) charges out of 23 namely charge nos. 2,3,4,5,6,7,8,17 and 18 for the commission of offences as specified in section- 3(2) read with section 4(1)of the International Crimes (Tribunals) Act, 1973. The accused is awarded punishments showing its nature and quantum for each charge proportionate to the gravity of offences as mentioned below:-

**Charge nos.3,5,6 and 8**

Accused Salauddin Quader Chowdhury is held guilty to the offences of crimes against humanity and genocide in section-3(2) read with section 4(1) of the ICT Act of 1973 for substantially contributing to the commission of crimes as brought in aforesaid 4(four) charges.

The accused is convicted and sentenced to death for each charge mentioned above under section 20(2) of the said Act for committing the gravest offences, and accordingly he be hanged by the neck till he is dead.

**Charge nos.2, 4 and 7**

The accused is held guilty to the offences of crimes against humanity and genocide as specified in section 3(2) read with section 4(1) of the ICT Act of 1973 for substantially contributing to the commission of offences as brought in the aforesaid 3(three) charges. The accused is convicted and sentenced to suffer imprisonment for 20 years for each charge mentioned above under section 20(2) of the said Act.

**Charge nos. 17 and 18**

The accused is held guilty to the offences of crimes against humanity as specified in section 3(2) read with section 4(1) of the ICT Act of 1973. The accused is convicted and sentenced to suffer imprisonment for 5 years for each charge mentioned above under section 20(2) of the said Act.

**Charge nos.1,9,10,11,12,13,14,15,16,19,20,21,22, and 23**

The accused is held not guilty to the offences of crimes against humanity and genocide as specified in section 3(2) read with section 4(1) of the ICT Act of 1973. He be acquitted from the aforesaid 14 (fourteen) charges levelled against him.

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

The convict accused is at liberty to prefer appeal to the Appellate Division of the Supreme Court of Bangladesh against the order of conviction and sentence within 30 (thirty) days from the date of passing the order of sentence as per provision of section 21 of the Act.

Let a certified copy of the judgment be furnished to the prosecution and to convict free of cost.

Let another copy of this judgment be sent to the District Magistrate, Dhaka for information and necessary action. The convict be sent to the prison with a conviction warrant accordingly.

**(A.T.M. Fazle Kabir, Chairman)**

**(Jahangir Hossain, Member)**

**(Anwarul Haque, Member)**