

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

ICT-BD Case No. 01 OF 2011

**(Charges:- Crimes against Humanity and genocide as specified in
section 3(2)(a) and 3(2)(c)(i)(g)(h) of the Act of XIX of 1973)**

The Chief Prosecutor

Versus

Delowar Hossain Sayeedi

Present:

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

Mr. Justice Jahangir Hossain, Member

Mr. Justice Anwarul Haque, Member

Date of delivery of Judgment 28 February, 2013.

Prosecutors:-

Mr. Golam Arif Tipu, Chief Prosecutor

Mr. Syed Haider Ali,

Mr. Abdur Rahman Howlader,

Mr. Altab Uddin Ahmed,

Mrs. Nurjahan Begum Mukta,

Mr. A.K.M. Saiful Islam,

Mr. Shahidur Rahman

Mr. Sultan Mahmud

Mr. Hrishikesh Saha

Mr. Mir Iqbal Hossain

Defence Counsels:-

Mr. Md. Abdur Razzak Senior Counsel with

Mr. Mizanul Islam,

Mr. Monjur Ahmed Ansari,

Mr. Kafil Uddin Chowdhury,

Mr. Tajul Islam,

Mr. Tanvir Ahmed Al-Amin,

Mr. Imran Siddique,
Mr. Abu Bakar Siddique

Judgment

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

I. Introduction:-

1. It is a remarkable occasion that after creation of this Tribunal-1, today it is going to deliver the first judgment of the first case after completion of its trial. This Tribunal was established under the International Crimes (Tribunals) Act, enacted in 1973 (hereinafter referred to as the Act) by Bangladesh parliament 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 25th March to 16 th December 1971.

2. On behalf of both the parties the learned prosecutors and defence counsels raised some legal issues by way of arguments which need to be addressed as those issues are involved in the instant case.

3. In delivering the verdict, we suppose that it is necessary to highlight some legal issues and factual aspects relating to historical background of the War of Liberation, characterization of international Crimes, Commencement of proceedings, charges framed, and the laws applicable to the case for the purpose of determining culpability of the accused.

II. Commencement of proceedings.

4. It is evident on record that the learned Chief prosecutor having received investigation report along with documents therewith by the Investigation Agency, Submitted the formal charge along with documents to this Tribunal on 11.7.2011 under section 9(1) of the Act of 1973. Sole accused Delowar Hossain Sayeedi was in the custody in connection with other cases. He was produced before the Tribunal on 14.07.2011 following a production warrant issued by this Tribunal on that date, on perusal of the documents submitted by the prosecution, this Tribunal took cognizance of offence against the accused as mentioned under section 3(2) of the Act as required under Rule 30 of the Rules of procedure (ROR) on hearing of the learned lawyers of both the sides, this Tribunal framed charges against accused Delowar Hossain Sayeedi on 03.10.2011 under sections 3(2) (a) and 3(2)(c i), (g)(h) of the Act which are punishable under section 20(2) read with section 3(1) of the Act. 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 the trial started.

III. Historical Background:-

5. 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 quarter million women were raped, and over 10 million people were deported to India causing brutal persecution upon them.

6. 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.

7. 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, the people of East Pakistan started thinking for their own emancipation and started a political movement for getting provincial autonomy for East Pakistan.

8. 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.

9. 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 lacs) 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-Badar, 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 perpetrator 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 Delowar Hossain Sayeedi alias Delu son of late Yousuf Ali Sayeedi of village –South Khali, Police Station Indurkani (Zianagar) Dist.- Pirojpur was born on 01.02.1940 in his village. He passed Dhakil Examination from Darns Sunnat Madrasha Sarsina in 1957 and he also passed the Alim Examination in 1960 from Barroipara Madrasha. He has got one wife and four sons. He was elected Member of the parliament in the election held in 1996

and 2001. He joined Jamaat-e-Islam and now the Nayb-e-Amir of Jamaat-e-Islami Central Committee. He is a writer by profession and known all over the Muslim world as a renowned Oazin and orator. On perusal of the papers submitted by the accused with the form filled up in the 9th Parliament Election of 2008, it is found that a part of his name “Abu Nayeem Mohammad” is cut off from his name and new names such as ‘Alamma’ and Sayeedi have been added with his name. In the same form he wrote his name “Allama Delowar Hossain Sayeedi and Signed it. It is alleged by the prosecution that after passing Alim Examination he did not receive any higher degree nor he obtained doctorate degree in any subject of Islam religion and as such he is not legally entitled to use the title ‘Allama’ or Maulana with his name. During the War of Liberation in 1971 the accused was a grocery shopkeeper, he used to sell oil, salt, onion and pepper at parerhat Bazar and as such his economic condition was not good. He could speak urdu well as, he obtained ‘Alim’ from Madrasha. He welcomed the Pakistani Army at parerhat Bazar and formed local peace committee and subsequently as a member of Rajakar Bahini actively participated in the atrocities committed by Pakistani Army and Rajaker Bahini targeting civilians, Hindu Community and pro-liberation people. By adopting illegal means became a rich man and now he is the owner of huge properties including multistoried buildings in Dhaka and Khulna.

V. Jurisdiction of the Tribunal:-

16. The International Crimes (Tribunals) Act, 1973 has empowered the Tribunal to prosecute and punish not only armed forces but also the

perpetrators was belonged to auxiliary forces or who committed the offence 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) the person or the group of persons 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. Thus, the Tribunals set up under the Act of 1973 are absolutely domestic Tribunal 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:-

17. 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;

18. Many have expressed their concern by the degree to which the above definition of ‘Crimes against Humanity’ under the 1973 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.

19. 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 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

20. 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.

21. The ICTR Article 3: Crimes against Humanity

The international 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.

22. THE ICTY. ARTICLE 5

The International 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.

23. ICT BD

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 whether perpetrated;

elements differs in the different statutes.

24. The ICTY requires the crime to be taken place in an armed conflict, be it international or national. The statute doesn't require the crime to be committed

as part of widespread or systematic attack on the civilian population, neither it requires that the crime to be perpetrated on discriminatory grounds.

25. Case laws:

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 the ICTY Trial Chamber's 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.

26. 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.

27. 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.

28. 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 didn’t require the crime to be taken place as part of widespread and 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 part of a systematic or widespread attack on civilian population. Court’s language ([t] he “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).

29. 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. 163 The Tadic Judgment did not elaborate on how to construe “Widespread” or “Systematic,” “But customary IHL mandates that either systematic or widespread are enough to qualify a crime to be a crime against humanity.

30. 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 laws 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 and systematic. Our law doesn't require the attack to be part of a widespread and systematic attack. But as discussed in Tadic case by ICTY the word civilian population indicates that the attack to be part of widespread and systematic attack. It is now well-settled that the attack 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.”

31. Summary:

The International Crimes Tribunal 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;

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

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 take 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.

2) Though the statute of the tribunal doesn't explicitly requires the attack to be part of a systematic and 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. See Tadic case for references. However the term 'systematic and widespread' is a disjunctive, rather than cumulative requirement. The Rome statute and the ICTR 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.

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.

4) [t] he "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.

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.

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, on 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 2012 provides a system which broadly and fairly compatible with current international standards.

VIII. Procedural History:

33. At pre-trial stage, a complaint petition was filed by one Md. Mahbubul Alam Houlader on 20.07.2010 with the investigation agency constituted under section 3(1) of the Act of 1973. Accused Delowar Hossain Sayeedi was in the jail custody in connection with other criminal cases pending in different courts of Bangladesh. This Tribunal issued production warrant against the accused and he was produced before this Tribunal on 2.11.2010 by the prison authority. Several bail applications filed by the accused were disposed of in accordance with law in presence of the accused and the learned lawyers of both the parties upon hearing an application filed by the accused, this Tribunal directed the prison authority to arrange proper treatment of the accused in Bangabandhu Sheikh Mujib Medical University Hospital (BSMMU) and accordingly he was provided proper treatment thereof. The accused informed the court that he being a diabetic patient needs treatment in BIRDEM Hospital. Then this Tribunal allowed the accused to have treatment in BIRDEM Hospital. The jail authority was directed to provide green vegetable as specialized food to the accused considering him to be a diabetic patient and also directed to provide health friendly vehicle to the ailing accused for his transport.

34. On the basis of investigation report, the chief prosecutor submitted formal charge on 11.07.2011 against the accused before this Tribunal. It is alleged that the accused as a member of group of individuals as well as a

member of Rajakar Bahini Committed crimes against Humanity, genocide and other Crimes in different places of the then Pirojpur Sub-division. This Tribunal upon consideration of the formal charge and documents attached therewith took cognizance of offence on 14.07.2011. An application on behalf of the accused was submitted for discharge of him. Hearing on charge matter was continued for four days by the learned lawyers of both the parties. After completion of hearing on charge matter, the application for discharge of the accused was rejected and as many as 20 charges under section 3(2) (a) and 3(2) (c)(i) (g) (h) of the ICT Act of 1973 were framed on 03.10.2011 against accused Delowar Hossain Sayeedi.

IX. Special features of laws and rules applicable to trial procedure:-

35. The proceedings before the Tribunal shall be guided by the International Crimes (Tribunals) Act, 1973 and the Rules of procedure, 2012 (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. Tribunal is authorized to take into its judicial notice of fact of common knowledge which is not needed to be proved by adducing evidence (section-19(4) of the Act). The Tribunal is authorized to take any evidence without observing formality, such as reports, photographs newspaper, 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 (Rule -56(2). The defence shall have liberty to cross-examine prosecution

witness on his credibility and to take contradiction of the evidence given by him (Rule -53(ii)). The accused shall have right to give explanation to the charges and to present evidence in support of the defence case. He deserves right to conduct his case or to have assistance of counsel (Section-17 of the Act). The Tribunal may release an accused on bail subject to fulfillment of conditions imposed by it (Rule -34(3)) 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 (Rule-58A).

X. Witnesses adduced by the parties:-

36. The prosecution submitted a list of 138 witnesses including formal witnesses while the defence submitted a list of 48 witnesses in support of defence case. At the time of trial, the prosecution examined 28 witnesses of whom 20 were witnesses of occurrence, 07 were seizure list witnesses and one was the investigation officer. On the other hand, this Tribunal allowed the defence to examine maximum 20 witnesses but it examined 17 witnesses of whom 14 were listed witnesses and the rest three were examined by the defence with the permission of the Tribunal. It may be mentioned that out of said three witnesses one was the listed prosecution witness but he deposed as a defence witness.

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

37. 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. We found sufficient grounds to presume that the accused has committed offences described under section 3(2) punishable under section 20(2) of the Act and accordingly as many as 20 charges were framed against accused Delowar Hossain Sayeedi on 03.10.2011 which were read over and explained to him to which he pleaded not guilty and claimed to have fair justice.

38. The incidents took place about 40/41 years back in 1971 and as such memory of live witnesses may have been faded and as a result discrepancy may have occurred in their versions made in the Tribunal. The case before us depends mostly on narratives of live witnesses who claim to have witnessed the occurrences and sustained trauma as well. Their testimonies are based on their explicit memories. Despite the indisputable atrocities of the crimes committed during the war of Liberation in 1971 by the Pakistani Soldiers in collaboration with the local perpetrators like accused Delowar Hossain Sayeedi we require to examine the facts constituting offences dispassionately, keeping in mind that the accused is presumed to be innocent.

39. Thus, in the case in hand, together with the testimony of the live witnesses, we shall have to depend upon the following issues namely (1) facts of common knowledge (ii) context of the attack directed against unarmed Hindu Civilians (iii) Documentary and circumstantial evidence (iv) political

status of the accused, if any at the time of occurrences. (v) Link of the accused with the local Pakistani armed forces and his participation in the commission of offences charged. (vi) What was the status and role of the accused at the relevant time and how he used to maintain his relation with Pakistani occupation armed forces.

XII. Backdrop and context of the War of Liberation:-

40. 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 occupation armed forces in order to implement their organizational policy and plan they created some parallel forces namely Razaker Bahini, Al-Bador Bahini, Al-shams and Peace Committee as auxiliary forces who 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 organized 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. The charges against the accused person arose from some particular

events allegedly constituting the crimes against Humanity and genocide during the War of Liberation in 1971.

41. In determining culpability of the accused for the commission of offence for which he has been charged, we are to adjudicate the fundamental issues such as (i) whether the accused was a member of Razakar Bahini or simply a member of group of Individuals at the relevant time (ii) whether the accused was substantially associated with Pakistani Army and facilitated their activities in the commission of offences. (iii) whether the accused physically participated in the commission of crimes against Humanity and genocide during the War of Liberation we always remind that the burden of proving charges lies upon the prosecution and mere failure to prove the defence plea shall not render the accused guilty.

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

XIII. Summing up the prosecution case by the prosecutor:-

43. Mr. Syed Haider Ali, the learned prosecutor contends that as many as 20 charges relating to crimes against Humanity, genocide and other crimes described under section -3(2) of the Act, were framed against accused Delowar Hossain Sayeedi who committed the said crimes within Pirozpur Sub-Division

during the War of Liberation of Bangladesh. The accused as a member of group of individuals as well as a member of local peace committee and sometimes as a member of Razakar Bahini took part in killing, torture, rape, looting, setting fire on the houses of civilians, forceful conversion of Hindus to Muslims and systemic attack on the Hindu community with intent to destroy it . It is further contended that the prosecution has successfully proved 19 charges by oral testimony and documentary evidence and 5 charges namely charges 1-4 and 13 have been proved by statements for want of live witnesses those charges have been proved by the statements of witnesses, recorded by the investigation officer as per provision of section 19(2) of the Act.

XIV. The Summing up the defence case by the counsel:-

44. Mr. Abdur Razzak, the learned senior counsel for the defence submits that in committing international crimes, attack must be widespread or systematic with a clear knowledge about commission of offence but the Act does not contemplate this and crimes are not adequately defined as such alleged charges suffer from vagueness and element of crimes are hopelessly absent. It is contended that the accused used to live in Jessore upto June 1971, thereafter he went to Pirojpur in the Month of July and he never joined the local peace committee or Rajakar Bahini or took part in any atrocities committed by Pakistan Army. It is contended that the Government of Bangladesh made press

release on 17.4.1973 and accordingly enacted the International Crimes (Tribunals) Act 1973 in order to try only 195 war criminals and the then Government passed the collaborators order 1972 aiming at to try the civilians responsible for the offence and as such the accused as a civilian could be tried under collaborators order but the present Government with a malafide intention has brought the case against him though such proceeding is barred by the tripartite agreement dated 02.07.1972 where clemency was granted to the War Criminals. It is further argued that the prosecution has committed delay of about 40 years in bringing criminal charge against the accused without explanation and as such unexplained inordinate delay is sufficient to disbelieve the prosecution case. It is submitted that the Tribunal received statement of 16 witnesses in evidence recorded by the investigation officer under section 19(2) of the Act, though those witnesses were available in their locality. It is lastly contended that recently skype conversations between the former Chairman of this Tribunal with one Ahmed Ziauddin which go to show that the order of framing charge and other 4 orders were transmitted from Belgium and as such the defence has been materially prejudiced by such unfair process of the Trial.

XV. Reply of prosecutor to the argument made by defence:-

45. In reply to these legal points Mr. Syed Haider Ali submits that there is no limitation in bringing criminal prosecution particularly when it relates to the international crimes committed in violation of customary international laws. Moreover, the International Crimes (Tribunals) Act was enacted in 1973 but after the assassination of Bangabandhu Sheikh Muzibur Rahman and his family member on 15 August 1975, the process was halted and even collaborators order 1972 was repealed on 31.12.1975. After the said dark history there was no favourable situation, strong political will and consensus to prosecute the offenders under the Act of 1973. The present Government under a strong political will established this Tribunal on 25 March 2010 for the first time to bring the offenders to justice and thus investigation and trial against the perpetrators have been started. This history of common knowledge itself is explanatory as to long delayed prosecution and as such it cannot be said that the delay is unexplained. It is further argued that the Tripartite Agreement did not give immunity to listed 195 War Crimes belonging to Pakistani occupation forces nor it was ratified by the parliament of Bangladesh as such it cannot stand as a barrier on the way of holding trial under the Act of 1973 against the accused persons who are local perpetrators.

XVI. Discussion and decision:-

46. 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:-

It is not acceptable to say that no individual or member of auxiliary force as stated in section 3 of the Act of 1973 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 Force 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 an '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 of 1973 enacted to prosecute those offences.

47. 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 of 1973 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.

48. As 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.

49. Next, the Act of 1973 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 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 of 1973 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 of 1973. Therefore, the argument that since the main responsible persons (Pakistan Army) have scaped 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.

50. Therefore, we are of the view that the ‘tripartite agreement’ is not at all a barrier to prosecute civilian perpetrator under the Act of 1973. Thus, we also hold that ICT Act of 1973 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.

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

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’ 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. Prosecution could not show that the accused belonged to Al-Badar Bahini or an ‘auxiliary force’ and as such on this score too he cannot be prosecuted under the Act of 1973.

52. At the outset, 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.

53. 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 of 1973 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.

54. 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 of 1973 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 of 1973 he does not have right to call in question any provision of the International Crimes (Tribunals) Act 1973 or any of amended provisions thereto. Thus, we hold that the application of prospectiveness or retrospectivity as to amendment to section 3 of the Act of 1973 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.

55. Delay in bringing prosecution

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 Conventions of 1949 contain any provisions on statutory limitations to war crimes and crimes against humanity. Article 1 of the Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes Against Humanity

adopted and opened for signature, ratification and accession by General Assembly resolution 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.

56. 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 internationally recognised crimes committed during Chilean revolution in 1973 is still going on. Internationally recognised crimes were also committed during Pol Pot regime of Cambodia in the year 1973 to 1978 but due to internal conflicts and lack of political will of the then government could not start prosecution against the 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 Slobodan Milosevic of Serbia, Charles Taylor of Liberia and Augusto Pinochet of Chile, as the head of the state could not protect them from being detained and prosecuted for committing genocides, crimes against Humanity and war crimes.

57. In view of above settled position and in the absence of any statutory limitation, as a procedural bar, only the delay itself does not preclude prosecutorial action to adjudicate the culpability of the perpetrator of core international crimes. Indubitably, a prompt and indisputable justice process cannot be motorized solely by the painful memories and aspirations of the victims. It requires strong public and political will together with favourable and stable political situation. Mere state inaction, for whatever reasons, does not render the delayed prosecution readily frustrated and barred by any law.

58. Considerations of material justice for the victims should prevail when prosecuting crimes of the extreme magnitude is on the process. Therefore, justice delayed is no longer justice denied, particularly when the perpetrators of core international crimes are brought to the process of justice. However, there can be no recognized theory to insist that such a 'system crime' can only be perused within a given number of years. However, delay may create a doubt but the matter is addressed after taking all the factual circumstances into consideration.

59. Offences: Whether well characterized

It is emphatically submitted that the offences enumerated in the Act are not well defined and as such it will cause prejudice the accused in preparing its own defence. The Rome Statute embodies elements required to constitute crimes underlying in the Statute. On the basis of flawed

definition of crimes lawful prosecution cannot be initiated. The learned Counsel also drew our attention to the Statute of ICC (Rome Statute).

60. It is to be noted that looking at the contemporary standards of definition of ‘Crimes against Humanity’ in various Statutes, this observation can be made that there is no ‘consistency’ among definitions. The definition of ‘Crimes against humanity’ as contemplated in Article 5 of the ICTY Statute 1993 neither requires the presence of ‘Widespread and Systematic Attack’ nor the presence of ‘knowledge’ thereto as conditions for establishing the liability for ‘Crimes against Humanity’. True, the Rome Statute definition differs from that of both ICTY and ICTR Statutes.

61. But, the Rome Statute says, the definition etc. contained in the Statute is ‘for the purpose of the Statute’. So, use of the phrase “for the purpose of the Statute” in Article 10 of the Rome Statute means that the drafters were not only aware of, but recognized that these definitions were not the final and definitive interpretations, and that there are others. In establishing the ‘Crimes against Humanity’ in the Sierra Leone Court, there is no need to prove that the relevant crimes were committed with the knowledge of attack. We see that there is no actual consistency in the definition of ‘Crimes against Humanity’ as per the ICTY Statute, the ICTR Statute, the Rome Statute and the Sierra Leone Statute.

62. The Section 3(2)(a) of the Act states the ‘attack’ constituting the offences of crimes against humanity is required to have been directed against ‘any civilian population’ or ‘persecution on political, racial, ethnic or religious grounds’. Similarly, genocide requires, as stated in section 3(2)(c) of the Act, that the unlawful acts to constitute the offence of genocide are to be committed ‘with intent to destroy, in whole or in part’, a ‘national, ethnic, racial, religious or political group’. Therefore, the claim as to the non-existence of a consistent international standard for the definition of ‘Crimes against Humanity’ in the 1973 Act is not acceptable. However, in this regard, the Tribunal shall not be precluded in seeking guidance from international references and evolved jurisprudence, if it is so indispensably required in the interest of fair justice.

63. Mr. Mizanul Islam the learned defence counsel submits that the investigation officer has admitted in his cross-examination that two other criminal cases arising out of the charges framed against the accused are under investigation and pending in the Magistrate court and as such trial of this case is liable to be stopped. In reply, it can be said that the ICTA of 1973 is a special law dealing with International Crimes namely Crimes against Humanity, Genocide and other system crimes and as such any ordinary criminal offence shall not stand as a barrier on the way of holding trial of those special crimes mentioned above. Accordingly, this

prosecution under the Act of 1973 cannot be said to be barred by the doctrine of double jeopardy.

64. It is lastly contended by Mr. Abdur Razzak that recently it has been revealed by skype conversation of the former Chairman and one Ahmed Ziauddin based in Belgium and their E-mail Communications that as many as five draft orders including the order of framing charge were transmitted of the Tribunal from Belgium which has made the trial process questionable and thus the defence has been materially prejudiced.

65. It may be mentioned here that the above issue as regards alleged skype conversations was disposed of by the Tribunal's order dated on 03.01.2013 with an observation that the act of recording any private skype conversation and hacking E-mail communications are nationally and internationally recognized as crime. In view of the fact, this Tribunal as a court of law cannot take cognizance of such hacked documents which are inadmissible in evidence. Moreover, all the orders were passed by three Judges of the Tribunal, and its chairman alone is not the Tribunal. For the sake of argument if participation of the former chairman is excluded even then all the orders including the order of framing charge passed by the majority Judges stand good since rest two Judges did not disown the said orders. Besides this, framing of charge is nothing but a concise form of the formal charge as submitted by the prosecution. Verdict of a case in no way shall be merely based on charges framed. Evidence adduced is to be

evaluated only for arriving at a decision as to how far the prosecution has been able to establish charges. In the process of such task of evaluation of evidence before us the alleged skype conversations and illegally hacked communications shall in no way keep any impact causing prejudice to either party. Moreover, the examination of witnesses was recorded in public trial and this part of proceeding chiefly based on testimony of the witnesses which was transparently done in presence of both the parties.

XVII. Whether accused Delowar Hossain Sayeedi was a member of local Razakar Bahini /Peace Committee?

66. It is a fact of common knowledge that during the War of Liberation in 1971, Pakistani Occupation forces organized auxiliary forces namely , Razakar , Al-Bador, Al-Shams and Peace Committee for the purpose of their operational support in implementing its atrocious activities in furtherance of making policy to execute their missions. The Razakar Bahini was composed of mostly pro-pakistani Bangalee Razakars who actively associated with many of the atrocities committed by Pakistani Army during nine-month of the War of Liberation.

67. Now let us discuss the oral and documentary evidence produced by the prosecution as to proving the accused as a member of local Razakar Bahini.

68. P.W. 1 Md. Mahbubul Alam Howlader deposed that during Liberation War, 1971, Parerhat Peace Committee was formed with accused Delwar

Hossain Sayeedi and some others who were against the independence of Bangladesh. He also deposed that Razakar bahini was formed there with some members of the said Peace Committee including accused Delwar Hossain Sayeedi and some students of different Madrasas and members of different organizations who were against the independence of Bangladesh.

69. P.W. 2 Ruhul Amin Nobin deposed that during Liberation War, 1971, a Peace Committee was formed at Parerhat with accused Delwar Hossain Sayeedi and others. He also deposed that a Razakar bahini was also formed there under the leadership of accused Delwar Hossain Sayeedi, Sekander Ali Sikder, Danesh Ali Molla, Mowlana Moslehuddin and some other anti-liberation people with intent to kill the supporters of Liberation War and freedom-fighters.

70. P.W. 3 Md. Mizanur Rahman Talukder deposed that during Liberation War, 1971, accused Delwar Hossain Sayeedi along with his accomplices (Razakars) tortured his brother Abdul Mannan.

71. P.W. 4 Sultan Ahmed Howlader deposed that on 1st May, 1971, he having gone to his village home he came to know that leaders of Jamat-E-Islami namely Sekander Ali Sikder, Danesh Ali Molla, accused Delwar Hossain Sayeedi and Moslem Mowlana, formed a Peace Committee at Parerhat. Under the leadership of accused Delwar Hossain Sayeedi, a Razakar bahini was also formed at Parerhat with the students of different Madrasas, workers of Jamaat-E-Islam and the persons of different anti-liberation organizations.

72. P.W. 5 Md. Mahtabuddin Howlader deposed that during Liberation War, 1971, Md. Moslemuddin, accused Delwar Hossain Sayeedi, Danesh Molla and

Sekander Sikder formed Peace Committee. He also deposed that 2/3 days after the Peace Committee having been formed the said persons themselves formed Razakar bahini.

73. P.W. 6 Manik Posari deposed that during Liberation War, 1971, Razakar bahini and Peace Committee were formed and, accused Delwar Hossain Sayeedi formed the Peace Committee at Parerhat with the persons who were against the Liberation War, and thereafter the members of said Peace Committee formed Razakar bahini.

74. P.W. 7 Md. Mofizuddin Posari deposed that during Liberation War, 1971, there were people of Razakar bahini and Peace Committee in their area and he knew them. He further deposed that the goods of the house of Saijuddin Posari were burnt by kerosene oil at the direction of Razakars, namely, Sekander Sikder, Danesh Molla, Mobin, Razzaque, Delu Sikder (accused Delwar Hossain Sayeedi) and some other Rajakars. He identified the accused in the dock.

75. P.W. 8 Mostafa Howlader deposed that during Liberation War, 1971, accused Delwar Hossain Sayeedi was a member of Peace Committee and Rajakar bahini and he along with the members of Peace Committee and Razakar bahini looted the goods of the houses and shops of Hindus of Parerhat.

76. P.W. 9 Altaf Hossain Howlader deposed that on 7th May, 1971, Pakistani Army came to Parerhat and, 6/7 days prior to their arrival, a Peace Committee

was formed at Parerhat and thereafter accused Delwar Hossain Sayeedi himself formed Razakar bahini there with the members of the Peace Committee.

77. P.W. 10 Basudev Mistri deposed that during Liberation War, 1971, accused Delwar Hossain Sayeedi, Sekander Sikder, Danesh Molla, Moslem Mowlana, Hakim Kari, Ruhul Amin, Momin along with others formed a Razakar bahini at Parerhat. He identified the accused in the dock.

78. P.W. 11 Abdul Jalil Sheikh deposed that on 8th May, 1971 he saw that some Razakars including Rajakar Delwar Hossain Sayeedi (accused) along with 10/15 Pakistani Army having come to their village Chitholia, proceeded to the house of Manik Posari and then the accused along with two other Rajakars caught hold of Kutti and Mofizuddin therefrom and tied them with rope and then they looted the goods of that house and, thereafter they having poured kerosene oil burnt that house.

79. P.W. 26 Abed Khan is a journalist. He deposed that he was the editor of Dainik Samokal in 2007; that on 10.02.2007 a news report was published on the first page of that daily newspaper under the headline “জামায়াতের গডফাদাররা ধরা ছোয়ার বাইরে ” about four persons and of them accused Delwar Hossain Sayeedi was number one. He further deposed that it was reported in the newspaper amongst others accused Delwar Hossain Sayeedi had formed Razakar bahini at Parerhat Bondar.

80. Ext. 35 is a list of Razakars, prepared by Dr. M. A. Hasan, Convener, War Crimes Facts Finding Committee, Truth Commission For Genocide in

Bangladesh, the name of accused Delwar Hossain Sayeedi appears to have been in the said list under district Pirojpur.

81. Dr. M.A. Hasan, as one of the researchers on war crimes wrote a book named “যুদ্ধাপরাধীর তালিকা ও বিচার প্রসঙ্গ” published in February 2009 in which the name of Delwar Hossain Sayeedi has been published at page No. 148 as one of the Razakars of District Pirojpur. The defence side has filed a book named “Santi Committee 1971” (Exhibit NO. FV) in the case of Professor Ghulam Azam which also speaks that the name of Delwar Hossain Sayeedi has been listed as one of the Razakars of District Pirozpur.

82. Ext. 8 is an issue dated 05.03.2001 of the Bengali Daily Janakantha wherein a staff report under the caption “একাত্তরের ‘রাজাকার দিইল্লা’ এখন মাওলানা সাঈদী” was published which reads as follows:

“নেকড়ে যেমন ছদ্মবেশ নিলেও নেকড়েই থেকে যায়, তেমনি একাত্তরের নরপশু রাজাকার-আলবদররা স্বাধীনতার পর ভোল পাঁটানোও নরপশু রাজাকার-আলবদরই থেকে গেছে। পিরোজপুরের একাত্তরের ‘রাজাকার দিইল্লা’ স্বাধীনতার পর জনগণকে ধর্মকর্মের কথা শুনিয়ে ‘মাওলানা সাঈদী’ হলেও তার অধর্মের অপকর্মের কলংক ত্রিশ বছর পরও মুছে যায়নি। এখন সাঈদীরা একাত্তরের স্বাধীনতাবিরোধী দালাল-ঘাতক-ধর্ষকের নির্মমতা নৃশংসতার ভয়ংকর প্রতীক। গণহত্যা, লুণ্ঠন, অগ্নিসংযোগ, নিপীড়ন ইত্যাদীর মাধ্যমে এরা জাতীয় মুক্তি সংগ্রামের বিরোধিতা করেছে। এ সত্য থেকে এরা পলায়ন করতে পারে, কিন্তু সত্য নিষ্ঠুরভাবে আমৃত্যু তাদের ধাওয়া করে যাবে। স্বাধীন বাংলাদেশের ইতিহাসে এই সাঈদীদের নাম উচ্চারিত হবে সীমাহীন ঘৃণায়।

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83. Ext. 11 is an issue dated 04.11.2007 of the Bengali Daily Bhorer Kagaj wherein a staff report under the caption “রাজাকারের একান্তরনামা ৭-হত্যা ধর্ষণ লুটপাটে অভিযুক্ত দেলোয়ার হোসেন সাঈদী” was published which runs as follows:

“.....
১৯৭১ সালে মহান মুক্তিযুদ্ধকালে তিনি ধর্মের দোহাই দিয়ে নিজ জেলা পিরোজপুরে হিন্দু সম্প্রদায়ের ঘরবাড়ি, সম্পদ লুট করেছেন। পাকিস্তানি হানাদার বাহিনীকে গণহত্যা ও নির্যাতনে প্রত্যক্ষভাবে সহায়তা করেছেন সাঈদী। পিরোজপুরে মুক্তিযুদ্ধের সময় গণহত্যা, নির্যাতন, লুটতরাজসহ নানা যুদ্ধাপরাধের অন্যতম হোতা দেলোয়ার হোসেন সাঈদী। তার এসব অপকর্মের বহু নজির ও সাক্ষী আজো পাওয়া যাবে তার হাতে নির্যাতিত ও ক্ষতিগ্রস্ত হয়ে বেঁচে থাকা পিরোজপুরের স্বজনহারা মানুষের ঘরে ঘরে।

একান্তরে মুক্তিযুদ্ধের সময় স্বাধীনতা বিরোধী ও ঘাতক সাঈদীর দুষ্কর্মের কিছু বিবরণ প্রকাশিত হয়েছে ‘একান্তরের ঘাতক দালাল ও যুদ্ধাপরাধীদের সম্পর্কে গঠিত জাতীয় গণতদন্ড কমিশনের রিপোর্ট’-এ। ওই রিপোর্টে বলা হয়:

১৯৭১ সালে মুক্তিযুদ্ধের সময় এই জামাত নেতা পাকিস্তানি হানাদার বাহিনীকে সহযোগীতা করার জন্য তার নিজ এলাকায় আলবদর, আল শামস এবং রাজাকার বাহিনী গঠন করেন এবং তাদের সরাসরি সহযোগীতা করেন। ১৯৭১ সালে তিনি সরাসরি কোন রাজনৈতিক দলের নেতা ছিলেন না, তবে তথাকথিত মওলানা হিসাবে

তিনি তার স্বাধীনতা বিরোধী তৎপরতা পরিচালনা করেছেন। তার এলাকায় হানাদারদের সহযোগী বাহিনী গঠন করে প্রত্যক্ষ এবং পরোক্ষ ভাবে লুটতরাজ, নির্যাতন, অগ্নিসংযোগ, হত্যা ইত্যাদী তৎপরতা পরিচালনা করেছেন বলে তার বিরুদ্ধে অভিযোগ রয়েছে। মুক্তিযুদ্ধের সময় তিনি তার এলাকায় অপর চারজন সহযোগী নিয়ে ‘পাঁচ তহবিল’ নামে একটি সংগঠন গড়ে তোলেন, যাদের প্রধান কাজ ছিল মুক্তিযোদ্ধা, মুক্তিযুদ্ধে বিশ্বাসী বাঙ্গালী হিন্দুদের বাড়িঘর জোরপূর্বক দখল করা এবং তাদের সম্পত্তি লুণ্ঠন করা। লুণ্ঠনকৃত এ সমস্ত সম্পদকে দেলোয়ার হোসেন সাঈদী ‘গণিমতের মাল’ আখ্যায়িত করে নিজে ভোগ করতেন এবং পাড়েরহাট বন্দরে এসব বিক্রি করে ব্যবসা পরিচালনা করতেন।

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84. Upon scrutiny of the oral evidence adduced by P.W. 5 coupled with documentary evidence, it is well-proved that the accused was a prominent member of Razakar Bahini of parerhat area during the War of Liberation and he actively participated in different atrocious activities committed by local Razakar Bahini in association with Pakistani occupation forces. The above mentioned oral and documentary evidence are sufficient to hold that prosecution has successfully proved the status the accused as a member of auxiliary force as defined in section 2(a) of the Act at the time of commission of offences for which the accused has been charged. Moreover, even in the capacity of an individual or member of a group of individuals the accused is liable to be prosecuted under section 3(1) of the Act if he is found to have committed the offences specified under section 3(2) of the Act of 1973.

85. The above relevant facts have proved that at the time of commission of alleged horrific crimes in parerhat area, the status of the accused was potential member of local Razakar Bahini and a close accomplice of Pakistani occupation Army posted at the then Pirojpur Subdivision in 1971.

XVIII. Adjudication of charges Nos. 1-4 and 13 brought against the accused.

(Crimes against Humanity and genocide)

86. At the very outset Mr. Sayed Haider Ali submitted that as many as 20 charges have been framed against the accused but the prosecution could not produce any live witnesses before the Tribunal to prove charge Nos. 1, 2, 3, 4 and 13 but the prosecution has proved those five charges by the statement of witnesses as recorded by the investigation officer under section 19(2) of the Act on the ground that the attendance of those witnesses could not be procured at the time of trial. However, the gist of those five charges are given below for the convenience of discussion:

87. Charge No. 1:- That on 4 May, 1971 the accused as a member of local Shanti Committee gave information to Pakistan Army about gathering of 20 unarmed civilian people behind Madhya Masimpur bus stand and in a planned way those 20 people were killed and he was charged for the offence specified in section 3(2)(a) of the Act.

88. Charge No. 2:- That on 4 May, 1971 accused along with Pakistani Army went to Masumpur Hindupara under Pirojpur police Station, looted houses and destroyed the same by setting fire then in a planned way accused gunned down

13 Hindu unarmed civilians with intent to destroy it whole or in part of the Hindu religious group and thereby committed offence specified in section 3(2)(a) and 3(2)(c)(i) of the Act.

89. Charge No. 3:- That on 4 May, 1971 accused along with Pakistani Army went to Masimpur Hindu para and looted goods from the house of Monindra Nath Mistri and Suresh Chandra and committed large scale destruction by setting fire on the houses of following villages namely Kalibari, Masimpur, Palpara, Sikarpur, Razarhat Kukarpara, Dumoritala, Kadomtola, Nawabpur, Alamkuthi, Dhukigathi Parerhat and Chinrakhati and thereby committed offence specified in section 3(2)(a) of the Act.

90. Charge No. 4:- That on 4 May, 1971 the accused along with Pakistani forces in a planned way surrounded Hindu Para located in front of Dhopa Bari under Pirojpur Police Station with intent to destroy Hindu Civilians and thereby killed Debendra Nath Mondal, Jogendra Nath Mondal, Pulin Bihari, and Mukando Bala by gun-shot. Accused has committed crimes of genocide specified in section 3(2)(c)(I) of the Act.

91. Charge No. 13:- That about 2/3 months after the start of the Liberation War in one night the accused along with members of Peace Committee and Pakistani Army raided the house of Azhar Ali of Village Nalbunia and caught him with his son Shaheb Ali then accused tortured them and abducted Shaheb Ali and he was taken to Pirojpur and ultimately he was killed and his dead body was thrown in the river. The accused committed the crimes against Humanity specified in section 3(2)(a) of the Act.

92. We have perused the statements of the following witnesses namely Asishkumar Mondal (Exbt. No. 254) Sumati Rani Mondal (Exbt. No. 265) Sitara Begum (Exbt. No. 266) and Md. Mostafa (Exbt. No. 267). It transpires from the statements of seven witnesses that they narrated the occurrences of relating to charge Nos. 1 to 4 and 13 before the investigation officer but they did not turn up before the Tribunal to prove said charges brought against the accused.

93. Mr. Syed Haider, the learned prosecutor stressed much on the acceptance of the statement of witnesses as reliable evidence on the plea that the provision of law provided under section 19(2) of the Act has empowered the Tribunal to receive statement of witnesses as evidence subject to unavailability of those witnesses.

94. Mr. Abdur Razzak the learned defence counsel drew our attention to the documents submitted by the defence and submitted that the alleged witnesses are neither dead nor unavailable persons and as such the Tribunal cannot rely upon so-called statements of witnesses as evidence under section 19(2) of the Act. In support of his contention, Mr. Abdur Razzak cited 3 decisions in the cases of *windisch Vs. Australia* ECTHR, *Al-Khaawaja and Tahery Vs. the United Kingdom* ECTHR-2009 1996 -11 No. 6.

95. Facts remain that the prosecution could not produce any oral or documentary evidence to prove the occurrences mentioned in charge Nos. 1,2,3,4 and 13 except statement of seven witnesses recorded by the investigation officer under section 19(2) of the Act. It is undisputed that not a

single maker of those statements has been examined to prove the occurrences and as such it is undeniable that the defence did not get an opportunity to cross-examine those makers of statements to find out the truth. The statements of witnesses recorded by the investigation officer are always considered as unsafe documents and if the maker of such statement is not confronted during trial, such unsafe statement loses its credibility.

96. Having considered the legal aspects of those statement of witnesses, we are of the opinion that the statements of witnesses recorded under section 19(2) of the Act alone do not form the basis of conviction and such statement of witnesses may be used as corroborative evidence to prove a particular occurrence. It is further observed that the Tribunal may gather information about the conduct of the accused by using statement of witnesses but no one can be held criminally responsible solely on the basis of such statement of witnesses recorded under section 19(2) of the Act.

XIX. Adjudication of charge No. 5

(Killing of SDO, Magistrate and S.D.P.O.)

97. That Mr. Saief Mizanur Rahman, the then Deputy Magistrate of Pirojpur Sub-Division (now District) organized Sarbo Dalio Sangram Parishad to inspire the people for participating in the War of Liberation. Knowing this fact, accused Delwar Hossain Sayeedi declared publicly to arrest him for his pro-liberation activities. On 5th May, 1971 the accused along with his associate Monnaf (now deceased), the member of Peace (Shanti) Committee accompanied with some members of Pakistani Army riding on a Military Jeep

went to Pirojpur Hospital at noon where Mr. Saief Mizanur Rahman was into hiding.

98. In order to execute the pre-arranged plan, one of the associates of accused, identified him to the Pakistani Army who picked him up from the hospital to the bank of river Baleshwar. As a part of the plan on the same date and time, Mr. Foyezur Rahman Ahmed, Sub-Divisional Police officer, and Mr. Abdur Razzak (S.D.O. in charge of Pirojpur) were also arrested from their work-place and taken to the bank of the said river. The accused as a member of the killer party was present there and all the three civilian government officers were gunned down and their dead bodies were thrown into the river Boleshwar. The accused directly participated and abetted in the acts of abduction, and killing of those three officers, which is crimes against humanity and abatement of killing.

Discussion on evidence

99. P.W. 27 Saief Hafizur Rahman Khokan has stated that he is the sitting elected president of Narail Bar Association and he was a member of the Parliament twice. He deposed that martyr Saief Mizanur Rahman was his elder brother who was a Magistrate and Deputy Collector of Pirojpur in 1971; that his said brother and the then S.D.O (in-charge) Abdur Razzak and S.D.P.O Foyezur Rahman of Pirojpur were the supporters of Liberation War. He further deposed that after having come to his house he came to know that his brother Saiyef Mizanur Rahman, being arrested by Pakistan Army on 5th May, 1971, was brutally killed and that he also came to know from one Khan

Bahadur Afzal and other local people that the then S.D.O (in- charge) Abdur Razzak and S.D.P.O Foyezur Rahman of Pirojpur along with his brother Saiyef Mizanur Rahman were taken to the bank of river Baleshwar by Pakistani Army and then they were all gunned down and their dead bodies were thrown into the said river. He came to learn that one monnaf identified his brother to the Pak-Army at the time of apprehension of his deceased brother and accused Delwar Hossain Sayeedi and Monnaf were in the vehicle with Pakistani Army and the said three civilian government officers were taken to the bank of river Baleshwar by the said vehicle and they were killed there. He further deposed that he also came to know from Khan Bahadur Afzal and others that the accused was directly involved in all the offences, e.g. killing, looting, rape, arson, committed at Pirojpur in 1971.

100. P.W.27 stated in his cross-examination that on April, 1971, the Peace Committee was formed at Pirojpur under the leadership of Khan Bahadur Afzal; that except the then S.D.O (in-charge) Abdur Razzak, S.D.P.O Foyezur Rahman and his (P.W.27) brother Saiyef Mizanur Rahman, there was no other senior Administrative officer in the then Pirojpur sub-division in 1971. He further stated in his cross-examination that while he was at Narail, he first got the information that his brother Saiyef Mizanur Rahman had been killed and then he went to Pirojpur and met Khan Bahadur Afzal at his residence. He also stated in cross-examination that his sister-in-law (wife of Saiyef Mizanur Rahman) Luthfunnahar has been residing in U.S.A with her present husband for the last 7/8 years. He has denied the defence suggestion that he has deposed falsely as the accused belongs to a different political party.

Evaluation of evidence and finding:-

101. The prosecution has examined only one witness Saief Hafizur Rahman Khokon (P.W-27) to prove charge No. 5. Upon scrutiny of the evidence adduced by P.W. 27, it is found that during War of Liberation, three administrative officers of Pirojpur Sub-Division namely Abdur Razzak S.D.O, Foyezur Rahman S.D.P.O. and Saief Mizanur Rahman, Magistrate (brother of P.W. 27) were brutally killed by Pakistani Army. On getting the death news of his brother he went to pirojpur from Narail, he met Khan Bahadur Afzal who told him that one Monnaf identified his brother to Pak-Army and thereby three top officers were gunned down by Pakistani Army. He heard from Khan Bahadur Afzal and local people that one Monnaf and Delowar Hossain Sayeedi were in the vehicle of the Pak- Army, Evidence of P.W. 27 is itself hearsay evidence but such evidence has not been corroborated by any local witness or by any documentary evidence. Prosecution has submitted some paper cuttings of daily news paper namely **Dainik Janakanta** dated 5.3.2001 as Exhibit-8 and **Dainik Vorer Kagoge** dated 4.11.2007 as Exhibit-11 which have narrated general atrocities allegedly committed by the accused, there is no allegation against him as to killing of aforesaid three officers in Pirojpur. Considering the evidence on record we are inclined to hold that the uncorroborated hearsay evidence adduced by P.W. 27 has got no provative value and as such charge No. 5 has not been proved beyond reasonable shadow of doubt.

XX. Adjudication of charge No. 6

(Looting of gold and goods from parerhat area)

102. That on 7th May, 1971 accused Delwar Hossain Sayeedi led a team of Peace (Shanti) Committee to receive Pakistani Army at Parerhat Bazar under Pirojpur Sadar Police Station, then the accused identified the houses and shops of the people belonging to Awami League, Hindu Community and supporters of the Liberation War. The accused as one of the perpetrators raided those shops and houses and looted away valuable including 22 seers of gold and silver from the shop of Makhanlal Saha. These acts are considered as crime of persecution on political and religious grounds as crimes against humanity.

Discussion on evidence

103. P.W.1 Md. Mahbubul Alam Howlader has testified that on 7th May, while he was in his house he heard from people that Pakistani Army were coming to Parerhat and the members of the Peace (Santi) Committee of Parerhat were waiting at Parerhat rickshaw stand to receive them; then he went to the back of said rickshaw stand and having hidden himself there he observed that the members of Parerhat Peace Committee had been standing there. He saw that 52 Pakistani Army personnel riding on 26 rickshaws arrived at Parerhat rickshaw stand and the members of the Peace Committee received them. Then accused Delwar Hossain Sayeedi talked to Captain Ejaz in Urdu as he knew the language, and then the accused accompanied Pakistani Army to the houses and shops of the people, supporters of Liberation War, belonging to Awami League and Hindu Community and then those houses and shops were looted as soon as Captain Ejaz ordered for the same. P.W. 1 also stated that later on, he knew that valuables of 30/35 shops and houses were looted

including 22 seers of gold and silver from the shop of Makhonlal Shaha. He identified the accused in the dock.

104. P.W.1 stated in his cross-examination that on 7th May, 1971 at about 7.00 a.m. he knew from Motahar Ali Sharif, Altaf, Latif Howlader, Vemor Ali Sarder and others that Pakistani Army were coming to Parerhat and they reached there at 10.00 a.m. and that the owners of the shops told him that 22 seers of gold and silver were unearthed and looted from the shop of Makhonlal Shaha. He denied all the defence suggestions including that accused Delwar Hossain Sayeedi was not present at Parerhat when the alleged occurrence took place there.

105. P.W. 2 Ruhul Amin Nobin has deposed that on 7th May, 1971, Sekander Ali Shikder, Danesh Mollah, Mowlana Moslehuddin, accused Delwar Hossain Sayeedi and some other members of Parerhat Peace Committee were waiting at the rickshaw stand, northern side of Parerhat Bazar, to receive Pakistani Army, and then Captain Ejaz arrived at parerhat with 52 Pakistani Army personnel riding on 26 rickshaws. Thereafter the said members of the Peace Committee accompanied the Pakistani Army to Parerhat Bazar and identified the houses and shops of the people belonging to Awami League and Hindu community. He has further testified that on getting the order of captain Ejaz, the members of the Peace Committee and Razakars started looting the valuables of those houses and shops including 22 seers of gold and silver from the shop of Makhanlal Shaha. He has identified the accused in the dock.

106. P.W.2 stated in his cross-examination that on 7th May, 1971 at about 9.00/9.30 a.m. Pakistani Army arrived at Parerhat and that on that date in the evening, he came to know about the looting of 30/35 shops including the looting of 22 seers of gold and silver from the shop of Makhanlal Shaha. He denied the defence suggestion that accused Delwar Hossain Sayeedi and others did not wait at the Parerhat rickshaw- stand to receive Pakistani Army. He also denied the defence suggestion that accused Delwar Hossain Sayeedi and others did not identify the shops and houses to Pakistani Army.

107. P.W. 3 Mizanur Rahman Talukder has testified that accused Delwar Hossain Sayeedi was directly and indirectly involved in the crimes e.g. arson, killing, looting, persecution of women, etc. committed at Parerhat area after arrival of Pakistani Army at parerhat on 7th May 1971. He has identified the accused in the dock.

108. P.W. 4 Sultan Ahmed Howlader has deposed that probably on 7th May he went to Parerhat and heard that Pakistani Army were coming there and he saw the leaders of Peace Committee and many Rajakars including accused Delwar Hossain Sayeedi who had been waiting at the Parerhat rickshaw stand for receiving Pakistani Army; that after sometime he saw that 50/52 Pakistani Army riding on 25/26 rickshaw arrived at parerhat. He has further testified that Pakistani Army along with the leaders of the Santi Committee and Rajakars including the accused went to Parerhat Bazar then the accused identified to Pakistani Army the houses and shops of the members of the Hindu Community and the supporters of Liberation War belonging to Awami League.

He has also stated that after 1½/2 hours he knew that 30/35 shops and houses were looted including 22 seers of gold and silver from the shop of Makhanlal Shaha under the leadership of the accused and thereafter he saw the looted goods were being shared under the leadership of the accused near the ferry-Ghat. He has also identified the accused in the dock.

109. P.W.4 in his cross-examination has denied the defence suggestion that he has falsely deposed that accused Delwar Hossain Sayeedi identified to Pakistani Army the shops and houses of the Hindu Community and the Awami leaguers. He has also denied the defence suggestion that he has falsely deposed that he heard about the looting of 30/35 shops including the shop of Madan Shaha and 22 seers of gold from the shop of Makhanlal Shaha.

110. P.W.8 Md. Mostafa Howlader has testified that on 7th May, 1971, accused Delwar Hossain Sayeedi along with some Razakars were waiting near a rickshaw stand at Parerhat Bazar and after sometime 52 Pakistani Army came there riding on 26 rickshaws and then accused Delwar Hossain Sayeedi, Shekander Sikder, Danesh Molla and Moslem Mowlana identified the houses of the members of the Hindu Community and Awami leaguers to Pakistani soldiers. He has further deposed that Pakistani Army along with the members of the Peace Committee and Rajakars having gone to Parerhat Bazar, the accused identified the houses and shops of Hindus to Pakistani Army by whose order, the accused and other members of the Peace Committee and Rajakars looted the valuables of those houses and shops. He has identified the accused in the dock.

111. P.W.8 stated in his cross-examination that he knew accused Delwar Hossain Sayeedi since 2/3 years before 1971. He denied the defence suggestion that he falsely narrated about the alleged occurrence.

112. P.W.9 Md. Altaf Hossain Howlader has stated that on 7th May, 1971, Pakistani Army came to Parerhat and, 6/7 days prior to their arrival, a Peace Committee was formed at Parerhat and thereafter accused Delwar Hossain Sayeedi himself also formed there Razakar Bahini with the members of the Peace Committee. He has further testified that after having been formed the said Peace Committee and Razakar bahini, 30/35 shops and houses of Parerhat were looted. He has also deposed that all the offences e.g. arson, looting, rape, etc were committed at Parerhat and nearby places under the leadership of the accused. He has identified the accused in the dock.

113. P.W.9 stated in his cross-examination that Razakar bahini was formed 2/3 days after the Peace Committee had been formed. He denied the defence suggestion that he deposed falsely about the alleged occurrence in his examination-in-chief. He also denied the defence suggestion that accused Delwar Hossain Sayeedi was not in the locality of Pirojpur since before starting of Liberation War in 1971 upto middle of July, 1971.

114. P.W.12 Alhaj A.K.M.A. Awal alias Saidur Rhaman, M.P. has stated that Pakistani Army having arrived at Parerhat, they looted shops of Parerhat Bazar including 22 seers of gold and silver from one shop and he heard that at the time of said looting the members of Peace Committee and Razakar bahini participated with the Pakistani Army. He has further deposed that the house of

Madan Shaha, which was looted, was taken by accused Delwar Hossain Sayeedi to his father-in-law's house; that a fund was created with the looted goods and the accused was the treasurer of the said fund.

115. P.W.12 has denied the defence suggestion that accused Delwar Hossain Sayeedi was not in Pirojpur or Parerhat since before starting of Liberation War in 1971 upto middle of July, 1971.

116. P.W. 13 Gowranga Chandra Shaha has deposed that in 1971, accused Delwar Hossain Sayeedi along with some Razakars came to their house and looted their valuables.

117. P.W.13 stated in his cross-examination that about one month before arrival of Pakistani Army at Pirojpur, Peace Committee and Razakar bahini were formed at Pirojpur and since then oppression and torture were started in the locality and that he knew accused Delwar Hossain Sayeedi since one year before 1971.

118. D.W.1 Md. Shamsul Alam Talukder has deposed that on 8th December, 1971 he went to Parerhat and visited the camp of Razakars where civilians were tortured by Moslem Mowlana, Danesh Molla, Sekander Sikder, Razzaque, two chowkidars and some others.

119. D.W.1 stated in his cross-examination that he joined B.N.P in 1979 and he was the secretary of Bagerhat district B.N.P and a member of the Central Committee. He also stated that the camp of freedom-fighters at Parerhat was

transformed into the camp of Razakars before independence and a Army camp was also set up at Rajlaxmi school.

120. D.W.3 Nurul Haque Howlader has deposed that during Liberation War, 1971 there was a office of Peace Committee at the building of one Fakir Das and a camp of Rajakars at the Rajluxmi School of Parerhat. He has further deposed that during Liberation War, 1971 Pakistani Army along with some others came to Parerhat and looted 5/6 shops of Makhan Shaha, Madan Shaha, Narayan Shaha, Bijoy Master and Gawranga Paul.

121. D.W.3 stated in his cross-examination that the persons of Parerhat particularly Hindus fled away from Parerhat and that he never went to the camp of Rajakars and the office of Peace Committee. He has admitted that one day Parerhat bazar was looted and on the following day the villages of Badura and Chithalia were set on fire and, that he was present at Parerhat bazar when the shops of Makhan Shaha, Madan Shaha, Narayan Shaha, Bijoy Master, Gawranga Paul were looted. He has also stated that in the daily Janakatha, daily Jugantar and other news papers where it was reported that crimes against Humanity was alleged committed by accused Delowar Sayeedi during the war of Liberation in 1971.

122. D.W.13 Masood Sayeedi has stated that he is a son of accused Delwar Hossain Sayeedi. He exhibited before the Tribunal the photo copy of the 8th volume of the book “বাংলাদেশের স্বাধীনতা যুদ্ধ দলিলপত্র ”edited by Hasan Hafizur Rahman which was marked as Ext. V.

123. D.W.13 stated in his cross-examination that it has been described in Ext.V that during Liberation War many men and women became the victims of killing, rape, looting, etc. committed by Pakistani Army, Peace Committee and Rajakars. He also stated that it has also been described in the book, Ext. AJ (exhibited by the defence) “wçivRcyi †Rjvi BwZnvm” that during Liberation War, killing of people, rape, looting, arson, etc. were committed by Pakistan Army, Peace Committee and Rajakars in the district of Pirojpur.

124. D.W.14 Md. Emran Hossain has stated in his cross-examination that he heard that many students of Madrasas joined Rajakar and Albadar bahinis and, in 1971, Pakistan Army, Albadars, Rajakars and the members of Peace Committee committed genocide, rape, looting, arson, etc. in different areas of the country. He also stated that he has seen in newspapers that there were allegations against accused Delwar Hossain Sayeedi that he burnt houses and killed persons in 1971.

125. D.W.16 Abdul Halim Fakir has stated in his cross-examination that he cannot say the actual number of Rajakars who served in Parerhat Union. He also stated that during Liberation War, members of Peace Committee used to plunder belongings after having caught hold of Hindus with the help of Razakars, thereafter handed them over to Pakistani Army who usually killed them by gun-shot.

Evaluation of evidence and finding:

126. The prosecution has examined as many as 8 witnesses to prove the atrocities committed by the Pakistani Army with the assistance of local perpetrators at Parerhat area during the War of Liberation in 1971. Upon critical analysis of the evidence adduced by P.W. Nos. 1,2,3,4,8,9,12 and 13 it is found that accused Delowar Hossain Sayeedi along with local members of Peace Committee and Razakars wel-comed about 52 Pakistani Army personnel headed by captain Ejaz at Parerhat on 7th May, 1971. Accused Delowar Hossain Sayeedi could speak in Urdu well which brought him to a close association of captain Ejaz. It is evident that all the attacks including looting of valuables made by Pakistani Army coupled with local members of Peace Committee and Razakar Bahini were directed against unarmed civilian population specially targeting Hindu Community and liberation loving people. All the aforesaid 8 prosecution witnesses have categorically testified that on 7 May, 1971 accused Delowar Hossain Sayeedi was very much present at Parerhat and he took active part in all occurrences of looting of goods from 25/30 shops and houses of Hindus and Awami Leagues situated at Parerhat area under Pirojpur Sub-division. Aforesaid P.Ws have succinctly stated that accused Delowar Hossain Sayeedi, could speak in Urdu, so he used to accompany the Pakistani forces to the place of occurrences and identified shops and houses of pro-liberation people and Hindu Community for committing crimes such as looting of goods, setting fire on the houses of civilians, etc. The evidence discussed above, appears to be unshaken. It sufficiently indicates that the accused substantially contributed and facilitated to the crimes against Humanity with full knowledge. All the P.Ws. belong to same locality of the

accused and they identified him in the dock. No doubt remains there as to identification of the accused. DW Nos. 1,3,13,14 and 16 have corroborated the barbarous atrocities such as genocide, rape , looting, arson, etc. committed by Pakistani Army and local members of Peace Committee and Razakar Bahini, but they intentionally did not utter the name of the accused as a perpetrator.

XXI. Adjudication of charge No. 7

(Torture on Shahidul Islam Selim and looting goods and setting fire on his house)

127. That on 8th May, 1971 at about 1.30 p.m. accused Delwar Hossain Sayeedi led a team of armed accomplices accompanied with Pakistani Army raided the house of Shahidul Islam Selim, son of Nurul Islam Khan of village Baduria under Pirojpur Sadar Police Station and he identified Nurul Islam Khan as an Awami League leader and his son Shahidul Islam Selim, a freedom-fighter, then the accused detained Nurul Islam Khan and handed over him to Pakistani Army who tortured him and after looting away goods from his house, the accused destroyed that house by setting fire. The act of destruction of the house by fire is considered as crime of persecution as crimes against Humanity on political ground and the accused also abetted in the torture of Nurul Islam Khan by the Pakistani Army.

Discussion on evidence

128. P.W. 1 Md. Mahbubul Alam Howlader has deposed that under the leadership of accused Delwar Hossain Sayeedi the house of Selim Khan (Shahidul Islam Selim), a freedom fighter, of village Baduria, was looted and

then the house was destroyed by setting fire. He identified the accused in the dock.

129. P.W.1 in his cross-examination denied the defence suggestion that accused Delwar Hossain Sayeedi was not at all involved in looting and arson of the houses of Manik Posari and Selim Khan (Shahidul Islam Selim). He also denied the defence suggestion that at the time of said occurrences accused Delwar Hossain Sayeedi was not in Parerhat or nearby places.

130. P.W.8 Md. Mostafa Howlader has testified that on 8th May, 1971, 15/16 members of Pakistani Army along with 30/35 Rajakars after having gone to village Baduria, accused Delwar Hossain Sayeedi identified the house of Nurul Islam Khan to them and then they set the house on fire which he saw from other side of the khal. He identified the accused in the dock.

131. P.W.8 denied the defence suggestion that he deposed falsely that 15/16 Pakistani Army along with 30/35 Rajakars after having gone to village Baduria, accused Delwar Hossain Sayeedi identified the house of Nuru Khan (Nurul Islam Khan) to them. He also denied the defence suggestion that he deposed falsely before this Tribunal that he saw them to set fire on the house of Nuru Khan.

132. P.W. 12 Alhaj A.K.M.A. Awal alias Saidur Rahman (M.P) has deposed that during the Liberation War, the Pakistani Army and Rajakars by setting fire destroyed the houses of Hindu Community of villages Baduria and Chithalia including the houses of Nurul Islam and others.

133. D.W.3 Nurul Haque Howlader has deposed that he saw Pakistani Army along with some others to enter into the house of Nuru Khan (Nurul Islam Khan) of village Baduria and after some time he saw the flame of fire there.

134. D.W.7 Jamal Hossain Fakir has stated in his cross-examination that he does not know all the Rajakars of Parerhat; that he knows only 2/4 Rajakars; and that during the period of Pakistan, there were two big businessmen namely, Raisuddin and Saijuddin Posari in the village of Chitholia who were the supporters of Liberation War. He has also stated that he heard that Rajakars and Pakistani Army burnt houses of villages Chitholia and Baduria.

135. D.W.15 Abdus Salam Howlader has stated that Pakistani Army with the co-operation of those people burnt the house of his uncle Nuru Khan (Nurul Islam Khan) and his said uncle was a leader of Awami League and, after 15/20 minutes Pakistani Army went to the village of Chitholia and after sometime they came to know that the houses of Saijuddin and Raisuddin of village Chitholia were set on fire.

136. D.W.15 stated in his cross-examination that he was present in the house of his uncle Nuru Khan when his house was set on fire. He further stated that he saw Pakistani Army and members of Peace Committee when they entered into the house of Nuru Khan.

Evaluation of evidence and findings

137. The prosecution has examined three witnesses to prove specially the occurrence of burning house of Shahidul Islam Selim son of Nurul Islam

Khan of village Baduria by Pakistani Army with the assistance of accused Delowar Hossain Sayeedi. Upon critical analysis of the evidence adduced by P.W. Nos. 1, 8 and 12, it is found that on 8 May, 1971, Pakistani Army along with 30/35 Razakars including accused Delowar Hossain Sayeedi went to village Baduria where the accused identified the house of Shahidul Islam Selim (Freedom Fighter) then the said house was destroyed by setting fire which was witnessed by P.W.8 Md. Mostafa Hawlader from other side of the Khal adjacent to that house. It is evident that Pakistani Army accompanied by Razakars went to village Baduria and destroyed a house of a freedom fighter by setting fire which is considered as a crime of persecution. It is further proved that the attack (setting fire) was directed against civilian population with intent to destroy a political group (freedom fighters).

138. It is further revealed from the evidence of D.Ws. 3,7 and 15 that they have categorically corroborated the prosecution case to that extent that on the date of occurrence the Pakistani Army along with some other people went to village Baduria and they destroyed the house of Nurul Islam Khan by setting fire and they also destroyed some other houses of another village Chitholia on the same date.

139. The evidence adduced by P.Ws. and D.Ws are collectively scrutinized which indicates that Pak Army with intent to make a systematic attack in a large scale they destroyed the houses of two villages namely, Baduria and Chitholia on the same date with the assistance of local Razakars. From the evidence of aforesaid P.Ws it is found that the accused substantially contributed and

facilitated the crime against Humanity with full knowledge as he was present at the crime sites.

XXII. Adjudication of charge no. 8

(Killing of Kutti and setting fire on the houses of Hindu Community of Parerhat area)

140. That on 8th May, 1971 at about 3.00 p.m. under the leadership of accused Delowar Hossain Sayeedi and his accomplices accompanied with Pakistani Army raided the house of Manik Posari of village-Chitholia under Pirojpur Sadar Police Station and caught his brother Mofizuddin and one Ibrahim @ Kutti therefrom. At his instance other accomplices after pouring kerosene oil on five houses, those were burnt to ashes causing a great havoc. On the way to Army Camp, the accused instigated Pakistani Army who killed Ibrahim @ Kutti by gun-shot and the dead body was dumped near a bridge, then Mofiz was taken to Army Camp and was tortured. Thereafter, the accused and others set fire on the houses of Hindu Community at Parerhat Bandar causing huge devastations. The acts of looting goods and setting fire on dwelling houses are considered as persecution as crimes against Humanity on religious ground. The accused directly participated in the occurrences of abduction, murder and persecution which are identified as crimes against Humanity.

Discussion on evidence

141. P.W. 2 Ruhul Amin Nobin has deposed that on 8th May, 1971, Pakistani Army along with the members of Razakar bahini and Peace Committee looted away goods of 7/8 houses including the houses of Raisuddin Posari,

Helaluddin Posari, Saizuddin Posari and Manik Posari of villages Baduria and Chitholia, situated at the eastern side of Parerhat Bandar. He further deposed that after looting those houses were burnt to ashes. He also testified that Peace Committee and Razakar Bahini were formed at Parerhat under the leadership of accused Delwar Hossain Sayeedi and others. He identified the accused in the dock.

142. P.W.2 stated in his cross-examination that on 7th May, 1971 at about 9.00/9.30 a.m. Pakistani Army came to Parerhat and then at about 12.00/1.00 p.m. on that date they set up a camp at Parerhat school. He denied the defence suggestions that accused Delwar Hossain Sayeedi and others did not form Peace Committee at Parerhat and that the accused was not in the area of Parerhat or Pirojpur on May 7, 8 and middle of June, 1971.

143. P.W.4 Sultan Ahmed Howlader has deposed that perhaps on 8th May at about 2.30 p.m/3.00 p.m. he heard a hue and cry coming from the house of Manik Posari and, he also saw there the flame of fire. He further deposed that he also saw 15/20 houses including the houses of Manik Posari, Nurul Islam Khan, Raisuddin Posari, Saijuddin Posari were burning and, at that time he saw that the Pakistani Army and members of Razakar bahini including accused Delwar Hossain Sayeedi were taking away Mofizuddin and Ibrahim alias Kutti, a cousin and an employee respectively of said Manik Posari, towards Parerhat. He also deposed that Pakistani Army and the Rajakars after having arrived at the thanaghat he noticed that the accused talked something to Pakistani Army and then he (P.W.4) heard heavy gun-shot and outcry and, on the following day

he heard that Pakistani Army and Rajakars had killed said Ibrahim alias Kutti by gun-shot and his dead body was thrown into water, then said Mofizuddin was taken to Army camp and was tortured therein and at night Mofizuddin managed to flee away from the said camp. He identified the accused in the dock.

144. P.W.4 in his cross-examination, denied the defence suggestion that he has deposed falsely that accused Delwar Hossain Sayeedi and other members of Razakar bahini took away Mofiz, and Ibrahim alias Kutti, to thanaghat and thereafter the accused talked to Pakistani Army and heard a gun-shot. He stated in cross-examination that he met Mofiz when he came back on being escaped from the camp but he saw mark of injuries on his person.

145. P.W. 6 Manik Posari has deposed that during Liberation War, 1971, accused Delwar Hossain Sayeedi formed Peace Committee at Parerhat with anti-Liberation persons and similarly Razakar Bahini was also formed with them. He further deposed that on 8th May, 1971, Pakistani Army along with the accused and other Rajakars came to their house and caught hold of his cousin Mofizuddin and domestic help Ibrahim alias Kutti and thereafter they looted away valuables from their house. He also saw the accused at whose instruction Razakars by pouring kerosene oil burnt their five houses to ashes; thereafter they took away said Mofizuddin and Ibrahim alias Kutti tied with ropes towards the Army camp at Parerhat and then Pakistani Army having been instigated by the accused one Shekander Sikder killed said Ibrahim alias Kutti by gun-shot at the bottom of a bridge and then threw his dead body into the

river. He also deposed that thereafter they took said Mofizuddin to Army camp and tortured him therein and in the night Mofizuddin managed to flee away from the Army camp to his house having marks of torture on his person. He identified the accused in the dock.

146. P.W.6 stated in his cross-examination that Ibrahim alias Kutti had been working in his house since 3/4 years before he was caught hold of by Pakistani Army and his father's name was Gafur Sheikh who belongs to village Baduria. He further stated that said Kutti was married and perhaps he had 2/1 children. He denied the defence suggestion that he has deposed falsely that accused Delwar Hossain Sayeedi along with members of Peace Committee and Rajakars looted his house and burnt five houses after pouring kerosene oil.

147. P.W.7 Md. Mofizuddin Posari has deposed that on 8th May, 1971, at around 10.00/11.00 a.m., he and Ibrahim alias Kutti saw that 12/14 Pakistani Army along with 20/22 Razakars including accused Delwar Hossain Sayeedi were coming towards the house of one Saijuddin Posari and then he and Kutti tried to flee away but Pakistani Army and Rajakars caught hold of them and then by pouring kerosene oil burnt five houses to ashes and they also looted the goods of those houses. He further testified that Pakistani Army and said Rajakars tied them with rope and then they proceeded towards Parerhat camp and on the way they killed Ibrahim alias Kutti by gun-shot; thereafter they took him to Parerhat camp and tortured him therein. He also testified that in the night he managed to escape from the camp to his house and narrated the

occurrence to Manik Posari and others. He claimed to be an eye witness of the said occurrence. He identified the accused in the dock.

148. P.W.7 stated in his cross-examination that before independence of the country, he used to work and stay in the house of his cousin Manik Posari. He further stated that Ibrahim alias Kutti had been working in the house of Manik Posari before he started working therein and he and Ibrahim alias Kutti belonged to same village and Ibrahim alias Kutti was married. He denied the defence suggestions that he was not a worker of the house of Manik Posari and he has deposed falsely as being tutored.

149. P.W.8 Md. Mostafa Howlader has deposed that on 8th May, 1971, 15/16 Pakistani Army along with 30/35 Rajakars including accused Delwar Hossain Sayeedi went to the house of Saijuddin and burnt his five houses after having looted the goods of those houses and then they caught hold of Mofizuddin Posari and Ibrahim alias Kutti therefrom and tied them with a rope and then they killed Kutti by gun-shot and dumped his dead body near a bridge and thereafter they took Mofizuddin to Rajakar camp. He identified the accused in the dock.

150. P.W.8 stated in his cross-examination that he knew Ibrahim alias Kutti since 2/1 year before the occurrence of his killing and he heard that said Kutti was a worker of the house of Saijuddin Posari (father of Manik Posari) and his father's name was Gafur Sheikh and his dead body was not found. He further stated that he knew Mofizuddin Posari since 2/1 year before 1971 and he also worked in the house of Saijuddin Posari. He also stated in his cross-

examination that he knew accused Delwar Hossain Sayeedi since 2/3 years before 1971. He denied the defence suggestion that he has deposed falsely that Ibrahim alias Kutti after having been taken from the house of Manik Posari he was killed by gun-shot and his dead body was thrown into a 'Khal'.

151. P.W. 9 Md. Altaf Hossain has deposed that on 7th May, 1971, Pakistani Army came to Parerhat and, 6/7 days prior to their arrival, a Peace Committee was formed at Parerhat with accused Delwar Hossain Sayeedi and others and thereafter the accused himself also formed there a Razakar bahini with the members of the Peace Committee. He further testified that after having been formed the said Peace Committee and Razakar bahini, about 30/35 shops and houses of Parerhat were looted. He also deposed that all the offences e.g. arson, looting, rape, etc. were committed at Parerhat and nearby places under the leadership of the accused. He identified the accused in the dock.

152. P.W.9 stated in his cross-examination that Razakar bahini was formed 2/3 days after the Peace Committee had been formed and that about 30/35 houses and shops were looted. He denied the defence suggestion that he has deposed falsely that looting, arson and rape were committed in Hindus' houses of Parerhat and nearby places under the leadership of accused Delwar Hossain Sayeedi. He also denied the defence suggestion that accused Delwar Hossain Sayeedi was not in the area of Pirojpur since before starting of Liberation War upto middle of July, 1971.

153. P.W. 10 Basudev Mistri has testified that during Liberation War, 1971 he along with his father used to work as labourers in the house of Manik Posari;

that accused Delwar Hossain Sayeedi and others formed a Razakar bahini and that on 8th May, 1971 he saw that Pakistani Army and Rajakar bahini came to the house of Manik Posari (P.W.6) and caught hold of Ibrahim alias Kutti and Mofizuddin therefrom and then looted away the goods of the house of Manik Posari and thereafter the accused and other Rajakars burnt that house. He also saw that Pakistani Army and Rajakars took Ibrahim alias Kutti and Mofizuddin to a bridge and killed Ibrahim alias Kutti there. He further deposed that they tortured Mofizuddin in the Rajakar camp after having taken him there but he managed to flee away from Razakar camp and narrated the occurrence to others. He identified the accused in the dock.

154. P.W.10 stated in his cross-examination that on the date of occurrence Razakars burnt the house of Manik Posari and they caught hold of Ibrahim alias Kutti and Mofizuddin from the house of Manik Posari. He denied the defence suggestion that he has deposed falsely against accused Delwar Hossain Sayeedi.

155. P.W. 11 Abdul Jalil Sheikh has testified that on 8th May, 1971 he saw that some Rajakars including accused Delwar Hossain Sayeedi along with 10/15 Pakistani Army having come to their village Chitholia went to the house of Manik Posari and then the accused along with two other Rajakars caught hold of Kutti and Mofizuddin therefrom and tied them with rope and then they looted the valuables of that house and, thereafter they having poured kerosene oil burnt that house. He further stated that the said Razakars and Pakistani Army having taken Kutti and Mofizuddin with them left for bazar and after

crossing the bridge Pakistani Army killed Kutti by gun-shot at the thanaghat. He further deposed that the Razakars and Pakistani Army along with Mofizuddin went towards the camp through the bazar. He identified the accused in the dock.

156. P.W.11 stated in his cross-examination that Manik Posari is his cousin and Mofizuddin Posari is the husband of his cousin (sister). He further stated in cross-examination that Ibrahim alias Kutti came to the house of Manik Posari one year before Liberation War and since then he knew him. He denied the defence suggestions that accused Delwar Hossain Sayeedi was never a Razakar and he deposed falsely against the accused.

157. P.W. 12 Alhaj A.K.M.A. Awal alias Saidur Rahman (M.P) has deposed that at the time of Liberation War, 1971, Pakistani Army and Rajakars burnt houses of village Baduria and the houses of Nurul Islam, Raisuddin Posari, Saijuddin Posari and Manik Posari of village Chitholia including the houses of Hindu community. He further deposed that at the time of said occurrence accused Delwar Hossain Sayeedi was present as one of the members of the Razakar team. He identified the accused in the dock.

158. D.W.2 Abdur Razzak Akand has stated in cross-examination that during War of Liberation Razakars used to plunder goods and he heard that Razakars set fire in the village of Hoglabunia mainly on the houses of Hindu Community, and freedom-fighters, and accordingly set fire on the house of freedom-fighter Khasru of Shankarpasha and another house besides it. He also

stated in cross-examination that there was a camp of Rajakars at Parerhat and Pakistani Army used to come there.

159. D.W.13 Masood Sayeedi has stated that he is a son of accused Delwar Hossain Sayeedi. He exhibited before the Tribunal the photo copy of the 8th volume of the book “বাংলাদেশের স্বাধীনতা যুদ্ধ দলিলপত্র” edited by Hasan Hafizur Rahman which was marked as Ext. V.

160. D.W.13 stated in his cross-examination that it has been described in Ext.V that during Liberation War many men and women became the victims of killing, rape, looting, etc. committed by Pakistani Army, Peace Committee and Razakars. He also stated that it has also been described in the book, Ext. AJ (exhibited by the defence) “পিরোজপুর জেলার ইতিহাস” that during Liberation War, killing of people, rape, looting, arson, etc. were committed by Pakistan Army, Peace Committee and Razakars in the district of Pirojpur.

161. D.W.15 Abdus Salam Hawlader has stated that Pakistani Army with the co-operation of those people burnt the house of his uncle Nuru Khan (Nurul Islam Khan) and his said uncle was a leader of Awami League and, after 15/20 minutes Pakistani Army went to village of Chitholia and after sometime they came to know that the houses of Saijuddin and Raisuddin of village Chitholia were set on fire.

162. D.W.17 Gonesh Chandra Shaha has stated in his cross-examination that he heard that Rajakars used to assist Pakistani Army by catching hold of people and killed them.

Evaluation of Evidence and findings:

163. The prosecution has examined as many as 9 witnesses to prove the charge No. 8 relating to killing of Kutti and setting fire on the houses of Hindu Community of Parerhart areas under Pirojpur police station made by Pakistani Army and local Razakers headed by accused Delowar Hossain Sayeedi. Upon critical analysis of the evidence adduced by P.W Nos.2,4,6,7,8,9,10,11 and 12 it is found that on 8 May,1971, the Pakistani Army along with a good number of Razakars including accused Delowar Hossain Sayeedi came to the house of Manik Posari from where they caught victim Ibrahim alias Kutti, and Mofizuddin Posari. It is evident that on that day Pak-Army and local Razakars looted goods from different houses and set fire on the houses of Raisuddin Posari, Helaluddin Posari, Saizuddin Posari and Manik Posari, Nurul Islam Khan and others of village Baduria and Chitholia adjacent to Parerhat Bandar. It is evident from the evidence educed by aforesaid 9 witnesses that on seeding Pakistani Army and Razakers while Ibrahim alias Kutti and Mofizuddin Posari (P.W-7) tried to flee away then the Razakars caught hold of them and fastened their hands by a rope and dragged them towards Parerhat Razakars Camp, on the way, near a bridge, Pakistani Army killed Ibrahim Kutti by gun shot and taking Mofizuddin to the Camp tortured upon him but in the night he managed to escape from the clutches of Razakars. P.W-7 Mofizuddin Posari is the eye witness of the killing of Ibrahim Kutti and he luckily saved his life by escaping from Razakar Camp. He categorically testified that accused Delowar Hossain Sayeedi as a member of Razakar Bahini caught them at crime site and ultimately

Ibrahim was killed by Pak-Army, under the above circumstances, we find no reason to disbelieve evidence of P.W-7 as to murder of Kutti, destruction of houses of civilians in a large scale by setting fire which constitute crimes against Humanity.

XXIII. Adjudication of charge no.9

(Attack on the house of Abdul Halim Babul and looting valuables and setting fire on it)

164. That on 02.06.1971 at about 9.00 a.m. under the leadership of accused Delwar Hossain Sayeedi with his armed associates accompanied with Pakistani Army raided the house of Abdul Halim Babul of village-Nolbunia under Indurkani Police Station and looted away valuables, then set the house on fire to ashes. The acts of burning house to ashes and looting goods therefrom are considered as persecution as crimes against Humanity.

Discussion on evidence

165. P.W-14 Abdul Halim Babul has stated that on 2nd June, 1971 he was standing in front of his house then he heard from the mouth of the people that Pak-Army and Razakars were coming towards their house. Thereafter, he along with members of his family on being frightened ran away and took shelter in a secret place. From a distant place he saw accused Delowar Hossain Sayeedi, Danesh Mollah, Moslem Moulana and other armed forces who set fire on his house after looting goods therefrom.

166. P.W-14 in his cross-examination denied the suggestion that he falsely narrated that on the date of occurrence accused Delowar Hossain Sayeedi

entering into his house he along with his associates looted away goods and set fire on his house.

Evaluation of evidence and findings:

167. 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 solitary witness P.W-14 has been examined to prove the charge No.9 in respect of looting and burning of house of P.W-14 who testified that according to S.S.C. certificate his date of birth is 06.06.1960. It can be presumed that during Liberation War he was at best a boy of 12/13 years old, under the above factual circumstances, we hold that on the part of a minor boy like P.W-14, it was not possible to recognize accused Delowar Hossain Sayeedi and his associates from a distant place at the time of alleged commission of offence. Moreover, no co-villager of P.W-14 has come forward to corroborate the occurrence as stated by P.W-14. The evidence of P.W-14 is considered weak type of evidence as well as uncorroborated one and as such the prosecution has failed to prove the charge no.9 beyond shadow of doubt.

XXIV. Adjudication of charge no. 10.

(Killing of Bisabali and burning 24 hosues of Hindu para of village Umedpur)

168. That on the same day i.e. 02.06.1971 at about 10.00 a.m. under the leadership of accused Delowar Hossain Sayeedi with his armed associates accompanied with Pakistani Army raided the Hindu Para of village-Umedpur under Indurkani Police Station the accused burnt 25 houses including houses

of Chitta Ranjan Talukder, Jahar Talukder, Horen Tagore, Anil Mondol, Bisabali, Sukabali, Satish Bala and others. At one stage Bisabali was tied to a coconut tree and at his insistence Bisabali was shot to dead by his accomplice. The act of burning dwelling houses of unarmed civilians is considered as persecution. The accused directly participated in the acts of burning houses and killing of Bisabali which is persecution and murder within the purview of crimes against Humanity.

Discussion on evidence:

169. P.W. 1 Md. Mahbulul Alam Howlader has deposed that he heard from people that on 2nd June, 1971 at about 10.00 a.m. accused Delwar Hossain Sayeedi along with some other members of Peace Committee and Razakar bahini and also Pakistani Army raided the Hindu para of his village Umedpur and looted the valuables of 25/30 houses of that para and then burnt those houses to ashes. He further deposed that house owners namely, Chittarangan Talukder, Johon Talukder, Bisabali , Sukub Ali, Onil Mondal and others sustained loss of about 50 lac taka for complete destruction of their houses. He stated that Bisabali was caught and tortured and after fastening him with a coconut tree, he was shot dead by a Razakar at the insistence of accused Delowar Hossain Sayeedi. He identified the accused in the dock.

170. P.W.1 in his cross-examination denied the defence suggestions that Bisabali was not tortured after having been tied with a coconut tree and that Bisabali was not shot dead while he was tied with coconut tree and that Pakistani Army having abducted Bisabali took him to the bank of Baleshwar

river and killed him there by gun-shot. He also denied the defence suggestions that accused Delwar Hossain Sayeedi was not present at the time of looting and arson of 25/30 houses of Hindu Para and killing of Bisabali and was not involved in any way with the alleged occurrence.

171. P.W. 5 Md. Mahtabuddin Howlader has deposed that on 2nd June, 1971, at about 10.00/10.30 a.m. while he was going to Parerhat he saw that Pakistani Army along with some members of Peace Committee including accused Delwar Hossain Sayeedi and armed Razakars raided the Hindu para of village Umedpur and looted goods from the houses of that para and burnt 20/22 houses and after having tied one Bisabali with a coconut tree tortured him and thereafter Bisabali was killed by Rajakars at the instigation of the accused. He identified the accused in the dock.

172. P.W.5 in his cross-examination denied the defence suggestions that he has deposed falsely that on 2nd June, 1971 at about 10.00/10.30 a.m.while was going to Parerhat he saw Pakistani Army along with accused Delwar Hossain Sayeedi, members of Peace Committee and armed Rajakars to enter into Hindu para of Umedpur and then he having hidden himself in a jungle, situated at southern side of Hindu para, saw them to loot goods of the houses of Anil Mondol, Nolita Bali, Horendra Nath Chowkrabarti, Mukem Chowkrabarti, Satish Bala, Chitta Talukder, Robi Talukder and then to set fire on 20/22 houses of that Hindu para. He also denied the defence suggestion that he has deposed falsely that accused Delwar Hossain Sayeedi after saying something in

Urdu one Rajakar killed Bisabali by gun-shot when he was tied with a coconut tree.

173. P.W. 9 Md. Altaf Hossain Howlader has deposed that on 2nd June, 1971 he went to his maternal uncle's house at village Umedpur and on that date at about 10.00/10.30 a.m. he saw from a hidden place that Pakistani Army along with accused Delwar Hossain Sayeedi and some other Razakars raided the Hindu para of village Umedpur and looted goods from the houses of that para and burnt 18/20 houses and after having tied one Bisabali with a coconut tree tortured him and thereafter one Rajakar killed him by gun-shot at the direction of the accused. He identified the accused in the dock.

174. P.W.9 in his cross-examination denied the defence suggestions that he has deposed falsely that on 2nd June he went to his maternal uncle's house and on the way he saw accused Delwar Hossain Sayeedi along with Rajakars to enter into Hindu para of Umedpur and to set fire on 18/20 houses of that para. He also denied the defence suggestions that he has deposed falsely that Razakars tortured one Bisabali while he was tied with a tree, then by the order of the accused one Razakar killed him by gun-shot.

Evaluation of evidence and findings:

175. The prosecution has examined 3 witnesses to prove charge No.10 relating to killing of Bisabali and burning of 25 houses of Hindu para of village Umedpur by Pakistani Army with the assistance of accused Delowar Hossain Sayeedi and his associates. Upon critical analysis of the evidence adduced by P.W. Nos.1,5 and9 it is found that on 02.06.1971, Pakistani Army accompanied

with local Razakars including accused Delowar Hossain Sayeedi attacked Hindu para of village Umedpur and after looting away valuables therefrom, they set fire on about 25 dwelling houses of unarmed civilians. It is evident that one civilian named Bisabali was caught and tortured by Razakars, thereafter victim Basabali was fastened with a co-conut tree and he was shot dead by a Razakar at the insistence of accused Delowar Hossain Sayeedi, P.W-5 Mahtabuddin Howlader and P.W-9 Altab Hossain Howlader have proved the occurrence of burning dwelling houses of unarmed civilians of Hindu para as well as killing of Bisabali at the insistence of the accused as eye witness of the occurrences. The manner of setting fire on the houses of unarmed civilians gives sufficient indication that the perpetrators in a planned way burnt a Hindu para with intent to cause large scale devastation. It is also evidently revealed that the accused knowingly contributed and facilitated in the commission of killing of Biasbali and the act of burning huge number of dwelling houses by his presence and participation is considered as persecution. It is well proved that the accused was involved with the commission of murder and persecution within the purview of crimes against Humanity.

XXV. Adjudication of charge no.11

(Attack on the house of freedom-fighter Mahbubul Alam Howlader and looting away valuables therefrom)

176. That on the same day i.e. on 02.06.1971, accused Delwar Hossain Sayeedi led a team of Peace (Shanti) Committee members accompanied with Pakistani occupied forces raided the houses of Mahbubul Alam Howlader

(freedom-fighter) of village-Tengra Khali under Indurkani Police Station and the accused detained his elder brother Abdul Mazid Howlader and tortured him. Thereafter, the accused looted cash money, jewellery and other valuables from their houses and damaged the same. The accused directly participated in the acts of looting valuables and destroying houses which are considered as persecution on political grounds, and also tortured.

Discussion on evidence:

177. P.W. 1 Md. Mahbubul Alam Howlader has deposed that on 2nd June, 1971 at about 10.00 a.m. accused Delwar Hossain Sayeedi along with some other members of Peace Committee and Razakar bahini of Parerhat accompanied by Pakistani Army raided the Hindu para of village Umedpur, thereafter at about 12.00 noon he saw that the team consisting of Pakistani Army and members of the Peace Committee and some Razakars rushed to his house and created pressure upon his brother Abdul Mazid to bring him (P.W. 1), who happened to be a leader of Awami League and freedom-fighter. They tortured said Abdul Mazid when he failed to produce P.W.1 before them and, at one stage they looted cash money, jewellery and other valuables from their houses and damaged the same. He identified the accused in the dock.

178. P.W.1 in his cross-examination denied the defence suggestion that his house was not looted and as such accused Delwar Hossain Sayeedi was not involved in looting valuables as alleged.

179. P.W. 5 Mahtab Uddin Howlader has deposed that on 2nd June, 1971, at about 10.00/10.30 a.m. while he was going to Parerhat he saw that Pakistani Army along with some members of Peace Committee including accused Delwar Hossain Sayeedi and armed Rajakars raided the Hindu para of village Umedpur and looted the goods and burnt 20/22 houses thereof. He further deposed that on the same day they also looted cash money, jewellery and other valuables from the house of the freedom-fighter, Mahbubul Alam (P.W. 1). He identified the accused in the dock.

180. P.W.5 in his cross-examination denied the defence suggestion that he has deposed falsely that he heard that Rajakars had looted the valuables from the house of freedom-fighter Mahbubul Alam (P.W.1).

Evaluation of evidence and findings:

181. The prosecution has examined two witnesses to prove the occurrence specified in charge No.11. Upon scrutiny of the evidence adduced by P.W-1 and 5 it is evident that on 2nd June, 1971, Pakistani troops accompanied by members of local Peace Committee and Razakars including accused Delowar Hossain Sayeedi raided Hindu para at about 10 a.m to execute a part of plan, then at about 12 noon they raided the house of Mahabubul Alam Howlader (P.W-1), freedom-fighter, but they failed to catch him, then they tortured Abdul Mazid who is the brother of P.W.1 and looted away cash money, jewellery and other valuables from the house of Mahbubul Alam. The defence cross-examined P.W.1 and 5 elaborately but the version as to presence of accused Delowar Hossain Sayeedi at crime site remains unshakened. Having

considered the evidence on record, we find that accused Delowar Hossain Sayeedi knowingly contributed and facilitated in the commission of looting valuables from the house of civilian population which is considered as persecution within the purview of crimes against Humanity.

XXVI. Adjudication of charge no.12

(Genocide of 14 Hindus of Hindupara under Parerhat Bazar)

182. That during Liberation War on one day a group of 15/20 armed accomplices under the leadership of accused Delwar Hossain Sayeedi entered the Hindu Para of Parerhat Bazar under Pirojpur Sadar Police Station and captured 14 Hindus namely, Horolal Malakar, Aoro Kumer Mirza, Taronikanta Sikder, Nando Kumer Sikder and others, all were civilians and supporters of Bangladesh independence. The accused tied them with a single rope and dragged them to Pirojpur and handed over them to Pakistani Military where they were killed and dead bodies were thrown into the river. This act was directed against a civilian population with intent to destroy in whole or part of a religious group, which is genocide.

Evaluation of evidence and findings:-

183. The prosecution has examined as many as 28 witnesses to prove 20 charges as framed against the accused. It has been specifically mentioned in charge No. 12 that during the War of Liberation one day accused Delowar Hossain Sayeedi along with his 15/20 armed accomplices entered in the Hindu Para of Parerhat Bazar and caught 14 Hindu Civilian supporters of

independence and after fastening those civilians with single rope they were dragged to Pirojpur and handed over them to Pakistani Army who killed them and their dead bodies were thrown into the river. On perusal of the evidence adduced by the P.Ws including (P.W.1 and 12) it is revealed that no witness has narrated the story mentioned in charge No. 12 before this Tribunal. It is evident that prosecution witnesses have narrated different incidents involving the accused but none has entangled him with the commission of genocide in question.

184. The prosecution could not connect accused Delowar Hossain Sayeedi with the commission of genocide as described in charge No. 12. In view of the fact, we hold that charge No. 12 has not been proved against the accused.

XXVII. Adjudication of charge no. 14.

(Attack on Hindu Para of Hoglabunia, rape of Shefali Gharami and setting fire on houses.)

185. That during the last part of the Liberation War, accused Delowar Hossain Sayeedi led a team of Razakar Bahini consisting of 50 to 60, in the morning of the of occurrence in a planned way they attacked Hindu para of Hoglabunia under Indurkani police station. On seeing them Hindu people managed to flee away, but Shefali Ghaarami, the wife of Modhu Sudhan Gharami could not flee away, then some members of Razakar Bahini entering into her room raped Shefali Gharami. Being the leader of the team the accused did not prevent them in committing rape upon her. Thereafter, the accused and members of his team set-fire on the dwelling houses of the Hindu para of village-Hoglabunia resulting complete destruction of houses of the Hindu

civilians. The act of destruction of houses in the Hindu para by burning in large scale is considered crime of persecution on religious ground and the act of raping both as crimes against Humanity.

Discussion of evidence

186. P.W.1 Md. Mahabul Alam Howlader has stated that in every place of Pirojpur District, Razakars committed rape, arson, killing of general people, killed members of Hindu Community who were supporters of Liberation War and handed women forcefully to the Pakistani Army for commission of rape. He stated in cross-examination that subsequently a peace Committee was formed at Parerhat. Delowar Hossain Sayeedi was one of the members of that Committee and thereafter, they constituted a Razakar Bahini there. Defence claimed that the accused did not stay in his own area when the alleged occurrence took place. This witness has identified the accused in the dock.

187. P.W-3 Md. Mizanur Rahman Talukder testified that after arrival of army at Parerhat on 7th May, 1971 Delowar Hossain Sayeedi, son of Yosuf Sikder of Village- Southkhali, established Razakar Camp and committed directly or indirectly various evil deeds such as arson, murder, looting, torture on women, converting Hindus to Muslims under constraint, handing village women over to Pakistani Army. He has identified the accused in the dock. In cross-examination he replied that there was no Razakar named Delowar Hossain Mallik in their area.

188. P.W- 4 Md. Sultan Ahmed Howlader has stated that Delowar Hossain Sikder currently Sayeedi and his followers (Razakars) were committing offences

by looting the houses of Hindu Community, families of freedom-fighters, workers and leaders of Awami League who were supporters of Liberation War, arson, killing of innocent people, rape of women and handing women forcefully over to Pakistani soldiers for committing rape. He identified the accused in the dock. In cross-examination he states that he never heard the name of any Razakar like Delowar Hossain Mollik at the relevant time. He denied the defence suggestions that in connivance with Parliament Member, backed by Awami-league, he has given false evidence against the accused to tarnish his image in public.

189. P.W-23 Modhu Sudan Ghowrami has testified that 3/4 days after the incidence of 9 murder at about four/half past four in the afternoon Razakars came to his house, at that time he was not present in the house. His wife Shefali Gharami told him that the person who converted him to Muslim came and told him to flee away. His wife also told him that she was raped, and experreencing havy pain, she could not talk any more, she did not think about herself and told him to flee away. Delowar Sikder converted him to Muslim and told them that he would survive if he became Muslim otherwise not. 4/5 months later of looting, his wife gave birth to a child. The child was a girl, she was named Shandha. His wife was stigmatized by others, then she along with her daughter migrated to India. In cross-examination he testified that his wife would not go to Bazaar. When the occurrence of rape took place his wife was staying in that house. His sister-in-law and he are getting old-age allowance since 2010. He denied the suggestion that he has given false evidence and has

become sick on pressure. He has also denied the suggestion that his wife Shefali Gorami migrated to India due to conflict with him.

Evaluation of evidence and findings

190. The prosecution has examined a good number of witnesses out of them evidence adduced by P.Ws 1,3,4 and 23 are taken together for consideration. From the evidence adduced by P.W. 1,3 and 4 it is revealed that the accused Delowar Hossain Sayeedi was a member of Santi Committee and Razakar Bahini of Parerhat under Pirojpur, the then Sub-division . He, as a Razakar used to take part in committing rape, looting goods, torture, arson and killing members of Hindu community in Parerhat area during War of Liberation. The evidence adduced by P.W. 23- Madhu Sudan Gharami is very much important for adjudication the offence of rape committed upon his wife Shefali Ghorami. He testified that one day a group of Razakars attacked his house, at that time he was not present in his house. His wife Shefali Ghorami disclosed to him that she was raped by Razakars against her will. On query she told that she could not say the name of the rapist, but that man who converted him to Muslim raped her and, she also requested him to go away for security reasons. He testified that accused Delowar Hossain Sayeedi converted him to Muslim along with others under a threat that they would survive if they became Muslims otherwise not. He further testified that his wife gave birth to a child who was named Shandha but some people used to laugh at her recalling painful memories of her life, then she left for India in order to get rid of such humiliation . The evidence adduced by P.W. 23 as regards rape and forced

pregnancy of his wife, is a crime within the purview of crimes against Humanity. Though the victim wife of P.W. 23 could not be examined as she was not available in Bangladesh, the evidence as regards commission of rape upon the wife of P.W. 23 cannot be disbelieved.

191. Rwanda ICT Chamber observed in the case of the prosecutor Vs. Jean-Paul Akayesu under the caption “sexual violence as a constituent act of genocide” out of which a relevant portion of it is quoted below for understanding crime of rape as explained. Second, the Trial Chamber identified the specific elements of the crime of rape for the first time in international law, and distinguished sexual violence from rape. Although the Rwandan Tribunal had previously included rape among the enumerated acts that could constitute crimes against Humanity, it was in Akayesu that a Trial Chamber first defined rape as “ a physical invasion of a sexual nature committed on a person under circumstances which are coercive.” Sexual violence was broadly defined as “ any act of a sexual nature which is committed on a person under circumstances which are coercive.” Such an act, the Trial Chamber declared, could involve dignitary harms that did not involve penetration or even physical contact. For example, the instance of a student being forced to publicly undress and do gymnastics in the nude was found to constitute sexual violence.

192. In the instant case, P.W. 23 has categorically testified that accused Delowar Hossain Sayeedi was one of the Razakars who on the date of occurrence raided his house and some of them committed rape upon his wife. Considering the above circumstances, we are led to hold that the accused as a

member of Razakar bahini was present in the crime site having full knowledge about the said crime of rape and he substantially contributed and facilitated in the commission of said crime.

XXVIII. Adjudication of charge no.15

(Last part of Liberation War, 1971 at Hoglabunia Village ten (10) Civilians were killed and were thrown in the river)

193. That during the last part of the Liberation War, 1971 accused Delowar Hossain Sayeedi led 15/20 armed Razakars under his leadership and entered into the village-Hoglabunia under Indurkani Police Station, caught 10 (ten) Hindu civilians namely, Toroni Sikder, Nirmol Sikder, Shymkanto Sikder, Banikanto Sikder, Horolal Sikder, Prokash Sikder and others. The accused then tied all of them with a single rope with intent to kill and dragged them to Pirojpur and handed over them to the Pakistani Army where they all were killed and the dead bodies were thrown in the river. This conduct was directed against a population with intent to destroy religious group which is genocide.

Discussion of evidence

194. P.W-23 has stated that in one night 9(nine) people were abducted from their village, he did not see who abducted them. In the morning 9(nine) people could not be found. The following persons were abducted namely, Taroni Sikder, Shamkanto Sikder, Bani Kanto Sikder, Nirmol Sikder, Horlal Malakar, he can not remember another person, his father's name was Lalu Halder, Prokash Sikder and his son-Nirmol Sikder and one brother-in-law of Prokash Sikder. In reply to a question this witness has said that he can not remember

whether he told the matter to the investigation officer. He has denied that he has given false evidence.

195. P.W-12 A.K.M.A Awal M.P. has stated that during war he heard through the detectives that a fund by booties was created named as “Panch Tahabil”. Sayeedi Saheb performed as treasurer of that “Panch Tahabil”. Since Parerhat was Hindu majority area and full of pro-liberation people, the atrocities such as looting, arson, rape and murder were extensively committed in that area. In cross-examination he denied the suggestion that accused Delowar Hossain Sayeedi was not involved in the atrocious activities committed by Razakars and Pakistani Army.

196. On this charge prosecution has produced two statements of Anil Chandra Mondal and Azit Kumar Sheel marked as exhibit-259 and exhibit-264 respectively. Danesh Mollah was the president of Peace Committee while Shekander Sikder, Delowar Hossain Sayeedi alias Delu and many others were its members. Delowar Hossain Sayeedi used to speak Urdu very well and he communicated with Pakistani Bahini. Members of that Peace Committee formed Razakar Bahini who looted houses of Parerhat Bandor. They killed innocent people of various areas including Hoglabunia and Umedpur. They used to accompany the Pakistani invading force to village to village and ignited houses of Hindu Community and freedom fighters after looting. Armed Razakars under the leadership of Delowar Hossain Sayeedi (Delu) made a fund under the name of “Panch Tahbil” by establishing a shop. They used to take share out of ‘Panch Tahbil’ created by looted goods.

Evaluation of evidence and findings:-

197. The prosecution has examined a good number of witnesses but in order to prove charge No. 15, only one witness P.W. 23 has been examined. P.W.12 A.K.M. A Awal M.P. has testified that accused Delowar Hossain Sayeedi was involved in the atrocious activities committed by local Razakars with the aid of Pakistani Army. Two statements of witnesses recorded by the investigation officer under section 19(2) of the Act, have been perused but those statements could not connect the accused with the commission of genocide alleged committed at village Hoglabunia. P.W. 23 Modhu Ghorami as an inhabitant of village Hoglabunia has testified that in one night 9 people of his village were abducted by unknown person and no trace of those 9 persons was found afterwards. P.W. 23 did not even suspect accused Delowar Hossain Sayeedi in the commission of alleged genocide.

198. Upon scrutiny of the evidence on record it transpires that prosecution could not produce any evidence before this Tribunal to connect the accused with the commission of crime of genocide as stated in charge No. 15.

XXIX. Adjudication of charge no.16

(Abduction of three women confinement and rape and abetment of offences)

199. That during the time of Liberation War in 1971, accused Delowar Hossain Sayeedi led a group of 10/12 armed Razakars and Peace Committee members and surrounded the houses of Gowranga Saha of Parerhat Bandor

under Indurkani police station, subsequently the accused and others abducted (i) Mohamaya (ii) Anno Rani (iii) Komol Rani, the sisters of Gowranga Saha and handed over them to Pakistani Army Camp at Pirojpur where they were confined and raped for three days before release. The accused was directly involved in abetting the offences of abduction, confinement and rape as crimes against Humanity.

Discussion of evidence

200. P.W-13 Gouranga Chandra Saha has testified that in 1971 Delowar Hossain Sayeedi went to their house along with some Razakars who looted their house and they abducted his 3(three) sisters. Among the 3(three), the name of the eldest one is Mohamaya, middle one is Anu Rani and 3rd one is Komala Rani. Sayeedi and other Razakars handed them over to Pakistani Army Camp in Pirojpur. In the Pakistani Army Camp they were forcefully raped and returned home after 3(three) days. In cross-examination he replied that he does not know whether Ruhul Amin Nabin, Mostafa Hawlader, Sultan Ahmed, Mizanur Rahman, Mahtab Uddin Hawlader, Manik Posary, Bashu Dev Mistri and Jalal Shekh knew about abduction of his 3(three) sisters with the help of Delowar Hossain Sayeedi and others who handed over them to Pakistani invading force for rape. In cross-examination he has said, he does not know the name of other Razakars except Delowar Hossain Sayeedi. He further says that he can recall one Razakar named Abdur Razzak who was subsequently killed. He can identify Moslem Moulana of Parerhat if he sees him face to face but he does not know him by name. In cross-examination this witness has told that

Sayeedi got married two years before Liberation War in 1971, but he cannot remember whether Sayeedi had any issue in 1971. He denied the suggestion that in order to get sympathy from the ruling party he has falsely implicated Sayeedi with abduction of his 3(three) sisters and handing over them to Pakistani Janta for rape.

201. P.W-3 Md. Mizanur Rahman, P.W. 4 Sultan Ahmed Howlader and P.W. 5 Md. Mahatabuddin Howlader have brought general allegations against the accused that Delowar Hossain Sayeedi alias Sayeedi son of Yousuf Sikder of Village South Khali as a member of Razakar Bahini committed various evil deeds in Parerhat after arrival of Army there such as arson, murder, looting, torture on women, converting Hindus to Muslims under constraint, handing village women over to Army for committing rape. Delowar Sikder was directly or indirectly involved with these crimes. In cross-examination they denied the defence suggestion that they deposed falsely in order to tarnish the image of the accused.

202. Prosecution has produced statement of Azit Kumar Sheel, marked as exhibit 264 recorded under section 19(2)of the Act. It has been stated in the statement of Ajit Kumar Sheel, that Delowar Hossain Sayeedi along with his associates abducted three sisters of Gourango and handed them over to Pakistani soldiers at Pirojpur and they committed rape upon them. Parents of Gourango and his three sisters left for India during Liberation War and yet came back.

Evaluation of evidence and findings

The prosecution has examined some witnesses to prove charge No. 16 relating to abduction of three women and violation upon them.

203. P.W. 3 Mizanur Rahman, P.W.4 Sultan Ahmed Hawlader and P.W.5 Md. Mahatabuddin have narrated different crime occurrences took place at Parerhat during the War of Liberation. They have testified that accused as a member of Peace Committee and a Razakar took part in the attacks directed against unarmed civilians causing murder, looting, torture, converting Hindus to Muslims handing over women to Pakistani Army for committing rape upon them. P.W. 13 – Gourango Chandra Saha has testified that in 1971 accused Delowar Hossain Sayeedi along with his associate Razakars went to his house and looted goods and they abducted his three sisters namely Mohamaya, Anno Rani and Komol Rani from his house and handed over those three woman to the Pakistani Army Camp for committing rape upon them. He further testified that his three sisters were forcefully raped and returned them after three days. He further stated that after a few days accused Delowar Hossain Sayeed went to their house and all the members of their house were converted to Muslims. In order to get rid of such disgraceful happenings, his father, mother and three victim sisters left for India.

204. In cross-examination he denied the defence suggestion that the accused was not involved in the act of abduction of his sisters and handing them over to Pakistani Army. It appears from the statement of Azit Kumar Sheel (Exbt. NO. 264) that the evidence adduced by P.W. 13 has been corroborated by the statement as to abduction of three sisters of P.W. 13 and handing over them to

Pakistani Army with the assistance of accused Delowar Hossain Sayeedi and his associates.

205. Upon scrutiny of the evidence discussed above, we are led to hold that the accused knowingly contributed and facilitated the commission of abduction of three women and paving the way in causing sexual violence upon them. The act of abduction and rape of victims were directed against civilians which manifestly fall within the purview of crimes against Humanity.

XXX. Adjudication of the charge no.17

(Confinement of Bipod Saha's daughter Bani Saha at their house at Parerhat and committed rape upon her.)

206. That during the time of liberation war in 1971, accused Delowar Hossain Sayeedi along with other armed Razakars kept confined Bipod Saha's daughter Vanu Saha at Bipod Saha's house at Parerhat under Indurkani police station and regularly used to go there to rape her. This was committed by force or by threat and directed against a civilian population.

Discussion of evidence

207. P.W-4 Md. Sultan Ahmed Hawlader states that, Delowar Hossain Sikder currently Sayeedi and Moslem Moulana regularly raped Bani Saha, daughter of Bipod Saha of Parerhat and compelled her father and brothers to say prayer in mosque after converting them to Muslims. He has identified the accused in the dock. In cross-examination he denied the suggestion that he falsely implicated the accused with the crime of rape. He has also denied the suggestion that

Delowar Hossain Sayeedi did not rape Banu Saha, daughter of Bipod Saha of Parerhat.

Evaluation of evidence and findings:

208. It is evident from the record that the prosecution has examined only one witness namely P.W. 4 Md. Sultan Ahmed Hawlader who has stated that accused Delowar Hossain Sayeedi and one Moslem Maulana used to rape Bani Saha, daughter of Bipod Saha of Parerhat regularly. He further stated that the accused compelled the father and brother of Bani Saha to be converted to Muslims and saying prayer in the Mosque. In cross-examination P.W. 4 denied the defence suggestion that he falsely implicated the accused with the alleged commission of rape.

209. It is evident on record that neither Bani Saha nor her near relation has come forward before the Tribunal with the allegation of rape against the accused. It appears that P.W.4 did not disclose his source of knowledge about the allegation of rape against the accused. The uncorroborated testimony of a solitary witness (P.W.4), as to proving charge on rape is not sufficient to rely upon. In view of the fact, we hold that prosecution could not prove charge No. 16 beyond shadow of doubt.

XXXI. Adjudication of charge no.18

(Torture and killing of Vagiroti and throwing her dead body into the river.)

210. That during the Liberation War, Vagiroti used to work in the camp of Pakistani Army. On one day, after a fight with the freedom-fighters, and at the

instance of the accused said Bhagiorithi was arrested on charge of passing information to the freedom fighters and was tortured and then after taking her to the bank of river Boleshwar she was killed and the dead body was thrown into the river.

Discussion of evidence

211. P.W-12 A.K.M Awal M.P. has stated that one poor woman named Vagirothi of Pirojpur Sadar used to cultivate betel leaf. Local Razakars suspected that Vagirothi was spying for freedom-fighters, so they caught her and handed her over to Pakistani Army who tied her in the back of a jeep and dragged her around the town and killed her at the bank of river Boleshar. In cross-examination this witness has stated that Delowar Hossain Sayeedi is his distant relation and both of them hail from the same area, therefore they know each other for a long time since before independence. He denied the suggestion given by the defence that due to political rivalry he deposed false evidence against the accused.

212. Prosecution has produced statement of Gonesh Chandra Saha son of Vagirothi as exhibit 268 recorded under section 19(2) of the Act. The statement of Gonesh Chandra Saha contains that his mother used to give information to the freedom fighters about the movements of Pakistani invading force during Liberation War. Razakars informed Pak-Army about the activities of his mother Vagirothi. One day freedom-fighters attacked Pakistani soldiers and killed 50-60 soldiers when they went on in an operation at Bagmara village. Thereafter, Pakistani soldiers caught and tied her in a motor cycle and dragged

her around the town and shot her dead then threw her into the river Voleshori. The prosecution has also placed “**Vorer Kagoge**” dated 04.07.2007 marked as exhibit-11 and “Dainik Azad” dated 03.02.1972 as exhibit-48 and বাংলাদেশের স্বাধীনতা যুদ্ধের দলিল পত্র ৮ম খণ্ড (page-385-386).

Evaluation of evidence and finding

213. The prosecution has examined P.W. 12 A.K.M. Awal M.P. to prove charge No. 18 relating to killing and torture of ill-fated Vagirothi, an unofficial spy of the freedom-fighters. P.W.12 has depicted her as a brave lady who used to pass informations to the freedom-fighters about the movements of Pakistani forces. It is stated that local Razakars suspected her as a spy of freedom-fighters and consequently she was caught and handed over to Pakistani forces who brutally killed her by gun shot and threw her body into the river. It is evident that P.W.12 in his statement did not suspect the accused in any way responsible for the tragic murder of ill-fated Vagirothi. It transpires from the statement (Exbt. No. 268) of Gonesh Chandra Saha that he has described the valient role of his mother Vagirothi in the War of Liberation but he did not implicate the accused with the killing of his mother. It is undisputed that Pakistani Army fastened Vagirothi with the back of a jeep and dragged her to river side and killed by gun-shot. Admittedly Vagirothi sacrificed her life for the noble cause of Liberation of Bangladesh. Having considered all aspects, we are led to hold that Prosecution could not connect the accused with the commission of killing of Vagirothi.

XXXII. Adjudication of the charge no. 19

(Conversion of Hindus to Muslims by using force)

214. That during the period of Liberation War starting from 26.03.1971 to 16.12.1971 accused Delowar Hossain Sayeedi being a member of Razakar Bahini, by exercising his influence over Hindu community of the then Pirojpur Subdivision (now Pirojpur District) converted the following Hindus to Muslims by force namely, (1) Modhusudan Gharami(2) Kristo Saha(3) Dr. Gonesh Saha(4) Azit Kurmar Sil(5)Bipod Saha(6)Narayan Saha(7)Gowranga Pal(8)Sunil Pal(9)Narayan Pal(10) Amullya Hawlader,(11)Hari Roy(12) Santi Roy Guran (13) Fakir Das (14) Tona Das(15) Gourangaa Saha(16) his father Hori Das(17) his mother and three sisters (18) Mahamaya (19) Anno Rani and (20) Kamol Rani and other 100/150 Hindus of village-Parerhat and other villages under Indurkani police station and the accused also compelled them to go the mosque to say prayers. The act of compelling somebody to convert his own religious belief to another religion is considered as an inhuman act which is treated as crimes against Humanity.

Discussion of evidence

215. P.W-23 Modhu Sudan Ghowrami has stated that one day he, Krisno Saha and Dr. Gonesh were converted to Muslims in the mosque of bazaar. After 2/3 days later, Krisno Saha could not survive despite of being converted to Muslim. His name was given Ali Ashraf, Krishno Saha was given the name Ali Akbar. Delowar Hossain Sikder converted him to Muslim and told them

that he would survive if he becomes Muslim otherwise not. In cross-examination he stated that he could not remember the name of pesh Imam of the mosque wherein he was converted to Muslim.

216. He further stated that after becoming Muslim he stayed in his house but he went into hiding when Krishno Saha was killed 3(three) days later. Before abduction of Toroni Sikder and others he had been converted to Muslim. He could not remember whether he informed the investigation officer that he was converted to Muslim in a mosque of Parerhat Bazar and his name was given Ali Ashraf, Kishna Saha was given the name of Ali Akbar. It is not a fact that he gave evidence against Sayeedi under pressure and he has given false evidence in a false case.

217. P.W-13 Gourango Chandra Saha has deposed that after return of his three sisters from Army Camp, Delowar Hossain Sayeedi converted his parents, brothers, sisters and other members of their family to Muslims by reciting Kalema and compelled them to say prayers at mosque. In order to get rid of such humiliation, his parents and sisters migrated to India. He further says that many more around 100/150 Hindus were converted to Muslims, and compelled them to say prayers. Delowar Hossain Sayeedi Shaheb gave him Tupi and Tajbih. After independence he reverted to his own religion.

218. In cross-examination he denied the suggestion that Delowar Hossain Sayeedi did not convert his parents, brothers, sisters and other members of their family to Muslims by reciting Kalema and compelled them to say prayer at

mosque. He denied all the suggestions put to him as regards forceful conversion to Islam.

219. P.W-2 Ruhul Amin Nabin has stated that members of Shanti Bahini compelled members of local Hindu Community namely, Noni Saha, Makhon Saha, Dr. Gonesh Chandra Roy, Dr. Satish Chandra Roy, Sudir Chandra Roy along with 50/60 persons to embrace Islam. They compelled these Hindu persons to say prayer in the mosque 5 times a day and they were taught 2/4 Sura and supplied them accessories of prayer like jainamaz (prayer mat), Tajbih and Tupi (cap). On getting chance some of them migrated to India. Rest who remained in Parerhat Bandor reverted to their own Hindu religion after the independence. Raped victims Chobi Roy, Banu Saha fled to India. He identified Delowar Hossain Sayeedi in the dock. He admits that he is a supporter of ruling party. He denied the defence suggestion that for political jealousy and financial gain from the government he gave false evidence against Delowar Hossain Sayeedi, a central leader of Jamate-Islam.

220. P.W-3 Md. Mizanur Rahman Talukder has testified that not only this Sayeedi Shaheb caught devotee Hindus and converted them to Muslims under pressure, he also ordered them to say prayer in the mosque 5 times with Tupi (cap), Tasbih and prayer mat. Converted people used to say prayers in the mosque under constraint and they were given Muslim names. After Liberation War the converted people reverted to their own religion. He identified accused Sayeedi in the dock. In cross-examination he denied the suggestion that Sayeedi Shaheb brought devotee Hindus and forcefully converted them to Muslim and

ordered them to say prayer in the mosque five times a day. The converted people used to say prayers in the mosque under constraint and they were given Muslim names. The converted people reverted to their own religion after Liberation War. This witness has denied the defence suggestion that he has given false evidence in a false case.

221. P.W-4 Md. Sultan Ahmed has stated that Delowar Sikder currently Sayeedi and Moslem Moulana regularly raped Banu Saha, daughter of Bipod Saha of Parerhat and compelled her father and brothers to say prayer in the mosque after converting them to Muslims. He identified Delowea Hossain Sikder alias Sayeedi in the dock. This witness says during cross-examination that it is a fact that Bhanu Saha's father and brothers were converted to Muslims and compelled them to say prayer in the mosque.

222. In the statement of Ajit Kumar Sheel(exhibit-264) it has been stated that at the end of June, 1971 one day Delowar Hossain Sayeedi and his associates came to his house and gave pressure upon them to convert to Muslims. They all forcefully converted them including his brothers after taking them to a mosque at Parerhat Bandor by reciting Kalema under constraint. Besides those, Bipod Saha, Narayan Saha, Gouranga Pal, Shunil Pal, Narayan Pal, Anulla Howlader, Hori Roy, Shanti Roy, Juran, Fakir Das and Juna along with around 100/150 Hindus were converted to Muslim under constraint. In fear of those Razakars many Hindus migrated to India and did not come back till now. Delowar Hossain Sayeedi alias Delu compelled him to say prayer at the mosque. After converting him to Muslim he was given the name Sultan. Many

people yet know him as Sultan. In fear of Razakars his sisters were put into under hiding in different houses of their relatives.

Evaulation of evidence and findings:

The prosecution has examined as many as 5 witnesses to prove charge No.19 relating to conversation of Hindus to Muslims agasinst their will.

223. Upon scrutiny of the evidence adduced by P.W.2, 3,4,13 and 23 it is corroboratively found that during the War of Liberation accused Delowar Hossain Sayeedi was a member of local Peace Committee as well as member of Razakar Bahini of Parerhat. It is evident from the evidence discussed above that he compelled a good number of Hindus to embrace Islam putting them in fear of death. P.W-13 Gourango Chandra Saha and P.W.23 Modhu Sudan Ghorami are the victims of conversion who candidly narrated under what compelling circumstances they agreed to convert their religion. P.W-23 testified that the accused took him along with members of his family to local mosque and converted them to Muslims against their will. P.W.13 also gave direct evidence asserting that the accused compelled all the members of his family to embrace Islam under threat and they were also compelled to go to mosque regularly to say prayers. It is found on solid evidence that during the War of Liberation the accused under coercion and threat compelled a good number of Hindu Community people to convert religious belief which is considered as inhuman act, torture and mental persecution which fall within the purview of crimes against humanity. Our Holly Quran teaches us not to impose any sort

of pressure upon the followers of other religion, because Islam was preached only by rational appeal and not by coercion or threat.

However, having considered the evidence on records, we are satisfied to hold that prosecution has successfully proved commission of offence against the accused mentioned in Charge No.19.

XXXIII. Adjudication of charge no.20

(Confinement of 85 persons at Talukdar Bari looting of valuables and women were raped)

224. That in the last part of November 1971 while civilians were fleeing to India, accused Delowar Hossain Sayeedi with his associate Razakars attacked them at the house of Talukdar Bari of Indurkani village and detained 85 persons therein and looted away their valuables and some female persons were raped by Pakistani Army by his assistance and thereby the accused committed offences of abduction, torture and abetment of rape which fall within the purview of the crimes against Humanity.

Discussion on evidence:

225. Mr. Sayed Haider Ali, the learned Prosecutor frankly submits that he could not produce any relevant witness to prove the occurrence of Talukdar Bari of village Indurkani.

We have perused the documents both oral and documentary produced by the prosecution. It is found on evidence that no witness has been examined to prove the occurrence of Talukdar Bari and the prosecution has failed to prove the charges mentioned in charge No.20.

XXXIV. Plea of Alibi of the defence

226. On behalf of the accused Delwar Hossain Sayeedi a plea has been taken to the effect that since before starting the war of Liberation of Bangladesh he used to reside in Jessore and he came back to his village home at Pirojpur in the middle of July, 1971.

227. The defence has examined D.W.4 Md. Abul Hossain, D.W.6 Ramjan Ali, D.W.8 Md. Kubad Ali, D.W.12 Md. Hafizul Hoq and D.W.14 Md. Emran Hossain to prove the plea that accused used to reside in Jessore till middle of July, 1971.

228. Mr. Mizanul Islam, the learned defence counsel submitted that the defence witnesses have successfully proved the plea of alibi that the accused was not present in the then Pirojpur Sub-Division (now District) during the War of Liberation till middle of July, 1971 and as such all the allegations brought against the accused are proved to be false and fabricated.

Discussion on evidence:

229. D.W.4 Md. Abul Hossain has testified that he has been residing in house no. A/185 at Jessore New Town since 1968 and accused Delwar Hossain Sayeedi lived there in house no. 182 during Liberation War, 1971; they in fear of life 4th April went to Sheikhhati from Jessore on 03/04 April and accused Delwar Hossain Sayeedi went to the house of one Muslim saint of village Mohiron under Bagharpara police station of district Jessore. In cross-examination he said that accused Sayeedi had two children in 1971.

230. D.W.6 Rawshan Ali has stated that his village is Dohakola under Bagharpara police station of district Jessore and that accused Delwar Hossain Sayeedi lived in a rented house at New Town of Jessore. Accused Delwar Hossain Sayeedi along with his family took shelter in the house of one Sadaruddin, a muslim saint of village Mohiron under Bagharpara police station, in the middle of April. He also stated that the accused left Mohiron for his village home in the middle of July. In cross-examination he said that at that time the accused had two children.

231. D.W.8 Md. Kobad Ali has stated that in the year of 1969/70, accused Delwar Hossain Sayeedi had been living in a rented house at New Town of Jessore while war was started in 26 March in 1971, accused Delwar Hossain Sayeedi took shelter in the house of Sadaruddin, a muslim saint of village Mohiron, in the middle of April and on the request of Sadaruddin, he was taken to the house of Rowshan of village Dohakhola in the beginning of May and thereafter the accused left Dohakhola for his own village home in the middle of July.

232. D.W.8 stated in his cross-examination that he did not go to the house of accused Delwar Hossain Sayeedi at Jessore nor he did go to his village home.

D.W.12 Md. Hafizul Huq and D.W.14 Md. Emran Hossain also corroborated the defence plea that the accused was not present in the Parerhat area till middle of July, 1971.

233. Mr. Syed Haider Ali, the learned Prosecutor submitted that the defence could not produce any single document to show that accused used to reside in

Jessore since before the war of liberation till middle of July,1971 and as such the plea of alibi has not been proved.

234. Mr. Syed Haider Ali, draw our attention to the nomination paper (Exhibit-151) of the accused and submitted that during War of Liberation accused had only one son and after liberation he fled away from Pirojpur and might have taken shelter in Jessore and thus became the father of two children.

Evaluation of evidence as to proving plea of Alibi

235. It may be mentioned here that failure to prove plea of alibi is not fatal to the accused. Sub-rule (3) of Rule 51 of the Rules of Procedure have provided protection of the defence which reads as follows:

236. Mere failure to prove the plea of alibi and or documents and materials by the defence shall not render the accused guilty. Moreover, the accused charged with offence presuming him to be innocent until he is found guilty.

237. On perusal of the evidence adduced by D.W.5 it is found that the evidence of P.W. 4 and 6 that they have categorically stated while accused Delowar Hossain Sayeedi used to reside in Jessore before starting the War of Liberation in 1971, at that time he had two children. The prosecution has proved the copy of Nomination paper (Exbt. 151) for National Assembly election filed by accused Delowar Hossain Sayeedi which shows that the accused gave particulars of his four sons with the date of birth as quated bellow:-

<u>Name of son</u>	<u>Date of birth</u>
1. Rafiq Bin Sayeedi	18.11.1970
2. Shamim Sayeedi	01.01.1972
3. Masud Sayeedi	01.11.1975
4. Nasim Sayeedi	08.12.1976

238. The Nomination Paper (Exbt. 151) dated 30.11.2008 submitted by the accused goes to prove that he had only one son at the time of War of Liberation in 1971. The learned defence counsel gave suggestions to P.Ws. 1,2,4,5,6,8,9,10,12 and 13 that the accused used to live in Jessore since before starting the war of Liberation till middle of July, 1971 but all the P.Ws flatly denied the suggestions as to his alleged residing in Jessore at the time of starting liberation struggle. The aforesaid P.Ws and the accused belong to same locality and the PWs have categorically stated his presence and participations in the atrocities committed in Parerhat area since May, 1971. P.W. 2 Ruhul Amin Nobin as a commander of freedom-fighter testified that he went to Parerhat Bazar on 18.12.1971 but he could not arrest accused Delowar Hossain Sayeedi and his associates as they reportedly fled away. P.W.12 A.K.M.A Awal M.P. also stated that after Liberation the accused left his locality for saving his life. It is evident that while Bangladesh war was over, diverted the accused left his village home and went into hiding. The factual aspect supposes that soon after Liberation the accused might have taken shelter in Jessore for his safety, at that time D.W.4 and 6 might have seen the sons of the accused.

239. In consideration of both oral and documentary evidence, we are inclined to hold that the defence could not prove the plea of alibi. Thus, the plea of alibi

does not inspire any amount of credence and appears to be a futile effort with intent to evade the charges brought against him.

XXXV. Additional issues raised by the defence counsel:-

240. Mr. Mizanul Islam, the learned counsel for the defence submits that P.W. 28 Mr. Helaluddin without observing legal formalities, even without visiting place of occurrences has submitted perfunctory investigation report which has flawed the very foundation of the case. It may be recalled that we the Judges, Prosecutors, defence counsels and investigation officers, all are new in the trial process of the International crimes Tribunal, therefore, we hold that if any blunder is committed by the investigation officer in the process of investigation in that event the prosecution case will be more prejudiced than that of defence case.

241. Mr. Mizanul Islam then submits that most of the witnesses are enjoying government benefits and as such no one can be held guilty relying upon the evidence of such interested witnesses. It may be mentioned that it is a right of classified citizens to enjoy some benefits such as old-age allowance, widow's allowance, freedom-fighters allowance, distress person's allowance, etc, so it is our considered view that no such witness can be termed as an interested witness merely on the plea that he is enjoying Government benefits.

XXXVI. Conclusion:

242. As Judges of this Tribunal, we firmly hold and believe in the doctrine that 'Justice in the future cannot be achieved unless injustice of the past is addressed'.

243. Horrendous incidents took place in Bangladesh about 40/41 years back in 1971 and as such memory of live witnesses may have been faded and as a result discrepancy may have occurred in their versions made before this Tribunal. But, in practice, we found no significant inconsistencies in their testimonies in proving old incidents occurred during the War of Liberation.

244. We should keep in mind an important aspect of the case that we are not holding the trial of an Ex-M.P. or Nayb-e-Amir of Jamat-e-Islam named Allama Delowar Hossain Sayeedi, a renowned Oazin who is popularly known as an Islamic orator through out the country for his gift of the gab. Now let us go back to 40/41 years while the struggle for Liberation War started in 1971. From the evidence on record we have found that accused Delowar Hossain Sayeedi had a very low profile having no significant social or political status in the society. He was simply a grocery shop keeper who used to sell oil, salt, onion, pepper etc. at Parerhat Bazar. His financial condition was not good. This trial is being held against that Delowar Hossain Sayeedi for the commission of crimes against Huminity alleged to have been committed by him about 41 years back at Parerhat area while he was a Potential Razakar as well as member of local Peace Committee. The defence took a plea to the effect that there was a Razakar named Delowar Hossain Mollik who was killed

after Liberation but prosecution with an ulterior motive, shifted the liability of that dead Delowar Mollik upon this present accused Delowar Hossain Sayeedi.

245. In the above aspect, we find no substance because a good number of prosecution witnesses and the accused himself hail from the same locality who identified the accused in dock as the sole accused in this case and as such there is no confusion as to identity of the accused.

246. The expression 'directed against civilian population' as mentioned in section 3(2)(a) of the Act of 1973 specifies that in the conduct of a crime against Humanity the civilian population is the primary object of the attack. From our discussion on adjudication of the charges we have found that all the attacks were systematically made to cause widespread destruction of properties and lives directed against unarmed civilians belonging to pro-liberation people.

Guiding Principle for fixing up liability for the crimes described in section 3(2) of the Act of 1973

247. According to Section 3(1) of the Act it is manifested that even any person (individual or a member of group of individuals) is liable to be tried and punished if he is found to have committed crimes specified in Section 3(2) of the Act. In consideration of the nature of criminal charges brought against the accused, we are led to hold that the principle for determining liability for crimes as laid down in Section 4(1) of the Act is the guide line in this regard. The provision for fixing up liability for crimes is quoted below:-

Section 4(1) of the Act of 1973 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.”

248. From the oral and documentary evidence as produced by the prosecution, we are convinced to hold that the accused was a member of Razakar Bahini of Parerhat during the War of Liberation in 1971 which has been decided in chapter XVII of this judgment. It is also proved that the accused could speak Urdu well which brought him to a close associate with Pakistani Army. We are also convinced from the evidence on record that the accused knowingly the context of Liberation War he purposely stood against the War of Liberation and joined the Razakar Bahini to resist it. From the forgoing discussion, it is proved that the accused as one of the Razakars or a person of a group of individuals took active part in the attacks directed against civilian population at Parerhat area, causing murder, deportation, rape, looting of goods, setting fire on the houses and shops of civilians, forceful religious conversion, inhuman acts and torture which fall within the purview of crimes against Humanity. On scrutiny of the evidence on record, we have found that out of 20 charges the prosecution has successfully proved 8 charges against the accused who as a member of local Razakar Bahini contributed and facilitated in committing those offences by his active participation and presence at the crime sites. According to the 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. 6,7,8,10,11,14,16 and 19 as if, those were done by him alone as a

member of Razakars and/or also in the capacity of a member of atrocious group of individuals.

XXXVII. Verdict on conviction

249. Having considered all evidence, materials on record and arguments advanced by the learned lawyers of both the parties, we hold that the prosecution has successfully proved 8(eight) charges out of 20 against accused Delowar Hossain Sayeedi beyond reasonable doubt.

Charge Nos. 1 to 4 and 13: The accused is found NOT GUILTY to the offences of murder, persecution, genocide, abduction and torture which fall within the purview of crimes against Humanity and genocide as specified in section 3(2)(a) and 3(2)(c)(i) of the I.C.T. Act of 1973 and he be acquitted from the aforesaid charges levelled against him.

Charge No. 5:- The accused is found NOT GUILTY to the offences of murder, abduction and abetment which fall within the purview of crimes against Humanity as specified in section 3(2)(a) of the I.C.T. Act of 1973 and he be acquitted from the said charge.

Charge No. 6:- The accused is found GUILTY to the offence of persecution which falls within the purview of crimes against Humanity as specified in section 3(2)(a) of I.C.T. Act of 1973 and he be convicted and sentenced under section 20(2) of the said Act.

Charge No. 7:- The accused is found GUILTY to the offences of persecution and abetment of torture which fall within the purview of crimes against

Humanity as specified in section 3(2)(a) and (g) of the I.C.T. Act of 1973 and he be convicted and sentenced under section 20(2) of the said Act.

Charge No. 8:- The accused is found GUILTY to the offences of murder, abduction, torture and persecution which fall within the purview of crimes against Humanity as specified in section 3(2)(a) of the I.C.T. Act of 1973 and he be convicted and sentenced under section 20(2) of the said Act.

Charge No. 9:- The accused is found NOT GUILTY to the offence of persecution which falls within the purview of the crimes against Humanity as specified in section 3(2)(a) of the I.C.T. Act of 1973 and he be acquitted from the said charge.

Charge No. 10:- The accused is found GUILTY to the offences of murder and persecution which fall within the purview of the crimes against Humanity as specified in section 3(2)(a) of the I.C.T. Act of 1973 and he be convicted and sentenced under section 20(2) of the said Act.

Charge No. 11:- The accused is found GUILTY to the offences of torture and persecution which fall within the purview of the crimes against Humanity as specified in section 3(2)(a) of the I.C.T. Act of 1973 and he be convicted and sentenced under section 20(2) of the said Act.

Charge No. 12:- The accused is found NOT GUILTY to the offence of genocide which falls within the purview of genocide as specified in section 3(2)(c)(i) of the said Act and he be acquitted from the said charge.

Charge No. 14:- The accused is found GUILTY to the offences of persecution and rape which fall within the purview of crimes against Humanity as specified in section 3(2)(a) of the I.C.T. Act of 1973 and he be convicted and sentenced under section 20(2) of the said Act.

Charge No. 15:- The accused is found NOT GUILTY to the offence of genocide which falls within the purview of genocide as specified in section 3(2)(c)(i) of the I.C.T. Act of 1973 and he be acquitted from the said charge.

Charge No. 16:- The accused is found GUILTY to the offences of abduction, confinement, rape and abetment which fall within the purview of crimes against Humanity as specified in section 3(2)(a) and (g) of the I.C.T. Act of 1973 and he be convicted and sentenced under section 20(2) of the said Act.

Charge No. 17:- The accused is found NOT GUILTY to the offence of rape which falls within the purview of crimes against Humanity as specified in section 3(2)(a) of the I.C.T. Act of 1973 and he be acquitted from the said charge.

Charge No. 18:- The accused is found NOT GUILTY to the offence of abetment of torture which falls within the purview of crimes against Humanity as specified in section 3(2)(a)(g) of the I.C.T. Act of 1973 and he be acquitted from the said charge.

Charge No. 19:- The accused is found GUILTY to the offence of inhuman act which falls within the purview of crimes against Humanity as specified in

section 3(2)(a) of the I.C.T. Act of 1973 and he be convicted and sentenced under section 20(2) of the Act.

Charge No. 20:- The accused is found NOT GUILTY to the offences of abduction, torture and rape which fall within the purview of the crimes against Humanity as specified in section 3(2)(a) of the I.C.T. Act of 1973 and he be acquitted from the said charge.

XXXVIII. Verdict on sentence

250. From the foregoing discussions we have found the accused guilty to the offences of murder, abduction, torture, rape, persecution, forcible religious conversion and abatement as mentioned in 8(eight) charge Nos.6,7,8,10,11,14,16 and 19 which fall within the purview of crimes against humanity as specified in section 3(2)(a)(g) of ICT Act of 1973. Now a pertinent question is before us as to decide what punishment can be awarded to the accused which shall squarely meet the ends of justice.

251. We have weighed up gravity of offences proportionately which had been committed by the accused during the War of Liberation of Bangladesh. We are of agreed view that 8(eight) charges brought against the accused have been proved beyond reasonable doubt. It is well proved that accused Delowar Hossain Sayeedi substantially contributed and facilitated in killing Ibrahim alias Kutti and Bisabali as listed in charge Nos.8 and 10 respectively. It is also proved that the killing of Ibrahim alias Kutti and Bisabali was followed by

looting of properties and setting fire on two Hindu Para as a part of systematic attack directed against unarmed civilians as well as pro-liberation people.

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

Hence it is,

ORDERED

That accused Delowar Hossain Sayeedi alias Delu @ Abu Nayeem Mohammad Delowar Hossain @ Allama Delowar Hossain Sayeedi, son of late Yousuf Ali Sikder of villages-South Khali, Police Station Indurkani/Zianagar, District-Pirojpur, at present 914-Shaheed Bag, Police Station Motijheel, District-Dhaka is found guilty to the offences of crimes against humanity (listed in charge Nos.8 and 10) and he be convicted and sentenced to death and be hanged by the neck till he is dead under section 20(2) of the International Crimes (Tribunals) Act, 1973.

253. In our due consideration, the gravity of the offences as listed in charge Nos. 6,7,11,14,16 and 19 appear to be lesser than that of as listed in charge Nos.8 and 10. Since we have awarded Capital Punishment to the accused for the offences as listed in charge Nos. 8 and 10, we refrain from passing any separate sentence of imprisonment for the offences as listed in the rest charge Nos.6,7,11,14,16 and 19 though those charges have also been proved beyond reasonable doubt.

254. Accused Delower Hssain Sayeedi is, however, found not guilty to the offences of crimes against humanity as listed in charge Nos. 1,2,3,4,5,9,12,13,15,17,18 and 20 and he be acquitted from the said charges.

255. 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 provisions of section 21 of the Act.

Let a certified copy of the judgment be furnished to the prosecution and the convict free of cost at once. Let another copy of the judgment be sent to the District Magistrate, Dhaka for information and necessary action.

Issue conviction warrant accordintly.

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

(Jahangir Hossain, Member)

(Anwarul Haque, Member)