

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

ICT-BD [ICT-1] Case No 11 of 2017

Present:

Justice Md. Shahinur Islam, Chairman

Justice Md. Abu Ahmed Jamadar, Member

Justice K.M. Hafizul Alam, Member

Chief Prosecutor

Vs.

(1) Amjad Hossain Howlader (2) Md. Shahar Ali Sardar (3) Md. Atiar Rahman Sheikh (4) Md. Motasim Billah (5) Md. Kamal Uddin Goldar and (6) Md. Nazrul Islam[**Absconding**]

For Prosecution

Mr. Golam Arief Tipoo, Chief Prosecutor

Mr. Syed Haider Ali, Prosecutor

Mr. Mokhlesur Rahman Badal, Prosecutor

Mr. Md. Sultan Mahmud, Prosecutor

Ms. Rezia Sultana Begum, Prosecutor

Mrs. Sabina Yesmin Khan, Prosecutor

Mr. Tapas Kanti Baul, Prosecutor

For defence

Mr. Abdus Sattar Palwan, Advocate, Supreme Court of Bangladesh and Mr. Al Faysal Siddique, Advocate, Supreme Court of Bangladesh: For accused (1) Amjad Hossain Howlader

(2) Md. Shahar Ali Sardar (3) Md. Atiar Rahman Sheikh (4) Md. Kamal Uddin Goldar and (5) Md. Motasim Billah.

Mr. Gazi M.H Tamim, Advocate, Supreme Court of Bangladesh: State defence Counsel: For accused (6) Md. Nazrul Islam [**Absconding**]

Date of delivery of Judgment: 28 July, 2022

JUDGMENT

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

I. Introductory Words

1. The judgment which we are going to render today, on wrapping up of trial will be the 48th judgment. Seven accused (1) Amjad Hossain Howlader (2) Md. Mojahar Ali Sheikh(died during trial) (3) Md. Shahar Ali Sardar (4) Md. Atiar Rahman Sheikh (5) Md. Motasim Billah (6) Md. Kamal Uddin Goldar and (7) Md. Nazrul Islam[**Absconding**] have been indicted by framing charges in this case. Out of seven accused one Md. Mojahar Ali Sheikh died after framing charges and thus trial took place against six accused of whom accused Md. Nazrul Islam has been absconding. Trial relates to the offences as enumerated in section 3(2) of the International Crimes

(Tribunals) Act, 1973 allegedly committed in the localities under police station Batiaghata of District-Khulna in 1971 during the war of liberation.

2. The accused persons have been indicted for aiding, abetting, facilitating, participating and substantially contributing the commission of horrendous offences of crimes against humanity and genocide as arraigned in four counts of charges. The charges framed involve the acts of brutal killing of numerous unarmed freedom-fighters and members belonging to Hindu community of the vicinity targeted and also conducting destructive activities in aggressive and designed manner.

3. On closure of summing up of case by both sides, the Tribunal sent the detained accused persons to prison with direction to produce them on call. After fixing the date of delivery of judgment Tribunal issued production warrant(P/W) in compliance of which the prison authority has produced the five(05) accused (1) Amjad Hossain Howlader (2) Md. Shahr Ali Sardar (3) Md. Atiar Rahman Sheikh (4) Md. Motasim Billah and (5) Md. Kamal Uddin Goldar today before this Tribunal [ICT-1].

4. The appalling atrocities were allegedly committed in 1971, during the war of liberation, directing the Hindu civilian population and non combatant freedom-fighters, aiming to terrorize and wipe them out, in furtherance of policy and plan of the Pakistani occupation army.

5. Now, the Judgement is being rendered by this Tribunal [ICT-1] for the prosecution of persons allegedly responsible for the serious offences enumerated in the International Crimes (Tribunals) Act, 1973 committed in violation of international humanitarian law in the territory of Bangladesh in 1971.

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

II. Formation and Jurisdiction of the Tribunal

7. The Tribunal [ICT-1], a domestic judicial forum has been set up on 25 March 2010 to prosecute, try and punish the perpetrators of offences enumerated in the Act of 1973. The notion of fairness and norms of due process has been

contemplated in the Act of 1973 and the Rules of Procedure, 2010 (ROP) formulated by the Tribunal [ICT-1] under the powers conferred in section 22 of the principal statute.

8. The Act No. XIX enacted in 1973 remained dormant for decades due to grave inaction resulted from military regime. It was rather a grave blow to victims and sufferers of horrendous crimes committed in 1971. The Act is meant to prosecute crimes against humanity, genocide and system crimes committed in violation of international humanitarian law and other international conventions.

9. The Act is *ex-post facto* legislation. It is fairly permitted to bring the perpetrators to justice for the crimes arraigned. The 1973 Act of Bangladesh has the merit and means of ensuring the standard of safeguards recognized universally to which the persons indicted are entitled.

10. This Tribunal formed under the Act of 1973 is absolutely a domestic judicial forum. This judicial forum formed of a panel of three judges is meant to try ‘internationally recognized crimes’ which are known as ‘system crimes’ or ‘group crimes’ committed in violation of customary international law during the war of liberation in 1971 in the territory of Bangladesh.

11. We reiterate that the Act of 1973 has been enacted to prosecute, try and punish not only the ‘armed forces’ but also the perpetrators who belonged to ‘auxiliary forces’ created to collaborate with the armed force, or who committed such offence as an ‘individual’ or a ‘group of individuals’ or ‘organisation’. It is patently manifested from section 3(1) of the Act of 1973 that even any person (individual), if he is *prima facie* found accountable either under section 4(1) or 4(2) of the Act of 1973 for the perpetration of offence(s), can be brought to justice under the Act.

III. Brief Historical Background

12. The Bangalee nation started facing and experiencing explicit disparity and dishonour by the Pakistani rulers since partition of British India in August, 1947. In various manners the Bangalee nation was kept cornered by resisting their voice and lawful rights.

13. The partition of British India based on two-nation theory, gave birth to two new states, one a secular state named India and the other the Islamic Republic of Pakistan. The western zone was named West Pakistan and the eastern zone was named East

Pakistan, which is now Bangladesh, the long cherished independent motherland of the Bangalee nation.

14. The history of such detestable disparity the Bangalee nation experienced is now judicially noticeable chapter of history. 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 their mother language Bangla recognized as a state language and eventually turned to the movement for greater autonomy and self determination and finally 'independence'.

15. The history goes on to portray that in the general election of 1970, the Awami League under the leadership of Bangabandhu Sheikh Mujibur Rahman became the majority party of Pakistan. But defying the democratic norms Pakistan Government did not care to admire this overwhelming majority. As a result, movement started in the territory of this part of Pakistan and Bangabandhu Sheikh Mujibur Rahman the Father of the Nation in his momentous speech of 7th March, 1971, called on the Bangalee nation to start struggling for independence if people's verdict is not respected.

16. At a stage, in the early hour of 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. In this way the Pakistani occupation army in collaboration with their local collaborators started carrying out horrendous mayhem throughout the entire Bangladesh which they kept continued till the Bangalee nation achieved its independence.

17. In the War of Liberation that ensued, all people of the then East Pakistan unreservedly supported and participated in the call to free Bangladesh but a small number of Bangalees, Biharis, other pro- Pakistanis, as well as members of numbers of different religion-based pro-Pakistan political parties, particularly Jamat E Islami (JEI) and its student wing Islami Chatra Sangha (ICS), Muslim League, Convention Muslim League joined and/or collaborated with the Pakistani occupation army intending to aggressively resist and defy the conception of independent Bangladesh and in materializing such object most of them committed and facilitated as well the commission of appalling atrocities directing civilian population in the territory of Bangladesh, in 1971. This is now a settled history of which

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

18. The horrendous atrocities for which the accused persons have been indicted in this case were not isolated from the policy and plan of the occupation Pakistani army who started its ‘mayhem’ since 25 March 1971 intending to stamp out the pro-liberation Bangalee civilians. Millions of brave sons, mothers and daughters laid their lives and supreme honour, during the war of liberation for the cause of independence and self determination.

19. In portraying the ferocity of atrocious acts committed during the nine-month period of the war of liberation the Appellate Division, in the case of *Abdul Quader Molla* observed that—

“.....The whole of Bangladesh became truly a Jallianwala Bagh, hallowed and sanctified by the blood of patriotic martyrs and innocent defenceless people; whose only fault was that they were somewhat different than those who came to rule them from Pakistan.”

[Appellate Division, Abdul Quader Molla Judgment, 17 September 2013, page 42]

20. It is now an undeniable history that the local collaborators belonging to militia forces like Razakar, Al-Badar actively assisted the Pakistani occupation army in accomplishing their policy and plan to wipe out the pro-liberation Bangalee civilians. The local collaborators despite being Bangalee truly had acted as notorious traitors. It is now a settled history which needs no further document to prove.

21. Indescribable atrocious resistance on part of thousands of local collaborators could not impede the nation's valiant voyage to self-determination and independence. Undeniably the ways to self-determination for the Bangalee nation was indeed arduous, swabbed with enormous blood, struggle and immense sacrifices. In the present-day world history, conceivably no nation paid as extremely as the Bangalee nation did for its self-determination. The nation shall remain ever indebted to those best sons and daughters of the soil who paid immense glorified sacrifices for an indelible long cherished motherland – **Bangladesh.**

IV. Brief account of the Accused Persons

22. Before we move to the task of determination of charges framed we deem it imperative to have a look to what has been asserted in the formal charge in respect of the identity and status

the accused persons had in 1971. According to the narrative made in the formal charge the following are the brief account of the 06(six) accused persons that may essentially offer a depiction of the ideology, status and mindset they had in 1971, during the war of liberation.

23. It is to be noted that one (1) accused Md. Md. Mojahar Ali Sheikh died on 19.06.2019, after rendering order on framing charges and thus proceeding so far as it related to him stood abated, vide Tribunal's order dated 11.07.2019. Therefore, now we refrain from stating the brief portrayal of this accused. Just we now require stating the brief portrayal of six (6) accused as below.

(i) Amjad Hossain Howlader

Accused Amjad Hossain Howlader [75], son of late Amdad Ali Howlader and late Achhia Khatun, of village-Charkhali (Machhalia), Police Station-Batiaghata, District-Khulna was born on 01.01.1942 (as per his NID). In 1971, during the war of liberation he was a follower of Convention Muslim League, a pro-Pakistan political party and he joined the locally formed Razakar Bahini and thereby knowingly got engaged in committing unspeakable atrocious activities, prosecution alleges.

(ii) Md. Shahar Ali Sardar

Accused Md. Shahar Ali Sardar [65], son of late Abdul Gani Sardar and late Kariman Nesa, of Village-Shurkhali, Police Station-Batiaghata of District-Khulna was born on 16.07.1952 (as per his NID). He was an active member of the locally formed Razakar Bahini and aggressively collaborated in accomplishing atrocities, prosecution alleges.

(iii) Md. Atiar Rahman Sheikh

Accused Md. Atiar Rahman Sheikh [70], the son of late Hasan Sheikh @ Hashem Sheikh and late Malancha Bibi, of village-Shundar Mahal, Police Station-Batiaghata of District-Khulna was born on 10.09.1947 (as per his NID). He studied up to Class VII. He was an active member of the locally formed Razakar Bahini and participated in committing crimes directed against civilians, prosecution alleges.

(iv) Md. Motasin Billah

Accused Md. Motasin Billah [80] is the son of late Rakamtullah Sheikh and Johara Begum, of Village-Kismat Laxmikhola, Jheelaghata under Police Station-Batiaghata of District-Khulna. His date of birth is 04.10.1937, according to his NID. He studied up to Class IV. In 1971, during the liberation war, he was a follower of Jamaat-e-Islami. He joined the locally formed

Razakar Bahini and knowingly assisted the Pakistani occupation army in carrying out atrocious activities, prosecution alleges.

(v) Md. Kamal Uddin Goldar

Accused Md. Kamal Uddin Goldar [66] is the son of late Dabir Uddin Goldar and late Hamida Begum, of village-Birat, Police Station- Batiaghata of District-Khulna. He was born on 01.01.1951 (as per his NID). He passed H.S.C examination in 1967 from the City College, Khulna. In 1971, during the liberation war, he joined the locally formed Razakar Bahini and actively collaborated with the Pakistani occupation army in committing heinous crimes, prosecution alleges.

(vi) Md. Nazrul Islam (absconding)

Accused Md. Nazrul Islam [60] is the son of late Md. Nayan Ali Jarddar and late Rabeya Begum, of village: Noyailtala, Police Station-Batiaghata of District-Khulna. His present address is Nila Manjil, House No. 67, Ward No. 29, Tank Road, Khulna Sadar Thana, KMP, Khulna. According to his National Identity Card (NID) his date of birth is 02.08.1957. He passed the H.S.C examination. In 1971, during the liberation war, he joined the locally formed Razakar Bahini to assist the Pakistani Occupation Army in carrying out atrocious activities, prosecution alleges.

V. Procedural History

Pre-Trial Sate

Initiation of Investigation

24. The Investigation Agency of the Tribunal constituted under the Act of 1973 started investigation pursuant to complaint register serial no. 59 dated 15.11.2015, in respect of commission of offences enumerated in section 3(2) of the Act of 1973 allegedly perpetrated by (1) Amjad Hossain Howlader (2) Md. Mojahar Ali Sheikh (died during trial) (3) Md. Shahrar Ali Sardar (4) Md. Atiar Rahman Sheikh (5) Md. Motaasin Billah (6) Md. Kamal Uddin Goldar and (7) Md. Nazrul Islam.

Arrest of suspected accused

25. During investigation i.e. at pre-trial stage the Investigation Officer through the Chief Prosecutor came up with an application seeking arrest of all the seven suspected accused persons, for the purpose of holding proper and effective investigation.

26. On hearing application the Tribunal-1 by its order dated 08.03.2017 issued warrant of arrest in execution of which **six** suspected accused who were detained in connection with Batiaghata police station case no. 05 dated 09.01.2016 were then produced before the Tribunal-1 and then they were sent to

prison showing them arrested in connection with this case.

Another suspected accused Nazrul Islam could not be arrested.

Interrogation of accused persons

27. All the six accused persons, detained in prison have been interrogated by the investigation officer as permitted by an order dated 25.05.2017 of Tribunal-1, ensuring due rights of the accused persons.

Submission of Investigation Report

28. The Investigation Officer [IO] submitted its report together with documents and materials collected and statement of witnesses, on wrapping up of investigation before the Chief Prosecutor on 08.08.2017 recommending prosecution of all the 07[seven] suspected accused persons of whom 01[one] could not be arrested.

Submission of Formal Charge

29. The Chief Prosecutor, on the basis of the report and documents submitted therewith by the Investigation Agency, after completion of investigation, placed the 'Formal Charge' on 19.11.2017 under section 9(1) of the Act of 1973 before this Tribunal alleging that the seven[07] accused persons had committed the offences of 'crimes against humanity' and 'genocide' during the period of War of Liberation in 1971

around the localities under the Police Station-Batiaghata of District-Khulna, as narrated in the formal charge and recommended for joint prosecution and trial of the accused persons.

Taking Cognizance of Offences

30. On 14.12.2017 the Tribunal-1, under Rule 29(1) of the Rules of Procedure(ROP), took cognizance of offences as mentioned in section 3(2) (a) g)(h) of the Act of 1973, by application of its judicial mind to the Formal Charge and materials and documents submitted therewith.

Publication of notification in daily news papers

31. Out of seven [07] accused one [01] accused Md. Nazrul Islam could not be arrested, at pre-trial stage. After having the report in execution of warrant of arrest issued against this accused the Tribunal-1, for the purpose of holding proceedings in absentia against him, by its order dated 14.01.2018 directed publication of notice in two national daily news papers, as required under law.

32. But the accused Md. Nazrul Islam did not turn up despite publication of such notification and as such treating him absconding the Tribunal-1 by its order dated 06.03.2018 fixed 07.05.2018 for hearing on charge framing matter by appointing

Mr. Gazi M.H. Tamim, Advocate, Supreme Court of Bangladesh as state defence counsel, at the cost of Government, to defend the absconding accused Md. Nazrul Islam.

Charge Framing Hearing and Order

33. Then on 29.10.2018 hearing on charge framing matter took place when both sides placed their respective submission. Tribunal rendered its order on charge framing on 22.01.2019 indicting seven (7) accused as recommended by the prosecution by submitting formal charge. Four counts of charges framed were read over and explained to the six (6) accused present on dock when they pleaded not guilty and claimed to be tried according to law. One (1) accused Md. Nazrul Islam remained in absconsion.

Proceeding so far as it relates to accused Md. Mojahar Ali Sheikh stood abated

34. It is to be noted that the accused Md. Mojahar Ali Sheikh detained in prison was brought before Tribunal when in his presence charges so framed on 22.01.2019 were read over and explained to him to which he pleaded not guilty. But few months later he died on 19.06.2019 i.e. after commencement of trial by framing charges indicting seven (7) accused including him. As a result, considering documents related to his death as placed before Tribunal proceeding so far as it related to him

stood abated vide Tribunal's order dated 11.07.2019. Accordingly, trial continued against in all six (6) accused of whom one (1) has been absconding.

Trial Stage

Opening Statement and Examination of prosecution witnesses

35. Prosecution after placing opening statement started examining witnesses on 13.03.2019. In this way prosecution adduced and examined in all 18 witnesses who have been duly cross-examined by defence. The phase of examining prosecution witnesses ended on 21.11.2021. Defence refrained from examining any witnesses and thus date 19.01.2022 was fixed for placing summing up.

Summing up

36. Prosecution started placing summing up drawing attention to the incriminating evidence and materials relied upon and eventually it got concluded on 09.04.2022. Then defence placed its summing up. In this way the phase of summing up ended on 22.05.2022 and the case was kept in CAV i.e. for delivery and pronouncement of judgment.

VI. Summing up placed by both sides

Summing up by prosecution

37. Mr. Mokhlesur Rahman Badal, the learned prosecutor being assisted by **Mrs. Sabina Yesmin Khan**, the learned prosecutor in course of placing summing up by portraying the profile of the accused persons indicted submitted that all of them belonged to locally formed Razakar Bahini, in 1971. Citing testimony of prosecution witnesses and the materials collected during investigation which have been marked as Exhibits the learned prosecutor next submitted that being imbued by the policy and plan of Pakistani occupation army the accused persons not only took stance against the war of liberation but also actively participated, by their conscious culpable act and conduct, in committing atrocious crimes around the localities under police station Batiaghata of District Khulna. Evidence tendered in this regard could not be undermined in any manner.

38. It has been further argued that evidence presented demonstrates that the accused persons knowingly assisted, abetted, aided and contributed to the commission of crimes arraigned and thereby they incurred liability. The learned prosecutor's argument advanced in relation to all counts of charges may conveniently be addressed together with that

advanced by the defence, in adjudicating each charge independently.

Summing up by Defence

39. Mr. Abdus Sattar Palwan the learned defence counsel and **Mr. Gazi M.H Tamim, the learned state defence counsel** for absconding accused in placing argument submitted that the accused persons did not have affiliation with local Razakar Bahini; that they have been falsely implicated in this case; that the testimony of prosecution witnesses does not leave any degree of credence. Argument in relation to each count of charge as has been advanced on part of defence may be well addressed when each charge will be determined, on weighing evidence.

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

40. The learned prosecutor drawing attention to the documentary evidence, the lists of Razakars prepared in 1971 **Exhibit-II** and the list prepared in 2014 **Exhibit-I** submitted that it unquestionably proved the formal affiliation of accused persons in local Razakar Bahini. These documents are authenticated. The learned prosecutor Mrs. Sabina Yesmin Khan

also emphatically submitted drawing attention to oral testimony presented that the accused persons had acted in committing atrocious crimes in exercise of their proved affiliation in local Razakar Bahini. The witnesses in recounting the events of attacks arraigned consistently stated that in course of attacks they could recognize the accused persons accompanying the group of attackers.

41. It has been further submitted that the witnesses had natural reason of knowing the accused persons. Their testimony in this regard could not be tainted in any manner. The accused persons were from the neighbouring or same locality and thus the witnesses naturally knew them beforehand. Presence of accused persons in the crime sites accompanying the gang, sharing intent by itself is sufficient to prove their infamous affiliation with local Razakar Bahini.

42. Mr. Abdus Sattar Palwan the learned defence counsel and **Mr. Gazi M.H Tamim**, the learned state defence counsel submitted that the documents relied upon by the prosecution to prove accused persons' alleged affiliation in locally formed Razakar Bahini have been created for the purpose of this case; that the accused persons did not belong to Razakar Bahini and

that the witnesses had no reason of knowing the accused persons.

43. Now, before we resolve the issue we reiterate that it cannot be said that mere failure to prove an accused's membership in Razakar Bahini by adducing any document makes space for the accused to walk free. The International Crimes (Tribunals) Act, 1973 permits to prosecute even an 'individual' or 'group of individuals' for the offences as enumerated in the Act. However, since prosecution alleges that the accused persons in exercise of their affiliation with locally formed Razakar Bahini got engaged in committing the offences arraigned let us see how far it could be proved by prosecution.

44. First, let us eye on oral evidence on the issue under determination. P.W.01, P.W.02, P.W.03, P.W.04, P.W.07, P.W.08, P.W.09, P.W.11, P.W.12, P.W.13, P.W.14, P.W.15, P.W.16, and P.W.17 recounted the events arraigned implicating the accused persons. These witnesses knew the accused persons beforehand as they were from their neighbouring localities. Defence could not refute it.

45. P.W.08 stated that at the end of April in 1971 peace committee was formed in their locality on headship of Azahar

Mia (now dead). Then under his leadership Razakar Bahini was formed and accused Amjad Hossain Howlader, Ansar Ali (now dead) and some other people joined in Razakar Bahini.

46. No indication whatsoever could be demonstrated by cross-examining the prosecution witnesses that the version they made in respect of affiliation of the accused persons with locally formed Razakar Bahini suffers from any degree of doubt.

47. In 1971, nexus and affiliation with Razakar Bahini which was created to collaborate with the Pakistani occupation army became anecdote, especially for its notoriety around the locality of witnesses examined. This logical proposition together with the oral evidence presented has thus made it unerringly proved that all the accused persons were the members of locally formed Razakar Bahini.

48. The witnesses particularly who are brave freedom-fighters had justified reason of knowing and recognizing the accused persons accompanying the gang of attackers. Besides, it depicts from consistent account of these witnesses that the accused persons belonging to Razakar Bahini were from their neighbouring localities. Notoriety the accused persons achieved

by their culpable acts indisputably made them widely known around the localities.

49. Since uncontroverted account made by witnesses depicts that the accused persons being part of collective criminality were with the gang of invaders it may safely be inferred that they so got engaged with the prohibited acts in exercise of their affiliation in Razakar Bahini, an auxiliary force of Pakistani occupation army.

50. Context existing in 1971 during the war of liberation for the reason of activities carried out by such infamous militia force a member of it became naturally well known to the locals for his notorious acts and it may thus be proved even by oral testimony of the witnesses particularly who experienced and observed the acts related to the commission of horrific offences alleged. We consider that there can be no bar even in relying solely upon oral testimony in determining the fact of accused persons' nexus and association with the local Razakar Bahini. But in the case in hand, it appears that prosecution relied upon even some documents including old documentary evidence to substantiate this issue.

51. Now, let us see the documentary evidence relied upon on the issue of affiliation of accused persons in locally formed Razakar Bahini. In 1971 Razakar force was created as an auxiliary force and peace committee played key role in forming this para militia force. It is now settled history. In the case in hand, document , the photocopy of list of Razakars of localities under Batiaghata police station recommended and certified by the concerned Chairman/ Secretary of peace committee seems to be the best evidence to substantiate the issue under determination. The document has been proved and marked as **Exhibit- II (Prosecution Documents Volume page -15-19)** by the IO P.W.18 Md. Helal Uddin PPM-Bar, PPM-Seba.

52. The above pieces of documents are indeed rare and old documents which the IO has been able to collect. It appears from these documents that a number of individuals including the accused persons indicted in this case were recommended and certified as Razakars, stating their age there. Name of the accused persons finds place in these lists as Razakars. These lists prepared in 1971 **Exhibit-II** endorsed the certificate under signature of concerned Chairman/ Secretary of peace committee as below:

“Certified that the above named persons are truly loyal Pakistani none of them have taken part in any activities subversive of the state or the discipline. They are ready to dedicate their lives for the save of Pakistan.”

53. Therefore, **Exhibit-II (Prosecution Documents Volume page-15-19)** contemplating such endorsement seem to be the old evidence having unquestionable authenticity and the same rather carry packed credibility and lead to the conclusion that the accused persons got enrolled in Razakar Bahini in 1971, on due recommendation of local peace committee.

54. In addition to the **Exhibit-II**, prosecution relies upon the lists of Razakars prepared in 2014 by Bangladesh Muktijodhdha Sangsad, Batiaghata Upazila Command which have been proved and marked as **Exhibit-I (Prosecution Documents Volume page nos. 8-14)**.

55. Defence avers that these lists **Exhibit-I** do not carry credibility and the same have been prepared intending to implicate the accused persons with this case. We do not agree with this averment as it was a futile attempt to negate the authenticity of documentary evidence. It is found that these lists came to exist prepared in 2014, before initiation of investigation

into the case which refers to complaint register serial no. 59 dated 15.11.2015. Be that as it may, there is no reason of asserting that these lists have been created for the purpose of this case. Rather, it gets strength from **Exhibit-II**, the list of Razakars prepared in 1971.

56. Besides, it depicts that P.W.18 the IO of the case in reply to question put to him in cross-examination stated that he collected the documentary evidence prepared in 1971 in proving the fact that the accused persons were Razakars; that the local peace committee preparing the list of said Razakars communicated it to the District Ansar and VDP camp for their training as Razakars.

57. The above version rather affirms as the authenticity of **Exhibit-II**, the old documents and confirms the same as best proof of affiliation of all the accused persons in local Razakar Bahini.

58. **Mr. Gazi M.H Tamim**, the learned counsel defending the accused Nazrul Islam submitted that in 1971 this accused was 13 years old and thus he did not belong to Razakar Bahini. We are not in agreement of this submission It transpires from the **Exhibit-II (prosecution documents volume page no.16)** that

this accused was recommended to be selected as Razakar and at that time he was 18 years old. Defence could not negate the information contemplated in **Exhibit-II** in any manner. Besides, there is no proof to substantiate this defence contention.

59. It is now well settled fact that in 1971 Razakars became branded around their locality for their infamy. In 1971 during the war of liberation, the Razakars had to maintain close nexus and attachment with the Pakistani occupation army stationed in their locality and the Razakar Bahini in conducting atrocities, in exercise of their membership in Razakar Bahini, it may safely be assumed. From this settled historical point of view we arrive at decision that the accused persons' presence and culpable alliance with the gang of attackers as found proved from evidence lead to the conclusion that they were active members of Razakar Bahini formed to further the policy and plan of the Pakistani occupation army by carrying out prohibited criminal atrocities directed against the Bangalee civilans.

60. In view of reasoned discussion made above chiefly on cumulative appraisal of old documentary evidence and oral testimony of prosecution witnesses we arrive at unerring finding

that all the accused persons, being loyal citizens of Pakistan indicted in this case belonged to locally formed Razakar Bahini.

VIII. Applicable laws

61. The proceedings dealt with in the Tribunal are guided by the International Crimes (Tribunals) Act, 1973, the Rules of Procedure 2010[ROP] formulated by the Tribunal-1 under the powers conferred in section 22 of the Act. Section 23 of the Act of 1973 prohibits the applicability of the Code of Criminal Procedure, 1898 and the Evidence Act 1872 as the offences dealt with in the Tribunal are not isolated crimes punishable under the normal Penal law.

62. In resolving the arraignments and involvement of the accused therewith Tribunal is authorized to take judicial notice of any fact of common knowledge which is not needed to be proved by adducing evidence [Section 19(4) of the Act]. Even the Tribunal shall not be bound by technical rules of evidence and may admit any evidence which it deems to have probative value [section 19(1) of the Act of 1973].The Tribunal shall have judicial discretion to consider hearsay evidence by weighing its probative value [Rule 56(2)].

63. The defence shall have right to cross-examine prosecution witness on his credibility and to take contradiction of the evidence given by him [Rule 53(ii)]. Defence shall have right to examine witnesses [Section 10(1) (f) of the Act of 1973] in support of defence case.

64. In resolving the facts chained to the event arraigned the Tribunal may receive in evidence statement of witness recorded by Magistrate or Investigation Officer only when the witness who has subsequently died or whose attendance cannot be procured without an amount of delay or expense which the Tribunal considers unreasonable [Section 19(2) of the Act]. But in the case in hand, no such prayer on part of the prosecution has been initiated.

65. Atrocities arraigned in the charges framed were allegedly committed in wartime situation, not in normalcy. Thus the Tribunal notes that in adjudicating culpability of the persons accused of criminal acts arraigned, context and situations prevailing at the relevant time i.e. during the period of war of liberation in 1971[March 25 to December 16 1971] is to be considered.

IX. General Considerations Regarding the Evaluation of Evidence in a case involving the ‘Group Crimes’

66. The case so far as it relates to the facts of criminal acts constituting the alleged ‘group crimes’ is chiefly founded on oral evidence presented by the prosecution. The locals, relatives of victims and sufferers of atrocious activities came on dock and recounted what they experienced and saw in course of the atrocious events of attack launched in 1971 in and around their localities. Some secondary witnesses also narrated the alleged events.

67. It has already been settled that in a trial of offences enumerated under the Act of 1973 ‘hearsay evidence’ is admissible and it may be taken into consideration if it carries probative value and gets support from other evidence. The phrase ‘other evidence’ includes relevant facts, circumstances and testimony of ocular witnesses.

68. In respect of admissibility of hearsay evidence, it has been observed in the decision rendered in the case of *Limaj* that whether any weight, and if so, what weight will attach to [hearsay opinion] will depend to what extent the question of hearsay is clarified by other evidence and it is shown to be

reliable [Archbold International criminal Courts: page 751: 9-104: HEARSAY].

69. In dealing with the crimes arraigned Tribunal keeps it in mind that the core essence of the horrific principal event always remains imprinted in the human memory if a person really had opportunity of seeing the event of monstrous nature. Thus, taking this reality into account it is to be assessed as to how far the testimony of ocular witnesses on material facts inspires credence.

70. In committing the offences of crimes against humanity the person accused of such crimes may not have physical or direct participation. But his act or conduct--- amid, prior or subsequent to the event, lawfully makes him responsible for the offences committed by other members of the group, if his act or conduct is found to have had substantial effect and contribution on the commission of such crime. It is now settled jurisprudence.

71. Tribunal notes that there has been no mandatory provision of recording statement of witness, during investigation by the IO under the Act of 1973. However, the IO is not debarred from

reducing the statement of any witness in writing as required under section 7(6) of the Act of 1973.

72. But, there has been no explicit provision as to contradict witness's testimony to what is stated to the IO. Besides, mere omission, if any in an earlier statement made to non judicial body (IO) does not make witness's sworn testimony made before the Tribunal tainted and untrustworthy. Thus, the truthfulness of direct sworn testimony made before the Tribunal is subject to the test of cross-examination by the defence.

73. In this regard it has already been settled by the Appellate Division of the Supreme Court of Bangladesh, in the case of *Abdul Quader Molla* that the contradiction can be drawn only from the statements made by a witness in his 'examination-in-chief', not with respect to the statement made to the investigating officer of the case in course of investigation" [Page 196 of the Judgment in *Abdul Quader Molla Case*].

X. Adjudication of Charges

**Charge No.01:[01 accused indicted]
[Killing 01 unarmed civilian of village Charkhali under police station- Batiaghata, District-Khulna]**

74. Charge: The accused Amjad Hossain Howlader and his cohorts with intent to spread terror and coercion compelled the Hindu residents including Binod Mandol, a supporter of the war of liberation of village- Charkhali under police station- Batiaghata of District Khulna to deport to India. Afterwards, Binod Mandol came back and on 10.09.1971 at about 07:00 P.M visited the house of Rabindra Nath Mandol, adjacent to their house. On getting information about his arrival the accused Amjad Hossain Howlader and his 4/5 accomplice Razakars by launching systematic attack at that house forcibly captured Binod Mandol and took him away to north-west side of the swamp where the accused gunned him down to death. Next, coming back to the house of Rabindra Nath Mandol the accused and his accomplices threatened the inmates of the victim's family not to disclose that he had killed **Binod Mandol**. Then all the family inmates of the victim, being scared then quitted the locality.

Therefore, the accused Amjad Hossain Howlader by his act forming part of systematic attack participated, facilitated and substantially contributed to the commission of '**abduction**', '**confinement**' '**torture**' and '**murder**' of a non-combatant civilian constituting the offence as crimes against humanity as

specified in section 3(2)(a)(g)(h) read with section 4(1) of the International crimes (Tribunals) Act, 1973 which are punishable under section 20(2) of the Act.

Evidence of Witnesses Examined by Prosecution

75. The charge involves the event of killing one unarmed freedom-fighter Binod Mondol, one Hindu civilian on getting him unlawfully apprehended by launching systematic attack. The charge also arraigns prohibited act of forceful deportation of Hindu residents and family inmates of the victim to India.

76. Prosecution relies upon 07 witnesses of whom some are eye witnesses to facts crucially chained to the event arraigned and some are hearsay witnesses. However, before we weigh up the testimony rendered by these witnesses first let us see what account they have made in Tribunal.

77. P.W.01 Sheikh Md. Afjal Hossain (79) is a resident of village- Batiaghata under police station-Batiaghata of District-Khulna and he is a freedom fighter. He is a hearsay witness. In addition to narrating the event arraigned in charge no.02 P.W.1 in respect of the event arraigned in charge no.01 simply stated that after independence he heard from people that Razakar Amjad Howlader had killed Binod Mandol of village-Masalia.

In cross-examination it has not been denied that P.W.01 heard the event of killing Binod Mandol.

78. P.W.02 Md. Monirul Islam (66) is a resident of village-Halia under police station- Batiaghata of District Khulna and he is a freedom-fighter. He too is a hearsay witness. He in addition to recounting the event arraigned in charge no.02 narrated what he heard about the event of killing arraigned in charge no.01. P.W.02 stated that after independence he heard from the wife of Binod (victim) of village-Masalia and other people that Razakar Amjad gunned down Binod Mondol to death. In cross-examination it has not been denied that P.W.02 heard the event of killing Binod Mondol.

79. P.W.07 Shanti Lata Mondol (65) is a resident of village-Masalia under police station Batiaghata of District-Khulna. She is a direct witness to the facts pertinently chained to the event arraigned. In 1971 she had been at her conjugal home. P.W.07 stated that in one evening at about 07:00 P.M at the end of Bangla month Bhadra in 1971 their neighbour Binod Mondol came to their house and told that he along with his co-freedom-fighters returned back home after receiving training of freedom-fighters in India. At that time, all on a sudden Razakar Amjad

Howlader, Razakar Ansar (now dead) and their 4/5 accomplice Razakars appeared there and apprehended Binod Mondol and took him away toward the swamp, north to their house. She (P.W.07) then made her husband's brother Sunil awakened and disclosed the event. About one hour later they heard gun firing from the end of the swamp.

80. P.W.07 also stated that afterward the said Razakars again came to their house and after taking green coconut water told that they had gunned down Binod to death and they threatened that they would liquidate them too if they disclosed it to other and then they had left the site. On the following day she (P.W.07) heard from people that Binod Mondol's' dead body was found lying in the swamp, north to their house. His dead body was dealt with by dogs. After the event conducted the family inmates of victim Binod Mondol deported to India, being intimidated. Finally, P.W.07 stated that she knew the Razakar Amjad Hossain Howlader beforehand as he was their neighbour.

81. In cross-examination P.W.07 stated in reply to defence question that she did not see the killing of Binod Mondol by gun shot. P.W.07 denied defence suggestion that he did not see and hear what she narrated; that this accused was not involved with

the event alleged and that what she testified was untrue and tutored.

82. P.W.08 Arobindo Shekhor Mondol (63) is a resident of village-Brittisolua under police station-Batiaghata of District Khulna. He too is a hearsay witness. In addition to narrating the event P.W.08 stated how and when the Razakar Bahini was formed in their locality. In fear of torture and aggression of the said Razakar Bahini they all the family members deported to India and got sheltered at refugee camp. In the mid of August in 1971 they returned back to their own home.

83. P.W.08 also stated that at the end of April in 1971 peace committee was formed in their locality on headship of Azahar Mia (now dead). Then under his leadership Razakar Bahini was formed and Amjad Hossain Howlader, Ansar Ali (now dead) and some other people joined in Razakar Bahini

84. In respect of the event arraigned in this count of charge P.W.08 stated that on 10.09.1971 at about 06:30 P.M. he had been staying at their home when their neighbour Binod Mondol came to their house and few times later he went back his home. Then one and half hour later he heard gun firing from the end of the swamp, north to their house.

85. P.W.08 stated that later on he heard from people that Amjad Razakar, Ansar (now dead) and their accomplice Razakars at about 07:00 P.M forcibly apprehended Binod Mondol coming to the house of Rabindra Nath and took him away toward the swamp where they gunned him down to death.

86. P.W.08 also stated that on the following morning he saw the dead body of Binod Mondol lying in the swamp. He also heard from Shanti Lata the wife of Rabindra Nath that after the event happened the said Razakars again came to their house and threatened not to disclose the killing of Binod to others, otherwise they would kill them too. After the event the family members being feared deported to India and they never returned back.

87. P.W.09 Md. Abdur Rab Molla (65) is a resident of village-Charkhali Masalia under police station-Batiaghata of District Khulna. He is a direct witness to the event of attack leading to killing of one Hindu civilian Binod Mondol.

88. P.W.09 stated that in 1971 on 24th day of Bangla month Bhadra at about 06:30 P.M. he had been staying outside of home when he saw Razakar Amjad, Razakar Ansar (now dead)

and some other armed accomplices moving toward the house of Rabindra Nath. He (P.W.09) then started following them and little time later he saw those Razakars taking away Binod Mondol toward north apprehending him from the house of Rabindra Nath. Seeing this he returned back home and one hour later he heard gun firing from the end of the swamp, north to their home.

89. P.W.09 next stated that on the following morning he along with other people moved to the bank of the swamp and they found bullet hit dead body of Binod Mondol lying there. Later on, he heard from inmates of Rabindra Nath that those Razakars coming to their home again disclosed the fact of killing Binod Mondol and threatened not to disclose it to others and on failure they would kill them too. The family members of Binod Mondol deported to India after this event happened and they never returned back.

90. In respect of knowing the accused Amjad Hossain Howlader P.W.09 stated that 2/3 years prior to the war of liberation ensued Amjad Hossain Howlader's family and their (P.W.09) family coming from Barisal became resident of the present locality (village Masalia).

91. In cross-examination, in reply to defence question put to him P.W.09 stated that he knew the accused Amjad Hossain Howlader since during their staying in Barisal; that he heard gun firing just one hour after taking away Binod Mondol on forcible capture; that Binod Mondol's family deported to India and could not say whether any relative of Binod has been staying in Bangladesh.

92. P.W.10 Amalendu Mondol (61/61) is a resident of village-Brittisolua under police station-Batiaghata of District Khulna. He has been tendered with P.W.08. Defence instead of cross-examining him simply adopted cross-examination of P.W.0-8.

93. P.W.17 Kazi Md. Yahiya (66) is a resident of village-Aisgati under police station Rupsa of District Khulna. In 1971 he was SSC examinee. He is a freedom-fighter. In addition to facts relating to formation of Razakar Bahini and affiliation of accused therewith P.W.17 stated what he heard in respect of the event arraigned in this count of charge, after independence achieved.

94. P.W.17 stated that on 16 December 1971 after achieving independence he along with Freedom-fighter commander

Captain Afjal, freedom fighter Monirul Islam and some other freedom-fighters visited different localities under Batiaghata police station and became aware that the Razakars he named (Razakar Amjad Hossain Howlader, and other Razakars) gunned down Binod Mondol of Charkhali Masalia to death .

95. It cross-examination, defence simply denied what has been testified by the P.W.17. This witness denied defence suggestions that this accused was not a Razakar and was not involved in committing the alleged crimes.

Finding with Reasoning on Evaluation of Evidence Adduced

96. Mrs. Sabina Yesmin Khan, the learned prosecutor placed summing up drawing attention to the relevant segment of the testimony of the witnesses relied upon in support of this count of charge. She submitted that of 07 witnesses 02 are direct witnesses to facts significantly linked to the forcible capture of victim Binod Mondol which resulted in his killing, the upshot of the attack and accused person's participation therewith. The rest five witnesses are hearsay witnesses and their hearsay version is admissible and carries probative value as the same gets corroboration from the sworn narrative recounted by two direct witnesses i.e. P.W.07 and P.W.09.

97. The learned prosecutor also argued that the criminal gang led by the accused Amjad Hossain Howlader indicted had conducted the designed attack directing unarmed pro-liberation Hindu civilians which resulted in unlawful detention of Binod Mondol who was an unarmed freedom-fighter as well, at the relevant time. After accomplishing the killing of the victim the family members of the victim Binod Mondol had to deport to India under coercion and duress. Panicking and coercive situation and grave threat extended by the gang led by the accused eventually forced them to deport to India and they never returned back. Such coercive deportation constituted the grave criminal act violating recognized human rights, the learned prosecutor submitted. Defence could not impeach testimony of witnesses relevant to the event.

98. It has been further argued that the victim was a freedom-fighter and at the time of apprehending him forcibly he was unarmed i.e. *hors de combat* and thus he was a protected civilian. Presumably, the accused and his accomplices sensing his presence at home conducted the attack which was rather explicit aggression against the freedom-fighters, pro-liberation civilians and civilians belonging to Hindu community.

99. On contrary, **Mr. Abdus Sattar Palwan** the learned defence counsel argued that the testimony of witnesses does not carry credence; that the witnesses did not see the event of the act of killing alleged. The witnesses testified the alleged event implicating this accused out of rivalry. Hearsay testimony of witnesses does not carry credence. It could not be proved that this accused belonged to Razakar Bahini.

100. In view of above argument advanced by both sides and also on eyeing on the core arraignment brought in this count of charge, the facts need to be proved for holding the accused liable for the crimes alleged are—

- (i) A designed attack was launched at the house of Rabindra Nath where from victim unarmed freedom-fighter Binod Mondol was forcibly captured;
- (ii) The systematic attack leading to unlawful detention of the victim was conducted by the gang led by the accused Amjad Hossain Howlader;
- (iii) That the gang took away the unlawfully detained victim toward the swamp;
- (iv) That one hour later the people and witnesses heard gun firing from the end of the swamp;

- (v) That on the following morning the bullet hit dead body of the victim was found lying on the bank of the swamp;
- (vi) That the accused afterward threatened not to disclose the killing of Binod Mondol and such threat resulted in coerced deportation of family members of the victim to India;
- (vii) That the accused Amjad Hossain Howlader, in exercise of his dominant affiliation in local Razakar Bahini with extreme aggression participated in accomplishing the criminal acts leading to killing, causing severe mental harm to Hindu community and deportation of Hindu civilians.

101. It appears that defence does not dispute that the localities of village- Charkhali under police station- Batiaghata of District Khulna was Hindu dominated. Charge framed arraigns that the Hindu residents including the family inmates of victim were coerced and forced to deport to India, after causing the murder of one unarmed civilian Binod Mondol.

102. This count of charge framed involves the systematic attack directed against a non-combatant freedom-fighter Binod Mondol which ended in his killing. It is arraigned that on getting

information about his arrival the accused Amjad Hossain Howlader, a potential Razakar of the locality and his 4/5 accomplice Razakars by launching systematic attack at that house forcibly captured **Binod Mandol** and took him away toward north-west side of the swamp where the accused gunned him down to death. The attack was thus conducted directed against a protected civilian.

103. It is evinced that the victim Binod Mandol a resident of the village attacked came back from India and on 10.09.1971 at about 07:00 P.M visited the house of Rabindra Nath Mandol (P.W.09), adjacent to their house. Binod Mondol was a freedom-fighter. But at the time when he visited his village he was non-combatant. This fact could not be undermined in any manner.

104. P.W.07 Shanti Lata Mondol (65) a resident of village-Masalia under police station Batiaghata of District-Khulna is a key direct witness to some relevant and crucial facts linked to the event arraigned. Victim Binod Mondol was a neighbour of P.W.07 Shanti Lata Mondol (65). It remained undisputed. It is arraigned that the victim was taken away on forcible capture by launching attack at the house of P.W.07.

105. It is evinced from unimpeached ocular narrative of P.W.07 that at the end of Bangla month Bhadra in 1971 at about 07:00 P.M victim Binod Mondol came to their house and told that he along with his co-freedom-fighters returned back home after receiving training of freedom-fighters in India.

106. What happened next to arrival of Binod Mondol at the house of P.W.07? Testimony of P.W.07 demonstrates that at that time suddenly Razakar Amjad Howlader, Razakar Ansar (now dead) and their 4/5 accomplice Razakars appeared there and apprehended Binod Mondol and took him away toward the swamp, north to their house.

107. Tribunal takes it to judicial notice that the key policy of Pakistani occupation army and their collaborators was to defy the war of liberation and to wipe out freedom-fighters and pro-liberation and Hindu civilans. The gang being led by the accused conducted the attack to further this policy, we deduce it unerringly.

108. It depicts from ocular testimony of P.W.07 that he had been at home of P.W.07 when the gang had launched that attack. It may be inferred that in exercise of affiliation with the Razakar Bahini the accused was aggressive to the freedom

fighters and pro-liberation civilians. It may be justifiably presumed that victim Binod Mondol's staying at the house of P.W.07, on coming back from India got leaked and then the accused and his accomplices by launching systematic attack unlawfully apprehended Binod Mondol and took him away.

109. It is thus manifested from the uncontroverted facts revealed in the narrative of P.W.07 that the gang formed of accused Amjad Hossain Howlader and his accomplice Razakars by launching attack had apprehended Binod Mondol from the house of P.W.07 and took him away.

110. Pattern and design of the attack as unfolded in the account the P.W.07 made itself tends to conclude that the accused himself was the linchpin of the attack and the attack was conducted on his leadership. It portrays his extreme aggression against the Hindu civilians and the Bengali civilians who sided with the war of liberation.

111. It is evinced too from unimpeached testimony of P.W.07 that about one hour after taking away the victim on forcible capture they heard gun firing from the end of the swamp.

112. None claims to have seen the act of killing the victim. But the above piece of version relating to the pertinent fact of killing the victim Binod Mondol inspires credence as it has been found proved that the accused and his accomplice Razakars coming back to the house of P.W.07 told that they had gunned down Binod to death and they threatened that they would liquidate them too if they disclosed it to other. This fact is indisputably linked to the participation of the accused in accomplishing the brutal killing. Defence could not smash this crucial fact.

113. According to established jurisprudence we must keep in mind that corroboration is not a legal requirement to arrive at a finding. In this regard it has been observed by the **ICTR Trial Chamber** that –

“Corroboration of evidence is not necessarily required and a Chamber may rely on a single witness’ testimony as proof of a material fact. As such, a sole witness’ testimony could suffice to justify a conviction if the Chamber is convinced beyond all reasonable doubt.”

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

114. But in the case in hand, the account the P.W.07 made in Tribunal seems to have been corroborated by P.W.09 Md. Abdur Rab Molla who is a resident of village-Charkhali Masalia under police station-Batiaghata of District Khulna. P.W.09 is a direct witness to the facts chained to the event of attack leading to killing of one Hindu civilian Binod Mondol. He also saw those Razakars accompanied by the accused taking away Binod Mondol toward north on forcible capture from the house of Rabindra Nath. One hour later he (P.W.09) heard gun firing from the end of the swamp. It gets corroboration from other witnesses. Defence does not seem to have been able to controvert this ocular account made by P.W.09.

115. It is evinced that on the following day Binod Mondol's' dead body was found lying in the swamp as testified by P.W.07. It gets corroboration from P.W.09, a direct witness. It proves that the victim was taken away to the swamp on forcible capture where he was gunned down to death.

116. Defence could not controvert the fact of finding bullet hit dead body of Binod Mondol lying on the bank of the swamp. It thus proves that the victim was taken away to the swamp on forcible capture where he was gunned down to death.

117. P.W.07 does not claim to have seen the act of killing. In cross-examination P.W.07 stated in reply to defence question that she did not see killing Binod Mondol by gun shot. Thus, it stands affirmed that the victim was gunned down to death.

118. The fact of perpetrating killing of detained victim Binod Mondol by gunshot followed by taking him away on forcible capture when he had been at the house of P.W.07 by the group led by accused Amjad Hossain proves it that the accused was the key perpetrator of the killing.

119. It also transpires that after the event happened, the inmates of the victim deported to India. That is to say, the horrific situation created by the perpetrators forced them to depart, quitting own home. Such deportation of Hindu civilians followed by the brutal killing of unarmed freedom-fighter Binod Mondol increased magnitude of the crimes committed.

120. Accused Razakar Amjad Hossain Howlader was the neighbour of P.W.07 and thus naturally she (P.W.07) had reason of knowing him beforehand. Defence could not controvert it. Accordingly, it cannot be said that she has testified falsely implicating this accused. Rather, ocular testimony of P.W.07 in

respect of seeing the accused participating in accomplishing the attack that resulted in unlawfully taking away the victim Binod Mondol inspires full credence. In no way it could be shaken.

121. P.W.02 Md. Monirul Islam is a resident of village-Halia under police station- Batiaghata of District Khulna and he is a hearsay witness. He heard the fact of killing Binod Mondol and it has not been denied in cross-examination. Hearing the commission of atrocious crimes committed during the war of liberation was quiet natural. Besides, hearsay evidence is admissible if it gets corroboration from other evidence and circumstance.

122. P.W.08 also heard from people that Amjad Razakar, Ansar (now dead) and his 2/3 accomplice Razakars at about 07:00 P.M forcibly apprehended Binod Mondol coming to the house of Rabindra Nath and took him away toward the swamp and gunned him down to death.

123. The above hearsay version of P.W.02 and P.W.08 gets consistent corroboration from ocular narrative of P.W.07 and P.W.09, direct witnesses. On the following morning P.W.08 also saw the dead body of Binod Mondol lying in the swamp. It

thus stands proved that the victim was shot to death taking him toward the swamp.

124. P.W.08 also heard from Shanti Lata (P.W.07) the wife of Rabindra Nath as to how the victim was got apprehended and taken away by the gang led by the accused and that after accomplishing the killing of victim how the accused threatened not to disclose it to others. Hearing the first phase of attack from P.W.07, a direct witness as testified P.W.08 a direct witness to facts related to the attack launched could not be shaken. Thus, hearsay evidence of P.W.08 carries probative value and credence.

125. P.W.17 Kazi Md. Yahiya is a freedom-fighter. On 16 December 1971 after achieving independence, in course of his visit along with their commander Captain Afjal and some other freedom-fighters in different localities under Batiaghata he came to know that the Razakars Amjad Hossain Howlader and other Razakars gunned down Binod Mondol of Charkhali Masalia to death.

126. Act of notoriety of Razakars involving brutal killing of a non-combatant freedom-fighter Binod Mondol committed in context of the war of liberation in 1971 could not be kept hidden

and thus naturally, P.W.17 being a freedom-fighter had reason of hearing the event and accused's involvement therewith. His hearsay version thus carries credence and it gets corroboration from direct testimony of two other witnesses.

127. Defence could not make the pertinent ocular version of P.W.07 and P.W.09 tainted at any rate. Be that as it may, we deduce it indubitably that the accused Amjad Hossain Howlader was the key player in perpetrating the crimes including launching attack, forcibly taking away the victim unarmed freedom-fighter Binod Mondol with intent to wipe him out and eventually on his active participation the victim was gunned down to death taking him at the swamp.

128. Proof of all forms of criminal responsibility, through 'participation' in any manner can be given by direct or circumstantial evidence. It is now settled jurisprudence. Circumstantial evidence relates to circumstances surrounding an event or offence from which a fact at issue may also be logically inferred.

129. Based on facts and circumstances divulged we are forced to leave the view that the accused Amjad Hossain Howlader had acted in a beastly manner in materializing the object of the

criminal mission. It could not be disputed too that dead body of victim Binod Mondol was found lying in the swamp, north to the house of P.W.07 and the dead body was dealt with by dogs. It shakes the humanity.

130. There is no direct evidence as to the actual perpetrator of the killing Binod Mondol, true. But facts and circumstances revealed lead to the unmistakable conclusion that accused Amjad Hossain Howlader did not keep him abstained from spreading terror even after materializing the object of the attack, the killing of victim Binod Mondol. This proved fact leads to conclude it unerringly that the accused Amjad Hossain Howlader was the mastermind of committing the horrific event leading to killing the detained victim Binod Mondol.

131. It stands proved from unimpeached ocular testimony of P.W.07 and P.W.09 that after causing the murder the accused Amjad Hossain Howlader and his accomplices again came to the house of P.W.07 wherefrom the gang took away the victim on unlawful capture and threatened not to disclose the killing of Binod Mandol to others , otherwise they would liquidate them too. Creating coercion and threat in such manner made the

family inmates of victim Binod Mondol forced to deport to India.

132. Extending such act of prohibited threat and creating coercion leading to '**deportation**' of Hindu civilians quitting own homes constituted the offence of crime against humanity and such prohibited act obviously caused severe mental harm to the relatives of victim and the local Hindu civilians which constituted the offence of '**torture**' as well. Deliberate infliction of such trauma, mental pain and sufferings constituted the offence of 'torture' as crime against humanity, we conclude.

133. It is to be noted here that the offence of murder as crime against humanity need not be carried out against a multiplicity of victims. The appeal Chamber of ICTR has observed in the case of *Nahimana, Barayagwiza and Ngeze*, [November 28, 2007, para. 924] that

A crime need not be carried out against a multiplicity of victims in order to constitute a crime against humanity. Thus an act directed against a limited number of victims, or even against a single victim, can constitute a crime against humanity, provided it forms part of a

‘widespread’ or ‘systematic’ attack against a civilian population.”

134. Tribunal notes that it is immaterial to see as to how many civilians were targeted of the attack conducted. Grave breach of normal human life, causing mental and physical harm, unlawful detention and finally the brutal killing of civilian cumulatively impel that the attack was ‘systematic’ and ‘directed against civilian population’.

135. In earlier cases already disposed of the Tribunal has rendered the view that even targeting a single individual of the population satisfies the requirement to constitute an offence of crimes against humanity if it occurred in war time situation, to further policy and plan of attackers. In this regard the **ICTR Trial Chamber** also observed in the case of **Seromba** that-

“A single murder may constitute a crime against humanity if it is perpetrated within the context of a widespread or systematic attack.”
[**Seromba, (ICTR Trial Chamber), December 13, 2006, para. 357**]

136. Thus, causing murder of a single unarmed freedom-fighter indisputably constituted the offence of crime against humanity. Only a single civilian was annihilated, true. But this brutal event

caused untold trauma and pain to his relatives and residents of the site attacked which constituted the offence of '**other inhumane act**' as crime against humanity as well.

137. We reiterate that since the specific offences of 'Crimes against Humanity' as arraigned were committed during 1971 have been tried under 1973 Act, it is obvious to conclude that they were committed in the '**context**' of the 1971 war of liberation. This 'context' itself is sufficient to prove the existence of a 'systematic attack'.

138. In the case in hand, it stands proved that the accused Amjad Hossain Howlader and his cohorts forming a group deliberately and sharing common purpose selected the victim, an unarmed freedom-fighter to be annihilated. The crimes happened in war time situation. This '*context*' thus transforms accused's act and conduct into a crime against humanity and it may be validly deduced that the accused being aware of this context, participated in committing the crime of killing an unarmed freedom-fighter, to execute the object and policy of the Pakistani occupation army.

139. The proved event of systematic attack happened in context of war of liberation. The victim, an unarmed freedom-fighter

was taken away on abduction by the accused and his accomplices by launching such designed attack and they did it to execute the object and policy of the Pakistani occupation army.

140. Thus, causing murder of a single unarmed freedom-fighter indisputably constituted the offence of crime against humanity. Only a single civilian was annihilated, true. But this brutal event caused untold trauma and pain to his relatives and residents of the site attacked which constituted the offence of **‘other inhumane act’** as crime against humanity as well.

141. The entire event as has been unveiled from the chronology of chained criminal acts was indeed the culpable portrayal of a designed and ‘systematic attack’ in orchestrating which accused Amjad Hossain Howlader was the architect, knowing the consequence. Prosecution has been able to prove it beyond reasonable doubt. The accused Amjad Hossain Howlader is therefore found to have had participation in committing the offences of **‘abduction’, ‘confinement’ ‘torture’, ‘deportation’, ‘other inhumane act’** and **‘murder’** of Binod Mondol, an unarmed civilian as ‘crimes against humanity’ as enumerated in section 3(2) (a)(g)(h) of the Act of 1973 and thus

the accused incurs criminal liability under section 4(1) of the Act of 1973.

Adjudication of Charge No.02: [07 accused indicted]

[Killing 01 unarmed freedom-fighter at village-Halia under police station-Bagerhat Sadar, District Bagerhat]

142. Charge: That on 14.10.1971 there had been a fight between freedom-fighters and Razakar Bahini at Ghanashyampur under police station-Bagerhat Sadar, District Bagerhat. Eight freedom fighters including Captain Afzal became injured and they and their co-freedom-fighter Haridas Majumdar then moved to village-Halia by boat and took refuge at the house of Harasit Chaprashi[now dead] to have medical treatment and remained stayed there. But their staying there got leaked by the boatman.

On the following day i.e. on 15.10.1971 at around 08:30 A.M the accused (1) Amjad Hossain Howlader (2) Md. Mojahar Ali Sheikh(died during trial) (3) Md. Shahar Ali Sardar (4) Md. Atiar Rahman Sheikh (5) Md. Motasin Billah (6) Md. Kamal Uddin Goldar and (7) Md. Nazrul Islam being accompanied by 15/20 cohort armed Razakars by launching systematic attack at the house of Harasit Chaprashi [now dead] forcibly captured unarmed freedom-fighter **Haridas Majumdar** when the other unarmed freedom fighters managed to escape. The detained

victim freedom-fighter **Haridas Majumdar** was then taken by the accused persons to the bank of the river Mara Pashur where he was shot to death and the dead body was left abandoned there.

Therefore, the accused (1) Amjad Hossain Howlader (2) Md. Mojahar Ali Sheikh(died during trial) (3) Md. Shahar Ali Sardar (4) Md. Atiar Rahman Sheikh (5) Md. Motasin Billah (6) Md. Kamal Uddin Goldar and (7) Md. Nazrul Islam by their act forming part of systematic attack participated, facilitated and substantially contributed to the commission of ‘**murder**’ of non-combatant civilians constituting the offence as crimes against humanity as specified in section 3(2)(a)(g)(h) read with section 4(1) of the International crimes (Tribunals) Act, 1973 which are punishable under section 20(2) of the Act.

Evidence of Witnesses Examined

143. This charge involves the offence of killing of unarmed freedom-fighter Haridas Majumdar by launching systematic attack at village-Halia under police station-Bagerhat Sadar, District Bagerhat. Victim martyr Haridas Mojumder was third year student of Rajshahi University before the war of liberation ensued.

144. The arraignment alleged in this count of charge rests upon testimony of five (05) witnesses who have recounted the event coming on dock of Tribunal as P.W.01, P.W.02, P.W.03, P.W.06 and P.W.17. Of them four witnesses i.e. P.W.01, P.W.02, P.W.03 and P.W.17 are direct witnesses to the facts significantly related to the event arraigned. They were the co-freedom-fighters of the victim unarmed freedom-fighter Haridas Mojumder. Before we weigh the value and credibility of testimony of witnesses let us first see what they have narrated in Tribunal.

145. P.W.01 Sheikh Md. Afjal Hossain (79), a resident of village- Batiaghata under police station-Batiaghata of District-Khulna is a freedom fighter. In 1971 he was in service of the then EPR and had been posted in Sylhet when the war of liberation ensued.

146. Before describing the event arraigned P.W.01 stated that on 06 April 1971, after the war of liberation ensued he along with 6/7 of his associates moved to Kolkata, India. Then commander of sector-09 of freedom-fight sent him to freedom-fighters camp at Takipur under 24 Porgona. In the month of

August he along with 24/25 co-freedom-fighters entered inside Bangladesh and got stationed by forming their camp on the bank of Kalekharbor pond under police station Rampal of Bagerhat sub-division. They continued their fighting remaining stayed at this camp.

147. P.W.01 also stated that at the end of October in 1971 they the more than 100 freedom-fighters got stationed at Ghonoshyampur High School. On that day in night at about 09:00 P.M Razakars besieging their camp started gun firing. Then they too started counter firing. The battle continued whole night. In course of battle some of his co-freedom-fighters got injured by gun firing. Before dawn they got dispersed and moved back to different places as their ammunition became dumpy. He(P.W.01) along with 14/15 freedom-fighters then took shelter at the house of one Harasit Chaprashi and neighbouring houses at village- Halia under police station- Batiaghata.

148. Next, the P.W.01 recounted the event arraigned. P.W.01 stated that within half an hour of taking shelter at the house of Harsit Chaprashi one woman coming to them informed that Razakars were coming and she asked them to leave the place. They were unarmed as they deposited their arms to Subedar

Anwar. On learning the movement of Razakars they then to defend themselves went into hiding inside the granary (Storehouse for grain: Dhaner Gola), on the bank of the pond of the house of Harasit Chaprashi.

149. What happened next? P.W.01 recounted by narrating that looking through the granary he saw the Razakars coming forward with gun firing chanting slogan 'Pakistan Zindabad' Then they came out of the granary and went into hiding inside a bush, 40 hands far, on the bank of the pond. But their co-freedom-fighter Haridas Mojumder could not come out from the granary.

150. P.W.01 continued narrating that they remaining in hiding inside the bush saw Razakar **Amjad Howlader** dragging out unarmed freedom-fighter Haridas Mojumder and started charging him with bayonet and **Razakar Nazrul Islam** gunned him down to death and then they (invaders) dragging his dead body dumped in the sandy land rising out of the river (**P.W.01 at this stage of making deposition broke down into tears remembering the tragic death of the co-freedom fighter**). P.W.01 stated too that Haridas Mojumder was a third year

student of Rajshahi University before the war of liberation ensued.

151. P.W.01 stated that in course of the event of attack conducted he could recognize Razakars Amjad Hossain Howlader, Nazrul Islam, Shahar Ali, Atiar and some others whose name he could not recollect.

152. In cross-examination done on part of 03 accused Amjad Hossain Howlader, Md. Shahar Ali Sarder and Md. Atiar Rahman Sheikh P.W.01 stated in reply to defence question put to him that they the 14/15 freedom-fighters took shelter at the house of Harasit Chaprashi and they arrived there at 12:00/01:00 in night; that the site of killing Haridas Majumdar was about 40/50 yards far from the bank of the river.

153. It has been simply suggested to P.W.01 on part of these three accused that he did not see the event alleged and that what he testified implicating these accused was untrue. P.W.01 denied this suggestion.

154. P.W.02 Md. Monirul Islam (66) is a resident of village-Halia, under police station-Batiaghata of District- Khulna. During the Liberation War in 1971 he was candidate of

Secondary School Certificate Examination. He is a renowned freedom fighter. He recounted how their unarmed co-freedom fighter Haridas Majumdar was annihilated by gunshot and who committed the crimes arraigned.

155. In addition to the event arraigned P.W. 02 made narrative in respect of forming Razakar Bahini in the locality under police station Batiaghata. P.W.02 stated that after beginning of the Liberation War, after forming peace committee the Razakar Bahini was formed under the leadership of Jamat-E-Islami leader A.K.M. Yusuf Ali. Md. Ashraf Sheikh, Amjad Hossain Howlader, Mojahar Ali Sheikh(died during trial), Md. Shahar Ali Sardar, Md. Atiar Rahman Sheikh, Md. Motasin Billah, Md. Kamal Uddin Goldar, Md. Nazrul Islam and many more joined in the Razakar Bahini and they established Razakar camp in the locality under police station Batiaghata.

156. P.W.02 stated too as to which situation made them compelled to get sheltered at the Chaprashi house where the event of attack arraigned was conducted. P.W.02 stated that he received training in India and under the guidance of Captain Afzal they 200/250 freedom fighters participated in Liberation War. On 13/10/1971 they around 100 freedom fighters got stationed at Ghonoshyampur School under Bagerhat Sadar

Thana. After an hour Razakars launched attack, gun fired against them like ceaseless rain. After eight hours of long front battle, they the freedom fighters found that they ran out of ammunition. Then they retreated and scattered in different directions.

157. P.W.02 continued stating that they forming group of 14/15 freedom-fighters along with Captain Afjal surrendered their arms to the group formed of 60 freedom-fighters led by Second Lieutenant Anwar. Afterward led by Captain Afzal they forming a group of 14/15 freedom fighters took refuge at Chaprashhi house at village-Halia on 14th October at around 02:00 A.M. On 15.10.1971 in morning at around 8/8:30 A.M. they saw the gang formed of Md. Ashraf Sheikh(now dead), Amjad Hossain Howlader, Mojahar Ali Sheikh(died during trial) , Md. Shahar Ali Sardar, Md. Atiar Rahman Sheikh, Md. Motasin Billah, Md. Kamal Uddin Goldar, Nazrul Islam including 15/20 armed Razakars coming toward Chaprashhi house. With this they went into hiding inside the rice granary.

158. What happened next? In respect of the ending phase of the event P.W.02 continued stating that the Razakars he named then started gun firing directing the granary which hit the rice granary. Then their commander came out of the granary and

helped others to come out. Coming out of the rice granary they then went into hiding inside a nearby bush beside the pond where from they witnessed that their co- freedom-fighter Haridas Majumdar could not come out of the granary and Razakars dragged him out there from, tortured him mercilessly and gunned him down to death. Lastly, P.W.02 stated that the accused persons he named were from his neighboring villages and that's why he knew them beforehand.

159. In cross examination done on behalf of accused Amjad Hossain Howlader, Md. Shahar Ali Sardar, Md. Atiar Rahman Sheikh and Md. Kamal Uddin Goldar P.W.02 stated that he was born in 1953; that the rice granary where they remained in hiding could store 350/400 maunds of rice; that he studied at Khalishpur school of Khulna.

160. P.W.02 denied defence suggestions that the accused were not members of Razakar Bahini; that they were not involved with the event alleged and that he (P.W.02) testified falsely implicating the accused persons out of rivalry.

161. P.W.03 Sushil Bachar (60/62) is a resident of village-Halia, under police station-Batiaghata of District- Khulna.

During the Liberation War he was a student of class VI. He is a direct witness to facts crucially linked to the event arraigned.

162. P.W.03 stated that on 15/10/1971 at around 02:00/02:30 A.M. 14/15 freedom fighters took refuge at the house of their neighbour Chaprashi. At that time, he moved there along with his mother to see the freedom- fighters when he found some freedom-fighters sick and thus they helped them by arranging food and lodging for them. The next day in morning at around 08:00/08:30 A.M when he came to know that the Razakars were approaching toward their village, he along with his mother went into hiding inside a nearer bush.

163. P.W.03 next stated that remaining in hiding there, he witnessed Razakar Ashraf Sheikh (now dead), Razakar Amjad, Razakar Mojahar(died during trial), Razakar Shahar Ali, Razakar Atiar and many more coming with firing gun shots directing the freedom-fighters who took shelter at the house of Chaprashi. At that time, freedom-fighters remained in hiding inside the rice granary at the house of Chaprashi. Little time later, he saw the Razakars dragging out freedom-fighter Haridas Majumdar from the rice granary and liquidated him by gunshot taking him beneath the banyan tree. Cremation of the dead body

of the martyr Haridas Majumdar could not take place due to the terror of Razakars. So, dogs and jackals chomped his dead body.

164. Finally, P.W.03 stated that the accused persons were from their neighboring villages and that's why he knew them beforehand.

165. In cross examination P.W.03 stated that Bararia village is 06 km away from their village; that he did not see gunning down Haridas to death. P.W.03 denied defence suggestions that he did not know the accused persons and that what he testified was untrue and that he did not see the accused persons at the crime site

166. P.W.06 Suvash Mohaldar (72) is a resident of village-East Halia, police station- Batiaghata of District-Khulna. He is a hearsay witness. During the Liberation War, he was a young man of 23/24 years. When the Liberation War started, he deported to India with his family due to fear of life. After the victory of Bangladesh achieved, he came back alone.

167. P.W.06 stated that when he was on his way back to home, he found a human skeleton at the brink of the river beside the

house of Chaprashy. Later, he came to know from his younger uncle Ononto Mahaldar (now dead), his elder uncle Raj Mistry (now dead) and freedom fighter Monirul Islam that at the end of Bengali month Ashwin, few unarmed freedom fighters remained stayed in hiding inside the rice granary at Chaprashy's house .

168. P.W.06 stated that he came to know too that a group of Razakars accompanied by Razakar Ashraf Sheikh (now dead), Razakar Amjad Howlader, Razakar Mojahar Ali Sheikh (died during trial), Razakar Shahar Ali Sardar, Razakar Atiar Sheikh and Razakar Motasin Billah gunned down freedom-fighter Haridas to death. The skeleton found on the bank of the river was of martyr freedom-fighter Haridas.

169. In cross examination on behalf of 04 present accused P.W.06 denied defence suggestions that he did not hear the event he narrated; that what he testified was untrue and tutored. The learned counsel defending the absconding accused declined to cross-examine this P.W.06.

170. P.W.17 Kazi Md. Yahiya (66) is a resident of village-Aijgati, under police station-Rupsa of District- Khulna. During the Liberation War in 1971 he was candidate of Secondary

School Certificate Examination. He is a distinguished freedom fighter.

171. In narrating the backdrop of the event arraigned P.W.17 stated that he and his 7/8 friends went to India to get training of freedom-fighter, at the beginning of July 1971. After the successful completion of training, under the supervision of Captain Afzal, they the 200/250 freedom fighters started joining battle against the Pakistani army and Razakars at different places.

172. P.W.17 continued stating that on 13/10/1971 they around 100 freedom-fighters got stationed at Ghonoshyampur School under Bagerhat Sadar Thana. Being aware of their staying there, according to the direction of A.K.M. Yusuf a group formed of 100/150 Razakars led by Razakar Rajab Ali Fakir (now dead) launched attack against them besieging Ghonoshyampur School and started gun firing . They the freedom-fighters too started exchanging gun firing and the open battle continued for long 08 hours when eight(08) of the freedom-fighters got injured and then they got dispersed in different ways.

173. P.W.17 next stated that on 14/10/1971 under the leadership of freedom-fighter Commander Captain Afzal Hossain they the 14/15 freedom-fighters surrendered their arms to Group Commander Lieutenant Anwar Hossain and then headed toward Batiaghata.

174. What happened next on the day of the event of attack arraigned happened? P.W.17 stated that on 15th October at around 02:00 A.M. they took shelter at Chaprashi's house at village-East Halia. On the next morning, they came to know from a Hindu lady that Razakars were approaching toward the village. Sensing the impending risk they then got themselves hidden in the rice granary at that house.

175. P.W.17 next stated that from the tiny space of the granary, he (P.W.17) witnessed Razakar Ashraf Sheikh (now dead), Razakar Amjad Hossain Howlader, Razakar Mojahar Ali Sheikh (died during trial), Razakar Shahar Ali Sardar, Razakar Atiar Rahman Sheikh, Razakar Motasin Billah, Razakar Kamal Uddin Goldar and Razakar Nazrul Islam accompanied by 15/20 armed Razakars coming toward the granary with gun firing.

176. What the freedom-fighters remained in hiding inside the granary opted to do? P.W.17 next stated that Commander Captain Afzal Hossain coming out of the granary helped others to come out and they coming out of the granary went into hiding inside the bush adjacent to the house. However, unfortunately freedom-fighter Haridas Majumdar got captured when he attempted to escape. Then the Razakars tortured him by charging bayonet and Razakar Nazrul Islam gunned him down to death there and then the Razakars dumped the dead body of martyr Haridas Majumdar on the bank of the river. Lastly, P.W.17 stated that the accused were from their neighboring villages and he often met them in the market place and that's why he knew them beforehand.

177. In cross-examination done on part of accused Md. Nazrul Islam P.W.17 stated in reply to defence question that he did not see the accused Nazrul Islam in the locality after independence achieved; that he did not initiate any complaint over the event he narrated after independence. P.W.17 denied defence suggestions that this accused was not a Razakar; that no event he narrated happened; that the accused was not involved with the event alleged.

178. On behalf of cross-examination done on part of other accused Amzad Hossain Howlader, Shahar Ali Sardar, Atiar Rahman Sheikh, Md. Motasin Billah and Kamal Uddin Goldar indicted in this charge P.W.17 denied the defence suggestions that these accused were not involved with the event alleged; that he did not see the event arraigned; that he did not know the accused persons and what he testified implicating these accused was untrue and tutored.

Reasoned Finding on Evaluation of evidence

179. This count of charge involves the event of killing of a non-combatant freedom-fighter by launching designed and systematic attack which happened just two months prior to the independence achieved. The attack arraigned was directed against a number of unarmed freedom-fighters.

180. This count of charge framed indicted seven accused of whom one accused Md. Mojahar Ali Sheikh died during trial and thus proceeding so far as it related to him stood abated. Therefore, prosecution requires proving the culpable involvement and alleged participation of six accused in committing the crime arraigned.

181. Mrs. Sabina Yesmin Khan, the learned prosecutor argued that unarmed co-freedom- fighters of the victim had natural occasion of seeing the criminal acts conducted in course of the attack arraigned. At a stage of battle with Razakars a number of freedom-fighters moved back as their ammunition became dumpy and got sheltered at the place where the attack was launched later on by the accused Razakars and their accomplices. Some of co-freedom-fighters of the victim have testified in Tribunal. Their unimpeached heart breaking ocular testimony proves that the group of Razakars accompanied by the accused persons indicted deliberately conducted the attack and had gunned down one unarmed freedom-fighter Haridas Majumdar who could not escape by going into hiding to save himself. Defence could not controvert what the witnesses recounted in relation to the event, in any manner. It could be proved by uncontroverted ocular testimony that accused Amjad Hossain Howlader and Md. Nazrul Islam physically committed the act of killing one unarmed freedom-fighter by gunshot.

182. The learned prosecutor also submitted that the attack was conducted after the battle between the group of freedom-fighters and Razakars came to cessation and when the freedom-fighters moved back and got sheltered at Chaprashis house at village-

East Halia. Co-freedom-fighters of the victim could not resist the gang of attackers as at that time they were not equipped with arms and ammunitions. Thus, the non-combatant victim was a protected civilian at the relevant time. But the accused persons and their accomplices had acted in tremendously violent manner in attacking the victim. The witnesses had rational reason of knowing the accused persons before hand and thus their consistent testimony in respect of participation of accused persons in perpetrating the offences carries credence.

183. The learned prosecutor finally submitted that all the accused persons indicted incurred equal liability of the act of killing as they knowingly by their act of accompanying the gang assisted and substantially facilitated the actual commission of the crimes proved.

184. Conversely **Mr. Abdus Sattar Palwan** the learned defence counsel argued that the victim died in a battle with counterpart; that the narrative made by witnesses is not credible and the claim of remaining in hiding inside the granary and that the alleged claim of seeing the accused persons accompanying the gang remaining in hiding is not credible.

185. Mr. Gazi M.H Tamim, the learned state defence counsel for absconding accused Md. Nazrul Islam submitted that in 1971 this accused was a minor boy and thus he was not in position of being affiliated in Razakar Bahini. The witnesses testified being tutored. It has been further submitted that testimony implicating this accused with the event arraigned does not inspire credence and prosecution failed to prove alleged participation of this accused in committing the alleged crimes.

186. In adjudicating the instant count of charge involving the act of murder of an unarmed freedom-fighter who was a ‘protected person’, the matters need to be resolved are --

- (a) The attack was systematic and the commission of murder of the victim, an unarmed freedom-fighter happened as the upshot of such systematic attack conducted;
- (b) The attack was conducted by a group formed of huge number of armed Razakars including the accused persons;
- (c) The invaders forcibly captured the unarmed victim from the place where he remained in hiding ;
- (d) That the detained victim was brutally annihilated by gunshot; and

(e) That the accused persons participated culpably by facilitating and contributing substantially to the commission of the principal crime as co-perpetrators, agreeing the purpose and object of the group of attackers i.e. the criminal enterprise.

187. It has been emerged from ocular account made by P.W.01, P.W.03 and P.W.17, the co-freedom-fighters of the victim Haridas Majumdar that a battle took place between freedom-fighters and a group formed of huge Razakars and at a stage when some freedom-fighters got injured and their ammunition became dumpy the freedom-fighters being divided into groups moved back. Defence could not impeach this fact.

188. It stands proved from unimpeached account made by P.W.17 that they forming a group of freedom-fighters accompanied by the victim after surrendering their arms to their group commander they led by Captain Afzal headed toward village- Halia where they being unarmed got sheltered at the house of Harasit Chaprashi. During staying at this place status of these freedom-fighters was *hors de combat* i.e. they were no more combatant and were not in position to make them engaged in any action. And thus it changed their status to protected civilians.

189. It is evinced that victim freedom-fighter Haridas Majumdar and his seven co-freedom-fighters including P.W.01, P.W.03 , P.W.17 and Captain Afzal became injured in a battle and thus they moving back from the battle field took refuge at the house of Harasit Chaprashi [now dead] village-Halia to have medical treatment. P.W.01, P.W.03 and P.W.17 are co-freedom-fighters of victim and they experienced how the attack was conducted directing them. It has been consistently portrayed in their consistent and unshaken testimony.

190. The systematic attack was conducted at this site when one unarmed freedom-fighter Haridas Majumdar was shot to death taking him to the bank of the river Mara Pashur on forcible capture as he could not escape by coming out of the granary despite sensing the attack, the charge framed arraigned.

191. At the time of launching attack the victim and his co-freedom-fighters were not in position to encounter the group of invaders as they were not equipped with ammunition, prosecution arraigns. If it is so, they were *horse de combat* at the relevant time and thus were protected civilians. In view of above facts first, let us see when and how the bunch of freedom-

fighters including the victim got engaged in battle and when they decided to move back and why.

192. It depicts that P.W.01 Sheikh Md. Afjal Hossain, a resident of village- Batiaghata under police station-Batiaghata of District-Khulna is a freedom fighter. In addition to facts relating to the battle with Razakars he recounted how the event of attack directed against them was conducted when they remained sheltered at the house of Harasit Chaprashi [now dead] of village-Halia.

193. It is evinced from uncontroverted testimony of P.W.01 that at the end of October in 1971 he along with more than 100 freedom-fighters got stationed at Ghonoshyampur High School. On that day in night at about 09:00 P.M Razakars besieging their camp started gun firing. They too started counter firing. The battle continued whole night. But in course of battle some of his co-freedom-fighters got injured by gun firing.

194. It depicts too from unimpeached ocular testimony of P.W.01 that for the reason stated above, before dawn they got dispersed and moved back to different places as their ammunition became dumpy. He (P.W.01) along with 14/15

freedom-fighters then took shelter at the house of one Harasit Chaprashi and neighbouring houses at village- Halia under police station- Batiaghata.

195. In view of above, it may be justifiably deduced that not only many of the freedom-fighters became injured but their ammunition became dumpy. Obviously these two reasons rather made them *horse de combat* and compelled to move back and to take shelter at the village-Halia under police station- Batiaghata.

196. We have got the narrative made by P.W.01 corroborated by P.W.02 Md. Monirul Islam who is one of victim's co-freedom-fighter. He too recounted the facts chained to the event. Unimpeached and corroborative testimony of P.W.02 demonstrates too that on 13/10/1971 they around 100 freedom fighters got stationed at Ghonoshyampur School under Bagerhat Sadar Thana and after an hour a group of Razakars by launching attack started gun firing directed against them like ceaseless rain. After eight hours of long front battle, they the freedom fighters found that they ran out of ammunition. Then they retreated and scattered in different directions.

197. In light of above ocular version of P.W01 and P.W.02 it stands proved that after continuing battle with Razakars for hours together eventually the freedom-fighters being divided into group moved back due to lack of ammunition and for the reason that some freedom-fighters got injured. Reason of their moving back after continuing battle for hours together is thus clear and justified. It stands proved too from corroborative version of P.W.02 that he and some of his co-freedom-fighters including the victim Haridas Majumdar led by Captain Afzal quitting the site where the battle happened took refuge at Chaprashi house at village- Halia. Defence could not refute it in any manner.

198. P.W.17 Kazi Md. Yahiya, another co-freedom-fighter of victim also consistently corroborated the account made by P.W.01 and P.W.02 in relation to the attack they faced by a group of 100/150 Razakars led by Razakar Rajab Ali Fakir (now dead) when they had been staying at Ghonoshyampur School. It is also evinced from the account made by P.W.17 that they the freedom-fighters too started exchanging gun firing and the open battle continued for long 08 hours when some of freedom-fighters got injured and thus then they got dispersed in different ways.

199. It could not be impeached that 14/15 freedom-fighters forming a group surrendering arms to their Group Commander Lieutenant Anwar Hossain then headed toward Batiaghata led by freedom-fighter Commander Captain Afzal Hossain. Defence does not seem to have been made any effort to controvert and negate the credibility of the above crucial piece of fact. Be that as it may, we may unerringly deduce that the freedom fighters along with the victim headed toward the village-Halia, being unarmed. Thus, it stands proved that during staying at village-Halia the freedom-fighters including the victim were non-combatant i.e. *hors de combat* when they faced systematic attack.

200. However, defence intending to negate the arraignment avers that the victim Haridas Majumdar, a freedom-fighter died in a battle and thus his death does not refer to the act of murder constituting an offence of crime against humanity.

201. We disagree with the above defence assertion. Let us see what has been unveiled in this regard from evidence presented? It has been unmistakably divulged from ocular account made by P.W.01, P.W.02 and P.W.17, the co-freedom-fighters of the victim that a battle took place between freedom-fighters and a

huge group of Razakars and at a stage when some freedom-fighters got injured and their ammunition came dumpy the freedom-fighters being divided into groups moved back. Thus, their status at the relevant time was non-combatant by virtue of which they were subjected to protection, in light of international humanitarian law. In this regard we recall the view made by ICTY Trial Chamber in the case of **Ratko Mladic** which is as below:

“Protected victims include members of armed forces who have laid down their arms and those placed *hors de combat* by sickness, wounds, detention, or any other cause.”[ICTY **Trial Chamber, RATKO MLADIĆ 22 November 2017** para 3017]

202. Obviously the status of the victim when he was aggressively attacked and annihilated by gunshot was ‘non-combatant civilian’. Thus, the attack was in fact directed against civilians, violating norms of war and international humanitarian law, we deduce. The notion of being *hors de combat* thus plays a significant role in ensuring that all individuals who were unarmed and abstained from the fight must be protected.

203. It is now well settled that --if the killing of a person placed hors *de combat* is not an isolated event, but rather committed as part of a widespread or systematic attack which the attacker is aware of, then it may also constitute the act of murder as a crime against humanity [ICTY Appeal Chamber: *Prosecutor vs. Milan Martić: Judgment 8 October 2008 para- 313*].

204. Tribunal also notes that capturing an armed freedom-fighter, even during a fight, and disarming him inevitably brings a change in his status. In the case in hand, the detained freedom-fighter was no longer bearing arms at the time of launching the attack that resulted in his brutal killing, it has been found proved. A fundamental rule of international humanitarian law demonstrates that persons who are *hors de combat* must not be attacked and must be treated humanely. But in the case in hand, this recognized right seems to have been gravely and aggressively violated by the accused persons and their accomplices.

205. It stands proved from unimpeached account made by P.W.17 that a group of freedom-fighters accompanied by the victim after surrendering their arms to their group commander they led by Captain Afzal headed to village- Halia where they being unarmed got sheltered at the house of Harasit Chaprashi.

During staying at this place status of these freedom-fighters was *horse de combat* i.e. they were no more combatant. And thus it changed their status to protected civilians.

206. What happened after the group of unarmed freedom-fighters including the victim got sheltered at the house of Harasit Chaprashi at village Halia? It is arraigned that after taking shelter at this place the systematic attack was launched directed against the unarmed freedom-fighters staying there.

207. Now, let us see what has been unveiled from ocular testimony of witnesses in respect of the attack launched at village-Halia. It depicts from testimony of P.W.01, direct witness and co-freedom-fighter of victim that within half an hour of taking shelter at the house of Harasit Chaprashi they came to know from one woman that Razakars were coming. On learning the movement of Razakars they then to defend themselves went into hiding inside the granary (Storehouse for grain: Dhaner Gola), on the bank of the pond of the house of Harsit Chaprashi as they were unarmed. Defence could not negate these facts by cross-examining the P.W.01.

208. It has been also depicted that when they saw the Razakars coming forward with gun firing chanting slogan 'Pakistan

Zindabad' they came out of the granary and went into hiding inside a bush, 40 hands far, on the bank of the pond.

209. The above piece of version remained unimpeached. Moving with gun firing by chanting slogan' Pakistan Zindabad' indicates the aggressive object of the gang of attackers. In view of above ocular version we may justifiably deduce that obviously P.W.01 and his co-freedom-fighters could not resist the Razakars as they were not equipped with arms and thus naturally to defend themselves they decided to remain in hiding inside a nearer bush, coming out of the granary..

210. But it stands proved that unluckily the victim, one unarmed freedom-fighter Haridas Majumdar could not come out from the granary when the gang of attackers was on move toward the granary with gun firing. What fate he had to face?

211. It reveals from ocular testimony of P.W.01 that they remaining in hiding inside the bush saw accused Razakar Amjad Hossain Howlader dragging out unarmed freedom-fighter Haridas Mojumder of the granary and starting charging bayonet to him and Razakar Md. Nazrul Islam then gunned him down to

death and dumped his dead body in the sandy land rising out of the river.

212. Such proved deliberate criminal act indeed paints untold beastly aggression of the accused perpetrators. Thus, it stands proved that accused Amjad Hossain Howlader and Md. Nazrul Islam participated physically in accomplishing the killing of the victim in extremely atrocious manner.

213. In recounting the tragic event of killing his co-freedom-fighter in Tribunal P.W.01 broke down into tears. The traumatic experience that P.W.01 recounted could not be tainted in any manner by cross-examining him. The event full of extreme melancholy makes not only the P.W.01 distressed and shocked but it must make all the human beings and humanity covered with the cloud of grave pain and sadness. Such demeanor of P.W.01 as observed by the Tribunal while he recounted the event on oath is indeed adds significant credibility to facts he narrated.

214. P.W.01 stated that in course of the event of attack conducted he could recognize Razakars Amjad Hossain Howlader, Md. Nazrul Islam, Shahar Ali, Atiar and some others

accompanying the gang of invaders. Defence does not seem to have been able to controvert it.

215. The account the P.W.02 narrated also demonstrates that at the time of the attack launched at Chaprashahi house the gang of attackers formed of Razakar Md. Ashraf Sheikh (now dead), accused Amjad Hossain Howlader, Mojahar Ali Sheikh (died during trial) , Md. Shahar Ali Sardar, Md. Atiar Rahman Sheikh, Md. Motasin Billah, Md. Kamal Uddin Goldar, Md. Nazrul Islam and their 15/20 armed cohort Razakars . P.W.02 could recognize them. It appears that P.W.17 as well could recognize the accused persons accompanying the gang when it conducted the attack. Defence could not question credibility of this version of P.W.02 and P.W.17.

216. Corroborative evidence of P.W.02 and P.W.17, two direct witnesses thus indubitably proves the presence of all the accused indicted with the gang when it conducted the horrific designed attack leading to killing of an unarmed freedom-fighter.

217. It depicts also from testimony of P.W.02, one co-freedom-fighter of the victim that victim Haridas Majumdar could not come out of the granary when the gang moving toward it with gun firing and then Razakars dragged him out there from,

tortured him mercilessly and gunned him down to death. P.W.02 knew the accused Razakars as they were from his neighboring villages. It remained unshaken.

218. It thus stands proved that the victim was first subjected to brutal torture by charging bayonet on getting him captured by dragging him out of the granary and then accused Razakar Md. Nazrul Islam gunned him down to death there and then the Razakars dumped the dead body of martyr Haridas Majumdar on the bank of the river. It is found consistently corroborated also from unimpeached testimony of P.W.17. It appears that P.W.17 knew the accused persons as they were from their neighboring villages.

219. We deduce it justifiably that notoriety of accused persons belonging to Razakar Bahini naturally made them infamous and known to the freedom-fighters and the locals. Be that as it may, we do not find any reason of keeping the testimony of prosecution witnesses' aside, agreeing with the defence submission that these witnesses had no reason of knowing the accused persons.

220. P.W.03 Sushil Bachar is a resident of village-Halia, under police station-Batiaghata of District- Khulna. He too stated that

The fact that a group of unarmed freedom-fighters took shelter at the house of Harasit Chaprashi of the village attacked when they had to face the attack arraigned is found to have corroborated by P.W.03 Sushil Bachar, a resident of crime village-Halia.

221. It also depicts from ocular testimony of P.W.03 that finding the freedom-fighters who got sheltered there they helped them by arranging food and lodging for them. This piece of version adds assurance to the fact that a group of freedom-fighters took shelter there when they faced the attack.

222. The above unimpeached narrative gets corroboration from the testimony made by P.W.01, P.W.02 and P.W.17 who being unarmed got sheltered at the Chaprashi house and witnessed the act of launching the attack leading to murder of their one unarmed freedom-fighter.

223. Evidence of single witness is sufficient to prove the facts chained to the act of attack conducted. But in the case in hand, we see that even one resident of the crime site recounted how the attack was carried out and how the victim was annihilated. It depicts from unshaken testimony of P.W.03 that on the next

morning at around 08:00/08:30 A.M on he along with his mother went into hiding inside a nearer bush when they came to know that the Razakars were approaching toward their village and remaining in hiding there, he witnessed Razakar Ashraf Sheikh (now dead), Razakar Amjad, Razakar Mojahar(died during trial), Razakar Shahar Ali, Razakar Atiar and many more with firing gun shots directing the freedom-fighters who took shelter at the house of Chaprashi.

224. It also transpires from ocular testimony of P.W.03 that little time later, he (P.W.03) also saw the accused Razakars dragging the freedom-fighter Haridas Majumdar out of the rice granary and liquidated him by gunshot taking him beneath the banyan tree. This uncontroverted crucial fact gets corroboration from P.W.01, P.W.02 and P.W.17, the co-freedom-fighters of the victim.

225. It is also evinced from testimony of P.W.03, resident of the crime site that cremation of the dead body of the martyr Haridas Majumdar could not take place due to the fear of Razakars and thus dogs and jackals chomped his dead body. What a tragedy! It shakes the humanity. Presumably, the horrendous and coercive situation spread through the barbaric attack the gang

had left no space of holding cremation of the dead body of the victim. It was a grave violation of recognized human rights and international humanitarian law.

226. P.W.06 is a hearsay witness. He too heard that a group of Razakars accompanied by Razakar Ashraf Sheikh (now dead), Razakar Amjad Howlader, Razakar Mojahar Ali Sheikh (died during trial), Razakar Shahar Ali Sardar, Razakar Atiar Sheikh and Razakar Motasin Billah by launching attack gunned down the unarmed freedom-fighter Haridas to death.

227. It is now settled proposition that hearsay evidence is also admissible and inspires credence if it is found to have been corroborated by other evidence. In the case in hand, it is seen that what the P.W.06 narrated gets corroboration from the ocular testimony of other direct witnesses.

228. Based on integrated appraisal of evidence as made above already we got it proved that out of six accused indicted accused Amjad Hossain Howlader and accused Md. Nazrul Islam physically participated in causing barbaric killing of the victim by charging bayonet and gunshot. But at the same time it stands proved too that the rest accused persons indicted were

with the gang when it conducted the criminal acts in course of systematic attack. Presumably, they were with the gang of attackers sharing common intent and object, knowing the consequence. Their presence sharing common object itself leads to the conclusion that they substantially assisted and contributed to the commission of the crimes and thus they too were ‘concern’ with the killing, being part of the criminal enterprise.

229. Thus presence of accused Md. Shahar Ali Sardar, Md. Atiar Rahman Sheikh, Md. Motasin Billah and, Md. Kamal Uddin Goldar, being part of the gang in the site where criminal acts were carried out would be sufficient to constitute the *actus reus* of aiding and abetting in perpetrating the crimes, and such presence at the crime site shall also depict the relevant *mens rea* in accompanying the group of attackers. Their act of ‘substantial assistance’ or ‘encouragement’ amounts to an act of ‘complicity’ in the commission of the crimes arraigned.

230. In the case of Kamubanda, (ICTR Chamber January 22, 2004) the Trial Chamber observed that the assistance need not have actually caused the commission of the crime by the actual perpetrator, but must have had a substantial effect on the commission of crime by the actual perpetrator. In the case in

hand, it may be justifiably inferred that all the accused persons indicted knowingly accompanied the gang, sharing common object which rather had ‘substantial assistance’ to the commission of horrific killing.

231. The factual matrix emerged unerringly points that there is no escape from the conclusion that the principal crime was committed on substantial contribution, facilitation and assistance of all the members of the group accompanied by the accused persons. Based on facts and circumstances unveiled in evidence we are compelled to deduce it unerringly that common design of all the accused persons was to cause death of unarmed freedom-fighter and thus none of the group including the accused persons can evade the responsibility of the act of killing, the upshot of the attack.

232. In view of circumstances unveiled, presence of accused persons with the gang of attackers suggest to conclude that such presence had significant effect in accomplishing the crime, the murder of unarmed civilian. **ICTY Trial Chamber** in the case of **Aleksovski** has observed that --

“Mere presence constitutes sufficient participation under some circumstances

so long as it was proved that the presence had a significant effect on the commission of the crime by promoting it and that the person present had the required *mens rea*.”

[Aleksovski, ICTY Trial Chamber, Judgment: June 25, 1999, para. 64]

233. We reiterate the well settled proposition too that there can be several perpetrators in relation to the same crime where the conduct of each one of them fulfils the requisite elements of the definition of the substantive offence. That is to say, the offence of crimes against humanity is often the cumulative outcome of conducts and acts of individuals who formed part of the ‘collective criminality’.

234. In the case in hand, since the act of killing one unarmed freedom-fighter was the upshot of 'collective criminality' all the accused persons being the members of the joint criminal endeavor are held equally responsible as co-perpetrators. The doctrine of JCE, basic form, permits for holding them responsible as above. In this regard **ICTY Trial Chamber** in the case of **Stakic** has observed that--

“.....a crime can be committed individually or jointly with others, that is, ‘[t]here can be several perpetrators in relation

to the same crime where the conduct of each one of them fulfils the requisite elements of the definition of the substantive offence.”

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

235. The offence of murder of one unarmed freedom-fighter on forcible capture as already proved was a ‘system crime’, not an isolated one and there had been a ‘context’ in committing such crime directing the civilian population. The victim and his co-freedom-fighters were no longer bearing arms and adequate ammunition to resist the counterpart and thus, ultimately, they had been placed *hors de combat*. At the moment the crimes were committed the victim’s status was indeed an unarmed civilian.

236. It has been proved that the accused persons belonged to locally formed Razakar Bahini an auxiliary force. In exercise of membership in such para militia force the accused persons indicted knowingly accompanied the gang of attackers toward the crime site of course was not for any pious purpose but to wipe out non-combatant freedom-fighters who were at the relevant time protected civilians.

237. Facts divulged indisputably lead to the conclusion that the accused Amjad Hossain Howlader had influence and *de facto* authority to guide and regulate the gang of attackers formed of accused persons and their cohort Razakars. It stands proved that accused Amjad Hossain Howlader and Md. Nazrul Islam had acted in most brutal manner in perpetrating the killing of victim, an unarmed freedom-fighter. And the other accused persons indicted were with the gang when the crimes were perpetrated.

238. The offence of ‘murder’, as a crime against humanity as enumerated in the Act of 1973 does not require the prosecution to establish that the accused personally committed the act of killing. Personal commission is merely one of the modes of responsibility. We reiterate that an accused can also be held liable and guilty of a crime enumerated in the Act of 1973 considering his act and conduct which rather constitute the act of ‘participation’.

239. Defence does not seem to have made effective effort intending to negate the credibility of the narrative made in examination-in-chief of the prosecution witnesses. It simply denied what has been stated by the witnesses by putting suggestions. But mere putting suggestion which has been denied

by the P.W.s that the accused persons did not belong to Razakar Bahini and were not engaged in committing criminal acts in course of the event of attack does not go with the object of cross-examination. Thus, and in absence of any earthly reason mere denial of what has been testified by the witnesses in respect of core essence of the attack arraigned does not diminish its value and credibility.

240. Based on facts and circumstances unveiled from ocular testimony of direct witnesses, the co-freedom-fighters of the victim Haridas Majumdar the Tribunal is convinced to deduce that the accused persons carried out prohibited acts that consisted of practical assistance, encouragement or moral support to the commission of the principal crime , in exercise of their capacity as members of the Razakar Bahini, an auxiliary force created to collaborate with the Pakistani occupation army, to further its policy and plan.

241. The material facts including the facts chained to the event arraigned proved by direct evidence impel us to conclude that all the six accused indicted (1) Amjad Hossain Howlader (2) Md. Shahar Ali Sardar (3) Md. Atiar Rahman Sheikh (4) Md. Motasin Billah (5) Md. Kamal Uddin Goldar and (6) Md.

Nazrul Islam actively participated in carrying out the systematic attack in aggressive manner that resulted in killing one unarmed freedom-fighter Haridas.

242. It has been proved beyond reasonable doubt that the chronology of chained criminal acts was the outcome of a planned and orchestrated attack to which the accused (1) Amjad Hossain Howlader (2) Md. Shahar Ali Sardar (3) Md. Atiar Rahman Sheikh (4) Md. Motasim Billah (5) Md. Kamal Uddin Goldar and (6) Md. Nazrul Islam (absconding) were conscious part, knowing the consequence and sharing the intent of the criminal enterprise and thus they are found criminally liable under section 4(1) of the Act of 1973 for participating, abetting, aiding, facilitating and substantially contributing to the actual commission of killing of 01 unarmed freedom-fighter, by launching systematic attack constituting the offence of **‘murder’ as crime against humanity** as specified in section 3(2) (a) (g)(h) of the Act which are punishable under section 20(2) read with section 3(1) of the Act.

**Adjudication of Charge No.03: [07 accused indicted]
[Killing 04 Hindu civilians of village- Sukhdara under police station- Batiaghata, District Khulna constituting the offence of ‘genocide’ or in alternative ‘murder’ as crimes against humanity]**

243. Charge: That on 21.10.1971 the accused (1) Amjad Hossain Howlader (2) Md. Mojahar Ali Sheikh(died during trial) (3) Md. Shahar Ali Sardar (4) Md. Atiar Rahman Sheikh (5) Md. Motasim Billah (6) Md. Kamal Uddin Goldar and (7) Md. Nazrul Islam being accompanied by 15/20 cohort armed Razakars by launching systematic attack at the Hindu dominated village- Sukhdara under police station- Batiaghata, District Khulna first forcibly captured **Ganendra Nath Halder @ Gajen Halder** , caused grievous injuries to him by charging bayonet and then shot him to death.

In conjunction with the attack, the accused persons and their accomplices by attacking the house of **Atul Roy**, a supporter of the war of liberation shot him to death. Next, in conjunction with the attack the accused persons and their cohorts unlawfully detained **Lalit Mondal and Hiralal Dhali** when they were on their way to Sukhdara Bazar and killed them.

Next, the gang accompanied by the accused persons carried out destructive activities at the houses of 5/6 Hindu civilians and set those on fire. Then the accused persons and their cohorts had left the site taking away one civilian Mobarak Ali detaining him from his house and two hours later made him freed.

Therefore, the accused (1) Amjad Hossain Howlader (2) Md. Mojahar Ali Sheikh (died during trial) (3) Md. Shahar Ali Sardar (4) Md. Atiar Rahman Sheikh (5) Md. Motasin Billah (6) Md. Kamal Uddin Goldar and (7) Md. Nazrul Islam by their act forming part of systematic attack, with intent to destroy Hindu religious group, either whole or in part, participated, facilitated and substantially contributed to the commission of the offence of ‘**genocide**’ as specified in section 3 (2) (c) (g) (h) of the International Crimes (Tribunals) Act, 1973 or in alternative the offences of ‘**abduction**’ and ‘**murder**’ as crimes against humanity as specified in section 3(2)(a)(g)(h) of the International Crimes (Tribunals) Act, 1973 read with section 4(1) of the Act which are punishable under section 20(2) of the Act.

Evidence of Witnesses Examined

244. This count of charge involves the event of systematic attack directed against the Hindu religious group of village-Sukhdara under police station- Batiaghata, District Khulna and the attack resulted in killing of a number of Hindu civilians. The charge framed arraigns that such brutal killing and criminal activities carried out were committed with intent to destroy the

Hindu religious group, either whole or in part constituting the offence of 'genocide'.

245. Prosecution relied upon testimony of 08 witnesses who have been examined as P.W.01, P.W.02, P.W.12, P.W.13, P.W.14, P.W.15, P.W.16 and P.W.17, to substantiate the arraignment brought in this count of charge. Of them P.W.01 and P.W.02 are hearsay witnesses. The rest P.W.s claim to have witnessed the facts crucially linked to the event arraigned. However, before we determine the matters related to the event and liabilities of accused persons first let us see what the witnesses testified in Tribunal.

246. P.W.01 Sheikh Md. Afjal Hossain (79) is a resident of village-Batiaghata under police station Batiaghata of District Khulna. **He is a hearsay witness.** He is a freedom-fighter. In addition to the event of attack leading to annihilation of two unarmed freedom-fighters as arraigned in charge no. 04 also narrated what he heard about the event arraigned in this count of charge i.e. charge no.03.

247. P.W.01 stated that after the gang formed of Razakars had left the site after the event of killing two unarmed

freedom-fighters Jotish and Abdu Aziz (as arraigned in charge no.04) he moved to village- Sukhdara under police station Batiaghata and heard from people that the Razakars had annihilated four (04) Hindu civilians, committed looting and burnt down the houses of civilans.

248. In cross-examination P.W.01 stated in reply to defence question put to him that he could, not say the name of people from whom he heard the event he testified. P.W.01 denied defence suggestions that he did not hear the event alleged and what he testified was untrue and tutored.

249. P.W.02 Md. Monirul Islam (66) is a resident of village-Halia under police station Batiaghata of District Khulna. He is a freedom-fighter. **He too is a hearsay witness** in respect of this count of charge. In addition to the event arraigned in charge no.02 he stated what he heard about the event arraigned in charge no.03.

250. P.W.02 stated that after the independence achieved he visited the village-Sukhdara when he heard that on the Razakars he named (Amjad Hossain Howlader, Mojahar Ali

Sheikh (died during trial), Md. Shahar Ali Sarder, Md. Atiar Sheikh, Motasim Billah, Kamal Uddin Goldar, Md. Nazrul Islam and their 15/20 cohorts gunned down Lalit, Ganendra, Atul and one Vikhkuk (victims of the event alleged in charge no.03) to death.

251. In cross-examination P.W.02 denied defence suggestions that he did not know the accused persons; that he did not hear the event he testified and what he narrated implicating the accused persons was untrue and tutored.

252. P.W.12 Ranjit Halder (65) is a resident of village-Sukhdara under police station- Batiaghata, District Khulna. Victim Ganendra Nath Halder @ Gajen Halder was his uncle. P.W.12 is a direct witness to the attack arraigned. In 1971 P.W.12 was around 18 years old.

253. P.W.12 recounted the event arraigned by stating that on the 03rd day of Bangla month Kartik in 1971 he had been at home. At around 10:00 A.M Razakars arrived at their village by launch and they went into hiding when the Razakars came to their house. But his Uncle Ganendra Nath Halder could not manage to flee and remained stayed at the home. He (P.W.12) remaining

in hiding witnessed the Razakar Ashraf Ali Sheikh, Razakar Amjad Hossain, Razakar Mojahar Ali Sheikh (died during trial), Razakar Shahar Ali Sheikh, Razakar Atiar Sheikh, Razakar Motasser Sheikh, Razakar Nazrul Islam Goldar, Razakar Kamal Uddin Sardar and 20/30 Razakars chopping his uncle dragging him out from home and then he (P.W.12) saw them killing him there by gun shot.

254. P.W.12 continued stating that after the Razakars had left the site they came back home and found his uncle's dead body lying in the courtyard. Moreover, those Razakars burnt down 4/5 houses including that of Roshik Roy, Monohor Roy, Prosen Roy. Later on, he came to know that those Razakars also gunned down Atul, Vikhari Hira Lal and Lalit to death. After the Razakars had left the site they dipped the dead bodies in the river.

255. P.W.12 categorically stated that their locality was Hindu dominated and that's why the Razakars targeted it and at the time of the event happened they threatened them to deport by calling them 'Malaun' with shouting. (*'Malaun' is a derogatory, defamatory, abusive ethnic slur which was used against Hindus*). P.W.12 finally stated that the accused were

from their neighboring localities and that's why he knew them beforehand.

256. In cross-examination done on behalf of absconded accused Md. Nazrul Islam P.W.12 stated that he did not know about the where about of accused Nazrul Islam after the independence of Bangladesh. P.W.12 denied defence suggestions that this accused was not a Razakar; that he was not involved with the alleged event; that he did not know this accused and that what he testified was untrue and tutored.

257. Defence on part of accused Motasin Billah declined to cross-examine the P.W.12. In cross-examination done on behalf of present accused Amzad Hossain Howlader, Shahar Ali Sardar, Atiar Rahman Sheikh and Kamal Uddin Goldar P.W.12 stated in reply to defence question put to him that Sukhdara village is about 8 miles far from village- Birat. P.W.12 denied defence suggestions that he did not see the event he testified; that he did not know any of these accused persons and what he testified implicating these accused was untrue and tutored.

258. P.W.13 Narendra Nath Mandol (67) is a resident of village- Sukhdara, under police station- Batiaghata, District- Khulna. He is the son of one victim martyr Lalit Mandol. He is a direct

witness to the event arraigned. In 1971 he was 17 years old. He stated that most of residents of their village belonged to Hindu community.

259. P.W.13 in recounting the event stated that on the 03rd day of Bangla month Kartik in 1971 he along with his father was on move toward the market place and on their way to market the Razakar Ashraf Sheikh (now dead), Razakar Mojahar Ali Sheikh (died during trial), Razakar Shahar Ali Sardar, Razakar Atiar Sheikh, Razakar Motasim Billah, Razakar Nazrul Islam, Razakar Kamal Uddin Goldar and their cohorts 20/25 Razakars besieged them. With this being panic stricken he(P.W.13) by running away got hidden behind a tree where from he witnessed the Razakars gunning down his father **Lalit Mandol** to death and then the invaders moved back toward the launch ghat (*stairs or a passage leading down to a river*). At the time of their moving back they were shouting aloud telling -- ‘Malaun! You deport to India! We will not let you stay in this country’.

260. P.W.13 next stated that later on he came to know that those Razakars also gunned down Ganendra Nath Halder, Hiralal Vikhari and Atul Roy of their village to death and the invaders burnt down 30/40 houses of their village . He saw the bullet hit dead bodies of Ganendra Nath Halder, Hiralal Vikhari and Atul

Roy. Being unable to perform the religious rituals of funeral, his relatives dipped the dead bodies in the river. Lastly, P.W.13 stated that the Razakars he named were from their neighboring villages and that's why he knew them beforehand.

261. In cross examination on behalf of 04 accused Motasin Billah, Shahar Ali Sardar, Atiar Rahman Sheikh and Kamal Uddin Goldar P.W.13 stated that the village Birat is about two miles far from their village; that he could not tell the name of any resident of village-Kismat Laxmikhola.

262. P.W.13 denied the defence suggestion that the Razakars he named were not from their neighbouring locality; that he did not know them; that these accused were not Razakars; that no event alleged happened ; that these accused were not involved with the event arraigned and that what he testified was untrue and tutored.

263. In cross-examination done on behalf of accused Md. Nazrul Islam P.W.13 stated that he could not confirm the distance between village-Sukhdara and village-Noailtola; that he did not know anybody of village Noailtola. P.W.13 denied the defence suggestion that during Liberation War accused Md. Nazrul Islam was a boy of 12/13 years; that he was not a

Razakar; that he did not know this accused; that he testified falsely implicating this accused in this case.

264. P.W.14 Usha Rani Roy (62) is a resident of village-Sukhdara, under the police station- Batiaghata of District-Khulna. She stated that in 1971 their village was Hindu dominated. She is the wife of freedom-fighter Brihaspati Roy.

265. P.W.14 recounted the event arraigned by stating that on the 03rd day of Bangla month Kartik in 1971 at about 10:00 A.M while she had been at her parental home, she learnt that Razakars were approaching toward the village. Then as per her father's instruction she took her younger brother Proshen Roy in her arms and took shelter inside the bush beside the pond of Atul Krishna Roy's home. Remaining in hiding inside the bush she heard gun firing from the end of Atul Krishna Roy's home. When the gun firing got ceased, she came out of the jungle and found the bullet hit dead body of **Atul Krishna Roy** whose intestine emerged from his abdomen.

266. P.W.14 next stated that she came to know from her father and uncles that a group formed of Razakars namely Razakar Ashraf Sheikh (now dead), Razakar Amjad Howlader, Razakar Mojahar Ali Sheikh (died during trial), Razakar Atiar Rahman

Sheikh, Razakar Shahar Ali Sardar, Razakar Motasin Billah, Razakar Nazrul Islam, Razakar Kamal Uddin Goldar and many more gunned down Ganendra Nath Halder, Lalit Mondal and Vikhari Hiralal to death. The relatives of the victims dipped the dead bodies in the river.

267. In cross examination done on behalf of 05 accused Motasin Billah, Amzad Hossain Howlader, Shahar Ali Sardar, Atiar Rahman Sheikh and Kamal Uddin Goldar P.W.14 stated that she could not confirm the date of death of her parents. P.W. 14 denied the defence suggestions that the event she narrated did not happen; that she did not know the accused persons; that the accused persons did not belong to Razakar Bahini and that what she testified was untrue and tutored.

268. The above cross examination was adopted by the absconded accused Md. Nazrul Islam. P.W.14 denied the defence suggestion put to him on part of accused Md. Nazrul Islam that in 1971 this accused was a boy of 12/13 years ; that she did not know this accused; that the event she stated did not occur; that she testified falsely implicating this accused,

269. P.W.15 Prokash Roy is a resident of village- Sukhdara, under Police Station- Batiaghata of District- Khulna. He is the

nephew of one victim martyr Atul Roy. During 1971 he was 17 years old and was engaged with agriculture.

270. P.W.15 stated that on the 03rd day of Bangla month of Kartik in 1971, he had been at home with his family inmates. Sukhdara village market was nearby their house. On that day in morning, they heard a rumor that houses of Hindu people of their village would be burnt down by Razakars by setting fire. With this he (P.W.15), his father and elder brother Kartik went into hiding inside a nearer ditch. At 10:00 A.M they got information that the Razakars had moved back and then they came back home.

271. P.W.15 next stated that after some time, Razakar Ashraf Sheikh (now dead), Razakar Amjad Howlader, Razakar Mojahar Ali Sheikh (died during trial) , Razakar Atiar Rahman Sheikh, Razakar Shahar Ali Sardar, Razakar Motasin Billah, Razakar Nazrul Islam, Razakar Kamal Uddin Goldar and their accomplices being armed trespassed their house, illegally captured his uncle Atul Roy, tortured him barbarously and finally gunned him down to death, taking to the south end of their house and then the Razakars had left the site abandoning the dead body there. P.W.15 stated that seeing the Razakars

entering their house they went into hiding beside their house and remaining in hiding there he saw this phase of the event (killing).

272. P.W.15 also stated that later on they became aware from the locals of the village that the said Razakars on the same day gunned down Lalit Mondol, Vikhari Hiralal Dhali and Ganendra Nath Howlader of their village to death and conducted rampant looting at houses of Hindu civilans and set those on fire. P.W.15 finally stated that the Razakars were from their neighboring villages and regularly they used to visit Sukhdara market and that's why he knew them beforehand.

273. In cross examination done on behalf of 05 accused Md. Motasin Billah, Amzad Hossain Howlader, Shahar Ali Sardar, Atiar Rahman Sheikh and Kamal Uddin Goldar P.W.15 stated in reply to defence question that he could not recall the date of his birth; that his father died on 06th day of Bangla month Jaistha of last year; that he could not tell name of the parents of these accused. P.W.15 denied defence suggestions that he did not know these accused; that he did not see them coming to Sukhdara village; that whatever he testified implicating them was untrue or tutored.

274. The above cross examination was adopted on behalf of absconded accused Md. Nazrul Islam. P.W.15 denied defence suggestion that in 1971 accused Md. Nazrul Islam was a boy of 12/13 years; that he did not know this accused; that the event he stated did not occur; that he had falsely implicated this accused in this case and made untrue testimony.

275. P.W. 16 Md. Abu Bakkar Sheikh (62) is a resident of village- Sukhdara under police station- Batiaghata of District Khulna. During 1971 he was studying in class VI in Khulshibunia High School.

276. P.W.16 in recounting the traumatic event he experienced stated that on 21.10.1971 at about 10:00 A.M he was playing with his friends beside the road. At that time, they saw 50/60 Razakars approaching toward their village from the end of Sukhdara Bazar. Being afraid with this they got hidden and witnessed that Razakar Ashraf Sheikh (now dead), Razakar Amjad Howlader, Razakar Mojahar Ali Sheikh (died during trial), Razakar Atiar Rahman Sheikh, Razakar Shahar Ali Sardar, Razakar Motasin Billah, Razakar Nazrul Islam, Razakar Kamal Uddin Goldar and their accomplice Razakars trespassing Atul Roy's house, illegally detaining him and then killed him by

gunshot by talking him in front of their (victim) house . He (P.W.16) saw this event remaining stayed in hiding place. Next, the Razakars moved back toward east of their village.

277. P.W.16 then stated that later he learnt from people that those Razakars also killed Ganendra Nath Halder @ Gajen Halder, Lalit Mondal and Hiralal Vikhari of their village by gun shot. He (P.W.16) also learnt that the said Razakars on that day (in conjunction with the attack) had carried out looting household of Hindu civilans of their village and set their houses on fire. He also heard that on that day said Razakars unlawfully captured his uncle Mobarak Ali Tarafdar, made him blindfolded and took him away toward Bararia Razakar camp.

278. P.W.16 finally stated that the said Razakars were from their neighboring villages and regularly used to visit Sukhdara market and that's why he knew them beforehand.

279. In cross examination on behalf of 05 accused Md. Motasin Billah, Amzad Hossain Howlader, Shahar Ali Sardar, Atiar Rahman Sheikh and Kamal Uddin Goldar P.W.16 stated that none of these accused was the voter of the ward he belongs; that he could not state the name of the parents of these accused. P.W.16 denied the defence suggestions that the accused persons

were not from their locality; that he did not know any of them beforehand; that he had falsely implicated these accused in this case and made untrue testimony.

280. The above cross examination has been adopted on behalf of absconded accused Md. Nazrul Islam. P.W.16 denied defence suggestions that in 1971 accused Nazrul Islam was 12/13 years old; that he did not know this accused; that the event he stated did not happen; that he had falsely implicated this accused in this case by making untrue and tutored testimony.

281. P.W.17 Kazi Md. Yahiya (66) is a resident of village-Aijgati under police station-Rupsa of District Khulna. He is a freedom-fighter. In addition to narrating the events arraigned in charge no.02 he stated what he learnt in respect of the event arraigned in charge no.03.

282. P.W.17 stated that On 16 December 1971 after Bangladesh got liberated he , freedom-fighter commander Captain Afjal Hossain, freedom-fighter Manirul Islam along with other freedom-fighters visited localities including the localities under Batiaghata when they learnt that the accused gunned down Binod Mandol of village-Charkhali Masalia, Atul Krishna Mondol, Lalit Kumar Mandol, Ganendra Nath Mondol and one

Vikhkuk of village-Sukhdara to death and looted numerous houses and burnt down those on fire. P.W.17 finally stated that he knew the accused persons as they were residents of their locality and he used to see them very often at market.

283. In cross-examination done on part of accused Md. Nazrul Islam P.W.17 stated that after independence he did not see this accused around the locality. P.W.17 denied defence suggestions that he did not know this accused beforehand; that this accused was not involved with the event he testified.

284. In cross-examination done on part of other 05 accused P.W.17 denied defence suggestions that he did not know these accused ; that they were not involved with the event arraigned and that what he testified implicating these accused was untrue and tutored.

Reasoned Finding on Evaluation of Evidence

285. Mrs. Sabina Yesmin Khan, the learned prosecutor drawing attention to the testimony of witnesses argued that most of the witnesses relied upon in support of this count of charge are the relatives of victims and residents of the vicinity attacked and their consistent and corroborative ocular narrative prove the event leading to brutal killing of four Hindu civilians and

destruction of their houses. The accused persons being part of the gang formed of huge number of armed Razakars with specific intent to destroy the Hindu religious group , either whole or in part had conducted such systematic attack in most aggravated pattern. The witnesses had reason of knowing the accused persons beforehand and thus they could recognize them in accompanying the criminal gang. Their presence with the gang itself is indicia that they aided, assisted and substantially contributed in committing the crimes directing the members of a protected group, agreeing with the specific intent and thus the criminal acts leading to indiscriminate killing of Hindu civilians which constituted the offence of ‘genocide’.

286. It has been further submitted by the learned prosecutor that defence could not impeach the crucial facts linked to the event of attack and killing of four Hindu civilians. It has been simply denied in cross-examination of witnesses. But it is not sufficient to negate the narrative made in examination-in-chief. There is no reason of disbelieving the witnesses most of whom are the relatives of victims who recounted what they witnessed at the time of conducting the attack.

287. Mr. Abdus Sattar Palwan, the learned counsel defending the accused persons detained in prison submitted that the accused persons did not have any affiliation with local Razakar Bahini; that they were not involved with the event alleged. Prosecution failed to establish that the accused person were with the gang when the alleged attack was being conducted. The prosecution witnesses did not have reason of recognizing the accused persons and thus their testimony implicating the accused persons does not carry credibility. It could not be proved as to who were the actual perpetrators of the act of alleged killings.

288. Mr. Gazi M.H Tamim, the learned stated defence counsel for absconding accused Md. Nazrul Islam argued that the prosecution witnesses testified implicating this accused falsely. In 1971 this accused was 12/13 years old and he was not a member of local Razakar Bahini. One witness P.W. 16 Md. Abu Bakkar Sheikh was a minor boy in 1971 and therefore it is not practicable for him of recollecting any phase of the alleged event. Thus, his testimony does not carry value and credence. It could not be proved that this accused physically participated in perpetrating the alleged killings.

289. It has been arraigned in this count of charge that the group formed of accused persons and their 15/20 cohort armed Razakars by launching systematic attack at the Hindu dominated village-Sukhdara under police station-Batiaghata, District Khulna had conducted atrocious acts directed against the Hindu civilans, with specific intent.

290. The charge framed arraigns that by such prohibited acts the accused persons committed the offence murder of number of Hindu civilans and destructive activities constituting the offence of 'genocide', with intent to destroy the Hindu religious' group, either whole or in part or in the alternative the offences of crimes against humanity.

291. In view of arraignment brought in this count of charge it is required to prove that –

- i. A systematic attack was launched at Hindu dominated village targeting Hindu civilans;
- ii. The group of attackers was accompanied by the accused persons;
- iii. The accused persons being active part of the criminal enterprise participated in accomplishing the

criminal acts including the brutal killing of four Hindu civilians;

- iv. The attack was with specific intent to destroy the Hindu community of the village attacked, either whole or in part;

292. It appears that one victim Ganendra Nath Halder @ Gajen Halder was the uncle of P.W.12 Ranjit Halder, a resident of village-Sukhdara under police station- Batiaghata, District Khulna. P.W.12 is a direct witness to the attack arraigned leading to killing of his uncle. In respect of killing three other Hindu civilians, in conjunction with the consecutive attacks by the same group P.W.12 is a hearsay witness.

293. It depicts that on sensing the attack launched at around 10:00 A.M at their house P.W.12 and others went into hiding. But his Uncle Ganendra Nath Halder could not manage to flee and remained stayed at the home. What happened next?

294. It reveals from unimpeached ocular narrative of P.W.12 that remaining in hiding place they saw the Razakar Ashraf Ali Sheikh (now dead), Razakar Amjad Hossain, Razakar Mojahar Ali Sheikh (died during trial), Razakar Shahar Ali Sheikh, Razakar Atiar Sheikh, Razakar Motasser Sheikh, Razakar

Nazrul Islam Goldar, Razakar Kamal Uddin Sardar and 20/30 Razakars dragging out his uncle Ganendra Nath Halder from home with chopping and then he saw them killing him there by gun shot.

295. The uncontroverted testimony of P.W.12, direct witness demonstrates too that after the gang of invaders accompanied by the accused persons had left the site they came back home and found his uncle's [Ganendra Nath Halder] dead body lying in the courtyard. It remained unshaken too that the Razakars the P.W.12 named also burnt down 4/5 houses including that of Roshik Roy, Monohor Roy, Prosen Roy. It impels explicit aggression against the Hindu religious group.

296. The locality of which the victim was a resident was Hindu dominated and this was the reason of exposing horrendous aggression by the invaders to cripple the Hindu community. It gets assurance from the narrative of P.W.12 that at the time of the event happened the invaders threatened the Hindu residents of the vicinity attacked to deport to India by calling them 'Malaun' with shouting.

297. It could not be rebutted that the accused persons were from their neighboring localities and that's why P.W.12 knew them beforehand. Thus, seeing the accused persons accompanying the gang at the crime site in assisting the accomplishment of the object of the attack as testified by the P.W.12 is significantly credible indeed.

298. In cross-examination of P.W.12 and P.W.13 defence simply denied that no event alleged happened and that these accused were not involved with the event arraigned and that what he testified was untrue and tutored. But mere denial, if unsubstantiated by convincing evidence cannot prevail over the positive testimony of prosecution witnesses. It appears that by cross-examining the witnesses defence could not shake the categorical and positive narrative made in examination-in-chief.

299. P.W.13 Narendra Nath Mandol is a resident of the village-attacked. He chiefly recounted how his father **Lalit Mandol** was gunned down to death, in conjunction with the attack arraigned. In respect of the killing of three other Hindu civilians Ganendra Nath Halder, Hiralal Vikhari and Atul Roy that happened in conjunction with the attack arraigned P.W.13 is a hearsay witness.

300. It depicts from the narrative recounted in respect of this phase of attack P.W.13 testified that on the day of the event happened he along with his father was on move toward the market place and on their way to market the Razakar Ashraf Sheikh (now dead), Razakar Mojahar Ali Sheikh (died during trial), Razakar Shahar Ali Sardar, Razakar Atiar Sheikh, Razakar Motasin Billah, Razakar Nazrul Islam, Razakar Kamal Uddin Goldar and 20/15 Razakars besieged them. With this P.W.13 managed to go into hiding behind a tree.

301. What the P.W.13 witnessed remaining stayed in hiding place? Unimpeached ocular narrative of P.W.13 demonstrates that the accused Razakars gunned down his father **Lalit Mandol to death** and then moved back toward the launch ghat shouting aloud telling -- ‘Malaun! You deport to India! We will not let you stay in this country’. Such coercive and vengeful utterance coupled with extreme criminality was indeed reflection of grave violence against the Hindu community.

302. Already we got it proved that the group accompanied by the accused persons uttered such revengeful threat also after accomplishing the killing of another victim Ganendra Nath Halder. Such explicit aggression on part of the gang of attackers

also leads to the inference that the intent of the gang was to destroy the Hindu religious community of the site attacked, either whole or in part.

303. P.W.13 in addition to narrating the event of killing his father Lalit Mandol also testified that later on he came to know that those Razakars also gunned down Ganendra Nath Halder, Hiralal Vikhari and Atul Roy of their village to death and the invaders burnt down 30/40 houses of their village . He saw the bullet hit dead bodies of Ganendra Nath Halder, Hiralal Vikhari and Atul Roy.

304. It has been found proved that P.W.13 saw the bullet hit dead bodies of Ganendra Nath Halder, Hiralal Vikhari and Atul Roy, after the gang had left the site. This fact together with the hearsay evidence in respect of killing Ganendra Nath Halder gets corroboration from P.W.12. P.W.14 too stated that the relatives of all the four victims dipped the dead bodies of victims in the river. Defence could not taint this piece of version.

305. Seeing the dead bodies of four Hindu civilans as consistently testified by P.W.13 together with the above version

of P.W.14 sufficiently and justifiably indicates that Hiralal Vikhari a resident of the Hindu dominated vicinity was also annihilated in conjunction with the attack conducted by the same group of attackers accompanied by the accused persons.

306. Brutal killing and rampant destruction of properties of Hindu civilans by arson suggest deducing that the relatives of victims could not perform the religious rituals of funeral due to fear of aggravated form of aggressive attacks, and thus the dead bodies of victims were dipped in the river. It portrays that the gang accompanied by the accused persons were engaged creating aggravated coercive situation through the barbaric criminal acts the intent of which was to destroy the Hindu community of the village attacked, either whole or in part, we may safely infer it.

307. P.W.14 Usha Rani Roy was a neighbour of victim Atul Krishna Roy. It stands proved from her ocular testimony that sensing attack launched at their village she went into hiding inside the bush beside the pond of Atul Krishna Roy's home where from she heard gun firing from the end of Atul Krishna Roy's home.

308. After cessation of such gun firing she (P.W.14) came out of the jungle and found the bullet hit dead body of **Atul Krishna Roy** and his intestine emerged from his abdomen. P.W.14 had no opportunity of seeing the actual commission of the killing. But hearing such gun firing as testified by her was chained to the act of killing the victim Atul Krishna Roy and finding his bullet his dead body is sufficient to prove the killing with extreme brutality.

309. P.W.14 also came to know from her father and uncles that the accused Razakars and their cohorts gunned down Ganendra Nath Halder, Lalit Mondal and Vikhari Hiralal to death. The relatives of the victims dipped their dead bodies in the river. Hearing this barbaric fact of killings of own village as testified by P.W.14 was quite natural. Besides, defence could not taint this piece of fact.

310. On cross-examination P.W.14 in reply to defence question put to her stated that she could not confirm the date of death of her parents. Based on it defence argued that testimony of P.W.14 implicating the accused persons stating the date of the alleged event happened does not carry credence.

311. We are not with this argument. Merely for this reason testimony of P.W.14 cannot be kept aside from consideration. Horrific atrocities happened in 1971 during the war of liberation still remains alive in the memory of sufferers and relatives of victims. Crimes arraigned were not isolated crimes. Those were group crimes committed in 1971 in context of war time situation. Core essence of the narrative in relation to the event arraigned is to be considered. Failure of stating the date of death of own parents cannot make the core fact unveiled in witness's testimony does not make her testimony untrustworthy. From this point of view mere failure to state date of death of parents does not diminish credibility of P.W.14.

312. In cross-examination it has been suggested to P.W.14 on part of absconding accused Md. Nazrul Islam that in 1971 this accused was 12/13 years old. P.W.14 denied it. Presumably, to negate the fact of affiliation of this accused with Razakar Bahini and his involvement with the event of attack such defence case has been suggested. But mere putting such unsupported suggestion by itself does not prove such specific defence case. It appears that defence does not seem to have adduced any form of evidence in support of this defence. Besides, already it stands

proved from old documentary evidence and oral evidence as well that in 1971 this accused got enrolled in Razakar Bahini.

313. Defence does not seem to have made effort to contradict and taint the facts chained to the event happened as divulged in the narrative made by P.W.14 in examination-in-chief. Rather, it appears that defence simply denied the version of P.W.14 in cross-examination. But the bare denial interposed by accused when juxtaposed with the positive narrative made by the prosecution witness does not negate the account related to the event arraigned made by the witness.

314. It has been divulged too from the ocular narrative made by P.W.15 Prokash Roy, the nephew of one victim martyr Atul Roy that sensing the attack they went into hiding beside their house and remaining in hiding there he saw the phase of the event. It depicts from ocular testimony of P.W.15 that the gang formed of accused Razakars and their armed cohorts by launching attack at their house forcibly captured his (P.W.15) uncle **Atul Roy**, tortured him barbarously and finally gunned him down to death taking to the south end of their house and then the Razakars had left the site abandoning the dead body there.

315. Seeing the accused persons accompanying the gang in accomplishing torture and killing of victim **Atul Roy** by his relatives was justifiably natural and credible and thus the account made on such crucial facts as testified by P.W.15 inspires significant credibility.

316. It is evinced that later on, P.W.15 became aware from the locals of the village that the gang of said Razakars on the same day gunned down Lalit Mondol, Vikhari Hiralal Dhali, Ganendra Nath Howlader of their village to death and conducted looting at houses of Hindu civilans and set those on fire, P.W.15 stated which remained unimpeached.

317. Hearing such horrific atrocities was quite likely. It appears too that P.W.15 knew the accused persons beforehand as they were from their neighboring villages. Thus, seeing the accused persons accompanying the gang of invaders in accomplishing torture and killing of one victim **Atul Roy** was reasonably natural and credible.

318. Tribunal further notes that the object of cross-examination is intended to test the veracity of the narrative and facts made by witness in the examination-in-chief. But it appears that defence could not controvert the above testimony of P.W.15 which

crucially related to the event happened. In cross-examining P.W.15, defence rather simply denied what has been stated in examination-in-chief which is not at all sufficient to negate the positive narrative in relation to the event happened and culpable concern of the accused persons therewith.

319. P.W.16 Md. Abu Bakkar Sheikh was a resident of village attacked. In `1971 he was a student of class VI. It appears that at the relevant time he was playing with his friends beside the road when he saw the group formed of 50/60 Razakars accompanied by the accused persons approaching toward their village and with this they being frightened got hidden and there from he witnessed the accused Razakars and their cohorts besieging **Atul Roy's** house, illegally detaining him and killing him by gunshot by taking in front of their (victim) house.

320. The above uncontroverted version of P.W.16 demonstrates explicitly that the accused persons were with the armed gang of attackers when it annihilated one victim Atul Roy on unlawful capture. This narrative gets corroboration from other witnesses as well.

321. P.W.16 too later on learnt from people that those Razakars also killed Ganendra Nath Halder @ Gajen Halder, Lalit

Mondal and Hiralal Vikhari of their village by gun shot. Since the systematic attack was carried out at village-Sukhdara under police station- Batiaghata of District Khulna and the attack ended in killing four Hindu civilians of the said village the locals of the village naturally heard who were attacked and liquidated. Besides, killing of said Hindu civilians appears to have been proved from ocular evidence of other witnesses. It also stands proved that in conjunction with the attack the perpetrators accompanied by the accused persons had carried out looting household of Hindu civilians of the village attacked and set their houses on fire.

322. It has been revealed from testimony of P.W.16 too that on that day of the event happened the accused Razakars and their cohorts unlawfully captured his uncle Mobarak Ali Tarafdar, made him blindfolded and took him away toward Bararia Razakar camp. Defence could not controvert it in any manner.

323. It has been submitted on part of the defence that P.W.16 Md. Abu Bakkar Sheikh was a minor boy in 1971 and thus he does not have capacity of recollecting the event if really he witnessed it and thus his testimony suffers from incredibility and cannot be acted upon in determining the arraignment.

324. We are not with the above argument. Tribunal reiterates that mere tender age cannot be a ground to discard one's testimony if the same appears to be natural and gets corroboration from other evidence. Tribunal notes that in the case of *Ali Ahsan Muhammad Mujahid* the **Appellate Division of Supreme Court of Bangladesh**, on this aspect, observed that

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

[Criminal Appeal no.103 of 2013, Ali Ahsan Muhammad Mujahid, Judgment, 16-06-2015, page 167]

325. The Appellate Division in rendering above observation relied upon the decision of the ICTR in the case of *Gacumbitsi* which runs as below:

“It was reasonable for the Trial Chamber to accept witness TAX’s testimony despite her young age at the time of the events (11 years old). The young age of the witness at the time of the events is not itself a sufficient reason to discount his testimony.”

[Gacumbitsi v. Prosecutor, Case No. ICTR-2001-64-A Appeal Chamber]

326. In view of above we do not find any reason of keeping testimony of P.W.16 aside from consideration. Besides, the arraignment brought does not rest solely upon testimony of P.W.16. We already have discussed testimony of some direct witnesses who experienced the barbaric acts in course of the attacks. Tribunal notes that the testimony even of a single witness on a material fact does not, as a matter of law, require corroboration. The established jurisprudence is clear that corroboration is not a legal requirement for a finding to be made.

“Corroboration of evidence is not necessarily required and a Chamber may rely on a single witness’ testimony as proof of a material fact. As such, a sole witness’ testimony could suffice to justify a conviction if the Chamber is convinced beyond all reasonable doubt.”

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

327. But in the case in hand, on cumulative evaluation of testimony of P.W.12, P.W.13, P.W.14, P.W.15 and P.W.16, the direct witnesses to facts crucially chained to the event leading to the killings perpetrated it stands proved that the gang of attackers after accomplishing the brutal killing of Hindu

civilians Ganendra Nath Halder @ Gajen Halder, Lalit Mandol by gunshot they liquidated another civilian Atul Krishna Roy and Vikhari Hiralal Dhali.

328. It has been found proved from ocular testimony of P.W.13 that the gang had left the site abandoning bullet hit dead bodies of Ganendra Nath Halder, Hiralal Vikhari and Atul Roy. Instantly after the killings happened the locals and relatives of victims had natural occasion of seeing that bullet hit dead bodies. This fact together with the hearsay evidence in respect of killing Ganendra Nath Halder gets corroboration from P.W.12.

329. We got it proved from testimony of P.W.14 that the relatives of all the four victims dipped their dead bodies in the river. Defence could not taint this piece of version related to the event of killings. Seeing the dead bodies of four Hindu civilians as consistently testified by P.W.13 together with the above version of P.W.14 sufficiently and justifiably indicates that Hiralal Vikhari a resident of the Hindu dominated vicinity was also annihilated in conjunction with the attack conducted.

330. P.W.17 Kazi Md. Yahiya is a freedom-fighter. It transpires from his narrative that after Bangladesh got liberated he along

with Commander Captain Afjal Hossain, and co-freedom-fighters visited the localities under Batiaghata when they learnt that the accused persons gunned down Binod Mandol (victim of charge no.01) of village Charkhali Masalia, Atul Krishna Mondol, Lalit Kumar Mandol, Ganendra Nath Mondol and one Vikhkuk of village Sukhdara (victims of charge no.03) to death and looted numerous houses and burnt down those on fire.

331. It also depicts that P.W.01 and P.W.02 are freedom-fighters who recounted what they heard in respect of the event arraigned in charge no.03. Their heresy version also demonstrates that the accused Razakars indicted were actively participated by their culpable act and conduct in perpetrating the horrific event of killing four (04) Hindu civilians.

332. It is well settled that even hearsay evidence carries probative value if it is found that it gets corroboration from other evidence. It appears to us that heresy version of P.W.01 and P.W.02 gets consistent corroboration from other direct witnesses.

333. Besides, P.W.01 and P.W.02 are the freedom-fighters. In 1971 they were actively engaged in the war of liberation being located around the localities under Batiaghata police station of

District Khulna and thus naturally they had fair opportunity of learning the atrocious events committed around those localities. Defence could not bring any reason in diminishing this natural probability. Besides, their heresy testimony in respect of the killing of four Hindu civilians stands corroborated from ocular testimony of other witnesses.

334. We restate that the charge is not rested solely upon hearsay evidence. Direct witnesses, the relatives of victims consistently recounted the core of horrendous event involving the killings they witnessed. Hearsay evidence seems to have been corroborated by such direct evidence. Thus, hearsay evidence of P.W.17 carries probative value and credence. Besides, war ruined territory of Bangladesh obviously made the brave freedom-fighters space of knowing the atrocities committed during the war of liberation in 1971 directed against the civilian population.

335. Based on facts and circumstances unveiled we deduce that by reason of membership in Hindu religious group of the vicinity attacked the gang of attackers annihilated the four unarmed Hindu civilians and also carried out massive destructive activities by arson.

336. Victims belonged to Hindu religious group which includes denomination or mode of worship or a group sharing common beliefs. Therefore, the victims were subjected to protection even in war time situation. But the perpetrators selected the victims because they were part of a Hindu religious group, a protected group which they intended to destroy. The term ‘destroy’ does not refer to destruction of the entire group or community. In the case in hand, the killings were explicit manifestation of the specific intent to destroy the Hindu religious group.

337. The criminal activities including the threatening utterance directing the Hindu civilians had rather an impact on the Hindu community of the village attacked beyond the killing of the four unarmed Hindu civilians. The event arraigned in its entirety was intended to send a message for the left over members of the Hindu community which was gravely detrimental to their normal livelihood and caused serious mental trauma.

338. The offence of ‘genocide’ refers to indiscriminate and systematic destruction of members of a protected group because they belonged to that group. According to Section 3(2)(c)(i)(ii)(iii)(g) of the Act of 1973 ‘genocide’ is the

deliberate and systematic attack intending to cause destruction of a national, ethnic, racial, religious or political group.

339. The crime village was predominantly Hindu dominated locality and the criminal squad accompanied by the accused persons had carried out systematic and purposeful attack directing the civilian population belonging to particular religious group, it stands proved. Pattern of the attack was indeed detrimental to the wellbeing and fundamental rights of Hindu civilians of the vicinity.

340. Infamous affiliation of the accused persons in locally formed Razakar Bahini and their culpable presence at the crime site with the killing squad coupled with their participation in committing the crimes, as found proved must prompt even a person of reasonable prudence that the accused (1) Amjad Hossain Howlader (2) Md. Shahar Ali Sardar (3) Md. Atiar Rahman Sheikh (4) Md. Motasim Billah (5) Md. Kamal Uddin Goldar and (6) Md. Nazrul Islam (absconding) sharing specific intent of the gang actively and knowingly assisted and substantially contributed to the actual accomplishment of barbaric killing of numerous Hindu civilians by gunshot.

341. Let us eye on some jurisprudence evolved in adhoc Tribunals in respect of the offence of ‘genocide’. In the case of **Seromba, ICTR Appeals Chamber** observed that –

“Genocide is a crime requiring specific intent, and . . . this intent may be proven through inference from the facts and circumstances of a case.”

[Seromba, ICTR Appeals Chamber, March 12, 2008, para. 176].

342. It has also been observed in the ICTR Trial Chamber that --
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“The requisite intent may be proven by overt statements of the perpetrator”

[Ndindabahizi, ICTR Trial Chamber, July 15, 2004, para. 454].

343. In the case in hand, already we got it proved from ocular testimony of P.W.13 that after effecting the barbaric killing of one Hindu civilian Lalit Mandol by gunshot the gang moved back shouting aloud telling -- **‘Malaun! You deport to India! We will not let you stay in this country’.**

344. Such revengeful words urging the Hindu community to deport was rather inciting and provoking and it had substantial effect in accomplishing the attack directing Hindu community

which was a distinct 'religious group' as well. We are thus convinced to conclude that the accused persons by their act of making such revengeful and inciting words intended to share the genocidal intent of the principals. Such threatening words together with the intense evil deeds manifestly constituted the specific intent of the accused persons forming part of the criminal enterprise to cripple the civilians belonging to Hindu religious group.

345. It may be indubitably inferred that the individuals belonging to Hindu religious group were chosen by the perpetrators in carrying out massive destructive and indiscriminate atrocities that resulted in killings and torching houses. We are thus of an unerring view that the atrocities were committed targeting a particular group, with genocidal intent. Civilians belonging to Hindu religion of the village attacked, and the destruction of their homes by torching constituting a single criminal operation which was executed with 'intent to destroy a group' 'in part', we infer it unerringly.

346. Next, it cannot be assumed that to constitute the offence of 'genocide' it must be shown that a large number of civilians of a protected group were liquidated with specific intent. Numeric

approach does not imply to the intent to destroy a protected group in whole or in part. It is now settled jurisprudence. Merely for the reason of annihilation of lesser number of civilians belonging to a protected group it cannot be viewed that intent was not to destroy the group in whole or in part. This view finds support from the well settled jurisprudence evolved by the ICTR Appeal Chamber in the case of **Ndindabahizi**, that—

“There need not be a large number of victims to enter a genocide conviction.”

[**Ndindabahizi, ICTR Appeals Chamber, January 16, 2007, para. 135**].

347. It is well settled that intended destruction of a protected group does not mean that the entire group in its entirety must be destructed and it needs to be shown that a large number of civilans are the victims of the massacre. It has also been observed in the case of **Seromba** that –

“There is no numeric threshold of victims necessary to establish genocide.”

[**Seromba, ICTR Trial Chamber, December 13, 2006, para. 319**]

348. The notion intent cannot be tangible and it cannot be proved by direct evidence. It is to be inferred from the facts, circumstances unveiled and the pattern and magnitude of attack.

In the case in hand, crucial facts and circumstances forming part of collective criminality cumulatively constituted the ‘genocidal intent’ of the criminal gang accompanied by the accused persons, we decisively conclude. ICTR Appeal Chamber observed in the case of Nahimana, Barayagwiza and Ngeze that

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“The jurisprudence accepts that in most cases genocidal intent will be proved by circumstantial evidence. In such cases, it is necessary that the finding that the accused had genocidal intent be the only reasonable inference from the totality of the evidence.”
[Nahimana, Barayagwiza and Ngeze, (Appeals Chamber), November 28, 2007, para. 524]

349. The entirety of facts unveiled leads us to the irresistible conclusion that the ‘specific intent’ of the criminal gang formed of accused persons and their cohorts was to cause substantial destruction of the Hindu religious group of the locality attacked. The barbaric massacre was conducted deliberately, in execution of plan and with ‘specific intent’.

350. In the case in hand, specific intent of the perpetrators was blatantly destructive and discriminatory. In this regard we may

eye on the observation of ICTR Trial Chamber in the case of Nchamihigo which is as below:

“In the absence of direct evidence, the following circumstances have been found, among others, to be relevant for establishing intent: the overall context in which the crime occurred, the systematic targeting of the victims on account of their membership in a protected group, the fact that the perpetrator may have targeted the same group during the commission of other criminal acts, the scale and scope of the atrocities committed, the frequency of destructive and discriminatory acts, whether the perpetrator acted on the basis of the victim’s membership in a protected group and the perpetration of acts which violate the very foundation of the group or considered as such by their perpetrators. [Nchamihigo, (Trial Chamber), November 12, 2008, para. 331]

351. It has been proved that four (04) Hindu civilians were annihilated brutally. The Hindu residents of the locality were gravely threatened to deport by uttering intimidating words. The coordinated attack against the human multiplicity of a protected group was thus aimed to cause a grave destructive effect on the group. Thus, the killing even of a limited number of people

obviously added the destructive effect of the Hindu community and it patently mirrors the genocidal intention of the gang.

352. Selective annihilation of a number of members of a religious group indisputably depicts that the intent of perpetrators was to 'destroy the group', either whole or in part and it is sufficient to constitute the 'genocidal intent' of the criminal squad to which the accused persons were active part.

353. Mere annihilation of a number of members of the Hindu religious group was not the sole objective of the attack. Rather, specific intent of the perpetrators by conducting such horrendous attack was to leave a detestable destructive effect upon the rest members of the group. Therefore, it is sufficient to infer unerringly that 'specific intent' of the gang was to destroy the Hindu community of the vicinity attacked, in whole or in part.

354. Proved act of accompanying the gang of perpetrators in launching systematic attack and presence at the crime sites with the gang amply and unerringly signify the conscious participation of all the accused persons indicted in accomplishing the culpable designed attacks which eventually ended in wiping out four Hindu civilians, by sharing specific

intent to destroy the Hindu religious group, either whole or in part. Therefore, the killings of Hindu civilians constituted the offence of ‘genocide’.

355. We reiterate that even in absence of evidence as to physical participation of any of accused persons forming part of the group in liquidating the members of a protected group all the members present with the gang shall be held liable for the crimes committed with specific intent.

356. It is now well settled that one can be held responsible for ‘committing an offence as ‘crime against humanity’ or the offence of ‘genocide’ when it is found that by their ‘act’ or ‘conduct’ they participated individually or jointly with others. In this regard we recall the observation of ICTY Trial Chamber in the case of *Stakic* which is as below:

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

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

357. Tribunal notes that personal commission is merely one of the modes of responsibility. An accused can also be found guilty of committing a crime enumerated in the Act of 1973 on the basis of his act and conduct constituting the act of approval, encouragement and abetment that substantially assisted and facilitated the commission of crime. As regards aiding and abetting genocide it has been observed by the ICTY Trial Chamber in the case of *Blagojevic and Jokic* that

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

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

358. Facts and circumstances unfolded in ocular narrative of witnesses tend to deduce the conclusion that the accused persons indicted being part of the joint criminal enterprise [JCE-basic form] substantially assisted the commission of the crimes knowing the ‘specific intent’ behind the crimes. Therefore, to be convicted for aiding or abetting genocide it need not be proven that they physically acted in perpetrating the crimes.

359. In the case in hand it stands proved that all the accused (1) Amjad Hossain Howlader (2) Md. Shahar Ali Sardar (3) Md. Atiar Rahman Sheikh (4) Md. Motasin Billah (5) Md. Kamal Uddin Goldar and (6) Md. Nazrul Islam (absconding) knowing consequence and intending to materialize the specific intent of the criminal scheme accompanied the gang and thereby assisted and substantially facilitated the commission of the horrific crimes proved. Cumulative appraisal of uncontroverted evidence presented leads to the conclusion that all the accused being part of the criminal enterprise consciously decided to pursue the goals of the attack and to perpetuate it by committing serious criminal offences, which objectively formed a part of that attack. In so doing, they knowingly took active part in accomplishing the attack directing the Hindu civilians.

360. Based on rational and integrated evaluation of evidence as made above together with settled propositions we arrive at decision that it has been proved beyond reasonable doubt that accused (1) Amjad Hossain Howlader (2) Md. Shahar Ali Sardar (3) Md. Atiar Rahman Sheikh (4) Md. Motasin Billah (5) Md. Kamal Uddin Goldar and (6) Md. Nazrul Islam (absconding) participated by their act and conduct that resulted in killing of four members of Hindu community , a protected

group with specific intent which, as evinced indisputably, signifies their active, conscious and substantial assistance in carrying out the criminal acts constituting the offence of ‘**genocide**’ as specified in section 3(2)(c)(i)(ii)(iii)(g) of the International Crimes (Tribunals) Act of 1973 and thus they are held criminally responsible under section 4(1) of the Act of 1973.

Adjudication of Charge No.04

[07 accused indicted]

[Killing 02 unarmed freedom-fighters at village-Baroaria under police station-Batiaghata, District Khulna

361. That on 29.11.1971 at about 06:30 A.M the accused (1) Amjad Hossain Howlader (2) Md. Mojahar Ali Sheikh (died during trial) (3) Md. Shahar Ali Sardar (4) Md. Atiar Rahman Sheikh (5) Md. Motasim Billah (6) Md. Kamal Uddin Goldar and (7) Md. Nazrul Islam being accompanied by 15/20 cohort armed Razakars by launching attack at village- Baroaria under police station-Batiaghata, District Khulna started searching of freedom-fighters who on the preceding day moved back from the battle that took place with the Razakars stationed at the camp situated at Monindra Nath’s building at village-Baroaria under police station-Batiaghata, District Khulna and forcibly captured two unarmed freedom-fighters **Jyotish Mandol and Abdul Aziz** who remained in hiding at the WAPDA office ,

adjacent to Baroaria Bazaar , dragged them out and shot them to death.

Therefore, the accused (1) Amjad Hossain Howlader (2) Md. Mojahar Ali Sheikh(died during trial) (3) Md. Shahar Ali Sardar (4) Md. Atiar Rahman Sheikh (5) Md. Motasin Billah (6) Md. Kamal Uddin Goldar and (7) Md. Nazrul Islam by their act forming part of systematic attack participated, facilitated and substantially contributed to the commission of ‘**murder**’ of non-combatant freedom-fighters constituting the offence as crimes against humanity as specified in section 3(2)(a)(g)(h) read with section 4(1) of the International crimes (Tribunals) Act, 1973 which are punishable under section 20(2) of the Act.

Evidence of Witnesses Examined

362. Seven (7) accused have been indicted in this count of charge. But of them one accused Md. Mojahar Ali Sheikh died after commencement of trial on framing charges and thus proceeding so far as it related to him stood abated. Prosecution relied upon six witnesses who have been examined as P.W.01, P.W.02, P.W.04, P.W.05, P.W.11 and P.W.17 to substantiate the accusation arraigned in this count of charge. Of them P.W.05 has been tendered and rest five witnesses, the co-freedom-

fighters of the victims had recounted what they witnessed in course of the event of attack launched, prosecution contends. Now, first let us see what the witnesses have testified in relation to the event arraigned in this count of charge.

363. P.W.01 Sheikh Md. Afjal Hossain (79) is a resident of village-Batiaghata under police station Batiaghata of District Khulna. He is a freedom-fighter. In addition to the event of attack leading to annihilation of one unarmed freedom-fighter as arraigned in charge no. 02 also narrated what he experienced about the event arraigned in this count of charge.

364. P.W.01 stated that on 29.11.1971 (the day subsequent to the event arraigned in charge no.02) they (unarmed freedom-fighters) remaining in hiding saw the Razakars Amjad Hossain Howlader, Shahar Ali, Nazrul and their 6/7 cohorts conducting search of houses and the invaders then forcibly capture unarmed freedom-fighters Jotish and Abdul Aziz and dragging them on the road they gunned them down to death.

365. In cross-examination P.W.01 stated in reply to defence question put to him that he did not initiate any case over the

event he testified after independence achieved. P.W.01 denied defence suggestion that he did not see the event he testified and what he narrated was untrue and tutored. It appears that P.W.01 could not say the name of people from whom he heard the event. But merely such failure does not make his testimony relating to killing two unarmed freedom-fighter Jotish and Abdul Aziz tainted at any rate.

366. P.W.02 Md. Monirul Islam (66) is a resident of village-Halia under police station Batiaghata of District Khulna. He is a freedom-fighter. He too is a direct witness to facts related to the event arraigned in this count of charge (charge no.04).

367. P.W.02 stated that on 29.11.1971 at about 06:30 A.M they remained in hiding inside a bush nearer to the Vadra River when they could see the Razakars he named (Amjad Hossain Howlader, Mojahar Ali Sheikh (died during trial), Md. Shahr Ali Sarder, Md. Atiar Sheikh, Motasim Billah, Kamal Uddin Goldar, Md. Nazrul Islam and their 15/20 cohorts carrying out searching the freedom-fighters, coming out of Razakar camp. At a stage, they the invaders gunned down unarmed freedom-fighters Jotish and Abdul Aziz to death taking them on the WAPDA road.

368. In cross-examination P.W.02 denied defence suggestions that he did not see the event alleged; that he did not know the accused persons and that what he narrated implicating the accused persons was untrue and tutored.

369. P.W. 04 Md. Akram Ali Sheikh (64) is a resident of village- Kalyan Sree under police station-Batiaghata of District Khulna. He is a valiant freedom fighter. He allegedly witnessed how his two unarmed co-freedom-fighters were shot to death by the gang accompanied by the accused Razakars.

370. P.W.04 stated that during the Liberation War, he went to India to get training as a freedom-fighter. After receiving training he came back along with Captain Afzal. In November 1971 they the 60/70 freedom fighters got assembled at Kapilmuni Bazar under Police Station- Paikgacha of Khulna District. Afterward, they being divided into different groups moved to different areas.

371. P.W.04 next stated that they became aware through their sources that in the Baroaria Bazar the two storied building of Manindra Nath was dispossessed by Razakar Ashraf Ali Sheikh (now dead), Razakar Amjad Hossain Howlader, Razakar

Mojahar Sheikh died during trial), Razakar Atiar Sheikh, Razakar Motasin Billah, Razakar Kamal Goldar, Razakar Shahar Ali Sardar, Razakar Nazrul Islam and many more and they committed different anti-social criminal activities in that house. Then they the freedom-fighters planned to attack the said Razakar camp set up at that building.

372. P.W.04 also stated that then pursuant to plan on 28.11.1971 at about 11:00 P.M they the group of 60/70 freedom-fighters led by Captain Afzal attacked the Razakar camp. They got information from the source that there were 50/60 Razakars in that camp. But 150/200 Razakars got stationed in that Razakar camp. After 2/3 hours' intense battle, they the freedom fighters reached back from battle as their ammunition came to an end. They then laid down their arms to their Assistant Commander Nurul Islam Manik and he and his co-freedom-fighters went into hiding inside the jungle, on the bank of the river Bhadra nearer to the said Razakar camp and they the 15/20 freedom fighters started keeping observation on the movement of Razakars.

373. P.W.04 in respect of the phase of the attack stated that the next day on 29.11.1971 at around 06:00/06:30 A.M. they witnessed Razakar Ashraf Ali Sheikh (now dead), Razakar

Amjad Hossain Howlader, Razakar Mojahar Sheikh (died during trial), Razakar Atiar Sheikh, Razakar Motasin Billah, Razakar Kamal Goldar, Razakar Shahar Ali Sardar, Razakar Nazrul Islam and 10/15 Razakars coming out from the Razakar camp, started searching for the freedom-fighters and pro-liberation minded people. At some point, they (invaders) forcibly apprehended unarmed freedom fighters **Jyotish and Abdul Aziz** from the abandoned WAPDA building and started torturing them and then they took them away on the WAPDA dam and gunned them down there to death. He (P.W.04) remaining in hiding witnessed this event.

374. Finally, in respect of reason of knowing the accused persons he named P.W.04 stated that these Razakars were from his neighboring villages and were involved with the politics of Muslim League and that's why he knew them before hand.

375. In cross examination done on behalf of the accused Amjad Hossain Howlader, Shahar Ali Sardar, Atiar Rahman Sheikh and Kamal Uddin Goldar P.W.04 stated in reply to defence question put to him that at the end of November in 1971 they the 60/70 freedom fighters got together in Kapilmuni and that at a stage of battle with Razakars they being divided into groups

went into hiding inside jungle and that they attacked the Razakar camp 3/4 days after they obtained information through their sources. P.W.04 denied defence suggestions that what he testified was untrue and he did not know any of accused persons.

376. In cross examination on behalf of the accused Md. Motasin Billah P.W.04 stated that he could not recall the date of death of his parents; that he could not confirm whether before and after the independence the accused was a farmer. P.W.04 denied defence suggestions that he did not know this accused; that the accused was not a Razakar; that the event he narrated did not happen; that this accused was not involved with the event he testified.

377. In cross-examination done on behalf of absconded accused Md. Nazrul Islam P.W.04 denied that this accused was not involved with the politics of Muslim League; that this accused was not involved with the event; that he did not know this accused.

378. P.W.05 Ahammad Ali Gazi (65) is a freedom-fighter and a resident of village-Sundar Mahal under police station

Batiaghata of District Khulna. Prosecution tendered him with P.W.04. Defence declined to cross-examine him.

379. P.W. 11 Horipad Mollik alias Kamal (67) is a resident of village- Uttor Shoilmari under police station-Batiaghata, of District Khulna. In 1971 he was a candidate of HSC examination from Azam Khan Commerce College, Khulna. He was involved with student politics in his student life. After the Liberation War ensued, he moved to India and after receiving training of freedom-fighter he came back at the beginning of September and started joining the war of liberation. During the war, his pseudonym was Kamal.

380. P.W.11 stated that in the mid of November in 1971 they the freedom-fighters got stationed at the locality under Batiaghata Thana along with other freedom fighters. On guidance of their Commander Captain Afzal, they being divided into 4/5 groups started keeping watch over the Razakar camp. They came to know through their regular sources that Manindra Nath Goldar(now dead) was dispossessed from his two storied house which was situated in Bararia Bazar under Batiaghata police station and Razakar Ashraf Ali Sheikh (now dead), Razakar Amjad Hossain Howlader, Razakar Mojahar Sheikh(died during trial), Razakar Atiar Sheikh, Razakar Motasin Billah, Razakar

Kamal Goldar, Razakar Shahar Ali Sardar, Razakar Nazrul Islam and their 40/50 armed accomplice Razakars established their camp there and were committing crimes against humanity like killing, looting, rape etc. by launching attacks at different houses of the locality. On getting this information, they the 70/75 freedom-fighters pursuant to their plan had attacked the said Razakar camp on 28/11/1971 at around 11:00 P.M. The battle continued for three hours and then they reached back. He laid down his arms to his Commander Nurul Islam and remaining in hiding started keeping watch over activities of Razakars.

381. P.W.11 also stated that in the next morning (on 29/11/1971) the Razakars he named and their 15/20 accomplice armed Razakars coming out of the Razakar camp started searching for the freedom fighters. At a stage, those Razakars carried out search at the local WAPDA office and forcibly apprehended the non-combatant freedom fighter Jyotish and Abdul Aziz who remained in hiding there. Then the captured freedom-fighters were subjected to merciless torture and eventually the Razakars gunned them down to death taking them on the road. Later, the relatives of departed freedom-fighters buried them.

382. P.W.11 finally stated that he was involved with Awami Student League Politics. So, he used to attend various meetings in different areas and since then he knew the Razakars who were the residents of their locality and were involved with Muslim League, Jamaat-E-Islami politics.

383. In cross examination done on behalf of the accused Amjad Hossain Howlader, Shahar Ali Sardar, Atiar Rahman Sheikh and Kamal Uddin Goldar P.W.11 stated that his date of birth was 02/07/1952; that when he came back in Bangladesh on having training, soon after he met Captain Afzal Hossain and joined in his company; that before he participated in the Paikgacha operation under the leadership of Kamruzzaman Tuku; that at a stage of battle with the Razakars he named they reached back and he went into hiding at a place about quarter mile far from the Razakar camp.

384. P.W.11 denied the defence suggestion that he did not know these accused beforehand; that the event he testified did not happen and that these accused had no involvement with the event alleged.

385. In cross-examination done on behalf of the present accused Motasin Billah P.W.11 denied the defence suggestions that the event he narrated did not happen; that he did not know this accused person; that this accused did not belong to Razakars and that what he testified was untrue and tutored.

386. In cross-examination done on behalf of absconded accused Md. Nazrul Islam P.W.11 stated that he did not know Mostafa Akonji, Khaleq Sheikh, Ayub Ali Sheikh of village- Noaltola under police station Batiaghata. P.W.11 denied the defence suggestions that this accused did not belong to Razakar Bahini and that what he testified implicating him was untrue and tutored.

387. P.W. 17 Kazi Md. Yahiya (66) is a resident of village- Aijgati under police station- Rupsa of District Khulna. He is a freedom-fighter. P.W.17 first stated the backdrop of the event arraigned and in recounting the same P.W.17 stated that in the first part of July in 1971 he moved to India for receiving training of freedom-fighter and on receiving training he and 200/250 freedom fighters came back inside Bangladesh under leadership of commander Captain Afjal Hossain and started fighting the Pakistani army and Razakar at different places.

388. P.W.17 next stated that on 13.10.1971 they the 100 freedom-fighters led by Commander Captain Afjal Hossain got stationed at Ghanashyampur School under Bagerhat Sadar Thana. Being aware about their staying there on order of AKM Yusuf 100/150 armed Razakars led by Razakar Rajab Ali (now dead) besieged Ghonoshyampur School and started gun firing. They the freedom-fighters too started counter gun firing and in this way battle continued for eight hours in conjunction with which eight freedom-fighters got injured and then they being scattered moved toward different directions.

389. P.W.17 after narrating the facts related to other charges stated that at a stage they the 100/150 freedom fighters got together at Kapilbunia under Tala police station of Khulna. They learnt from sources that Razakars were torturing civilians public by establishing camp in that locality. Then they the freedom-fighters being divided into groups got stationed in Bararia, Shomvunagar and Sundarmahal under Batiaghata police station. They came to know through their source that capturing the two storied house of one Manindra Nath Goldar situated beside the Baraaria Bazar a camp of Razakars was set up and the Razakars he named [Razakar Ashraf Ali Sheikh (now dead), Razakar Amjad Hossain Howlader, Razakar Mojahar

Sheikh (died during trial), Razakar Atiar Sheikh, Razakar Motasin Billah, Razakar Kamal Goldar, Razakar Shahar Ali Sardar, Razakar Nazrul Islam] and their accomplices were causing torture to civilians of the locality.

390. P.W.17 next stated that then on 28/11/1971 at around 11:00 P.M. pursuant to plan they the 70/75 freedom fighters under the leadership of Captain Afzal launched attack at the said Razakar camp. After three hours of intense battle their ammunition ran out and they moved back and laying down their arms to Commander Nurul Islam and they took secret shelter in different places.

391. P.W.17 then stated that on 29/11/1971 at about 06:00/06:30 A.M remaining in hiding place they saw the said Razakars and their 10/15 accomplice Razakars carrying out searching in the locality around the Razakar camp. They also saw them getting non-combatant freedom-fighters Abdul Aziz and Jotish apprehended from the abandoned building of WAPDA where they remained in hiding and torturing them and eventually the Razakars shot them to death and then had left the site abandoning the dead bodies there. Finally, P.W.17 stated that the Razakars he named were from their neighboring villages and

he saw them frequently moving through the streets and local markets and that is why he knew them beforehand.

392. No question appears to have been put to P.W.17 on part of any of accused indicted in this count of charge. P.W.11 denied the common defence suggestions put to him on part of all the accused that these accused were not Razakars; that the event he testified did not happen and that they were not involved with the event alleged and that what he testified was untrue.

Finding with Reasoning on Evaluation of Evidence

393. Mrs. Sabina Yesmin Khan, the learned prosecutor drawing attention to ocular testimony of P.W.01, P.W.02, P.W.04, P.W.11 and P.W.17 that they being the co-freedom fighters of the victims had occasion of witnessing the attack which resulted in killing two unarmed free-fighters . Unimpeached testimony of these direct witnesses tends to prove that the accused persons indicted forming part of the group of attackers participated in accomplishing the attack by their conscious act and conduct and they all are criminally liable for the crimes committed.

394. It has been further argued that a battle took place between the accused Razakars and their cohorts and the freedom-fighters.

But at a stage, the freedom-fighters laying their arms to their commander went into hiding as their ammunition came to an end. That is to say, at the time of the attack conducted the freedom-fighters including the victims were non-combatant and thus they were subjected to protection as recognized in international humanitarian law. But the group formed of accused persons and their armed cohorts in violation of such recognized right had conducted the attack in designed and aggressive manner directing the unarmed freedom-fighters leading to killings which constituted the offence of crimes against humanity. Defence could not impeach the active participation of accused persons in perpetrating the killings as their presence with the gang itself signifies their substantial assistance and conscious concern to the commission of criminal acts.

395. Mr. Abdus Sattar Palwan, the learned counsel defending the accused persons detained in prison submitted that the death of alleged two freedom-fighters occurred in course of battle and thus no offence committed. The witnesses' narrative is not credible and as they testified implicating the accused persons out of rivalry. They did not have reason of knowing and recognizing the accused persons. The accused persons were not with the gang. Prosecution failed to show as to which member

or members of the group allegedly apprehended the victims and gunned them down to death and thus they cannot be held liable for the alleged offences committed.

396. Mr. Gazi M.H Tamim , the learned state defence counsel for absconding accused Md. Nazrul Islam echoing the submission advanced on part of other accused persons submitted that this accused was not a Razakar as in 1971 he was a minor boy and thus testimony implicating him with the attack arraigned does not carry credibility. There is no indication to establish that this accused physically participated in perpetrating the crimes arraigned. He has been falsely implicated in this case out of rivalry.

397. The arraignment brought in this count of charge chiefly depends upon ocular testimony of P.W.01, P.W.02, P.W. 04, P.W.11 and P.W.17. They are the co-freedom-fighters of victims. The facts narrated by them are crucially chained to the event arraigned and also the notoriety of the accused persons and their armed cohorts.

398. It depicts from uncontroverted narrative of P.W.01, P.W.02, P.W. 04 , P.W.11 and P.W.17 that in November 1971 they and 60/70 freedom fighters got assembled at Kapilmuni

Bazar under Police Station- Paikgacha of District Khulna and then they being divided into groups moved to different areas.

399. Testimony of P.W.11 demonstrates too that on guidance of their Commander Captain Afzal, they being divided into 4/5 groups started keeping watch over the Razakar camp. Keeping close vigilance on activities of Razakars was indeed a part of object of the mission of the freedom-fighters to resist them. Defence could not impeach it by cross-examining the P.W.11.

400. It transpires from corroborative evidence of P.W.01, P.W.02, P.W.04, P.W.11 and P.W.17 that at a stage they came to know through their regular sources that one Manindra Nath Goldar (now dead) was dispossessed from his two storied house which was situated in Bararia Bazar under Batiaghata police station. They also became aware that Razakars accused persons and their 40/50 armed accomplice Razakars by establishing their camp there made them engaged in committing crimes of killing, looting, rape etc. by launching attacks at different houses of locality. Defence does not seem to have been able to diminish this piece of version.

401. It appears that naturally such information about the revengeful and atrocious acts of Razakars who got stationed at the said two storied house of Manindra Nath Goldar (now dead) imbued the P.W.01, P.W.02, P.W.04, P.W.11 and P.W.17 and their co- freedom fighters to combat the Razakars, aiming to protect the pro-liberation civilans.

402. P.W.11 recounted that they the 70/75 freedom-fighters pursuant to their plan had attacked the said Razakar camp on 28/11/1971 at around 11:00 P.M. The battle continued for three hours and then eventually they reached back, laying down arms to their Commander Nurul Islam and remained in hiding and started keeping watch over activities of Razakars.

403. Ocular testimony of P.W.04 also demonstrates that after 2/3 hours' intense battle, freedom fighters reached back from battle as their ammuniton came to an end. They then laid down their arms to their Assistant Commander Nurul Islam Manik and he and his co-freedom-fighters went into hiding inside the jungle on the bank of the river Bhadra nearer to the said Razakar camp and they the 15/20 freedom fighters started keeping observation on the movement of Razakars.

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404. The above facts do not seem to have been controverted in any manner. Rather, it has been affirmed in cross-examination of P.W.04 as it appears that in cross examination P.W.04 stated in reply to defence question that at the end of November in 1971 they the 60/70 freedom fighters got together in Kapilmuni and that at a stage of battle with Razakars they being divided into groups reached back and went into hiding inside jungle. It has also been affirmed that the freedom-fighters attacked the Razakar camp 3/4 days after they got information through sources.

405. What happened next? On the next day i.e. on 29.11.1971 at around 06:00/06:30 A.M. they the unarmed freedom-fighters remaining stayed in hiding place witnessed the accused Razakars and their 10/15 accomplice Razakars coming out from the Razakar camp and they started searching for the freedom-fighters and pro-liberation minded people.

406. How the attack in the name of searching freedoms-fighters ended? It also reveals form corroborative ocular narrative of P.W.01, P.W.02, P.W.04, P.W.11 and P.W.17 that next the accused Razakars forcibly apprehended unarmed freedom fighters Jyotish and Abdul Aziz from the abandoned WAPDA

building and started torturing them mercilessly and then they took them away on the WAPDA dam and gunned them down to death there and then had left the site abandoning the dead bodies there.

407. It stands proved that P.W.01, P.W.02, P.W.04, P.W.11 and P.W.17 co-freedom-fighters of victims remaining stayed inside the hiding place witnessed the accused Razakars (1) Amjad Hossain Howlader (2) Md. Mojahar Ali Sheikh(died during trial) (3) Md. Shahar Ali Sardar (4) Md. Atiar Rahman Sheikh (5) Md. Motasim Billah (6) Md. Kamal Uddin Goldar and (7) Md. Nazrul Islam(absconding) with the gang when it conducted the criminal acts which resulted in killing two unarmed freedom-fighters.

408. Victims were the co-freedom-fighters of P.W.01 and P.W.02. At the time of the event the victims were unarmed. Thus, their status was *hors de combat*. It is evinced that P.W.01 and P.W.02 had fair occasion of seeing the brutal killing of two unarmed freedom-fighters Jotish and Abdul Aziz. It could not be impeached. Rather, it gets sturdy corroboration for ocular testimony of other witnesses.

409. Defence does not seem to have made any effort to impeach the ocular testimony of P.W.01 and P.W.02. Defence simply denied what has been recounted in examination-in-chief of P.W.02. We do not find any rationale of disbelieving the ocular testimony of P.W.01 and P.W.02. It gets corroboration too from direct evidence of other witnesses.

410. In light of evidence discussed above it transpires that a battle took place between the freedom-fighters and huge number of armed Razakars. But at a stage the freedom-fighters reached back as their ammunition came to an end and then they laying down their arms to their Assistant Commander Nurul Islam Manik went into hiding inside the jungle on the bank of the river Bhadra nearer to the said Razakar camp. But the matter did not end here.

411. The freedom-fighters, at the time of launching the attack remained in hiding place and naturally they could not resist the accused Razakars and their accomplices as they (freedom-fighters) were not equipped with arms and ammunition. It already stands proved that laying down arms to their commander they went into hiding. Thus, they at the stage of

launching attack through searching of freedom-fighters were *hors de combat*.

412. The victims the freedom-fighters Abdul Aziz and Jotish were non-combatant at the time of the barbaric attack conducted. We got it proved from ocular testimony of their co-freedom-fighters. There had been no battle between the freedom-fighters and armed Razakars, at the time of apprehending the victims and killing them by gun shot. Rather, the systematic attack was conducted directing non-combatant freedom-fighters the status of whom was rather unarmed civilians and the designed attack eventually ended in barbaric killing, to further policy and plan of Pakistani occupation army.

413. Defence argued that death of two freedom-fighters occurred in battle and thus their death constituted no offence. We are not with this claim asserted on part of defence. Defence could not show with whom and when such battled happened.

414. Facts unveiled from the narrative of ocular narrative of competent witnesses do not suggest agreeing with the above defence averment. It stands proved that prior to the event of attack happened a battle took place between the freedom-

fighters and the group of huge number of Razakars. It stands proved that the victims and P.W.01, P.W.02, P.W.04, P.W.11 and P.W.17 were engaged in said battle. Why the battle took place?

415. It transpires that when the freedom-fighters got stationed being divided in groups in locality under police station-Batiaghata it came to their notice that the Razakars by establishing their camp at the two storied house of one Manindra Nath Goldar (now dead), taking it in their illegal possession were carrying out atrocious activities around the localities. This was the reason why the battle took place between the freedom-fighters and Razakars. But the victims' death did not happen in this battle. Rather, it has been proved that they were annihilated in course of the attack the accused persons and their cohorts carried out subsequent to the said battle happened, when the victims were unarmed.

416. It transpires that after continuation of three hours battle the freedom-fighters reached back, laying down their arms to their commander as their ammunition came to an end and got sheltered inside the jungle on the bank of the river Bhadra nearer to the said Razakar camp. On the following morning

attack was launched directing the freedom-fighters when they were *hors de combat*.

417. According to settled jurisprudence member of civilian population includes those persons placed *hors de combat* by reason of sickness, wounds or any other cause. In the case in hand, it appears that the group of freedom-fighters including the victims were engaged in battle and at a stage they reached back and went into hiding laying down their arms to their commander. This fact itself shows that at the time of the attack launched subsequent to the battle violating norms of war and international humanitarian law the victims were rather members of civilian population. It stands proved too that the victims were subjected to 'torture' before causing their death by gunshot which reflects extreme aggression of the criminal enterprise formed of accused persons and their cohorts.

418. In 1971 the freedom fighters and pro-liberation Bangalee people were treated as '*miscreants*' by the Pakistani occupation army and their local collaborators belonging to auxiliary force. Even reward was announced for the success of causing their arrest or to provide information about their activities. Indisputably objective of such announcement was to resist and

defy the war of liberation, the core policy of the Pakistani occupation army.

419. A report titled **ওমিকৃষ্ণী মনঃসী: 'স্বকৃষ্ণী' ই তম্ভুই** ev **Leñi Rb" cñvi t` Iqv nte0** published on 25 November 1971 in **The Daily Pakistan** [%00bK cwk`vb] demonstrates it patently. The report, pursuant to a government press note, classified the 'miscreants' in five categories as below:

'স্বকৃষ্ণী' ই তক্ৰেফুল বর্গে নত

K. Z_vKw_Z gñ ewnbxi vbqvgZ m`m", Z_vKw_Z gñ ewnbx fuztZ mnvh"Kvixi v|

L. t`"Qvq veñ vñx` i Lv`", hwbewb I Ab"vb" `e" mieivnKvix|

M. t`"Qvq veñ vñx` i Avk0vbKvix|

N. veñ vñx` i 0Bbdigvi0ev evZ0nK iatc hviv KvR Kñi Ges

O. Z_vKw_Z gñ ewnbx m`uñK0 bukKZvgj-K ñj dtj U, c`vutj U

c0zi tj LK ev c0kK|

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

420. In the case in hand, it stands proved that the killing of two incapacitated freedom-fighters placed *hors de combat* was not

an isolated event, but rather was committed as part of a widespread or systematic attack, in context of the war of liberation the goal of which the attackers were aware and thus it constituted the act of '**murder**' as a crime against humanity.

421. The crimes were perpetrated in context of the war of liberation. The unarmed freedom-fighters were the adverse party of the attackers. But at the time of the event of attack conducted they were non combatant persons and thus were protected persons.

422. Facts unveiled cumulatively lead to the conclusion that the accused (1) Amjad Hossain Howlader (2) Md. Mojahar Ali Sheikh (died during trial) (3) Md. Shahrar Ali Sardar (4) Md. Atiar Rahman Sheikh (5) Md. Motasim Billah (6) Md. Kamal Uddin Goldar and (7) Md. Nazrul Islam (absconding) and their accomplice perpetrators participated in accomplishing the attack in agreement with the policy of Pakistani occupation army. Proved facts lead to the unmistakable conclusion that the accused persons indicted participated in this designed criminal mission with conspicuous aggression and antagonism, in exercise of their infamous affiliation with local Razakar Bahini, an auxiliary force.

423. We consider it relevant to note that it has been experienced in many of cases already disposed of by this Tribunal most of atrocities arraigned there have been found committed by the group formed of Pakistani occupation army and the individuals belonging to Razakar Bahini.

424. But what we see in the case in hand? It appears that all the four counts of charges arraign brutal killing of unarmed freedom-fighters and individuals belonging to Hindu religious group, by launching systematic attack by the group formed of accused persons, notorious members of Razakar Bahini and their armed cohort Razakars. That is to say, no Pakistani occupation army was part of the criminal group in conducting the attacks arraigned in the case in hand.

425. It is now well settled history that Khulna was the birth place of *para militia* force infamous Razakar Bahini. Thus and in view of above it may be justifiably inferred that the Razakars of District Khulna were so mighty and notorious and they had acted in horrendous manner directing the civilian population and non-combatant freedom-fighters to further the object and policy of Pakistani occupation army and in doing so they had acted with extreme culpability which resulted in killing of numerous

unarmed civilians and civilians belonging to protected group as arraigned in all counts of charges.

426. On integrated evaluation of facts and circumstances we are forced to deduce that knowing the *hors de combat* status of the victims, the unarmed freedom-fighters the accused persons and their armed accomplices conducted the attack and eventually gunned down two unarmed freedom-fighters to death. The material facts and circumstances derived from statement of the direct witnesses are the fair indicia to arrive at rational hypothesis of accused persons' participation with the criminal activities carried out by the gang formed of huge number of Razakars and accused persons.

427. In war time situation attacking persons who are *hors de combat* is prohibited. A person *hors de combat* is anyone who is in the power of an adverse party but defenceless at the time of attack conducted directing them and such attack constitutes grave breaches of customary international humanitarian law.

428. It has been found proved that the perpetrators accompanied by the accused persons aggressively committed prohibited acts without distinguishing the status of unarmed freedom-fighters

and combatants, violating prohibition stemmed from the laws of war and international humanitarian law. In respect of such prohibition the **ICTY Appeal Chamber** observed in the case of **Kordic and Cerkez** that –

“The prohibition against attacking civilians stems from a fundamental principle of international humanitarian law, the principle of distinction, which obliges warring parties to distinguish *at all times* between the civilian population and combatants, between civilian objects and military objectives.....”

[Kordic and Cerkez, ICTY Appeals Chamber, December 17, 2004, para. 54]

429. Facts unveiled cumulatively tend to the conclusion that the accused (1) Amjad Hossain Howlader (2) Md. Shahar Ali Sardar (3) Md. Atiar Rahman Sheikh (4) Md. Motasin Billah (5) Md. Kamal Uddin Goldar and (6) Md. Nazrul Islam (absconding) and their accomplice perpetrators deliberately carried out such prohibited acts in agreement with the policy of Pakistani occupation army.

430. Prosecution has been able to prove beyond reasonable doubt that the accused persons indicted participated in such designed criminal mission with conspicuous aggression and antagonism, in exercise of their infamous affiliation with local

Razakar Bahini, an auxiliary force. Accordingly, it is not required to show which accused committed which act or conduct in perpetrating the crimes arraigned. Being active part of the JCE (basic form) they all incurred equal liability for the principal crimes.

431. In light of above reasoned findings based on evaluation of evidence we are persuaded to conclude that the accused (1) Amjad Hossain Howlader (2) Md. Shahar Ali Sardar (3) Md. Atiar Rahman Sheikh (4) Md. Motasin Billah (5) Md. Kamal Uddin Goldar and (6) Md. Nazrul Islam (absconding) being aware of the effect of their prohibited acts aided, abetted, assisted and participated in committing ‘**murder**’ of two non-combatant freedom-fighters constituting the offence of **crimes against humanity** as enumerated in section 3(2)(a)(g)(h) read with section 4(1) of the International Crimes (Tribunals) Act, 1973 which are punishable under section 20(2) of the Act.

XI. The Task of Investigation

432. Defence questioning the efficacy of investigation done argued that accused persons have been recommended for prosecution based on flawed investigation. Evidence could not be collected to prove the arraignments. Inmates of victims’

family (as listed in charge no.03) have not been made witnesses and the documents submitted by the investigation officer have been created to implicate the accused persons with the crimes arraigned, showing them as members of Razakar Bahini.

433. We are not agreed with the above averment. It cannot be said that the crimes committed in 1971 during the war of liberation can only be proved by the family inmates of victims. The persons who are found competent in course of investigation to substantiate the events arraigned have been made witnesses. We require seeing whether witness's testimony carries value and credence. Witness is not a member of victim's family – merely this reason does not leave any doubt as to credibility of witness.

434. The crimes punishable under the Act of 1973 are not isolated crimes. This nature of crimes happened in war time situation. The persons who had fair reason of witnessing and knowing the facts chained to the event of such prohibited attack are made witnesses. The IO who investigated into the arraignments does not appear to have departed from this rational way of investigation.

435. It appears that the IO Md. Helal Uddin PPM-Bar, PPM – Seba testified as P.W.18. He in cross-examination denied the defence suggestion that he deliberately avoided to make the members of victims’ family. But it in no way weakens the prosecution case. It appears that most of the witnesses testified in relation to the events arraigned in four counts of charges are direct witnesses.

436. In context of war the family inmates of victims might not have opportunity of witnessing the attacks. The persons who had occasion of experiencing the horrendous attacks have been made witnessed in this case and all of them consistently recounted what they experienced. Thus, non-making the family inmates of the victims, as asserted by defence does not seem to be any flaw affecting the task of investigation.

437. Next, the documents particularly showing affiliation of accused persons with Razakar Bahini are found to be authenticated. These are documents of 1971 where the name of accused persons finds place as Razakars. The IO (P.W.18) in his cross-examination also stated in reply to defence question that he inquired into the sources of those old documents and

provided information in this respect in the investigation report he submitted.

438. In view of above, we do not find any reason to question the authenticity of these old documents. Thus, there can be no room of alleging that these documents have been prepared for the purpose of this case. Rather, it may be emphatically viewed that the IO (P.W.18) efficiently worked in collecting those authenticated old evidence which carry much value to substantiate the fact that the accused persons were notorious Razakars.

XII. CONCLUSION

439. Section 3(1) of the Act of 1973 provides jurisdiction of trying and punishing even any ‘individual’ or ‘group of individuals’ including any ‘member of auxiliary force’ who commits or has committed, in the territory of Bangladesh any of crimes mentioned in section 3(2) of the Act, apart from member of armed or defence forces. It has been resolved in our foregoing deliberations based on evidence presented that the accused persons were notorious Razakars in 1971. It is found well evinced from authenticated old documentary evidence relied upon by the prosecution.

440. In the case in hand, all the accused persons indicted are found to have had culpable participation in annihilating non-combatant freedom-fighters and civilians belonging to Hindu community.

441. The atrocities committed were the fragmented portrayal of horrendous atrocities conducted against the non-combatant civilian population, in context of the war of liberation in 1971 in the territory of Bangladesh. Truth unveiled in trial must let the nation and the global community as well as to what extent of barbarity was committed by the Razakars directing the protected civilians.

442. Out of four counts of charges one involves the Barbaric murder of four Hindu civilians constituting the offence of 'genocide' and the three other charges involve the offences of designed killing of non-combatant freedom-fighters constituting the offence of 'murder' as crimes against humanity.

443. In adjudicating all the four counts of charges based on reasoned finding it has been found proved that target of the gang of notorious armed Razakars accompanied by the accused persons indicted was the non-combatant freedom-fighters and civilians belonging to protected Hindu religious group .

444. The accused persons are found to have had culpable assistance and participation to the commission of barbaric crimes which indisputably shock the nation and the humanity. The process of trial of such horrific crimes by bringing the perpetrators to justice must make space of solace to the victims, sufferers and the relatives of victims, we believe.

445. The proved prohibited acts constituting the offences of ‘genocide’ and ‘crimes against humanity’ proved were not divisible from the horrendous atrocities committed in the territory of Bangladesh in 1971 during the war of liberation. Unfortunately, unexpected culture of impunity had kept the notorious perpetrators untouched for decades. No judicial forum under the Act of 1973 could be formed due to military regime followed by the brutal killing of the Father of the Nation. Inaction on part of the military rulers who captured state power rather added endorsement to the culture of impunity.

446. All the events of attacks arraigned happened in the vicinities under police station Batiaghata of District Khulna. It stands proved that brutalities were carried out within the sight of near and dear ones of victims. In accomplishing such appalling atrocities the accused persons knowingly and being part of the

criminal enterprise actively assisted, aided and participated in materializing the object and intent of the systematic attacks proved.

447. The events recounted by the ocular witnesses do not appear to have been suffered from any material infirmity. Defence could not smash their credibility. Indisputably most of witnesses still have been carrying the trauma they sustained.

448. Monstrous acts of accused Razakars in accomplishing killing of numerous unarmed freedom-fighters and Hindu civilians as found proved demonstrate conscious and extreme culpable conduct and antagonistic mindset toward the war of liberation and the people allied and sided with it which unerringly point to the guilt of the accused persons. It is well consistent with their 'participation' to the commission of the horrific crimes proved.

449. All the offences proved indeed were extremely diabolical in nature for which all the accused (1) Amjad Hossain Howlader (2) Md. Shahar Ali Sardar (3) Md. Atiar Rahman Sheikh (4) Md. Motasim Billah (5) Md. Kamal Uddin Goldar and (6) Md. Nazrul Islam[**Absconding**] are found to have had Substantial contribution and participation.

450. Therefore, all the accused persons incurred liability under section 4(1) of the Act of 1973 and also under the doctrine of JCE [Basic Form] as they are found to have had shared common intent and purpose of the group of attackers in accomplishing the crimes already proved beyond reasonable doubt.

XIII. VERDICT ON CONVICTION

451. Tribunal notes that the standard has been found to be legitimately met in proving each count of charges brought against the accused persons. Prosecution has been able to prove that the Six (6) accused (1) Amjad Hossain Howlader (2)Md. Shahar Ali Sardar (3) Md. Atiar Rahman Sheikh (4) Md. Motasim Billah (5) Md. Kamal Uddin Goldar and (6) Md. Nazrul Islam(**absconding**) have incurred liability for the crimes arraigned in all the four counts of charges.

452. Based on articulated and coherent appraisal of all the evidences presented before us and argument advanced by both sides together with the factual and legal findings and settled legal propositions, the Tribunal [ICT-1] **UNANIMOUSLY** finds---

One (01) accused Amjad Hossain Howlader

Charge No.1: GUILTY of ‘participating’, substantially ‘contributing’ and ‘aiding’, by his culpable act and conduct forming part of systematic attack, in accomplishment of the criminal acts constituting the offences of ‘**abduction**’, ‘**confinement**’ ‘**torture**’, ‘**deportation**’, ‘**other inhumane act**’ and ‘**murder**’ as crimes against humanity as enumerated in section 3(2)(a)(g)(h) of the Act of 1973 and thus this accused incurred criminal liability under section 4(1) of the Act of 1973 and he be convicted and sentenced under section 20(2) of the said Act.

Six (06) Accused (1) Amjad Hossain Howlader (2)Md. Shahar Ali Sardar (3) Md. Atiar Rahman Sheikh (4) Md. Motasin Billah (5) Md. Kamal Uddin Goldar and (6) Md. Nazrul Islam(absconding)

Charge No.2: GUILTY of ‘participating’, substantially ‘contributing’ and ‘aiding’, by their culpable act and conduct forming part of systematic attack, in accomplishment of the criminal acts constituting the offences of ‘**murder**’ as crimes against humanity as enumerated in section 3(2)(a)(g)(h) of the Act of 1973 and thus all these six(06) accused persons incurred criminal liability under section 4(1) of the Act of 1973 and they be convicted and sentenced under section 20(2) of the said Act.

Six (06) Accused (1) Amjad Hossain Howlader (2)Md. Shahar Ali Sardar (3) Md. Atiar Rahman Sheikh (4) Md. Motasin Billah (5) Md. Kamal Uddin Goldar and (6) Md. Nazrul Islam(absconding)

Charge No.3: GUILTY of ‘participating’, substantially ‘contributing’ and ‘aiding’, by their culpable act and conduct forming part of systematic attack, in accomplishment of the criminal acts constituting the offence of ‘**genocide**’ as specified in section 3(2)(c)(i)(ii)(iii)(g) (h) of the Act of 1973 and thus all these six(06) accused persons incurred criminal liability under section 4(1) of the Act of 1973 and they be convicted and sentenced under section 20(2) of the said Act.

Six (06) Accused (1) Amjad Hossain Howlader (2)Md. Shahar Ali Sardar (3) Md. Atiar Rahman Sheikh (4) Md. Motasin Billah (5) Md. Kamal Uddin Goldar and (6) Md. Nazrul Islam(absconding)

Charge No.4: GUILTY of ‘participating’, substantially ‘contributing’ and ‘aiding’, by their culpable act and conduct forming part of systematic attack, in accomplishment of the criminal acts constituting the offences of ‘**murder**’ as crimes against humanity as enumerated in section 3(2)(a)(g)(h) of the Act of 1973 and thus all these six(06) accused persons incurred criminal liability under section 4(1) of the Act of 1973 and they be

convicted and sentenced under section 20(2) of the said Act.

XIV. VERDICT ON SENTENCING

453 Mrs. Sabina Yesmin Khan, the learned prosecutor concluded summing up by placing justification on awarding highest punishment to the accused persons who have found guilty for the barbaric acts constituting the offences of ‘crimes against humanity’ and ‘genocide’. Drawing attention to the proved barbarity the accused persons had shown in committing ‘genocide’ and ‘crimes against humanity’ the learned prosecutor has urged for awarding highest sentence which shall be commensurate to the magnitude and pattern of the crimes proved.

454. The accused persons deliberately participated in committing killing of numerous unarmed freedom-fighters and a number of civilians for the reason of their membership in Hindu religious group. The gang formed of accused persons and their cohorts intended to defy the war of liberation and to cripple the pro-liberation civilans and members of protected group.

455. Pattern and magnitude of the crimes proved deserve to be taken as aggravating factor in awarding just and highest punishment although it is not enough to reduce the trauma of relatives of victims sustained, the learned prosecutor added.

456. On contrary, it has been simply urged on part of defence by repeating that prosecution could not prove the arraignments brought by credible evidence; that the accused persons indicted in this case had no concern with any of crimes in question and thus, they deserve acquittal. No effort on part of defence has been advanced to show any mitigating factor.

457. The Tribunal reiterates that the gravity of the offences proved, one of the key factors in awarding sentencing is to be considered as the starting point for consideration of an appropriate sentence. At the same time the Tribunal must ensure that the sentence to be awarded reflects the totality of criminal conduct of the convicted accused persons.

458. In a case involving the offences known as internationally recognized crimes as enumerate in the Act of 1973, the Tribunal must eye on the pattern, seriousness and extent of the offences

committed and at the same time the role the convicted accused persons had played in perpetrating the crimes proved.

459. In respect of factors which should be considered in awarding sentence the Appellate Division of the Supreme Court of Bangladesh in the Criminal Review Petition No. 62 of 2015 [**Ali Ahsan Muhammad Mujahid case**] observed that Lord Justice Denning, Master of the Rolls of the Court of Appeal in England, appearing before the British Royal Commission on Capital Punishment, stated his views on this point as under:

“Punishment is the way in which society expresses its denunciation of wrong- doing; and in order to maintain respect for law; it is essential that the punishment inflicted for grave crimes should adequately reflect the revulsion felt by the great majority of citizens for them. It is a mistake to consider the objects of punishment as being deterrent or reformative or preventive and nothing else-----
---.The truth is that some crimes are so outrageous that society insists on adequate punishment, because the wrong doer deserves it, irrespective of whether it is a deterrent or not”. [**Appellate Division, Criminal Review Petition No.62, Judgment, 18 November 2015, page- 21**]

460. At the same time the Tribunal cannot stay abstained from keeping the untold trauma and harm sustained by the victims and their relatives in mind, in weighing the aggravating factors. It also significantly deserves to be considered.

461. Awarding sentence to convicted accused chiefly depends upon the magnitude of the crimes proved and the role the convicted had played in perpetrating the same. In the case in hand, it has been revealed that culpable and active engagement of the convicted accused persons in conducting criminal systematic attacks directing civilian population and members of Hindu religious group were indeed loaded of extreme antagonistic and beastly mindset.

462. All the victims of the three events leading to brutal killing were unarmed freedom-fighters (**as listed in charge nos.01, 02 and 04**). Despite being aware of the *hors de combat* status of those brave freedom-fighters the accused persons being accompanied by their cohorts had committed such barbaric annihilation. It has been proved.

463. The victims of these three charges fought for the cause of independence of motherland. They laid their lives when they

were not in active action. A group of Bangalee traitors including the accused persons belonging to Razakar Bahini made the lives of great sons of the soil halted by monstrous barbarity. It is rather a fragmented portrayal of horrendous atrocities carried out during the nine months' war of liberation in 1971, to further policy and plan of Pakistani occupation army. The nation pays tribute and salute the myriad sacrifice those brave freedom-fighters (**victims of events arraigned in charge nos.01,02 and 04**) laid in exchange of their lives.

464. Obviously humankind is shocked with the horrific barbarity of the convicted accused persons. It increases magnitude of crimes proved. The victims of the brutality as found in this case form part of three millions martyrs.

465. It stands proved that the accused persons got engaged in committing such barbaric killings, in exercise of their nexus with the auxiliary force [**as listed in charge no.03**]. The accused persons rather being traitors had acted in committing annihilation of Hindu civilans for the reason of their membership in Hindu religious group. Intent was to cripple the Hindu community of a particular geographical area and also to leave destructive effect to their normal livelihood.

466. Genocide is a denial of the right of existence of human group. Such offence shocks the conscience of humankind. Awarding just punishment for the crime of genocide is thus now indispensably the matter of the nations' concern. At the same time the global community too must raise the voice by saying—
NEVER AGAIN.

467. The settled jurisprudence affirms that 'genocide' is a crime under international law which the civilized world condemns. The offence 'genocide' proved (**as listed in charge no.03**) was of gravest and appalling nature that shakes human conscience, the humanity and civilization.

468. The inherent nature and pattern of the violence and aggression conducted as found proved [as narrated in all the four charges] indisputably makes the issue of awarding just punishment extremely imperative.

469. The victims of the vicious atrocities constituting the offences as 'crimes against humanity' (**as listed in charge no.01, 02 and 04**) and 'genocide' (**as listed in charge no.03**) as found proved in this case form fraction of three millions martyrs who laid down glorified sacrifice, for the cause of our

independence and independent motherland—**Bangladesh**. The nation pays gleaming tribute and salute to them.

470. Based on above view and propositions we reiterate that inappropriate sentence causes injustice not only to the victims of crimes but sometimes to the whole society and the nation as well. Thus, having regard to the magnitude and pattern of crimes proved and participation of convicted accused persons we are forced to say that letters of law cannot remain non responsive to the victims and relatives of martyrs and the nation too who have been still carrying colossal and terrifying trauma. In awarding sentence in the case of **Kupreskić** the ICTY Trial Chamber observed that-

“The sentences to be imposed must reflect the inherent gravity of the criminal conduct of the accused. The determination of the gravity of the crime requires a consideration of the particular circumstances of the case, as well as the form and degree of the participation of the accused in the crime.”

[ICTY Trial Chamber Kupreskić Trial Judgement, para. 852]

471. In the case in hand, the events of attacks (**as listed in all the four counts of charges**) were particularly horrifying. The convicted accused persons played a prominent part in their

commission. Impact of the proved crimes of which the accused persons have been found guilty affected the entire humankind.

The Tribunal must weigh heavily the grave nature of the crimes of which the accused persons have been found guilty when awarding sentence and the convicted accused persons must be condemned in a manner that shall leave a substantial deterrent factor against the recurrence of such horrific crimes anywhere.

472. In view of above, it is now well settled that awarding sentence must commensurate to severity and level of barbarity of crimes proved to which the convicted accused persons consciously participated, aided, abetted and substantially contributed. In this regard we recall the observation made by the Appellate Division of the Supreme Court of Bangladesh in the **Nizami Appeal Judgment** which is as below:

“It is the solemn duty of the courts to award proper sentence commensurate with the gravity of the crimes. In appropriate lesser sentence causes injustice not only to the victims of crimes but sometimes to the whole society” [Nizami Appeal Judgment, p.152]

473. Therefore, the sentence to be awarded must be proportionate to the seriousness of the offences proved and mode of participation of the convicted accused persons who have been found guilty beyond reasonable doubt..

474. In view of reasoned deliberation as made above and considering the nature and proportion to the gravity of the offences proved and also keeping the jurisprudential factors as focused above into account we are of the **UNANIMOUS** view that justice would be met if the convicted accused (1) Amjad Hossain Howlader (2) Md. Shahar Ali Sardar (3) Md. Atiar Rahman Sheikh (4) Md. Motasim Billah (5) Md. Kamal Uddin Goldar and (6) Md. Nazrul Islam(**absconding**) who have been found guilty beyond reasonable doubt for the crimes proved are condemned and sentenced as below, under the provision of section 20(2) of the Act of 1973:

Hence it is **ORDERED**

One accused (1) **Amjad Hossain Howlader**, son of late Amdad Ali Howlader and late Achhia Khatun, of village-Charkhali (Machhalia), Police Station-Batiaghata, District-Khulna is found **GUILTY** of the offence of ‘**murder**’ as ‘**crimes against**

humanity’ (as listed in charge no.01), as enumerated in section 3(2) (a)(g)(h) of the International Crimes (Tribunals) Act, 1973;

Six (06) accused (1) **Amjad Hossain Howlader**, son of late Amdad Ali Howlader and late Achhia Khatun, of village-Charkhali (Machhalia), Police Station-Batiaghata, District-Khulna (2) **Md. Shahar Ali Sardar**, son of late Abdul Gani Sardar and late Kariman Nesa, of Village-Shurkhali, Police Station-Batiaghata of District-Khulna, (3) **Md. Atiar Rahman Sheikh**, son of late Hasan Sheikh @ Hashem Sheikh and late Malancha Bibi, of village-Shundar Mahal, Police Station-Batiaghata of District-Khulna, (4) **Md. Mostasin Billah**, son of late Rakamtullah Sheikh and Johara Begum, of Village-Kismat Laxmikhola, Jheelaghata under Police Station-Batiaghata of District-Khulna, (5) **Md. Kamal Uddin Goldar**, son of late Dabir Uddin Goldar and late Hamida Begum, of village-Birat, Police Station- Batiaghata of District-Khulna **AND** (6) Md. Nazrul Islam(**absconding**) , son of late Md. Nayan Ali Jarddar and late Rabeya Begum, of village: Noyaitala, Police Station-Batiaghata of District-Khulna are found **GUILTY** of the offences of ‘**murder**’ as ‘**crimes against humanity**’ (as listed **in charge no. 02 and 04**), as enumerated in section 3(2) (a)(g)(h) of the International Crimes (Tribunals) Act, 1973 **AND**

of the offence of **‘genocide’**(as listed in charge no.03) as specified in section 3(2)(c)(i)(ii)(iii)(g) of the International Crimes (Tribunals) Act of 1973.

Accordingly, accused (1) **Amjad Hossain Howlader** be convicted and condemned to the sentence as below for the offences arraigned **in charge no.01**, under section 20(2) of the Act of 1973:

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

Six(6) accused (1) Amjad Hossain Howlader (2) Md. Shahar Ali Sardar (3) Md. Atiar Rahman Sheikh (4) Md. Motasin Billah (5) Md. Kamal Uddin Goldar and (6) Md. Nazrul Islam (**absconding**) be convicted and condemned to the sentence as below for the offences arraigned **in charge nos.02,03 and 04** under section 20(2) of the Act of 1973:

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

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

AND

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

The **‘sentences of death’** as awarded above, in respect of all the **four counts of charges** will get merged.

The **‘sentence of death’** as awarded above to convicted accused (1) Amjad Hossain Howlader (2) Md. Shahar Ali Sardar (3) Md. Atiar Rahman Sheikh (4) Md. Motasin Billah (5) Md. Kamal Uddin Goldar and (6) Md. Nazrul Islam (**absconding**) under section 20(2) of the International Crimes (Tribunals) Act , 1973 [The Act No.XIX of 1973] shall be carried out and executed in accordance with the order of the government as required under section 20(3) of the said Act.

Since the convicted accused **Md. Nazrul Islam** has been absconding the **‘sentence of death’** as awarded above to him

shall be executed after causing his arrest or when he surrenders before the Tribunal, whichever is earlier.

Five (05) convicted accused (1) Amjad Hossain Howlader (2) Md. Shahar Ali Sardar (3) Md. Atiar Rahman Sheikh (4) Md. Motasim Billah and (5) Md. Kamal Uddin Goldar [**present on dock as brought from prison**] be sent to prison with conviction warrant.

Let a copy of the Judgment be transmitted together with the conviction warrant to **the Senior Jail Super, Dhaka Central Jail**, Keraniganj, Dhaka for information and necessary action and compliance.

Let a copy of the Judgment also be transmitted together with the conviction warrant against **convicted absconding accused Md. Nazrul Islam** to (1) the Secretary, Ministry of Home Affairs and (2) the Inspector General of Police, Bangladesh Police, Police Head Quarters, Dhaka for information and due compliance.

The Secretary, Ministry of Home Affairs and the Inspector General of Police [IGP], Bangladesh Police are hereby directed to initiate effective and appropriate measure for ensuring arrest of the **convict absconding accused Md. Nazrul Islam**.

Let copy of the Judgment also be transmitted to the District Magistrate, Dhaka for information and necessary compliance.

Let certified copy of the judgment also be furnished to the prosecution.

The convict accused (1) Amjad Hossain Howlader (2) Md. Shahar Ali Sardar (3) Md. Atiar Rahman Sheikh (4) Md. Motasim Billah and (5) Md. Kamal Uddin Goldar shall have right to prefer appeal before the Appellate Division of the Supreme Court of Bangladesh within the time stipulated in law. Thus, let certified copy of the judgment be furnished to the convicts at once, free of cost.

If the convict accused **Md. Nazrul Islam (absconded)** is arrested or surrenders within 30(thirty) days of the date of the order of conviction and sentence he will be provided with certified copy of this judgment free of cost.

Justice Md. Shahinur Islam, Chairman

Justice Md. Abu Ahmed Jamadar, Member

Justice K.M. Hafizul Alam, Member