

International Crimes Tribunal-1 (ICT-1)

[Tribunal constituted under section 6 (1) of the Act No. XIX of 1973]

**Old High Court Building, Dhaka,
Bangladesh
ICT-BD Case No. 03 of 2017**

[Charges: crimes against Humanity as enumerated in section
3(2)(a)(g)(h) of the Act No. XIX of 1973]

The Chief Prosecutor

Vs.

- (1) Md. Abdul Khalek @ Abdul Khalek Mondol and**
- (2) Khan Rokunuzzaman @Rokunuzzaman[absconding]**

Before

Justice Md. Shahinur Islam, Chairman
Justice Md. Abu Ahmed Jamadar, Member
Justice K.M. Hafizul Alam, Member

For the Prosecution

Mr. Golam Arief Tipoo, Chief Prosecutor
Mr. Mokhlesur Rahman Badal, Prosecutor
Mr. Md. Sultan Mahmud, Prosecutor
Ms. Rezia Sultana Begum, Prosecutor
Ms. Sabina Yesmin Khan, Prosecutor
Mr. Tapas Kanti Baul, Prosecutor

For the Defence

For accused Md. Abdul Khalek @ Abdul Khalek Mondol: Mr. Abdus Sobhan Tarafder, learned Advocate, Bangladesh Supreme Court **and Mr. Muzahedul Islam** , learned Advocate, Bangladesh Supreme Court

For accused Khan Rokunuzzaman @Rokunuzzaman [absconding]: Mr. Gaji M.H Tamim, learned Advocate as State Defence Counsel

Date of delivery of Judgment: 24 March 2022

JUDGMENT

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

I. Opening words

1. Trial of the case in which we are going to render our unanimous verdict today commenced against 04 accused indicting them in charges framed. After closure of recording evidence of prosecution witnesses and 01 defence witness one accused M. **Abdullah-Al-Baki @ Abdullahel Baki who was on bail died on **13.07.2020** and another absconding accused **Zahirul Islam @ Zahurul Haque @ Tekka Khan** died on **12.05.2019**. As a result, proceeding so far as it related to these two accused stood abated. Thus, now the verdict in this case involving the offences arraigned against two (02) accused**

Md. Abdul Khalek @ Abdul Khalek Mondol and Khan Rokunuzzaman @Rokunuzzaman (absconding) is being rendered, on evaluation of totality of evidence adduced which also even speaks of the role of above two (02) accused who have already died.

2. All the charges in which the accused persons have been indicted involve the offences of crimes against humanity as enumerated in the International Crime (Tribunals) Act, 1973 in perpetrating which the accused persons allegedly aided, abetted, facilitated, participated and substantially contributed. The trial took place in presence of the two accused of whom accused **Abdullah-Al-Baki @ Abdullahel Baki** died at the ending phase of trial. He was on bail on ground of his old age complications. Another absconding accused **Zahirul Islam @ Zahurul Haque @ Tekka Khan** too already died. Summing up of the case took place in presence of accused **Md. Abdul Khalek @ Abdul Khalek Mondol** when another accused **Khan Rokunuzzaman @Rokunuzzaman** remained absconded. Pursuant to issuance of production warrant the prison authority has produced the accused **Md. Abdul**

Khalek @ Abdul Khalek Mondol today before this Tribunal [ICT-1].

3. The dreadful atrocities arraigned were committed in 1971, in context of the war of liberation, in systematic manner directing the pro-liberation civilian population, aiming to intimidate and wipe out the pro-liberation Bengali civilians, in furtherance of policy and plan of the Pakistani occupation army. All the events arraigned in this case allegedly happened in the localities under the then Satkhira sub-division.

4. In course of trial, both the prosecution and the defence provided utmost assistance to go with the proceeding in accordance with law. We endorse the stamp of our appreciation to their commendable assistance and acumen.

5. Now, this unanimous Judgment is being rendered by the Tribunal [ICT-1] for the prosecution of persons allegedly responsible and accountable for the serious criminal acts forming part of ‘system crimes’ or ‘group crimes’ as enumerated in the International Crimes (Tribunals) Act, 1973 committed in violation of international humanitarian law in the territory of Bangladesh in 1971, in context of the war of liberation. Having jurisdiction under section 10(1) (j), section

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

II. Formation and Jurisdiction of the Tribunal

6. This judicial institution known as ‘International Crimes Tribunal-1’ [ICT-1] has been set up on 25 March 2010. The notion of fairness and due process as has been contemplated in the Act and the Rules of Procedure, 2010 (ROP) formulated by the Tribunal [ICT- 1] under the powers conferred in section 22 of the principal legislation.

7. We reiterate that The Act No. XIX enacted in 1973 which is meant to prosecute, try and punish the person or persons or member or members of ‘auxiliary force’ for the offences of crimes against humanity, genocide and system crimes committed in violation of international humanitarian law is *ex-post facto* legislation. It is fairly permitted. The 1973 Act of Bangladesh has the merit and means of ensuring the standard of safeguards recognized universally to be provided to the person accused of crimes against humanity or genocide.

8. Section 3(1) of the Act of 1973 explicitly manifests 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. It is quite compatible with the recognized international norms and jurisprudence.

9. We restate that this Tribunal [ICT-1] formed under the Act of 1973 is absolutely a domestic judicial institution but meant to try ‘internationally recognized crimes’ or ‘system crimes’ committed in violation of customary international law during the war of liberation in 1971 in the territory of Bangladesh. Thus, merely for the reason that the Tribunal is preceded by the word “international” and possessed jurisdiction over crimes such as Crimes against Humanity, Crimes against Peace, Genocide, and War Crimes, it will be mistaken to assume that the Tribunal must be treated as an “International Tribunal”.

10. **Lemkin Institute for Genocide Prevention**, an US based institution by issuing a formal statement released on 31 December 2021 emphatically endorses the national efforts in

prosecuting the perpetrators of atrocities committed in 1971, by voicing --

“The Lemkin Institute also wishes to highlight the efforts carried out by Bangladesh to bring justice to the victims and accountability for perpetrators by establishing the International Crimes Tribunals of Bangladesh in order to try the Bengali nationals that collaborated with the Pakistani government in perpetrating genocide, war crimes, and crimes against humanity. Judicial accountability must be at the core of any transitional justice and preventative efforts, and the international community should give support to national processes.”

[Source: Statement on the Bangladesh Genocide of 1971: Released 31 December 2021: Lemkin Institute for Genocide prevention]

III. Brief Historical Background and Context prevailing in 1971 in the territory of Bangladesh

11. Background of our war of liberation is the outcome of the struggle the Bengali nation opted to go with for emancipation from grave disparities and for achieving self-determination.

Disparity to Bengali nation started after the partition in 1947. In August, 1947, the partition of British India based on two-nation theory, gave birth to two new states, one a secular state named India and the other the Islamic Republic of Pakistan. The western zone was named West Pakistan and the eastern zone was named East Pakistan, which is now Bangladesh.

12. In 1952 the Pakistani ruling 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 spirited movement to get Bangla recognized as a state language and eventually turned to the movement for greater autonomy and self-determination and finally independence.

13. The history goes on to depict 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 flouting the democratic norms Pakistan Government did not pay heed to value this overwhelming majority. As a result, movement started in the entire territory of this part of Pakistan [now Bangladesh].

14. The greatest Bangalee of all the times Bangabandhu Sheikh Mujibur Rahman in his historic speech of 7th March, 1971, called upon the Bangalee nation to jump struggling for independence if people's verdict was not respected. Next, in the early hour of 26th March, following the onslaught of **“Operation Search Light”** by the Pakistani Military on 25th March, Bangabandhu the Father of the Nation declared Bangladesh independent immediately before he was arrested by the Pakistani ruling authorities.

15. In this way the War of Liberation ensued, all people of the then East Pakistan enthusiastically supported and participated in the call to achieve liberated motherland –Bangladesh. But history says that a small number of Bangalees, Biharis, other pro- Pakistanis, as well as members of a number of different religion-based political parties, particularly Jamat E Islami (JEI) and its student wing Islami Chatra Sangha (ICS), Muslim League, Convention Muslim League joined and/or collaborated with the Pakistani occupation army intending to stand firm against the conception of independent Bangladesh and most of them as local collaborators of Pakistani occupation army aggressively and knowingly participated aided and facilitated as well in conducting appalling

atrocities and mayhem directing civilian population in the territory of Bangladesh, in 1971.

16. Tribunal is permitted by the Act of 1973 and the ROP in taking this settled dreadful history into judicial notice. This truth comes forward indisputably particularly to eye on the backdrop of the war of liberation in 1971.

17. In portraying the wildness of atrocious acts committed during the nine months period of the war of liberation in 1971 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]

18. The atrocious events arraigned in the case in hand are split portrayal of the mayhem conducted in 1971. Fragmented scenario of horrendous atrocities committed in 1971 is perceived also from a report titled ‘**A Country Full of Corpses**’ published in SUMMA Magazine, Caracas, October 1971 which is as below:

“.....A pathetic view of the tragedy is given to us by the fact that in a single night in the city of Dacca were killed 50,000 persons by the invading army. Between 26 March—the date of invasion—and this moment, the dead reach more than a million, and every day 30,000 persons leave East Pakistan and take refuge in Indian territory.”

[Source: **Bangladesh Documents- Volume II, page 76**]

19. But such enormously grave and recurrent appalling atrocities carried out directing the Bengali civilians in the territory of Bangladesh starting since 25 March 1971 could not make the highest sacrifice of the nation failed. Eventually, the nation achieved its independence.

20. The nation always pays tribute and homage to the blood of millions of patriotic brave martyrs and innocent defenceless people. **Muhammed Zafar Iqbal** in his book titled '**History of the Liberation War**' [translated by Yeshim Iqbal, published in 2008 by Proteeti Muktir Udyog, Dhaka] portrays an explicit paradigm of bravery of sons of this land. It states, citing the book titled '**Witness to Surrender, Siddiq Salik that –**

“There is no end to the stories of bravery of these freedom fighters. One small story from a book written by a Pakistani army official goes like this:

‘A young freedom fighter was arrested by the Pakistani army in Rohanpur area of Rajshahi in June 1971. Despite terrible torture, he refused to disclose any information. A Pakistani major finally held a stenguns to his chest and said, answer my question or I’ll kill you right now. The fearless young freedom fighter bent down and kissed the ground of

his motherland for the last time, stood up straight and said, I'm ready to die. My blood will free this country.'

[Source: Witness to Surrender, Siddiq Salik, page 104]

21. **“This is what is patriotism, valiance and bravery”** --the author of the book titled **“History of the Liberation War’** made this comment of his own. But this comment is always loudly voiced by the nation. On the other hand, the local collaborators truly had acted with extreme notoriety as traitors in most beastly manner. It is now a settled history which needs no further document to prove.

22. We reiterate that the Pakistani occupation army with the aid of its auxiliary forces, pro-Pakistan political organizations implemented the commission of horrendous atrocities in 1971 in the territory of Bangladesh in furtherance of policy of targeting non-combatant pro-liberation civilians by perpetrating regular and continuous horrific pattern of atrocities.

23. The above settled historical truth is beyond reasonable dispute. The context itself reflected from above policies

sufficiently suggests that the offences of crimes against humanity as specified in section 3(2)(a) of the Act of 1973 were the predictable effect of part of '*systematic attack*' '*committed against civilian population*'.

24. It is quite coherent from the facts of common knowledge involving the backdrop of our war of liberation for the cause of self-determination that the Pakistani occupation armed force, in execution of government's plan and policy in collaboration with the local anti-liberation section belonging to JEI and pro-Pakistan political parties and auxiliary forces, had acted with extreme brutality pursuant to such plan and policy as a 'part of a regular pattern basis' throughout the long nine months of war of liberation in 1971.

25. Incalculable atrocious resistance on part of thousands of local collaborators belonging to auxiliary force and having pro-Pakistan ideology could not impede the nation's valiant journey to freedom. We restate that undeniably the ways to self-determination for the Bangalee nation was strenuous, swabbed with enormous blood, struggle and mammoth sacrifices.

26. Lemkin Institute for Genocide Prevention, an US based institution by issuing a formal statement released on 31 December 2021 recognized the ‘Bangladesh Genocide of 1971’ committed towards the Bengali nation during the war for independence. It has been recognized by saying --

“The atrocities committed by the Pakistani army and the local collaborators - such as razakars, Al Badr and Al Shams - included a systematic policy of sexual violence against Bengalis, the majority of them Bengali Hindu women and girls, involving vicious gang rapes, life force atrocities, sexual slavery, sexual torture, and forced maternity.”

[Source: Statement on the Bangladesh Genocide of 1971:Released 31 December 2021:Lemkin Institute for Genocide prevention]

27. In the present-day world history, conceivably no nation paid as extremely as the Bangalee nation did for its self-determination and independence. The nation shall remain ever indebted to those best sons, mothers and daughters of the soil who sacrificed their supreme honour for an indelible motherland – **Bangladesh.**

IV. Brief Account of Accused persons

28. Before we render our reasoned decision on charges framed let us have a look what has been stated in the formal charge about the identity of the accused persons. In the case in hand four accused have been indicted for the offences arraigned in charges framed. But after closure of examination of prosecution and defence witness two accused M. Abdullah-Al-Baki @ Abdullahel Baki and Zahirul Islam @ Zahurul Haque @ Tekka Khan(absconding)died and thus proceeding so far as it related to them stood abated vide Tribunal's order dated**25.06.2019** and order dated**21.10.2020**. Thus, now just let us eye on the brief account only of two accused i.e. accused Md. Abdul Khalek @ Abdul Khalek Mondol and Accused Khan Rokunuzzaman @ Rokunuzzaman (absconding).

(i) Accused Md. Abdul Khalek @ Abdul Khalek Mondol

Accused Md. Abdul Khalek @ Abdul Khalek Mondol son of late Lutfor Rahman @ Lal Chand Mondol and late Deljan Bibi was born on 01.08.1944 at village-Khalilnagar under Police Station-Satkhira of District [now] Satkhira. He passed 'Kamil' examination in 1965 and then passed BA in 1969 from Satkhira College. He obtained M.A degree in Islamic

Studies from Dhaka University. He was involved with Islami Chhatra Sangha [ICS] the student wing of Jamaat-E Islami. In 1971 he was the main organizer of Razakar Bahini of the then Satkhira Sub-Division and was engaged in carrying out atrocious criminal activities directing civilian population maintaining affiliation with the Pakistani occupation army, prosecution alleges. After independence, in 2001 he was elected a Member of Parliament in National Parliamentary Election from Satkhira-2 constituency as a candidate of Jamaat-E Islami.

(ii) Accused Khan Rokunuzzaman @ Rokunuzzaman [absconding]

Accused Khan Rokunuzzaman @ Rokunuzzaman son of late Mohabbat Ali Khan and late Ohida Khanam was born on 05.02.1952 at village Dkahhin Palashpol under Police Station-Satkhira of District [now] Satkhira. He studied up to HSC. In 1971, while he was a student of HSC in Satkhira College he was actively involved with Islami Chhatra Sangha [ICS], the student wing of Jamaat-E-Islami. During the war of liberation he joined Satkhira Sub-Divisional Razakar Bahini and became known as a notorious Razakar, prosecution alleges.

V. Procedural History

29. The Investigation Agency of the Tribunal constituted under the Act of 1973 initiated investigation pursuant to complaint register serial no. 55 dated 16.06.2015, in relation to the commission of offences enumerated in section 3(2) of the Act of 1973 allegedly perpetrated in 1971 during the war of liberation around the localities under Police Station-Satkhira and District[now] Satkhira.

30. During investigation, on prayer of the IO initiated through the prosecution the Tribunal ordered issuance of warrant of arrest [W/A] against the accused **Md. Abdul Khalek @ Abdul Khalek Mondol**. In execution of WA issued the accused already arrested in connection with three cases lodged with Satkhira Police Station was produced before the Tribunal on 25.8.2015 when showing him arrested in this case Tribunal ordered to send him to prison by issuing custody warrant.

31. On application filed by the prosecution on 03.05.2016 Tribunal by its order permitted the investigation officer to interrogate the accused Md. Abdul Khalek Mondol at the safe home of the Investigation Agency. The accused was then

interrogated accordingly on 12.05.2016 in presence of his counsel and physician as ordered by the Tribunal.

32. The Investigation Officer [IO] submitted report together with documents and materials collected and statement of witnesses, on wrapping up of investigation before the Chief Prosecutor on 05.02.2017.

33. On the basis of the investigation report and materials submitted therewith the Chief prosecutor by filing an application before the Tribunal prayed for issuance of warrant of arrest against the three accused M. Abdullah-Al-Baki @ Abdullahel Baki, Khan Rokunuzzaman @ Rokunuzzaman and Zahirul Islam @ Zahurul Haque @ Tekka Khan. On hearing the application the Tribunal by its order dated 08.03.2017 issued warrant of arrest in execution of which accused M. Abdullah-Al-Baki @ Abdullahel Baki was arrested and was produced before the Tribunal on 19.03.2017 when he was released on bail considering his grave old age complications.

34. The Chief Prosecutor, on the basis of the report and documents submitted therewith by the Investigation Agency,

after completion of investigation, submitted the 'Formal Charge' on 20.03.2017 under section 9(1) of the Act of 1973 before this Tribunal alleging that all the 04 accused persons were engaged in committing the offences of crimes against humanity by participating , facilitating, aiding and abetting and also for complicity to commit such crimes narrated in the formal charge, during the period of War of Liberation in 1971 around the localities under Police Station Satkhira of District[now] Satkhira.

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

36. Out of 04 accused 02 accused Khan Rokunuzzaman @ Rokunuzzaman and Zahirul Islam @ Zahurul Haque @ Tekka Khan could not be arrested till taking cognizance of offences. After having the report in execution of warrant of arrest issued against them the Tribunal, for the purpose of holding proceeding in absentia against them, ordered publication of notification in two national daily newspapers.

37. But despite publication of such notice as required in law those 02 accused did not turn up and as such treating them absconded the Tribunal ordered for hearing the charge framing matter by appointing state defence counsels, at the cost of Government, to defend the 02 absconding accused persons.

38. Then the hearing on charge framing matter took place on 18.01.2018 when both sides placed their respective submission. The Tribunal also heard the applications seeking discharge of accused Md. Abdul Khalek Mondol and two absconding accused. However, Tribunal passed order on 05.03.2018 framing charges against the accused persons. The charges framed were read over to two accused present in Tribunal when they plead not guilty. In this way trial commenced.

39. In course of trial prosecution adduced and examined 15 witnesses to substantiate the arraignments. On closure of prosecution evidence one witness (son of accused M. Abdullah-Al-Baki @ Abdullahel Baki) has been examined as D.W.01.

40. Due to covid-19 pandemic situation summing up phase of the case could not take place immediately after closure of examining witnesses. However, eventually the summing up phase took place on 17.11.2019, 08.01.2020, 23.02.2020, 14.03.2021, 03.11.2021 and 11.11.2021. On closure of summing up on 11.11.2021 the case was kept in CAV i.e. for delivery and ;pronouncement of judgment.

VI. Applicable laws

41. Provisions as contemplated in the International Crimes (Tribunals) Act, 1973 and the Rules of Procedure [ROP], 2010 formulated by the Tribunal [ICT-1] under the powers conferred in section 22 of the Act are applicable to the proceedings dealt with by the Tribunal. Section 23 of the Act of 1973 explicitly prohibits the applicability of the Code of Criminal Procedure, 1898 and the Evidence Act 1872. Tribunal is authorized to take judicial notice of fact of common knowledge which is not needed to be proved by adducing evidence [Section 19(4) of the Act of 1973].

42. The Tribunal may admit any evidence which it deems to have probative value [Section 19(1) of the Act]. The Tribunal shall have discretion to consider hearsay evidence by

weighing its probative value [Rule 56(2)]. The defence does have liberty to cross-examine prosecution witness questioning his credibility and to take contradiction of the evidence given by him [Rule 53(ii)]. Defence does have right to examine witnesses [Section 10(1) (f) of the Act of 1973].

43. Both the Act of 1973 and the Rules (ROP) have adequately ensured the universally recognised rights of the defence. Additionally, the Tribunal, in exercise of its discretion and inherent powers as contained in Rule 46A of the ROP, has adopted numerous practices for ensuring fair trial by providing all possible rights of the accused.

VII. Summing Up

Summing up: By the prosecution

44. The learned prosecutor **Ms. Rezia Sultana** Begum placed summing up drawing attention to the evidence and documents adduced. It has been argued that before summing up two accused Zahirul Islam @ Zahurul Haque @ Tekka Khan and M. Abdullah-Al-Baki @ Abdullahel Baki died. Despite their death evidence adduced requires to be evaluated in its entirety and arraignment brought against them as well may be looked

into in proving the events arraigned. However, their death now leaves no room to render finding in respect of their guilt.

45. It has been argued that prosecution has been able to prove the arraignments brought in all the charges excepting charge no.04 by competent, natural and credible witnesses. Defence could not impeach their testimony in any manner. The accused persons indicted had acted consciously and knowingly in perpetrating the offences by launching systematic attack directing civilian population. The accused persons in exercise of their dominant affiliation in Satkhira Razakar Bahini participated in committing the offences of which they are charged with.

46. It has been further submitted by the learned prosecutor that admittedly accused M. Abdullah-Al-Baki @ Abdullahel Baki was a potential Razakar. His son deposed in tribunal as D.W.01 that his father in executrices of his position on Razakar Bahini used to protect the pro-liberation civilian. This accused already died. But such defence contended on his part does not seem to have any credence. Be that as it may, presence of other accused along with this accused leads to

prove presence and participation of other accused persons in committing crimes arraigned.

Summing up: By the defence

47. Mr. Abdus Sobhan Tarafder, the learned counsel defending the accused Abdul Khalek Mondol submits that this accused has been implicated in this case out of political rivalry; that he was not Razakar and had no association with the locally formed Razakar Bahini. Accusation brought against this accused could not be proved by lawful evidence; that mere affiliation with pro-Pakistan political party is not by itself an offence. The learned defence counsel drawing attention to evidence and facts argued in categorized manner as to failure of proving the charge brought against this accused. His argument may be well addressed when the charges be determined independently.

48. Mr. Gaji M.H Tamim, the learned state defence counsel for absconding accused Khan Rokunuzzaman @ Rokunuzzaman submits that prosecution could not prove the charges of which this accused has been indicted. There is no evidence to substantiate that this accused participated even in accomplishing the principal crime and that there is no reliable

evidence to show that this accused belonged to local Razakar Bahini. He has been implicated in this case falsely. The learned state defence counsel advanced argument in respect of all charges of which this accused has been indicted and the same may be well addressed when the charges be adjudicated independently.

VIII. Had the accused persons indicted committed alleged atrocities in exercise of their tacit and culpable nexus with the locally formed Razakar Bahini?

49. Prosecution avers that the accused persons were potential Razakars and had affiliation with the Razakar camp set up at Diamond hotel in Satkhira. We reiterate that under the Act of 1973 even an individual may be prosecuted, tried and punished if he is found to have committed offences enumerated in the Act of 1973. Before we render our decision on charges framed let us have a look what has been stated in the formal charge about the identity of the accused persons. However, what we find in the case in hand?

50. It appears that admittedly accused Abdullah Al Baki was a potential Razakar of Satkhira and had affiliation with the Razakar camp set up at Diamond Hotel in Satkhira town. Son

of this accused deposed before Tribunal as D.W.01 when he stated that his father got enrolled in Razakar Bahini, but intending to save the pro-liberation civilians and freedom-fighters. This plea remained unfounded. Rather, it was a futile attempt to shield this accused. However, this accused died after his son deposed in Tribunal.

51. Being part of the group of attackers formed of Razakars and including Abdullah Al Baki the accused Abdul Khalek Mondol and Rokunuzzaman deliberately participated in attacks arraigned. It is found proved from narrative of witnesses who had opportunity of seeing phase of the attack conducted.

52. It stands proved from testimony of witnesses that the criminal activities arraigned were conducted by the gang formed of the accused persons and their accomplices and Pakistani army men, being part of the enterprise. Witnesses testified are from the same or nearer locality and naturally thus they had reason of knowing them beforehand. Their testimony in this regard inspires credence of judicial mind.

53. Besides, it stands proved too from testimony of P.W.09 that accused Abdul Khalek Mondol along with other Razakar[now dead] was got apprehended by freedom-fighters , just after Satkhira got liberated. Defence, it appears, did not make any effort even to deny it in cross-examination of P.W.09. This unimpeached fact lends assurance that the accused Abdul Khalek Mondol was a potential Razakar in Satkhira. He and another accused got tacitly engaged in local Razakar Bahini, an ‘auxiliary force’ in exercise of their ideology of pro-Pakistan political party.

54. It is manifested from testimony of witnesses that the accused persons had culpable ‘concern’ of the upshot of the attacks conducted by the group formed of Razakars they accompanied at the phases of attacks. Thus it may be unerringly concluded that the accused persons were Razakars having dominance over the camp set up at Diamond hotel in Satkhira town.

55. It may be presumed that being imbued by the ideology of Jamat-E –Islami a pro-Pakistan political party the accused persons opted to collaborate with Pakistani occupation army

to further its policy which was gravely detrimental to human rights.

56. The I.O (P.W.17) MD. Abdur Razzak Khan BPM (Seba), PPM proved some documents which have been exhibited. Of those documents **Material Exhibit-I Series** (prosecution documents volume page-09) is the list of Razakars. It goes to show that name of accused Abdul Khalek Mondol finds place in serial no.1. The I.O also stated that he seized the photo from naval commando Khalilur Rahman (P.W.01) which was taken when the victims including P.W.01 were kept detained at Razakar camp. The photo-Exhibit-1 depicts presence of accused together with the detained victims. Defence could not controvert it.

57. In view of above we may justifiably and safely arrive at decision that the accused persons in exercise of their tacit association with locally formed Razakar Bahini had kept them allegedly engaged in conducting systematic attacks directing civilian population.

IX. General Considerations Regarding the Evaluation of Evidence in a case of Crimes against Humanity

58. The offences arraigned occurred in war time situation in 1971, in the territory of Bangladesh. Already long about five decades have been elapsed. Therefore, naturally documented evidence about the commission of the alleged offences and participation of accused therewith cannot be expected. Thus the criminal acts constituting the alleged offences chiefly rest on ocular account made by prosecution witnesses and circumstances unveiled. The locals, relatives of victims and sufferers of atrocious activities came on dock and narrated what they experienced and saw during the horrific attacks arraigned in 1971, in and around their localities.

59. Apart from the eye witnesses some are hearsay witnesses. It has already been settled that in a case involving the offences enumerated in the Act of 1973 'hearsay evidence' is admissible and it may be taken into consideration if supported by other evidence. The phrase 'other evidence' includes relevant facts, circumstances and testimony of ocular witnesses. Hearsay evidence is thus to be viewed and weighed in context of its credibility, relevance and circumstances.

60. It is noteworthy too that indeed due to lapse of long passage of time the witnesses may not be able to memorize

the exact date or time or distance or direction of crime sites from one place. However, the core essence of the horrific principal event always remains imprinted in the human memory if a person really had opportunity to see the event of monstrous nature. Thus, their testimony is to be viewed taking all these reality into account and then to assess as to how far the account they made on material facts inspires credence.

61. The case deals with the offences of crimes against humanity. This type of crime is known as 'group crime' or 'system crime' and not an isolated offence punishable under the normal Penal law. The matters to be adjudicated are the commission of the offence in question and another one is culpability of the person accused of such offence. Conduct and act of an accused -- amid, prior or subsequent to the event, may lawfully make him responsible for the offence committed by others, if his act or conduct is found to have had substantial effect and contribution on the commission of such crime. It is now settled and pertinent jurisprudence.

X. Way of Adjudication of Charges

62. The instant case involves adjudication of charges for the offences of crimes against humanity. These crimes are not

isolated offences. Thus, in adjudicating the charges we are to depend upon (i) facts of common knowledge (ii) available documentary evidence (iii) old reporting of newspaper, books etc. having probative value (iv) relevant facts (v) circumstantial evidence (vi) careful and rational evaluation of witnesses' version (vii) Political status, position and conduct of the accused at the relevant time and (viii) the jurisprudence evolved on these issues in our Apex Court and the observations of *ad hoc* tribunals as well, if deemed necessary to adjudicate any point of law.

Adjudication of Charge No.1

[04 accused indicted of whom 02 died during trial]

[Event No. 01 as narrated at pages 39-47 of the Formal Charge]

[Offences of Abduction, confinement and torture of 06 naval commandos [freedom-fighters] of whom 02 were shot to death]

63. Charge: That on 16 August, 1971 the six victims, the naval commandos [freedom fighters] returned Sutarkhali after detonating eight foreign ships in Mongla port and started moving by boat towards Ashashuni Police Station under District-Satkhira [former Sub-Division] to get sheltered. But their boat mistakenly arrived at the river Betna, due to storm.

On the following day at about 02:30 A.M they faced attack launched by Razakars led by Razakar commander Isaque near the Razakar camp at Budhata Ferry in Ashashuni Police Station. The Razakars at a stage got the six naval commandos detained and took them away to Budhhata Razakar camp where they were subjected to torture.

On the following day i.e. on 18.8.1971 at about 08:00 A.M the accused (1) Md. Abdul Khalek, Razakar committee organizer, (2) Razakar commander M. Abdullah-Al Baki, (3) Razakar Khan Rokunuzzaman and (4) Zahirul Islam @ Zahurul Haque @ Tekka Khan being accompanied 10/12 Razakars coming to Budhhata Razakar camp took away 02 injured naval commandos Aftab Uddin and Sirajul Islam to the bank of the river Betna, on direction of the accused Md. Abdul Khalek where the accused M. Abdullah-Al Baki and accused Khan Rokunuzzaman shot them to death.

On the same day at about 04:00 P.M the 04 other naval commandos and 03 other civilians detained at the Razakar camp were taken to 'Diamond Hotel' at Boro Bazar, Satkhira town which was known as 'torture center' where the detainees were subjected to torture in the name of grilling.

On 25 August, 1971 on order of the accused Md. Abdul Khalek 02 detainees Md. Imam Bari and Mujibur Rahman were shifted to the camp of Pakistani occupation army set up at Chachra Morh, Jessore and the accused Md. Abdul Khalek also ordered to send 02 other detainees Md. Khalilur Rahman and Imdadul Haque Sardar to Satkhira Thana custody and later on they were taken back to the army camp at Chachra turn[morh], Jessore where the 04 naval commandos along with 17/18 civilians were subjected to brutal torture in protracted captivity . Finally, on 17 September, 1971 the 04 detained victims managed to flee from the army camp and participated in the war of liberation.

Therefore , the accused (1) Md. Abdul Khalek @ Abdul Khalek Mondol, (2) Md. Abdullah-Al-Baki @ Abdullahel Baki, (3) Khan Rokunuzzaman @ Rokunuzzaman [absconded] and (4) Zahirul Islam @ Zahurul Haque[absconded] have been hereby charged for actively participating, facilitating, abetting and substantially contributing to the commission of the offences of '**abduction**', '**confinement**', '**torture**' and '**murder**' 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

64. In order to substantiate the arraignments brought in this charge prosecution relied upon three witnesses i.e. P.W.01, P.W.02 and P.W.03. Of them P.W.01 is a survived victim who was forcibly captured along with his five unarmed naval co-commandos of whom two were gunned down to death. Two other witnesses are hearsay witnesses. Before we proceed weighing their testimony let us see what they have narrated before Tribunal.

65. P.W.01 Md. Imam Bari (66) is a resident of village-Katia under Police Station-Satkhira of District Satkhira. He is a naval commando who fought for independence of Bangladesh. Before narrating the event arraigned he, at the outset, narrated how and when he moved to India for receiving training to join the war of liberation. He is a survived victim who experienced the brutal atrocities arraigned in charge no.01.

66. P.W.01 stated that he received training as a naval commando till 01 August, 1971 at Palashi camp in Murshidabad. Thereafter, on 15 August (1971), he along with 40 other naval commandos were sent to conduct an operation (famous as 'operation jackpot') directing ships anchored at Mongla port in Bangladesh. By launching the operation they mined out 8 ships which got devastated. After conducting the operation they returned back to their temporary camp at Sutarkhali nearer to Mongla port. There from on 16 August, after dawn they being divided into groups started going back to their base camp at Palashi, by boats.

67. P.W.01 next stated that he was accompanied by co-freedom-fighters naval commandos Sheikh Mohsin Ali, Mujibur Rahman, Khalilur Rahman, Imdadul Haque, Aftab Uddin and Serajul Islam. In the night of 17 August their boat had to face heavy storm and with this the boatman then wrongly entered in Betna River, instead of Isamoti River. Their boat was crossing through the front of Razakar camp of Budhhata under Ashashuni police station when indiscriminate gun firing was started directing them from the end of Razakar camp. With this his (P.W.01) companion naval commando

Sheikh Mohsin Ali managed to escape by jumping into the river. Naval commando Aftab Uddin and Serajul Islam got injured by such gun firing. On that day, in early morning at 05:00 A.M Razakars of Budhhata camp got them captured and took them to the camp where they were subjected to torture.

68. What happened next? P.W.01 stated that on having information about their capture, a group formed of Razakar commander Abdul Khalek Mondol, Abdullahel Baki, Rokunuzzaman Khan, Zahirul Islam @ Tekka Khan and their 15/16 accomplice Razakars came to Budhhata Razakar camp and increased the degree of causing torture upon them (detainees). His (P.W.01) fingers of both hands were scrapped by beating with hammer and they started pulling him on the road tying up with a vehicle [at this stage the P.W.01 breaks into tears, exhibiting his broken fingers]

69. Next, P.W.01 narrated how his two unarmed co-freedom-fighters were liquidated by gun shot. P.W.01 testified that on 18 August, 1971 at 08:00 A.M on instruction of Razakar commander Abdul Khalek Mondol Razakars Abdullahel Baki, Rokunuzzaman Khan and their accomplices taking the

detained naval commandos Aftab Uddin and Serajul Islam to the ferrying place of the river nearer to the Razakar camp made them stand. Then Razakar commander Abdul Khalek Mondol ordered Razakars Abdullah Al Baki, Rokunuzzaman Khan to shoot them to death. At that time he (P.W.01) was made compelled to see it by opening the window of the room where they were kept detained. He [P.W.01] saw Razakar Abdullah Al Baki gunning down naval commando Aftab Uddin to death and Rokunuzzaman Khan gunning down naval commando Serajul Islam to death. At that time bullet hit Serajul Islam screamed to have water to drink, but Razakar Zahirul Islam @ Tekka Khan released urine to his mouth and Serajul Islam eventually died.

70. What fate the four other detainees had to embrace? In this respect P.W.01 stated that on 18 August at about 11:00 A.M they the four detainees were made shifted to the torture cell and Razakar camp set up at Diamond Hotel, Satkhira where they were subjected to inhumane torture in protracted captivity by Razakar Commander Abdul Khalek Mondol, Razakars Abdullah Al Baki, Rokunuzzaman Khan, Zahirul Islam @ Tikka Khan and their accomplice Razakars.

Freedom-fighter Kamar Uddin and 10/12 civilians were also kept detained with them. On 19 August, 1971 in morning Photo studio owner Malik Amjad Hossain was called to the camp for their photo shoot. One of pictures was preserved with his co-naval commando Khalilur Rahman (now dead) and the investigation officer collected it from him. P.W.01 proved the said photo which has been marked as **Exhibit-01(Prosecution Documents Volume page- 306)**. The I.O (P.W.17) has corroborated the seizure of this document on collection from P.W.01.

71. They and the Razakars have been marked in the said picture, P.W.01 stated. Causing torture to them continued till 25 August and then they were handed over to Pakistani army by Razakar commander Abdul Khalek Mondol and Razakar Abdullahel Baki. He (P.W.01) and his co-freedom fighter Mujibur Rahman were taken to Pakistani army camp at Chachra in Jashore. Later on, he knew that his co-freedom-fighters Khalilur Rahman and Imdadul Haque were handed over to Satkhira Sadar police station.

72. Finally, P.W.01 narrated how he and his three other co-freedom-fighters, the naval commandos managed to escape

from captivity. P.W.01 stated that from 25 August to 02 September, during their captivity the Pakistani army used to take him and Mujibur Rahman to Jashore cantonment daily where they used to grilling them with torture till they were taken back at Chachra army camp. On 02 September 1971 detained naval commandos Khalilur Rahman and Imdadul Haque also were taken back to Chachra army camp from Satkhira Sadar police station. They four along with other detainees were kept detained at Chachra army camp. On 16 September 1971 theythe four detained naval commandos managed to escape strategically from Chachra army camp and arrived at naval commando's camp at Paikgacha and again joined the war of liberation.

73. In respect of reason of knowing the accused persons P.W.01 stated that accused Abdullah Al Baki was a leader of Muslim League, accused Rokunuzzaman Khan and he (P.W.01) used to study at the same government high school, accused Abdul Khalek Mondol was the principal of Alia Madrasa and thus he (P.W.01) knew them beforehand. P.W.01 stated that after their detention he came to know the identity of accused Razakar Zahirul Islam @ Tekka Khan.

74. In cross-examination done on behalf of accused Abdullah Baki P.W.01 in reply to defence question put to him stated that he could not say what was the post of Abdullah Al Baki in Muslim League, but he used to move along with potential leaders; that accused Abdullah Al Baki was not present when they were captured by Razakars.

75. P.W.01 denied the defence suggestions put to him that he did not know this accused; that this accused was in favour of the war of liberation and used to save the freedom-fighters; that freedom-fighters Aftab Uddin and Serajul Islam died in front fight when they the freedom-fighters had attacked the Budhhata Razakar camp. Defence suggested to P.W.01 that what he testified implicating this accused was untrue. P.W.01 denied it.

76. In cross-examination on part of accused Abdul Khalek Mondol P.W.01 stated in reply to defence question put to him that he did not initiate any case against this accused after independence; that they started moving toward Palashi base camp in India after the operation they conducted in Mongla port; that Razakar commander Isahak had been at Budhhata Razakar camp at the time of the event he narrated. P.W.01

denied defence suggestions that this accused was not Razakar commander and was not involved with the event alleged and that what he testified implicating this accused was untrue and out of political rivalry.

77. In cross-examination on part of absconding accused Rokunuzzaman and Zahirul Islam @ Tekka Khan, the above cross-examination has been adopted. P.W.01 in reply to defence question put to him stated that accused Rokunuzzaman and Zahirul Islam @ Tekka Khan remained in absconsion till 1975 and afterward they returned back. P.W.01 denied defence suggestions that he did not know these accused and that these accused were not involved with the event alleged.

78. P.W.02 S M Moniruzzaman (40) is the son of one victim late Imdadul Haque (naval commando). He is a hearsay witness. He heard the event arraigned from his father. P.W.02 stated that his father along with other freedom-fighters received naval commando training at Palashi in India in 1971 to join the war of liberation. Naval commandos Imam Bari, Khalilur Rahman, Serajul Islam, Aftab Uddin, Mujibur and Mohsin also received the training along with his father.

79. Next P.W.02 stated that 40 naval commandos along with his father were assigned to conduct an operation at Mongla port on 16 August 1971 and they devastated eight ships anchored at Mongla port by exploding mines. Then they returned back to their temporary camp at Sutarkhali and there from they started toward India by boats. But their boats wrongly entered into Betna River adjacent to Budhhata Bazar. Then Razakars of Budhhata camp on seeing them started indiscriminate gun firing directing them. With this naval commando Mohsin jumped into the river and naval commandos Aftab Uddin and Serajul Islam sustained bullet injuries. On 18 August in early morning Razakars took away six naval commandos including his father, on capture to Budhhata Razakar camp where they were inhumanly subjected to torture.

80. P.W.02 also stated that on getting information about detaining the naval commandos at about 08:00 A.M , on 18 August accused Razakars Abdul Khalek Mondol, Abdullahel Baki, Rokunuzzaman Khan, Zahurul Haque and their accomplices came to Budhhata Razakar camp and increased the degree of torture to the detainees. They (Razakars) started

dragging the detained naval commandos on the Bazar road tying them up with pickup vehicle and then took them back to the camp.

81. P.W.02 stated that accused Razakars Abdul Khalek Mondol, Abdullahel Baki, Rokunuzzaman and Zahurul Haque then ordered to gun down the detained naval commandos Aftab Uddin and Serajul Islam to death, taking them on the bank of the river Betna and forced the four other detainees including his (P.W.02) father to see the killing scene through the window. His (P.W.02) father and other detained naval commandos saw the accused Razakar Roknuzzaman and Razakar Abdullahel Baki gunning down Serajul Islam and Aftab Uddin to death.

82. P.W.02 continued stating that on 18 August in evening at 04:00 P.M his father (Imdadul Haque) and three other detained naval commandos were shifted to torture cell and Razakar camp at Diamond hotel in Satkhira Sadar where they were subjected to untold torture. On 21 August on order of accused Abdul Khalek Mondol a picture of detained naval commandos along with Razakars was taken. He (P.W.02) had

occasion of seeing that picture kept preserved by his father and naval commando Khalilur Rahman.

83. In cross-examination, P.W.02 denied the defence suggestion put to him that what he testified implicating the accused persons was untrue and tutored; that the accused persons were not Razakars and did not get involved with the event alleged.

84. P.W.03 Md. Zahirul Islam (61) happens to be the brother of one victim naval commando Serajul Islam. He is a hearsay witness. He stated that his brother Serajul Islam along with Imam Bari (P.W.01) and some other moved to India to join the war of liberation. He (P.W.03) heard it from his sister's husband Ayub Ali. On 18 August 1971 in the night Imam Bari's(P.W.01) father Atiar Rahman (now dead) came to their house and informed that in the night of 17 August 1971 when naval commandos Serajul Islam, Aftab Uddin, Imam Bari, Imdadul Haque, Khalilur Rahman and Mujibur Rahman were on move by boat his (P.W.03) brother Serajul Islam and Aftab Uddin got injured with gun firing by the Razakars from Budhhata Razakar camp Razakar commander Isahaque (now dead) of Budhhata Razakar camp with the

assistance of accomplice Razakars got the six naval commandos and took them away to Budhhata Razakar camp where they were subjected to inhumane torture.

85. P.W.03 next stated that on 16 August, 1971 in morning at 08:00 A.M organizer of Razakars Abdul Khalek Mondol, Razakars Rokunuzzaman, Abdullahel Baki (died during trial), Zahirul Islam and their 8/10 accomplices came to Budhhata Razakar camp. Then Razakar Abdul Khalek Mondol ordered to liquidate his (P.W.03) injured brother Serajul Islam and injured Aftab Uddin. With this Razakar Abdullahel Baki, Razakar Rokunuzzaman, Razakar Zahirul Islam, Razakar Isahaque took them on the bank of the river Betna where they were shot to death by Razakars Abdullahil Baki and Roknuzzaman. The four other detained naval commandos were forced to see this event of killing through the window (of the room where they were kept detained).

86. P.W.03 stated further that Atiar Rahman the father of naval commando Imam Bari (P.W.01) coming to their home described this event to them. On hearing the event, on the following morning he and his brother Azharul Islam moved

toward 'kheya ghat' nearer the Budhhata Razakar camp where they found some dead bodies lying there , but they did not have trace of his brother Serajul Islam's dead body and they returned back home. After independence they heard the event in detail from naval commando Imam Bari.

87. In cross-examination, P.W.03 stated in reply to defence question put to him that their home is about 300/400 yards far from the home of Imam Bari (P.W.01); that Budhhata Razakar camp was located nearer to Budhhata ferrying place (kheya ghat) of the river Betna; that Budhhata Razakar camp was about 7/8 kilometers far from their home; that he saw 2/3 corpses lying near Budhhata kheya ghat.

88. In cross-examination, P.W.03 denied the defence suggestion that accused Abdullahel Baki joined in Razakar Bahini to save the freedom-fighters and civilians of the locality and that what he testified implicating accused Abdullahel Baki was untrue and he did not hear the event alleged.

89. In cross-examination done on part of accused Abdul Khalek Mondol P.W.03 stated in reply to defence question

that no case was initiated over the event of killing his brother Serajul Islam, after independence; that he could not say whose dead bodies he found lying at Budhhata ferrying place (kheya ghat). P.W.03 denied the defence suggestions that the accused Abdul Khalek Mondol, Rokunuzzaman and Zahirul Islam @ Tekka Khan were not Razakars and they had no affiliation with the event alleged and that what he testified was untrue and tutored.

Finding with Reasoning on Evaluation of Evidence

90. The event arraigned in this charge happened in phases. Victims first got captured by Razakars of Budhhata Razakar camp when they, the naval commandos after conducting operation (operation jackpot) in Mongla port were on move back to their destination, charge framed alleges. Afterward, the accused persons indicted allegedly participated in accomplishing the killing two captured wounded naval commandos, in forcibly taking away four detained naval commandos to Razakar camp set up in Diamond Hotel in Satkhira town and few days later the detainees were handed over to Pakistani army.

91. Prosecution relied upon 03 witnesses to substantiate this charge. Of them P.W.01 Imam Bari is a survived victim. P.W.02 and P.W.3 are hearsay witnesses.

92. Ms. Rezia Sultana Begum, the learned prosecutor argued that P.W.01 a survived victim is the key witness who narrated how the phases of event happened and how the accused persons indicted participated in committing the offences of killing, abduction, confinement and torture. Defence could not impeach his testimony. The learned prosecutor further submits that as soon as the naval commandos got captured by Razakar of Budhata Razakar camp they became horse de combat and thus the criminal acts conducted were directed against civilians.

93. The learned prosecutor also submits that the accused persons had played active and culpable role in killing two wounded detained naval commandos and the rest four detained naval commandos were taken away to Satkhira Razakar camp in brutal manner; that the accused persons had dominance in Satkhira Razakar camp and thus they had conscious concern and support in respect of causing inhumane torture to detainees in captivity. The two hearsay

witnesses' version cannot be kept aside. Their testimony gets corroboration from P.W.01, a survived victim. Of four accused persons indicted in this charge two Abdullahel Baki and Zahirul Islam @ Tekka Khan died after closure of examination of prosecution and defence witnesses. But prosecution has been able to prove participation of all the four accused indicted beyond reasonable doubt, the learned prosecutor added.

94. On contrary, Mr. Abdus Sobhan Tarafder the learned counsel defending the accused Abdul Khalek Mondol argued that the fortnightly report relied upon by prosecution itself goes to show that two naval commandos died in battle and thus the event of killing two wounded naval commandos on order of accused Abdul Khalek Mondol stands untrue; that this accused has been implicated falsely with an untrue event out of political rivalry; that hearsay testimony of witnesses does not have evidentiary value.; that this accused had no concern and affiliation with the Razakar camp set up at Diamond Hotel in Satkhira town and the Chachra army camp, as alleged.

95. Mr. Gaji M.H Tamim, the learned state defence counsel, defending the absconding accused Rokunuzzaman echoing the submission advanced by Mr. Abdus Sobhan Tarafder argued that no such event as arraigned in this charge happened; that this accused had no involvement with the alleged event in any manner; that this accused did not belong Razakar Bahini; that the testimony of witnesses does not carry any degree of credence.

96. We require seeing first as to how far the prosecution has been able to prove the commission of the offences alleged. Then it is to be unearthed whether the accused persons indicted forming part of the group or criminal enterprise allegedly accomplished the killing of two non-combatant naval commandos and finally it is to be seen whether the accused persons had participation and substantial contribution in keeping the four non-combatant naval commandos, first at Razakar camp and next at army camp. It is also to be resolved whether the criminal acts were carried out with intent to further the framework of common plan and policy. Finally, it is to be seen how the accused had acted to further the plan and design in accomplishing the crimes in question.

97. Now, let us proceed to arrive at finding on rationale evaluation of evidence adduced. P.W.01 is a survived victim. He was a naval commando [freedom-fighter]. It is not disputed. Ocular testimony of P.W.01 demonstrates that after conducting an operation[operation jackpot] by detonating eight foreign ships in Mongla port a group of naval commandos was on move by boat towards Ashashuni Police Station under District-Satkhira [former Sub-Division] to get sheltered.

98. Conducting operation at Mongla port by the naval commandos as narrated by P.W.01 has been affirmed as P.W.01 stated in cross-examination in reply to defence question that they started moving toward Palashi base camp in India after the operation they conducted in Mongla port.

99. But it transpires that on the following day at about 02:30 A.M they the group faced attack launched by Razakars when their boat was crossing through the front of Razakar camp of Budhhata under Ashashuni police station and indiscriminate gun firing was started directing them from the end of Razakar camp. With this his (P.W.01) companion naval commando

Sheikh Mohsin Ali managed to escape by jumping into the river. But naval commando Aftab Uddin and Serajul Islam got injured by such gun firing.

100. What happened next? Ocular testimony of P.W.01 depicts that on that day, in early morning at 05:00 A.M Razakars of Budhhata camp got them captured and took them to the camp where they were subjected to torture. In cross-examination of P.W.01 it seems to have been affirmed that the naval commandos were captured by Razakars of Budhhata Razakar camp.

101. Thus, it stands proved that six naval commandos including P.W.01 were apprehended in front of Budhhata Razakar camp by Razakars and the attack launched directing them eventually resulted in capture of six naval commandos of whom **Aftab Uddin and Serajul Islam** got wounded. Presumably, due to attack they sustained such severe physical injuries. As soon as the six naval commandos got captured their status became *hors de combat* and they should have been treated according to international humanitarian law and the laws of war. But they were subjected to torture in captivity which was gravely detrimental to human rights, it

stands proved from unimpeached version of P.W.01, one survived victim.

102. The aggression and attack did not come to cessation merely with the capture of six naval commandos. What happened next to their unlawful detention on such capture? It appears from ocular testimony of P.W.01, one survived victim that on having information about their capture a group formed of Razakar commander Abdul Khalek Mondol, Abdullahel Baki[now dead] , Rokunuzzaman Khan, Zahirul Islam @ Tikka Khan [now dead] and their 15/16 accomplice Razakars came to Budhhata Razakar camp and increased the degree of causing torture upon them (detainees).

103. His (P.W.01) fingers of both hands were scrapped by beating with hammer and they started pulling him on the road tying up with a vehicle [at this stage the P.W.01 breaks into tears, exhibiting his broken fingers]. Demeanor of P.W.01 with such emotional recall of the barbaric event indeed makes his narrative quite credible.

104. In respect of reason of knowing the accused persons P.W.01 stated that accused Abdullahel Baki [now dead] was a

leader of Muslim League, accused Rokunuzzaman and he (P.W.01) used to study at the same government high school, accused Abdul Khalek Mondol was the principal of Alia Madrasa and thus he (P.W.01) knew them beforehand. Defence could not refute this version in any manner. Thus, the reason assigned by P.W.01 of recognizing the accused persons seems to be rationale. Be that as it may, it was quite natural of recognizing the accused persons at Budhhata Razakar camp and experiencing the criminal activities carried out by them.

105. Why the accused persons indicted appeared at Budhhata Razakar camp immediate after detention of six naval commandos on capture? Intention was not pious. Rather, the group had designed plan to take away the detained victims to Razakar camp at Satkhira town. It also impels that the accused persons had dominant affiliation with Razakar Bahini of Satkhira. Facts and circumstances together with the accused persons' proved dominance and culpable affiliation with the Razakar camp set up at Diamond hotel in Satkhira town lead to conclude it unmistakably that they being informed of detaining the six non-combatants naval commandos arrived there to decide their (detainees) fate.

106. The P.W.01 narrated how two unarmed naval commandos (co-freedom-fighters) were liquidated by gun shot. P.W.01 testified that on 18 August, 1971 at 08:00 A.M on instruction of Razakar commander Abdul Khalek Mondol Razakars Abdullahel Baki, **Rokunuzzaman Khan** and their accomplices taking the detained naval commandos Aftab Uddin and Serajul Islam to the ferrying place of the river nearer to the Budhhata Razakar camp made them stood there. Then Razakar commander **Abdul Khalek Mondol ordered** Razakars Abdullahel Baki, Rokunuzzaman Khan to gun them to death.

107. It appears that at that time he (P.W.01) was made compelled to see it by opening the window of the room where they were kept detained. He [P.W.01] saw Razakar Abdullahel Baki gunning down naval commando Aftab Uddin to death and **Rokunuzzaman Khan** gunning down naval commando Serajul Islam to death. At that time bullet hit Serajul Islam screamed to have water to drink, but Razakar Zahirul Islam @ Tikka Khan released urine to his mouth and Serajul Islam eventually died.

108. Defence could not controvert the above crucial ocular version of P.W.01 who had occasion of seeing the act of brutal killing. Thus, it stands proved from unimpeached ocular testimony of P.W.01 that the killing of two severely injured detained non-combatant naval commandos was conducted on order and tacit instigation of accused Abdul Khalek Mondol and being ordered accused Abdullahel Baki[now dead] and Rokunuzzaman Khan gunned them down to death.

109. Therefore, it has been found proved that the accused persons indicted in this charge had played active , aggressive and culpable role at this phase of the event and thereby they ‘participated’ in committing the killing of two detained wounded non-combatant naval commandos.

110. Mr. Abdus Sobhan Tarafder, the learned defence counsel argued that these two naval commandos died in front battle and thus no offence alleged was committed. The learned defence counsel drew attention to the information contained in the fortnightly report relied upon by prosecution submitted that these two naval commandos died in battle.

111. We have perused the fortnightly report. It contains the mere information of killing or death of two naval commandos. It does not state in detail the phase of killing of these two non-combatant freedom-fighters. We deduce that the battle with Budhhata Razakar camp's Razakars was ended in capture of these two naval commandos and with this the status of the detainees was transformed to *hors de combat*. Presumably, they got injured during the phase of the 'attack' which is called battle by the defence. In absence of detailed information in the fortnightly report we deduce based on unimpeached ocular evidence of P.W.01, one survived victim that these two detained naval commandos were shot to death in the manner as narrated by P.W.01.

112. On appraisal of narrative made by P.W.01 it may be justifiably inferred that the accused persons appeared at Budhhata Razakar camp to take away the detained non-combatant naval commandos to Satkhira main Razakar camp set up at Diamond Hotel. In effecting this plan the accused persons instead of taking away the two wounded detainees opted to annihilate them and eventually it happened and in most barbaric manner on active participation of all the four

accused persons indicted. However, of four two accused Abdullahel Baki and Zahirul Islam @ Tekka Khan died during trial and thus proceeding so far as it related to them stood abated.

113. It has been divulged from unimpeached testimony of P.W.01, one survived victim that he and other detainees were subjected to inhumane torture in captivity at Diamond hotel Razakar camp till 25 August 1971. Then Razakar commander Abdul Khalek Mondol and Razakar Abdullahel Baki handed him (P.W.01) and his co-freedom fighter Mujibur Rahman to Pakistani army who took them away to the camp at Chachra in Jashore. Later on, he (P.W.01) knew that two other detained co-freedom-fighters Khalilur Rahman and Imdadul Haque were handed over to Satkhira Sadar police station.

114. The above version leads to conclude that the accused Abdul Khalek Mondol did not keep him distanced even from acting to keep the captured unarmed naval commandos detained at the camp at Diamond Hotel in Satkhira and in causing torture to them in captivity. After protracted captivity at this camp the two detainees including P.W.01 were handed over to the Pakistani occupation army. It impels that the

accused Abdul Khalek Mondol had conscious, close and culpable nexus with the Pakistani army and he used to carry out unlawful activities directing pro-liberation civilians to further policy and plan of the Pakistani occupation army.

115. From testimony of P.W.01 it has been depicted that from **25 August to 02 September**, during their captivity at Satkhira Razakar camp the Pakistani army used to take him and Mujibur Rahman to Jashore cantonment daily where they used to quiz them with torture till they were taken back at Chachra army camp. Such unlawful act of torture committed on active facilitation of accused Abdul Khalek Mondol. Obviously such inhumane and degrading treatment inflicted to victims in captivity under coercion and intimidation caused severe pain and sufferings which were in violation of customary international law.

116. Defence could not controvert the above piece of version made by P.W.01 which relate to the phase of causing torture to detained victims in captivity. Knowing consequence of the act of handing over these two detainees to Pakistani army done by the accused Abdul Khalek Mondol thus explicitly facilitated the recurrent torture to the detainees in the name of

quizzing them. Facts unveiled impel the conclusion that the accused persons had tacit endorsement and conscious concern with such unlawful acts. The accused Abdul Khalek Mondol cannot thus evade responsibility of such brutal wrong doings done to the detainees, taking them at army camp.

117. What happened in respect of two other detainees? It stands proved from uncontroverted evidence of P.W.01 that on 02 September 1971 two detained naval commandos Khalilur Rahman and Imdadul Haque also were taken back to Chachra army camp from Satkhira Sadar police station. That is to say, eventually four detained naval commandos were kept in captivity at Chachra army camp.

118. It also transpires that few days later on 16 September 1971 they the four detained naval commandos managed to escape strategically from Chachra army camp and arrived at naval commando's camp at Paikgacha and joined the war of liberation. In this way the event arraigned ended. Defence could not refute it.

119. Based on evidence as discussed above it stands proved that out of seven naval commandos including P.W.01, one

managed to flee at the time of attack launched by the Razakars of Budhhata Razakar camp; that two wounded detained unarmed naval commandos were shot to death on active participation and aggressive instigation and order of accused Abdul Khalek Mondol and Rokunuzzaman Khan. At this phase of the event two other accused also actively participated in committing the killing. But already these two accused died during trial.

120. It stands proved that on active participation of accused Abdul Khalek Mondol and Rokunuzzaman Khan the rest four detained naval commandos were first kept detained at Razakar camp set up at Diamond Hotel in Satkhira town and then to army camp at Chachra, Jashore wherefrom eventually the detainees managed to escape.

121. The accused persons not only participated in effecting the killing two wounded detainees and in keeping four unarmed naval commandos detained at Satkhira Razakar camp which was in fact a torture cell but they incurred liability also for confinement of four unarmed naval commandos and causing recurrent torture to them in

protracted captivity, first at Razakar camp and then at army camp.

122. The learned defence counsel for accused Abdul Khalek Mondol argued that two naval commandos died in battle; that accused Abdul Khalek Mondol was not involved with the alleged event and the P.W.01 had no reason of knowing and recognizing the accused.

123. But we find even no indication as to truthfulness of any of such defence plea contended. Rather, accused persons' culpable involvement has been unveiled from unimpeached account made by P.W.01. Mere denial or suggestion put to him in cross-examination does not diminish what is stated by this witness.

124. It transpires from unshaken testimony of P.W.01 that accused Abdullah Al Baki was a leader of Muslim League, accused Rokunuzzaman Khan and he (P.W.01) used to study at the same government high school and accused Abdul Khalek Mondol was the principal of Alia Madrasa. That is why naturally P.W.01 knew them beforehand and could

identify them participating in accomplishing the attack of which they were active part. It also reveals that during protracted captivity at Razakar camp P.W.01 came to know the identity of accused Razakar Zahirul Islam @ Tekka Khan.

125. P.W.02 S M Moniruzzaman (40) is the son of one victim late Imdadul Haque (naval commando), one survived victim. He is a hearsay witness. He heard the event arraigned from his father. He narrated how the two detained wounded naval commandos were shot to death and how his father and other detainees were forced to see this brutal event of annihilation. Source of hearsay evidence of P.W.02 does not seem to be anonymous. He heard the barbaric event from his father, one survived victim and what he narrated gets corroboration from ocular testimony of P.W.01, one survived victim.

126. P.W.03 is another hearsay witness. He is the brother of one victim naval commando Serajul Islam. He heard the horrendous event from the father of naval commando Imam Bari (P.W.01). On hearing the event he (P.W.03) moved toward 'kheya ghat' nearer the Budhhata Razakar camp where they found some dead bodies lying there , but they did

not have trace of his brother Serajul Islam's dead body and they returned back home.

127. Existence of Razakar camp at Budhhata where the pro-liberation civilians were subjected to annihilation has been found affirmed in cross-examination of P.W.03. It appears that in cross-examination, in reply to defence question P.W.03 stated that Budhhata Razakar camp was located nearer to Budhhata ferrying place (kheya ghat) of the river Betna; that Budhhata Razakar camp was about 7/8 kilometers far from their home; that he saw 2/3 corpses lying near Budhhata kheya ghat.

128. Affirming the fact of seeing 2/3 corpses lying near Budhhata Kheya ghat lend assurance of existence of Razakar camp at Budhhata where Razakars were engaged in annihilating unarmed civilians. Thus, in this way it has been affirmed that in 1971 there had been a Razakar camp set up at the place nearer ferrying place (kheya ghat) of the river Betna; and the Razakars affiliated with this camp used to liquidate the pro-liberation civilians.

129. Hearsay evidence of P.W.03 on material facts chained to the event inspires credence of judicial mind and it gets corroboration from the ocular narrative made by P.W.01, one survived victim.

130. It has been affirmed too in cross-examination of P.W.03 that accused Abdullah Al Baki [already died after closure of evidence] joined in Razakar Bahini. However, defence made a futile attempt to negate his culpable role by suggesting that this accused used to save the freedom-fighters and civilians of the locality. Son of this accused also testified in Tribunal as D.W.01 to substantiate this claim. But such futile effort does not carry any degree of value at all. There is nothing before us which can speak that this accused actually sided with the war of liberation despite being enrolled in Razakar Bahini.

131. In cross-examination P.W.03 admitted that no case was initiated over the event of killing his brother Serajul Islam, after independence. We reiterate that mere non initiation of case over the event of killing immediate after independence does not make the event untrue. Rather, the event of killing seems to have been affirmed in cross-examination. Also delay does not create any clog in prosecuting the perpetrators

for the horrific event of killing constituting the offence of crimes against humanity, committed in violation of international humanitarian law. It is now well settled.

132. It has been proved beyond reasonable doubt that six naval commandos including two wounded naval commandos were *hors de combat* when they got captured by Razakars of Budhhata Razakar camp. They were thus supposed to be treated in line with the norms of international humanitarian law. As soon as they were captured the victims were not in combat. But the Razakars of Budhhata camp in violation of international humanitarian law started causing them torture. Presumably, next on getting information of capturing the *hors de combat* naval commandos the accused persons almost instantly arrived at Budhhata Razakar camp to get the captured non combatant commandos under their own control, seemingly being imbued by the policy and plan of Pakistani occupation army.

133. The accused persons indicted had nexus with the Razakar camp at Diamond Hotel in Satkhira town where the four unarmed naval commandos were kept unlawfully confined and were subjected to torture. Facts unveiled force

us to deduce it unerringly. Not only that, the accused persons particularly the accused Abdul Khalek Mondol used to keep culpable affiliation even with the Pakistani army, it stands proved. The act of handing over two detainees to the Pakistani army by the accused Abdul Khalek Mondol leads to this conclusion. Two other detainees who were first handed over to police station were also later brought to the army camp. In this way accused Abdul Khalek Mondol was concerned in facilitating the act of torture to detainees, even without physical presence at the army camp.

134. It is found proved that act of inflicting torture to detained victims both at Razakar camp and at army camp was done on approval and encouragement of accused Abdul Khalek Mondol. Intentional inhumane treatment inflicted to victims keeping them in confinement first at Satkhira Razakar camp and next at Chachra army camp indisputably caused serious mental harm and physical suffering or injury to victims which constituted a serious attack on human dignity. The accused Abdul Khalek Mondol and Rokunuzzaman Khan persons incurred criminal liability of committing such prohibited acts.

135. Out of four accused indicted in this charge i.e. accused Abdullah Al Baki and Zahirul Islam @ Tekka Khan died after closure of prosecution evidence and since the proceeding so far as it related to them stood abated we are going to render finding as to guilt of the two other accused, i.e. accused Abdul Khalek Mondol and accused Rokunuzzaman Khan who have been indicted in this charge.

136. On cumulative evaluation of evidence we arrive at decision that the phases of attack happened in context of the 1971 war of liberation. The context itself proves that the attack directing the non-combatant naval commandos was 'systematic attack' indeed. Unlawful acts and wrong doings directing civilian population i.e. *hors de combat* naval commandos constituted the offence of crimes against humanity and the offences were obviously a part of 'systematic attack'.

137. Further, we reiterate that even a single act comprises a crime against humanity when it happens in context of war. In the case in hand, the acts and conduct of the accused persons were not isolated. Those were intended to further the policy and plan of the Pakistani occupation army. Facts and

circumstances suggest the conclusion that the accused persons being dominant members of Satkhira Razakar Bahini knowingly and actively collaborated with the Pakistani army in causing inhumane torture to the four detainees in protracted captivity. The act of handing the detainees to army itself is sufficient to deduce that such unlawful act of accused persons constituted the offence of 'confinement' and torture' as crimes against humanity.

138. It is the historical truth that in 1971 the Pakistani government and the military formed auxiliary forces such as Razakars, Al-Badar, Al-Shams, peace committee etc. aimed to collaborate with the Pakistani occupation army. In this way the members of these *para militia* a auxiliary forces became part of the criminal enterprise. Object of forming such auxiliary forces was to identify and eliminating those who were perceived to be pro-liberation civilians and the people belonging to religious and intellectual group.

139. In addition to participation in committing killing of two wounded unarmed naval commandos in front of Budhhata Razakar camp the accused persons also actively participated in taking away the four unarmed detained naval commandos

from Budhhata to the Razakar camp at Diamond Hotel in Satkhira. Defence could not refute that the detainees were subjected to torture in captivity at this concentration camp for days together. Obviously all these unlawful acts happened within knowledge and on explicit approval of the accused persons.

140. It stands proved too that the accused persons next aided, abetted and facilitated the confinement of those four detainees at the Chachra army camp where they were subjected to torment in the name of quizzing. We are convinced to deduce that the accused persons also participated in committing criminal acts of this phase intending to advance the goals of the criminal enterprise, as co-perpetrators. It may be presumed that the accused persons to further policy and plan had acted in handing over the four detainees to the Chachra army camp.

141. It is true that the accused persons are not found to have had presence at the army camp when the detainees were subjected to recurrent torture, in the name of grilling them. But accused persons had played deliberate role in handing over the four detainees to army and police which rather

demonstrates that the accused persons carried out an act of substantial practical assistance, encouragement and moral support to the principal offender in causing torture to the detainees in captivity at the Chachra army camp.

142. Such act of accused had substantial effect in committing the act of brutal torture in captivity at Chachra army camp. “It is not necessary for the person providing assistance to be present during the commission of the crime.”[**Nahimana, Barayagwiza and Ngeze, (Appeals Chamber), November 28, 2007, para. 482**]. Further, in this regard we may also eye on the observation of ICTR Trial Chamber in the case of Kamuhanda which is as below:

“Such acts of assistance need not have actually caused the consummation of the crime by the actual perpetrator, but must have had a substantial effect on the commission of the crime by the actual perpetrator.”

[**Kamuhanda, (Trial Chamber), January 22, 2004, para. 597**]

143. It may be justifiably inferred that such conscious and culpable conduct of accused persons amounted to approval and encouragement in accomplishing the offences of confinement and torture of detained victims. In this way they aided and facilitated the commission of these prohibited acts constituting the offence of 'confinement' and 'torture' as crimes against humanity.

144. The accused persons thus had conscious concern and facilitation even with the unlawful confinement and torture conducted even at the army camp. Why the army had to borrow aid and assistance from local collaborators in carrying out such criminal act of causing torture to unarmed civilians in captivity at army camp? History says that the local Bengali collaborators, people belonging to pro-Pakistan ideology had acted as aide-de-camp of the army.

145. In addition to culpable acts presence of accused persons at the first crime site i.e. Budhata Razakar camp, their active concern and affiliation also with Satkhira Razakar camp are cumulatively a patent manifestation of their part to 'collective criminality' and indeed it proves their 'participation' to the commission of the crimes committed in phases including the

annihilation of two wounded non combatant naval commandos.

146. Victims were non combatant as soon as they got detained or captured by conducting attack against them. Two of captured victims were wounded. Thus, they too were protected civilians. 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]

147. But the manner of perpetrating the killing of two wounded unarmed naval commandos as has been found demonstrates that the accused persons had acted in beastly manner in accomplishing the killing violating norms of war and international humanitarian law. The killing of two wounded naval commandos placed *hors de combat* was not an isolated event, but rather committed as part of a widespread or systematic attack which the attackers were

aware of and thus it constitute the act of murder as a crime against humanity. It is now jurisprudentially settled proposition.

148. About torture inflicted to rest four detainees at army camp it appears that in causing such torment in captivity the accused persons did not have physical participation. But mere reason that the accused persons did not physically participate in causing torment to the detainees at Chachra army camp does not make them free from liability for the criminal acts committed at the army camp directing the four detainees. It is now settled jurisprudence that a person can commit a crime not only 'as an individual', but also 'jointly with another person', being part of criminal enterprise.

149. In view of above we come to conclude that obviously the accused persons being aware of the consequence handed over the four detainees to the army camp which resulted in their prolonged confinement and untold torment and torture. Causing torture in captivity on capture of an adversary or opponent being placed *hors de combat* is a grave and patent violation of International humanitarian law. Accused and their accomplice perpetrators did it in agreement with the policy of

Pakistani occupation army and as aider. In this regard we recall the observation made in the case of **Blaskic, ICTY [Appeal Chamber], [July 29, 2004, para-50]** which is as below:

“The trial Chamber [in Blaskic] agreed with the statement in the Furunzija Trial Judgment that “it is not necessary that the aider and abettorknow the precise crime that was intended and which in the event was committed. If he is aware that one of a member of crimes will probably be committed, and one of those crimes is in fact committed, he has intended to facilitate the commission of that crime, and is guilty as an aider and abettor. The Appeal Chamber concurs with this conclusion.”

150. Besides, it is not required to show that accused himself physically perpetrated the criminal act if his prior acts constituted a decisive contribution to the commission of the crimes agreed, i.e. torture in confinement. This view finds support from the observation of the ICTY Appeal Chamber made in the case of **Tadic** which is as below:

“Most of these crimes do not result from the criminal propensity of single individuals but constitute manifestations of collective criminality: the crimes are often carried out by groups of individuals acting in pursuance of a common criminal design. Although some members of the group may physically perpetrate the criminal act (murder . . .), the participation and contribution of the other members of the group is often vital in facilitating the commission of the offence in question. It follows that the moral gravity of such participation is often no less -- or indeed no different -- from that of those actually carrying out the acts in question.”

[Judgment, Tadic; IT-94-1-A, ICTY Appeals Chamber, 15 July 1999, para 191]

151. Proved criminal liability of accused persons indicted in respect of arraignment brought in this charge demonstrates conspicuous portrayal of aggression and antagonism of local

notorious collaborators belonging to auxiliary force who knowingly and deliberately used to play a substantial and decisive role in committing continuous brutal nature of atrocities against the targeted non combatant civilian population in 1971 during the war of liberation. The accused persons who incurred criminal liability for the crimes proved had played in similar antagonistic way.

152. Based on rationale evaluation of evidence presented we are convinced to record our finding that the prosecution has been able to prove that the accused **Md. Abdul Khalek @ Abdul Khalek Mondol and Khan Rokunuzzaman (Absconding)** participated in perpetrating the barbaric killing of two wounded unarmed naval commandos; abducting, confining and torturing four other unarmed naval commandos in protracted captivity and thus they are found liable under section 4(1) of the Act of 1973 for participating , substantially facilitating and contributing to the commission of the offences of **‘abduction’, ‘confinement’, ‘torture’ and ‘murder’** as crimes against humanity as enumerated in section 3(2))a)(g)(h) of the Act of 1973, which are punishable under section 20(2) read with section 3(1) of the Act.

Adjudication of Charge No. 02: (02 Accused indicted of whom 01 died during trial)

[Offences of Abduction, confinement, torture and murder of Komoruddin Dhali]

153. Charge: That on 18 August 1971 at about 01/01:30 P.M the accused (1) M Abdullah-Al Baki @ Abdullahel Baki (died during trial) and (2) Khan Rokunuzzaman@ Rokunuzzaman being accompanied by 10/12 Razakars by launching attack forcibly captured Komor Uddin Dhali from his house at village Gobindapur under Police Station-Satkhira of District [now] Satkhira and took away first to Dhulihar Bazar and then to Satkhira by a pick-up. Afterwards, detainee's dead body was found on the bank of the river Betna adjacent to Binerpota Bridge.

Therefore, the accused **(1) M. Abdullah-Al Baki @ Abdullahel Baki (died during trial) and (2) Khan Rokonuzzaman @ Rokunuzzaman** have been charged for participating, abetting, facilitating, contributing and complicity in committing abduction, confinement, torture and murder as crimes against humanity, as part of systematic attack directing against unarmed civilians as specified in section 3(2)(a)(g)(h) of the Act of 1973 which are punishable

under section 20(2) of the Act for which the accused persons have incurred liability under section 4(1) of the Act.

Evidence of Witnesses Examined

154. Prosecution adduced and examined three witnesses to substantiate the arraignment brought in this charge. Of them P.W.05 is a neighbor of victim, P.W.06 is the wife of victim. They are alleged to be direct witness to some pertinent facts related to the event of killing. P.W.07 is a hearsay witness. Before we weigh the value and credence of the account they made let us first eye on what has been testified by them in Tribunal.

155. P.W.05 Md. Wajed Ali Gazi (90) is a resident of village- Gobindapur under police station- Satkhira of District- Satkhira. In 1971 he was a neighbour of Komor Uddin the victim of the event arraigned in this charge no.02. He is a direct witness to the event of attack and facts related to it leading to liquidation of the victim.

156. P.W.05 stated that in 1971 on 1st day of Bangla month Bhadra (mid of August) at about 01:00/01:30 P.M. he moved to the house of Komor Uddin , on hearing screaming there

from and saw Razakar Abdullah Al Baki(died during trial), Razakar Rokunuzzaman and their 10/12 accomplice Razakars taking away Komor Uddin Dhali(victim) tying him up . Nine days later one Naim Uddin Chowkider (guard) (now dead) coming to Komor Uddin's house informed his mother Bauni Bibi that her son was kept detained at Razakar camp set up at Satkhira Diamond hotel.

157. P.W.05 continued stating that on the following day at about 07:00/08:00 A.M. he (P.W.05) and Bauni Bibi moved to the camp and staying in front of the camp they saw Razakar Abdullah Al Baki, Razakar Rokunuzzaman and their 4/5 accomplice Razakars taking away Komor Uddin toward Binerpota, tying him up behind a vehicle stationed in front of Diamond hotel. With this they being scared and returned back home there from.

158. P.W.05 next stated that three days later he (P.W.05) went to Jhaudanga Bazar where one fisherman Bhairab informed him that Komor Uddin's(victim) dead body was lying on the bank of the river Betna. He (P.W.05) then found dead body lying there and on returning back home he

disclosed it to mother and brother of Komor Uddin (victim). But they did not attempt to bring the dead body due to fear. Lastly, P.W.05 stated that accused Abdullah Al Baki was a resident of their neighbouring village Bolarhati and he knew him beforehand.

159. In cross-examination, P.W.05 denied defence suggestions put to him on part of two accused that what he testified implicating these accused was untrue and tutored; that he did not know the either accused and that they were not involved with the event alleged.

160. P.W.06 Asia Khatun (62) is the wife of victim Komor Uddin Dhali. She narrated what she witnessed in course of first phase of attack relating to her husband's forcible capture. P.W.06 stated that in 1971 she had three daughters. On the 1st day of Bangla month Bhadra (mid of August) at about 01:00/01:30 P.M. Razakar Abdullah Al Baki, Razakar Roknuzzaman and their 10/12 accomplice Razakars took away her husband, on forcible capture toward Dhulihar Bazar. She started following them but at a stage she being scared returned back home.

161. P.W.06 next stated that nine (09) days later one Naim Uddin Chowkider (guard) of their locality coming to them informed her mother-in-law that her husband was kept detained at Razakar camp set up at Satkhira Diamond hotel. On the following morning her mother-in-law being accompanied by Wajed Ali Gazi(P.W.05) moved toward Diamond hotel Razakar camp and staying in front of the camp they saw Razakar Abdullah Al Baki, Razakar Rokunuzzaman and their 4/5 accomplice Razakars taking away her husband toward Binerpota, tying him up behind a vehicle. With this her mother-in-law being scared returned back home and disclosed this event.

162. P.W.06 also stated that three(03) days later Wajed Gazi(P.W.05) discovered her husband's dead body lying on the bank of the river Betna and disclosed it, coming back home. Her (P.W.06) mother-in-law due to fear did not opt to bring the dead body and thus it could not be buried. Wajed Gazi (P.W.05) disclosed the identity of the accused persons and thus she knew their name.

163. In cross-examination P.W.06 denied the defence suggestions that she did not hear the identity of the accused

persons she stated; that she did not hear the alleged event of her husband's detention and that what she testified implicating these accused was untrue and tutored.

164. P.W. 07 Md. Motiur Rahman (72) is a resident of village-Gobindapur under police station- Satkhira of District-Satkhira. He is a hearsay witness. P.W. 07 stated that In 1971 on 1st day of Bangla month Bhadra (mid of August) at about 08:00 A.M he went to Dhulia Bazar and on his way back to home Moksedul Momin, peace committee secretary of Dhulia Taltola informed him that Komor Uddin (victim) of their village would be captured by Razakars and thus he should not have stayed at home. He (P.W.07) communicated this information to Komor Uddin. On the same day at about 11:00 A.M he again went to Haat and heard that Razakars took away Komor Uddin on capture. But he could not know which Razakars perpetrated it. Later on, he learnt also from Shamsur Rahman that his brother Komor Uddin was taken away, on forcible capture by Razakars. Few days later, he (P.W.07) learnt from him that his brother Komor Uddin's dead body was found lying on the bank of the river Betna.

165. Defence declined to cross-examine the P.W.07.

Finding with Reasoning on evaluation of Evidence

166. This charge encompasses the offence of killing one unarmed civilian Komor Uddin Dhali by taking him away on forcible capture, by launching systematic attack at his house at village-Gobindapur under Police Station-Satkhira of District [now] Satkhira and afterwards, detainee's dead body was found lying on the bank of the river Betna adjacent to Binerpota Bridge. The event thus ended in killing the detained victims, charge framed arraigns.

167. Two accused (1) M. Abdullah-Al Baki @ Abdullahel Baki and (2) Khan Rokunuzzaman @ Rokunuzzaman have been indicted in this charge. Of them accused M. Abdullah-Al Baki @ Abdullahel Baki died after closure of examination of prosecution witnesses. Thus, chiefly we require arriving at finding as to alleged criminal liability only of accused Khan Rokunuzzaman @ Rokunuzzaman.

168. This charge rests upon testimony of three (03) witnesses who have been examined as P.W.05, P.W.06 and P.W.07. Of them P.W.05 Md. Wajed Ali Gazi, a neighbour of victim Komor Uddin and P.W.06 Asia Khatun the wife of victim are

direct witnesses to facts crucially related to the event of attack. P.W.07 Md. Motiur Rahman is a hearsay witness.

169. Ms. Rezia Sultana Begum, the learned prosecutor drawing attention to ocular testimony of P.W.05 and P.W.06 submits that the act of taking away the victim Komor Uddin Dhali on forcible capture by conducting systematic attack has been proved. The attack was conducted by a group formed of accused (1) M Abdullah-Al Baki @ Abdullahel Baki [now dead] , (2) Khan Rokunuzzaman@ Rokunuzzaman and their accomplice 10/12 Razakars.

170. The learned prosecutor also added that defence could not impeach the consistent narrative of P.W.05 and P.W.06. The event happened in context of the war of liberation and thus the attack launched in getting the victim captured was ‘systematic’ in nature and was intended to further policy of the Pakistani occupation army. Hearsay evidence of P.W.07 also carries value as it gets corroboration from P.W.05 and P.W.06, two direct and natural witnesses. Seeing the accused taking away the detained victim toward the bank of the river Betna and finding dead body of victim there three days later are chained together and thus it has been proved beyond

reasonable doubt that the accused indicted actively participated even in killing the victim.

171. **Mr. Gazi M.H Tamim**, the learned state defence counsel defending the absconding accused Rokunuzzaman argued that the accused was not a Razakar; that he had no involvement with the commission of the alleged killing; that there is no evidence that this accused physically participated in committing the killing alleged; that the witnesses did not know the accused and thus their testimony implicating this accused does not have any credibility.

172. It appears that the event arraigned in this charge involves criminal acts occurred in phases. First, the victim was taken away on forcible capture, by launching attack at his house. Next, the victim was kept confined at Razakar camp set up in Diamond Hotel in Satkhira town. Finally, the victim was taken out of the camp and was brought to the killing site where he was gunned down to death, the charge framed arraigns. In this way the event ended.

173. Due to war time context naturally the relatives had no natural occasion of seeing all the phases of the event. Now,

let us evaluate the evidence adduced, for arriving at decision as to commission of offences and liability of the accused indicted.

174. From testimony of P.W.05 Md. Wajed Ali Gazi, a neighbour of victim it appears that he first saw the gang of armed Razakars accompanied by the accused Abdullah Al Baki[now dead], Razakar Rokunuzzaman taking away the victim by launching attack at his house on the date and time arraigned. Defence could not refute this fact which resulted in keeping the victim detained and causing his death. Further narrative made by P.W.05 leads to this conclusion.

175. It appears that nine days later P.W.5 saw the accused persons and their accomplices taking away the victim, bringing out of the Razakar camp at Diamond Hotel, Satkhira, toward Betna River tying him up behind a vehicle. Such act of extreme aggression eventually ended in killing the victim. Engagement of accused persons in conducting the act of taking away the victim by tying him up behind a vehicle indisputably indicates conscious concern and participation of accused persons in perpetrating the victim's annihilation.

Three days later P.W.05 found the dead body of victim lying on the bank of the river Betna. Defence does not dispute it.

176. On eyeing on ocular testimony of P.W.05 Md. Wajed Ali Gazi, a neighbour of victim it comes to light that on 1st day of Bangla month Bhadra (mid of August) at about 01:00/01:30 P.M. he moved to the house of victim Komor Uddin, on hearing screaming there from when he saw Razakar Abdullah Al Baki [now dead], Razakar Rokunuzzaman and their 10/12 accomplice Razakars taking away Komor Uddin Dhali on capture.

177. Ocular version of P.W.06 Asia Khatun, the wife of the victim too demonstrates that on the 1st day of Bangla month Bhadra (mid of August) at about 01:00/01:30 P.M. Razakar Abdullah Al Baki [now dead], Razakar Rokunuzzaman and their 10/12 accomplice Razakars took away her husband, on forcible capture toward Dhulihar Bazar. She started following them but at a stage she being scared returned back home.

178. Testimony of P.W.05 Md. Wajed Ali Gazi, a neighbour of victim provides consistent corroboration to what has been recalled by P.W.06 the wife of victim. It is found too from

narrative of P.W.05 that the group of attackers was formed of Razakar Abdullah Al Baki [now dead], Razakar Rokunuzzaman and their 10/12 accomplice Razakars. It explicitly suggests that the accused persons in exercise of their dominant affiliation in Razakar Bahini an auxiliary force actively and knowing consequence participated in getting the victim Komor Uddin Dhali captured, by launching systematic attack.

179. Defence could not controvert the above version which is crucially chained to the event of attack which first resulted in abduction or taking away **Komor Uddin** Dhali forcibly. It simply denied what these witnesses narrated in respect of the attack in effecting forcible capture of the victim, an unarmed civilian. But mere denial is not sufficient to cast doubt to ocular narrative made by witness, if it otherwise does not suffer from any doubt and flaw.

180. Accused M Abdullah-Al Baki @ Abdullahel Baki indicted in this charge died, after closure of prosecution evidence and defence evidence. His son as D.W.1 testified that his father was a dominant Razakar, although he claimed that his father used to protect the freedom fighters and pro-

liberation civilians. But this claim does not carry any degree of credence. This accused is now no more—during trial he died. But evidence presented before us explicitly demonstrates that a group of Razakars accompanied by this accused and accused Rokunuzzaman had actively participated in getting the victim forcibly captured.

181. What happened next? What fate the detained victim **Komor Uddin** Dhali had to face? For obvious reason it could not be instantly possible for the relatives of victim of being acquainted of the next phase of the attack. However, it depicts from evidence of P.W.05 and P.W.06 that 09 days later they could know from one Naim Uddin Chowkider (guard) of their locality that the victim was kept detained at Razakar camp set up at Satkhira Diamond hotel.

182. And on the following day at about 07:00/08:00 A.M he (P.W.05) and Bauni Bibi moved to the camp and had been staying in front of the camp and at a stage they saw Razakar Abdullah Al Baki [now dead], Razakar Rokunuzzaman and their 4/5 accomplice Razakars taking away Komor Uddin Dhali toward Binerpota, tying him up behind a vehicle

stationed at the front place of Diamond hotel. With this they being scared returned back home.

183. The effort the P.W.05 and the other relative of victim made thus became in vein. Naturally, P.W.05 and Bauni Bibi had no other alternative excepting coming back from that place, particularly when they saw their dear one the victim was taking away tying him up behind a vehicle. Such brutality they experienced indisputably caused untold trauma to them. P.W.06 the wife of victim obviously was quite aware of this effort. This crucial and brutal fact as unveiled from testimony of P.W.05 remained unimpeached and it gets corroboration from P.W.06, the wife of the victim.

184. The above unimpeached testimony of P.W.05 leads to conclude it irresistibly that the victim was kept detained for nine days at the Razakar camp set up in Diamond Hotel, Satkhira. Such protracted and unlawful confinement itself constituted the offence of torture as it caused untold trauma and pain to victim. It also transpires that nine days later the detained victim was taken away in most brutal and beastly manner toward Binerpota. Naturally, witnessing such barbaric

act the P.W.05 and the mother of victim became gravely scared. Thus and since they did not have any way of getting the victim released they returned back home carrying immense pain and trauma.

185. What was the upshot of the act of taking away the victim tying him up behind a vehicle stationed in front of Diamond hotel, toward Binerpota? Naturally, none had opportunity of seeing the ending phase of the attack, particularly in context of the war of liberation.

186. It stands proved from evidence of P.W.05 that three days later he (P.W.05) went to Jhaudanga Bazar when one fisherman Bhairab disclosed him that Komor Uddin's dead body was lying on the bank of the river Betna. He (P.W.05) then found dead body lying there and on returning back home he disclosed it to mother and brother of Komor Uddin.

187. The people of the crime vicinity could reasonably learn and see the post event consequences. It seems to be natural. However, ocular testimony of P.W.05 in respect of finding dead body lying on the bank of the river did not face any

attack in his cross-examination and as such it inspires credence.

188. Besides, naturally no attempt was made to bring the dead body due to horror. But it does not negate the fact of killing the victim which has been proved. In this regard we recall the observation made by **ICTY Trial Chamber** in the case of **Brdjanin** which is as below:

“The Trial Chamber concurs with the *Tadic* Trial Chamber that: ‘Since these were not times of normalcy, it is inappropriate to apply rules of some national systems that require the production of a body as proof to death. However, there must be evidence to link injuries received to a resulting death.’”

[Brdjanin, (ICTY Trial Chamber), September 1, 2004, para. 383]

189. Defence could not bring anything contrary by cross-examining the P.W.05 which may diminish this piece of crucial fact. Thus, it is unerringly concluded that the victim was taken on the bank of the river Betna, the killing site intending to annihilate him. Finding victim’s dead body lying there depicts that the victim was shot to death there. In this

way atrocious attack conducted by the criminal enterprise formed of accused and his accomplice Razakars ended in brutal liquidation of the detained victim.

190. It already stands proved that the accused Abdullah Al Baki [now dead] and Razakar Roknuzzaman actively participated in taking away the detained victim to the killing site in a most brutal manner. Thus, even in absence of any direct evidence as to which member of the gang physically participated in committing the killing we are convinced to deduce unerringly that the accused Abdullah Al Baki [now dead], Razakar Rokunuzzaman accompanying the gang in conducting such act obviously had conscious concern and participation to the commission of the killing.

191. Tribunal reiterates that act of a person forming part of the criminal enterprise before or after or amid the commission of offence constitutes his 'participation'. Seeing the accused with the gang when it brutally took away the victim toward the killing site as testified by P.W.05 is explicit indication that the accused indicted had the explicit intent of liquidating the victim.

192. The phrase ‘systematic attack’ refers to an organised nature of the attack. In the case in hand, it stands proved that the attack starting from forcible capture of victim to the commission of his killing was conducted in an organised way directing unarmed civilian and thus the attack formed of phases was indeed a ‘systematic attack’.

193. It stands proved from facts and circumstances chained to the attack that the accused persons and their accomplices had perpetrated the killing of an unarmed civilian by conducting ‘systematic attack’, sharing common intent and thus killing even of a single protected civilian constituted the offence of ‘crime against humanity’. In this regard the observation made by the **ICTY Trial Chamber** in the case of **Seromba** may be noted here which is as below:

“A single murder may constitute a crime against humanity if it is perpetrated within the context of a wide spread or systematic attack.”

[Seromba, (Trial Chamber), December 13, 2006, para. 357]

194. It appears that defence simply denied the fact of keeping the victim detained at Razakar camp set up at Diamond Hotel, Satkhira town. But It stands proved that after keeping the victim unlawfully confined for nine days at that camp he was taken away there from to the killing site. Participation of accused indicted in taking away the victim toward the killing site itself justifiably demonstrates that the accused had dominance and potential affiliation with the said Razakar camp. Therefore, they cannot evade liability also of confining the victim and causing torture to him. No one had occasion of seeing the act of torture caused to victim in confinement. But, keeping someone in unlawful and protracted captivity itself constituted the act of torture, mental and physical.

195. The accused M Abdullah-Al Baki @ Abdullahel Baki indicted in this charge is now no more. But the evidence presented proves it beyond reasonable doubt that a group of Razakars accompanied by this accused and accused Rokunuzzaman not only had actively participated in getting the victim forcibly captured but they actively participated at all phases of attack including the phase of killing. However, since accused M Abdullah-Al Baki @ Abdullahel Baki already died after closure of examination of witnesses and

proceeding so far it related to him stood abated there rests no scope of convicting him for the guilt he committed in perpetrating the offences proved.

196. On broad evaluation and careful appraisal of evidence as made above we are convinced to record our finding that the prosecution has been able to prove beyond reasonable doubt that accused Rokunuzzaman[absconding] being part of collective criminality participated, substantially contributed, aided and abetted in committing criminal acts which resulted in **'abduction', 'confinement', 'torture' and 'murder'** of an unarmed pro-liberation civilian as crimes against humanity as enumerated in section 3(2) (a)(g)(h) of the Act of 1973 for which he incurred liability under section 4(1) of the Act of 1973.

Adjudication of Charge No.03: (02 accused indicted of whom 01 died during trial)

[Event No.03 as narrated at page 49-52 of the formal charge]

[Offences of abduction, confinement, torture and murder of Sobdar Ali of village Faizullahpur]

197. Charge: That on 18 August, 1971 at about 03:00-03:30 P.M the accused **(1) M. Abdullah-Al Baki @ Abdullahel Baki (died during trial) and (2) Khan Rokunuzzaman @**

Rokunuzzaman and their 4/5 accomplice Razakars forcibly captured Sabdar Ali Sarder, the **president of No.14 Fingri Union Awami League** from the place at Dhulihar Bazar, when he was on his way back to home and took him away to Ashashuni Police Station by a pick-up and then he was taken to ‘Diamond Hotel’ at Boro Bazar, Satkhira which was Razakar Headquarter and since then the detained victim could not be traced even.

Therefore, accused (1) **M. Abdullah-Al Baki @ Adullahel Baki (died during trial)** and (2) **Khan Rokunuzzaman @ Rokunuzzaman** have been charged for participating, abetting, facilitating, contributing and complicity in committing ‘**abduction**’, ‘**confinement**’, ‘**torture**’ and ‘**murder**’ as crimes against humanity, as part of systematic attack directing against unarmed civilians as specified in section 3(2)(a)(g)(h) of the Act of 1973 which are punishable under section 20(2) of the Act for which the accused persons have incurred liability under section 4(1) of the Act.

Evidence of Witnesses Examined

198. Prosecution adduced and examined two witnesses in support of accusation brought in this charge. Both of them are

direct witnesses to facts related to the first phase of attack. Before we weigh their sworn narrative let us see what they have testified in Tribunal.

199 P.W.10 Md. Abdul Mazid (65) is a resident of village-Jahanbaj under police station- Satkhira of District-Satkhira. In 1971 he was a student of class VIII. He is a **direct witness** to the facts related to the event leading to forcible capture, unlawful detention, torture and killing of victim Sabdar Ali Sardar, as arraigned.

200. P.W.10 testified that on 1st day of Bangla month Bhadra in 1971 he went to the medicine shop of Nitai Sadhu at Dhulihar Bazar and during his staying there at about 03:00/03:30 P.M a group formed of Razakars arrived at Bazar by a yellow color pickup in which Razakar Abdullah Al Baki (died during trial) and Rokunuzzaman remained seated and 5/6 people (detained) having their eyes tied up remained seated on the back of the pickup. At that time Fingri Union Awami League president freedom-fighter Sabdar Ali Sardar along with his son Shahidul was moving by cycle besides the pickup when one Razakar hit them with rifle and with this Sabdar Ali Sardar fell down and then he was tied up and

Razakars made him boarded in the pickup and then they moved toward Satkhira . Shahidul started crying and then his cousin brother Tofazzal Hossain brought him back home.

201. 5. P.W.10 next stated that on the following day at about 05:00 P.M he moved to Sabdar Ali Sarder's home and heard from Hossain Ali Sarder and Kashem Sarder, brothers of Sabdar Ali Sarder that they moved to Razakar camp set up at Diamond hotel in Satkhira town and on arriving near the camp they came to know from one Razakar Saber Ali Sarder (now dead) that Sabdar Ali Sarder (victim) was being subjected to torture in captivity at the camp by Razakar Abdullah Al Baki and Razakar Rokunuzzaman. Since then they did not have any trace of Sabdar Ali Sarder (victim).

202. In respect of reason of knowing the accused persons P.W.10 stated that Abdullah Al Baki and Rokunuzzaman were affiliated with the politics of Jamat e Islami, since prior to liberation war in 1971 and that is why he knew them beforehand.

203. In cross-examination, P.W.10 denied the defence suggestions that accused Abdullah Al Baki joined in Razakar

Bahini to save the civilians and freedom-fighters; that he had saved thousands of civilians of Hindu community from the grip of Razakars and Pakistani army; that no event alleged he testified occurred and that what he testified implicating the accused persons was untrue and tutored.

204. P.W.11 Tofazzal Sarder (65) is a resident of village-Faizullahpur under police station-Satkhira of Distract-Satkhira. Victim of the event arraigned in charge no. 03 is his uncle. P.W.11 narrated what he witnessed in course of the first phase of the event of attack arraigned leading to forcible capture of his uncle.

205. P.W.11 stated that on 1st day of Bangla month Bhadra in 1971 at about 02:00 P.M he had been at Dhulihar Bazar. At about 03:30 P.M a yellow pickup arrived at Bazar carrying Razakars. He saw Razakars Abdullah Al Baki and Rokunuzzaman seated in front of the pickup and 5/6 Razakars along with 5/6 civilians (detained) seated in the back of the pickup. P.W.11 stated that his uncle freedom-fighter Sabdar Ali Sarder along with his son Shahidul came to Dhulihar Bazar by paddling a cycle. Then one Razakar smacked him (Sabdar Ali Sarder)by rifle and with this he fell down and he

was then tied up and taken away toward Satkhira by making him boarded in their pickup. On returning back home he (P.W.11) disclosed the event to all.

206. P.W.11 next stated that on the following day his (P.W.11) father Kashem Ali Sarder and uncle Hossain Ali Sarder moved to Razakar camp at Diamond hotel in Satkhira town when one Razakar Saber Sarder of their locality informed them that Sabdar Ali Sarder (detained victim) was being subjected to torture in captivity at the camp by Razakar Abdullah Al Baki and Rokunuzzaman. On hearing this they returned back home and disclosed it to them. Since then they could not have any trace of detained victim Sabdar Ali Sarder.

207. P.W.11 finally stated that Abdullah Al Baki and Rokunuzzaman used to visit Dhulihar Bazar and thus he knew them beforehand.

208. In reply to defence question put to him in cross-examination P.W.11 replied that in 1971 accused Abdullah Al Baki was 50 years old and that they did not initiate any case over the event as there was no such opportunity.P.W.11

denied the defence suggestions put to him that he did not know the accused persons; that no such event he testified happened; that these accused were not involved with the alleged event and that what he testified implicating these accused was untrue and tutored.

Finding on Evaluation of Evidence adduced

209. This charge rests upon evidence of two (02) witnesses i.e. P.W.10 and P.W.11, prosecution contends. Both of them allegedly testified the facts substantially linked to the event of attack. The event arraigned in this charge no.03 involves the act of forcible capture of Sabdar Ali Sarder, the president of No.14 Fingri Union Awami League from the place at Dhulihar Bazar, when he was on his way back to home. This part of event allegedly happened on 18 August, 1971 at about 03:00-03:30 P.M. The victim was kept detained at the Razakar camp set up at Diamond Hotel', at Boro Bazar, Satkhira which was allegedly the Razakar Headquarter and since then the detained victim could not be traced.

210. Ms. Rezia Sultana Begum, the learned prosecutor argued that the event arraigned occurred in day time and the P.W.10 and P.W.11 had occasion of seeing the gang

accompanied by accused taking away the victim on forcible capture from the place at Dhulihar Bazar. The accused had culpable nexus and dominance in the Razakar camp at Diamond hotel in Satkhira town. The witnesses later on heard that the victim was subjected to torture in captivity at that camp and since then the victim could not be traced even which unerringly proves that the victim was finally annihilated .

211. The learned prosecutor further argued that due to the war time context and horrific situation it could not be known where and how the victim was killed. But the accused being part of collective criminality and having potential concern with the Razakar camp incurred liability for the killing of detained victim who was the president of No.14 Fingri Union Awami League. Defence could not refute what has been narrated by the ocular witnesses in respect of first phase of attack and participation and involvement of accused persons thereof. The learned prosecutor also submits that out of two accused indicted in this charge one accused M. Abdullah-Al Baki @ Abdullahel Baki already died after closure of prosecution and examination of defence witnesses.

212. It has been depicted that at the relevant time P.W.10 had been at Dhulihar Bazar and at about 03:00/03:30 P.M he saw the group formed of Razakars arriving at Bazar by a yellow color pickup in which Razakar Abdullah Al Baki (died during trial) and Rokunuzzaman remained seated and 5/6 people (detained) having their eyes tied up remained seated on the back of the pickup. P.W.10 then saw Fingri Union Awami League president Sabdar Ali Sardar(victim) along with his son Shahidul moving by cycle alongside the pickup when one Razakar hit them with rifle and with this Sabdar Ali Sarder fell down and then he was tied up and Razakars made him forcibly boarded in the pickup and then they moved toward Satkhira.

213. The accused persons were with the armed criminal gang at the relevant time. Getting the forcible captured of victim happened in presence of accused and on their approval and facilitation. It stands proved. Thus it is not required to show that the accused persons by their acts physically participated in effecting victim's capture. Presence of accused persons with the gang itself is sufficient to deduce that they too participated and substantially contributed in effecting forcible capture of the victim.

214. The facts portrayed in testimony of P.W.10 depicts that the gang accompanied by the accused persons indicted was engaged in conducting systematic and designed criminal mission of getting pro-liberation civilians captured. The criminal mission of the gang thus resulted even in forcible capture of Fingri Union Awami League president Sabdar Ali Sardar who was instantly taken away along with 5/6 civilians already detained toward Satkhira. Pro-liberation civilians were the target of the criminal enterprise of which the accused persons were active part, sharing common intent and object.

215. In respect of reason of knowing the accused persons P.W.10 stated that Abdullah Al Baki and Rokunuzzaman were affiliated with the politics of Jamat e Islami, since prior to liberation war in 1971 and that is why he knew them beforehand. Defence could not impeach it. Naturally, political profile of the accused persons made the P.W.10 acquainted with their identity. Besides, we do not find any reason whatsoever to disbelieve the narrative made by P.W.10.

216. What happened next to the first phase of the attack? What fate the victim eventually had to face? It transpires from testimony of P.W.10 that on the following day at about 05:00

P.M. he moved to Sabdar Ali Sarder's home and heard from Hossain Ali Sarder and Kashem Sarder, brothers of Sabdar Ali Sarder that they moved to Razakar camp set up at Diamond hotel in Satkhira town and on arriving near the camp they came to know from one Razakar Saber Ali Sarder (now dead) that Sabdar Ali Sarder (victim) was being subjected to torture in captivity at the camp by Razakar Abdullah Al Baki and Razakar Rokunuzzaman.

217. It has been proved that since keeping the victim detained at the Razakar camp where he was subjected to protracted torment the relatives of victim did not have any trace of Sabdar Ali Sarder (victim). Fact and circumstances cumulatively forming chain indisputably leads to the conclusion that the detained victim was eventually killed. We reiterate that to prove the fact of killing perpetrated in war time situation recovery of dead body is not required. It is now well settled jurisprudence that the fact of victim's death can be inferred circumstantially from other evidence. Circumstantial evidence is sufficient as long as the only reasonable inference is that the victim was liquidated by the

acts of the accused indicted. Thus, prosecution is not required to prove the fact of getting trace of dead body of victim.

218. Activities carried out inside the Razakar camp might have been leaked or disclosed by a Razakar associated with the camp. Thus, it is believed that brothers of victim heard from one Razakar of the camp that accused persons had been torturing their brother inside the camp. Defence could not impeach this piece of hearsay evidence.

219. Besides, since the accused persons were actively engaged in effecting forcible capture of victim we may arrive at an irresistible conclusion that the accused persons were actively concerned and engaged even in causing torture to victim in captivity at the camp over which they had dominance. Such concern of accused indicted is a strong circumstance indeed which unerringly proves their participation and contribution in accomplishing the killing of victim.

220. Victim is the uncle of P.W.11 Tofazzal Sarder. P.W.11 also witnessed how his uncle was taken away on capture on the day and time alleged. At the relevant time P.W.11 had

been at Dhulihar Bazar when he saw a yellow pickup arriving at Bazar carrying Razakars. P.W.11 then saw Razakars Abdullah Al Baki (died during trial) and Rokunuzzaman seated in front of the pickup and 5/6 Razakars along with 5/6 civilians (detained) seated in the back of the pickup.

221. Arriving the gang at Dhulihar Bazar being accompanied by the accused persons indicted by a vehicle along with 5/6 detained civilians is found to have been corroborated by P.W.10 who also witnessed it. This piece of pertinent fact presumably suggests to the conclusion that the criminal gang had been engaged in a mission of apprehending pro-liberation civilians, by conducting systematic attack.

222. Manner of the act of getting the victim captured seems to have been corroborated also from testimony of P.W.11. It transpires that P.W.11 also saw his uncle Sabdar Ali Sarder along with his son Shahidul coming to Dhulihar Bazar by paddling a cycle when one Razakar smacked him by rifle and with this he fell down and he was then tied up and taken away toward Satkhira by making him boarded in their pickup.

223. Defence could not smash the above crucial piece of fact leading to confinement and killing of detained victim. Rather, it stands proved from unimpeached corroborative evidence of P.W.10 and P.W.11 that the event happened in day light and the gang of attackers was formed of accused persons indicted. The armed gang of which the accused persons were active part knowing identity of the victim, a pro-liberation civilian deliberately opted to get him forcibly captured, to further policy of Pakistani occupation army.

224. P.W.11 stated that accused Abdullah Al Baki and Rokunuzzaman used to visit Dhulihar Bazar and thus he knew them beforehand. Naturally, the potential profile of accused persons in Satkhira Razakar Bahini and affiliation in pro-Pakistan political party made them widely known to people. The reason of knowing them beforehand as stated by P.W.11 thus is natural and accordingly what he narrated in respect of detaining and taking away the victim toward Razakar camp in Satkhira by the gang accompanied by the accused persons inspires credence.

225. The relative of victim did not have any trace of the victim since he was kept detained at Diamond Hotel Razakar

camp. We have got it proved that in captivity the victim was subjected to brutal and enduring torture. In absence of anything contrary, it may be thus justifiably inferred that the event ultimately ended in killing the victim. Intent of the criminal gang to which the accused persons were active part was to liquidate the victim, a prominent pro-liberation civilian of the locality, we deduce it unerringly.

226. It has been depicted from fact and circumstance that the gang formed of accused persons and their accomplices formulated their intent to kill the detained victim. The facts related to the first phase of attack and keeping the detained victim at the Razakar camp cumulatively provide sufficient reasons to assume that the intent of the perpetrators was to kill the victim. Thus, it is not required to prove when, where and who physically acted in committing the killing of victim. Since it stands proved that the accused persons had dominant and culpable nexus with the Razakar camp they in no way evade responsibility of committing the killing the ending phase of the attack which was organized and systematic.

227. We reiterate that to qualify the act of ‘participation’ an individual need not be present at the crime sites. Even remaining far from the killing site an individual may be found guilty for ‘participation’ in committing actual crime, the killing by his act or conduct and by virtue of his position of domination over the Razakar camp.

228. The Tribunal, on integrated evaluation of context, proved role of the accused M. Abdullah-Al Baki @ Abdullahel Baki(died during trial) and Khan Rokunuzzaman @ Rokunuzzaman(absconding) and the evidence before it is satisfied that the event of capture of the victim, a pro-liberation civilian took place at Dhulihar Bazar. It stands proved too that on active participation of accused persons indicted the victim was taken away on forcible capture along with 5/6 civilians already detained by a vehicle. This part of attack was chained to annihilation of victim.

229. It has been proved that the victim was kept detained in captivity at the Razakar camp. But since then he could not be traced. Defence could not negate it in any manner. Thus, it may be safely inferred that the accused indicted and their accomplices having affiliation in the Razakar camp were

engaged and concerned also with the killing the victim. Here it is not required to prove as to when, where and in which manner the victim was annihilated.

230. Presence of accused at the first phase of attack causing torture coupled with the act of forcible capture of victim suggests that the accused persons indicted had explicit and conscious approval and endorsement to further the criminal acts of causing torture to victim in captivity and finally materializing the act of his killing.

231. As regards ‘participation’ of an accused in criminal conduct we recall the observation of the ICTY that “the accused himself need not have participated in all aspects of the alleged criminal conduct.” [Stakic, (ICTY Trial Chamber), July 31, 2003, para. 439]. “The *actus reus* of aiding and abetting a crime may occur before, during, or after the principal crime has been perpetrated.” [*Blaskic*, (ICTY Appeals Chamber), July 29, 2004, para. 48].

232. No one could witness the final phase of the event that resulted in killing the detainee. But according to above settled jurisprudence any act or conduct of an individual amid or

prior or after the event of principal offence connects him criminally responsible for the principal act, if such act or conduct had substantially facilitated and contributed to the commission of the principal offence and thus an individual forming part of criminal enterprise need not be shown to have participation in all phases of the event.

233. In view of above proposition presence of accused persons with the gang at the time of effecting forcible capture of the victim leads to conclude that their act rather approved, facilitated and encouraged their accomplices causing torture and forcible capture of victim which also adds assurance to accused persons' concern and participation even in committing subsequent criminal acts including the principal offence of murder of detained victim.

234. Two accused (1) M. Abdullah-Al Baki @ Abdullahel Baki and (2) Khan Rokunuzzaman @ Rokunuzzaman have been indicted in this charge. But of two accused one M. Abdullah-Al Baki @ Abdullahel Baki died during trial and thus we refrain from rendering finding as to his guilt in respect of arraignment brought in this charge.

235. On appraisal of facts and circumstances unveiled in evidence we arrive at finding that it has been proved beyond reasonable doubt that the accused **Khan Rokunuzzaman @ Rokunuzzaman** indicted in this charge had participation, by his act and conduct forming part of systematic attack directed against the civilian population in accomplishing the offences of ‘abduction’, ‘confinement’, ‘torture’ and ‘murder’ of Sabdar Ali Sarder as crimes against humanity as specified in section 3 (2)(a)(g)(h) of the International Crimes Tribunal Act of 1973 and is held liable under section 4(1) of the Act of 1973.

Adjudication of Charge No.04 (03 accused indicted of whom 01 died during trial)
[Event No.04 as narrated at page 52-55 of the formal charge]

[Offences of confinement, torture and murder of Sohel Uddin Sana, a local Awami League leader of Dhulihar Union under Satkhira Police Station]

236. Charge: That on 17 August, 1971 at about 03:00-04:00 P.M the accused(1) Md. Abdul Khalek @ Abdul Khalek Mondol (2) M. Abdullah-Al Baki @ Abdullahel Baki and (3 Khan Rokunuzzaman @ Rokunuzzaman being accompanied by 10/12 accomplice Razakars arriving at village Dhulihar under police Station Satkhira launched attack at the house of

Sohel Uddin Sana, a local Awami League leader and with this he along with his son A. Jalil Sana started moving towards the house of Abu Sayed of village Protap Nagar under Police Station Ashashuni of District[now] Satkhira. But on the way, at the place Budhhata Bazar he got forcibly captured by Ashashuni Razakar commander Isahak [now dead] and his accomplices and his son however managed to escape.

On the following day, the detained victim was then handed over to the three accused persons and then the detainee along with the four other detainees [victims of the event narrated in charge no.01] was taken to 'Diamond Hotel', at Boro Bazar, Satkhira town and since then he could not be traced even.

Therefore, accused **(1) Md. Abdul Khalek @ Abdul Khalek Mondol (2) M. Abdullah-Al Baki @ Abdullahel Baki and (3) Khan Rokunuzzaman @ Rokunuzzaman** are hereby charged for participating, abetting, facilitating, contributing and complicity in committing '**confinement**', '**torture**' and '**murder**' as crimes against humanity, as part of systematic attack directing against unarmed civilians as specified in section 3(2)(a)(g)(h) of the Act of 1973 which are punishable

under section 20(2) of the Act for which the accused persons have incurred liability under section 4(1) of the Act.

Evidence of Witness Examined

237. It appears that prosecution after examining one witness as P.W.04 has opted not to adduce and examine any more witness in support of this charge as it decides to drop the arraignment brought in charge no.4 presumably for the reason of bar of doctrine of double jeopardy. However, let us see what the P.W.04 testified in Tribunal.

238. P.W.04 S.M Abdur Rashid @ Khoka (62) is a resident of village-Manjitpur under police station- Satkhira of District-Satkhira. He is the son of victim martyr Sohel Uddin Sana. He is a direct witness to the event of attack leading to his father's forcible capture and looting conducted at their house in conjunction with the attack, as arraigned in charge no.04.

239. P.W.04 stated that on 17 August, 1971 at about 03/04 P.M. a group formed of Razakar commander Abdul Khalek Mondol, Razakar Rokunuzzaman and their 9/10 accomplice Razakars led by Razakar Major Abdullahel Baki chased toward their house. With this they went into hiding, adjacent

to their house. His father started running toward south to escape. Razakars fired gunshot directing his father which could not hit him. The Razakars looted their house and then moved back toward Satkhira with the looted goods by a jeep

240. P.W.04 next stated that on 18 August in early morning his father and elder brother Abdul Jalil started moving toward India and on their way, at Budhhata under Ashashuni police station Razakars got them captured and took away to Budhhata Razakar camp. His (P.W.04) brother strategically managed to escape from Razakar camp and on returning back home informed the event to others. Then he (P.W.04) moved to his another brother Abdul Hamid staying in Satkhira and disclosed the entire event and then his brother made communication with Razakar commander of Satkhira town to save his father.

241. P.W.04 also stated that he standing in front of Razakar camp at Diamond hotel saw brining 6/7 detainees including his father from Budhhata Razakar camp by a yellow pickup and they were taken to the first floor of the Razakar camp at Diamond Hotel. At that time Abdullahel Baki, Rokunuzzaman, Abdul Khalek Mondol and other Razakars

were present there. Then he (P.W.04) returned back home. On the following morning they got information that his father and other detainees were annihilated. Later on, they found many dead bodies lying under the Bakal Bridge, but they could not have trace of his father's dead body there.

242. Finally, P.W.04 stated that Abdullahel Baki used to move around the town and he (P.W.04) saw him calling others at Diamond hotel and as such he knew them beforehand.

243. In cross-examination done on part of accused Abdul Khalek Mondol P.W.04 stated in reply to defence question put to him that he disclosed the fact of taking away his father on forcible capture to Diamond hotel and killing him to his (P.W.04) brother Abdul Hamid; that his brother Abdul Hamid initiated a case in 1972 over the event of his father's killing. P.W.04 denied defence suggestions that this accused was not involved with event alleged; that what he testified implicating this accused was untrue.

244. In cross-examination done on part of accused Rokunuzzaman and Abdullah Al Baki (died during trial)

P.W.04 denied defence suggestions that what he narrated implicating these accused was untrue and that these accused were not involved with the event he testified.

245. P.W.04 in reply to defence question could not say whether accused Abdullah Al Baki got acquittal in the case initiated under the Collaborators Order of 1972, over the event of his father's killing.

Finding with Reasoning on Evaluation of Evidence

246. The learned prosecutor Ms. Rezia Sultana Begum submitted that they have opted to drop this charge from being adjudicated and that is why no further witness has been adduced and examined. For the reason of this submission defence refrained from placing argument on this charge.

247. It appears that prosecution adduced and examined only one witness as P.W.04, the son of victim Sohel Uddin Sana. But after examining this witness no other witness has been adduced on part of prosecution.

248. In course of placing summing up the learned prosecutor submitted that prosecution did not press this charge.

Presumably the reason of dropping this charge is that Abdul Hamid the brother of P.W.04 initiated a case over the event of killing arraigned in 1972 under The Collaborators Order, 1972 which has been admitted by P.W.04 in cross-examination.

249. P.W.04 in reply to defence question further stated that he could not say whether accused Abdullah Al Baki got acquittal in the case initiated under the Collaborators Order of 1972, over the event of his father's killing.

250. From above first it transpires that the P.W.04 opted to hide the full truth. Besides, we see that prosecution has visibly dropped the arraignment brought in this charge presumably for the reason of admitted earlier prosecution over the 'same criminal acts' though not constitute the offences as enumerated in the Act of 1973.

251. We feel compelled to observe that this matter should have been unearthed in course of investigation. However, since prosecution has dropped this charge we are not going to render any finding on adjudication of the accusation brought therein.

Adjudication of Charge No.05: (02 accused indicted of whom 01 died during trial)

[Event No.05 as narrated at page 55-58 of the formal charge]

[Offences of abduction and murder of Abul Hossain of village Kathanda under Police Station and District [now] Satkhira]

252. Charge: That on 22 June, 1971 at about 07:00 A.M Abul Hossain, a local Awami League activist and his brother Golam Hossain had been at the land nearer to their house at village Kathanda under Police Station and District [now] Satkhira. At about 08:30/09:00 A.M when Golam Hossain went to home to have meal the **accused (1) Md. AbdulKhalek @ Abdul Khalek Mondol and (2) Zahirul Islam @Zahurul Haque @ Tekka Khan** being accompanied by 10/12 accomplice Razakars forcibly captured Abul Hossain from the field and took him away to No.03 Boikari Union where he was killed in a jute field behind Boikari BOP.

Therefore, accused (1) Md. Abdul Khalek @ Abdul Khalek Mondol and (2) Zahirul Islam @ Zahurul Haque @ Tekka Khan are hereby charged for participating, abetting, facilitating, contributing and complicity in committing

‘abduction’ and ‘murder’ as crimes against humanity, as part of systematic attack directing against unarmed civilians as specified in section 3(2)(a)(g)(h) of the Act of 1973 which are punishable under section 20(2) of the Act for which the accused persons have incurred liability under section 4(1) of the Act.

Evidence of Witnesses Examined

253. This charge rests upon testimony of three (03) witnesses who have been examined as P.W.12, P.W.13 and P.W.14. Of them P.W.12 is the son of victim. Let us see what the witnesses have testified in Tribunal.

254. P.W.12 Md. Ayub Ali (59) is a resident of village-Kathanda under police station-Satkhira of District –Satkhira. He is the son of victim martyr Abul Hossain Gazi. P.W. 12 stated that his father Abul Hossain Gazi was affiliated with Awami League and an organizer of liberation war. His cousin brothers Zahirul Islam and Aharul Islam (P.W.13) went to India for receiving training to join the war of liberation. Thus Razakar commander Abdul Khalek Mondol and Razakar Zahirul Islam (died during trial) were furious to their family.

255. P.W.12 next stated that on 7th day of Bangla month Ashar in 1971 at about 07:00 A.M his father and uncle went out for cultivating land, adjacent to south of their home. He (P.W.12) had been at home as he was suffering from fever. Few time later his maternal uncle Shahar Ali Dafader (now dead) coming to their home disclosed that he saw the Razakar Commander Abdul Khalek Mondol, Razakar Zahirul Islam and their 10/12 accomplice Razakars taking away his(P.W.12) father forcibly toward Boikari BOP Razakar camp when they were engaged in cultivating the field.

256. What happened next? P.W.12 stated that on hearing it his (P.W.12) uncle Golam Hossain and maternal uncle Shahar Ali Dafader moved to Abdul Khalek Mondol's house, but they returned back as they did not find his father (victim) there.

257. P.W.12 continued testifying that on the following morning his uncle and maternal uncle again moved to Abdul Khalek Mondol's house to have trace of his father (victim). But they could not have any trace and on their way back there from they heard from people that Razakar commander Abdul

Khalek Mondol and Razakar Zahirul Islam annihilated his father at the jute field behind the Boikari BOP Razakar camp and dumped the dead body. But they could not collect the dead body due to horror of Razakars. The Razakars he named were from their neighbouring villages and thus he knew them beforehand.

258. In cross-examination P.W.12 stated in reply to defence question put to him that his uncle Golam Rahman lodged a case with Satkhira police station over the event of killing his father; that accused Abdul Khalek Mondol was elected Satkhira Upazila Chairman in 1989 and was elected Member of Parliament in 2001, from their constituency. P.W.12 denied defence suggestions that these accused were not Razakars; that they were not involved with the event alleged; that the alleged event he narrated did not happen; that what he testified implicating these accused were untrue and tutored.

259. P.W.13 Md. Aharul Islam (65) is a resident of village-Kathanda under police station- Satkhira of District-Satkhira. He is a freedom-fighter. He happens to be the son of brother of victim Abul Hossain Gazi. He is a hearsay witness.

260. P.W.13 stated that his uncle Abul Hossain Gazi (victim) was affiliated with Awami League and an organizer of liberation war. He (P.W.13) and his brother Zahurul Islam went to India for receiving training to join the war of liberation. This was the reason why accused Razakar commander Abdul Khalek Mondol and Razakar Zahirul Islam had antagonism against them. On receiving training in India he joined the freedom-fight around the locality of Laxmidari, adjacent to Satkhira border region.

261. P.W.13 also stated that on 08th day of Bangla month Ashar in 1971 his uncle Imam Ali Gaji coming to Laxmidari informed that on 07th day of Asarh, 1971 Razakar commander Abdul Khalek Mondol, Razakar Zahirul Islam and their 7/8 accomplices forcibly captured his uncle Abdul Hossain Gazi and took him away to Boikari Razakar camp where he was killed and his dead body was dumped at the jute field. The dead body could not be brought due to horror of Razakars. After independence he (P.W.13) returned back home and heard the event from his uncles Golam Hossain Gazi and Shahar Ali Dafader (now dead). The accused he named were from their neighbouring localities.

262. In cross-examination P.W.13 denied defence suggestions that these accused were not Razakars; that they were not involved with the event alleged; that the alleged event he narrated did not happen; that he did not hear the event alleged; that what he testified implicating these accused were untrue and tutored.

263. P.W.14 Md. Zahurul Islam (67) is a resident of village-Kathanda under police station-Satkhira of District-Satkhira. He too is a hearsay witness. He allegedly heard the event leading to killing his uncle Abul Hossain Gazi as arraigned in charge no.05 from his another uncle Golam Hossain Gazi.

264. P.W.14 stated that his uncle Abul Hossain Gazi had affiliation with Awami League and was an organizer of liberation war. He (P.W.14) and his brother Aharul Islam went to India for receiving training to join the war of liberation. First he was attached with *Bithari* youth camp as a freedom-fighter. One month later he joined the *Itinda Ambagan* camp in India. At the end of Bangla month Asharh in 1971 he came to meet his parents on taking leave and then knew from his uncle Golam Hossain Gazi that on 07th day of Ashar in 1971 his uncle Golam Hossain Gazi and uncle Abul

Hossain Gazi(victim) had been at the field for cultivating land, besides south to their home when Razakar commander Abdul Khalek Mondol and Razakar Zahirul Islam and their 10/12 accomplice Razakars took away his uncle Abul Hossain Gazi, on forcible capture toward the Razakar camp at Boikari BOP where he was killed. On hearing this event he (P.W.14) returned back to Itinda freedom-fighters camp, in the night. The accused persons he named were residents of the village s neared to their village and thus he knew them beforehand.

265. In cross-examination, in reply to defence question put to him P.W.14 stated that none of their family initiated any case over the event of killing his uncle Abul Hossain Gazi, after independence; that in 1971 other residents of their village also were engaged in cultivating their land, at the time of the alleged event occurred.

266. P.W.14 denied the defence suggestions that he did not hear the event alleged; that accused persons were not Razakars; that they were not engaged in committing the criminal acts alleged and that what he testified implicating these accused was untrue and tutored.

Finding with Reasoning on Evaluation of Evidence adduced

267. **Ms. Rezia Sultana Begum** the learned prosecutor argued drawing attention to the evidence of witnesses that it could be proved that the gang being accompanied by accused (1) Md. Abdul Khalek @ Abdul Khalek Mondol and (2) Zahirul Islam @Zahurul Haque @ Tekka Khan [died during trial] took away the victim on forcible capture out of extreme antagonism by launching systematic attack, to further policy; that the victim could not be traced since his abduction; that circumstances lead to the conclusion that the attack ended in killing the victim.

268. Victim's dead body could not be recovered due to horror. But it does not diminish the fact of killing. Defence could not impeach the facts chained together which indisputably prove that the accused persons indicted deliberately and in a designed way perpetrated the act of abduction of the victim which also proves their participation and contribution even in accomplishing the killing the detainee.

269. Mr. Abdus Sobhan Tarafder the learned counsel defending the accused Abdul Khalek Mondol submits that this accused had no manner of complicity or participation with any phase of the event of attack alleged; that hearsay witnesses testimony is anonymous as they have not disclosed the source of knowing the alleged facts; that prosecution could not bring any evidence to connect this accused with the alleged killing and thus he deserves acquittal from this charge of which he has been indicted.

270. This charge involves the event of conducting systematic attack directing unarmed pro-liberation civilian leading to abduction and murder. Prosecution requires proving that—

- i. the gang formed of accused persons and their accomplice Razakars took away the victim on forcible capture, by launching systematic attack ;
- ii. the detained victim was eventually killed and the accused persons participated in accomplishing this ending phase of the attack, being conscious part of the criminal enterprise;
- iii. the accused persons indicted committed the offences of abduction, confinement and murder of an unarmed civilian.

271. It is evinced from sworn testimony of P.W.12 the son of victim that on 7th day of Bangla month Ashar in 1971 at about 07:00 A.M the attack was conducted when his father and uncle were engaged in cultivating land, adjacent to south of their home and he (P.W.12) had been at home at that time. Instantly after the attack conducted his (P.W.12) maternal uncle Shahar Ali Dafader (now dead) coming back home disclosed that he saw the Razakar Commander Abdul Khalek Mondol, Razakar Zahirul Islam[dead during trial] and their 10/12 accomplice Razakars taking away his(P.W.12) father forcibly toward Boikari BOP Razakar camp when they were engaged in cultivating the field.

272. The fact relating to the offence committed in violation of international humanitarian law may be well proved even by hearsay testimony of a witness. Here we see that the above hearsay testimony of P.W.12 is not anonymous. It appears that P.W.12 heard the event of attack from his uncle who witnessed the criminal act of taking away the victim the father of P.W.12, instantly after the event conducted by a group of attackers formed of accused Abdul Khalek Mondol, Razakar Zahirul Islam [now dead]. Thus, hearsay testimony of P.W.12 relating to conducting attack and taking away his father the

victim away is quite believable and inspires credence. Defence could not tarnish the fact unveiled in testimony of P.W.12.

273. Why the victim was so targeted of the attack of group of Razakars? From the sworn narrative made in Tribunal by P.W.12 it depicts that his cousin brothers Zahirul Islam and Aharul Islam (P.W.13) went to India for receiving training to join the war of liberation. It gets corroboration even from testimony of P.W.13 who stated too that he (P.W.13) and his brother Zahurul Islam went to India for receiving training to join the war of liberation.

274. The stance the family of the victim had in favour of the war of liberation which was the reason of aggressive attack directing the victim by the members of auxiliary force created to further policy and plan of Pakistani occupation army. We deduce it indisputably. Members of Razakar Bahini, an auxiliary force were antagonistic to the pro-liberation civilians and to further policy of Pakistani occupation army they used to decide conducting attack directing pro-liberation civilians in 1971. It is now well settled history.

275. In the case in hand too we see that the P.W.12 and P.W.13 consistently stated it as the reason why the Razakar commander Abdul Khalek Mondol and Razakar Zahirul Islam [now dead] were furious to their family.

276. What happened next to forcible capture of victim Abul Hossain? P.W.12 continued testifying that on the following morning his uncle and maternal uncle again moved to Abdul Khalek Mondol's house to have trace of his father (victim). But they could not have any trace and on their way back there from they heard from people that Razakar commander Abdul Khalek Mondol and Razakar Zahirul Islam annihilated his father at the jute field behind the Boikari BOP Razakar camp and dumped the dead body. But they could not collect the dead body due to horror of Razakars. This crucial version remained unimpeached. The Razakars he named were from their neighbouring villages and thus he knew them beforehand.

277. That is to say, the act of forcible capture of the victim was followed by the act of his killing. This piece of hearsay version in respect of killing gets assurance as the relatives did

not have any trace even on move to the house of accused Abdul Khalek.

278. It stands proved that the victim was last seen within the grip of the accused and their accomplices and the fact that the victim could not be traced since his taking away on forcible capture. Defence does not seem to have made any effort to impeach this piece of hearsay evidence in respect of a crucial fact. These facts cumulatively lead to the unerring conclusion that the act of abduction of victim eventually ended in his killing and it was the intent of the criminal gang to which the accused was an active part.

279. P.W.13 also consistently corroborating the P.W.12 stated that the detained victim was taken away to Boikari Razakar camp where he was killed and his dead body was dumped at the jute field. P.W.13 heard it from his uncle Imam Ali Gaji.

280. Victim is the uncle of P.W.14 Md. Zahurul Islam. He too heard the event from his uncle Golam Hossain Gazi. He is a freedom fighter. It appears that on taking leave he came to home to meet his parents and then knew the event from his uncle Golam Hossain Gazi. It was quite natural. P.W.14

consistently narrated what he heard about the attack leading to forcible capture and killing the victim. We find no reason to keep his hearsay evidence aside from consideration.

281. It appears that the accused persons the Razakars, the witnesses named were from their neighbouring villages and thus they knew them beforehand. It could not be disputed and impeached that the uncle of P.W.12 who saw the event of attack knew the accused persons beforehand and thus hearing from him that the gang being accompanied by the accused persons carried out the attack leading to forcible capture of the victim inspires credence.

282. The event of attack was indeed systematic and organized and intended to directing pro-liberation civilian. The event as has been divulged from evidence discussed above is rather an explicit portrayal of extreme antagonism of Razakar Bahini and the notorious people who were engaged in collaborating with the Pakistani occupation army, to further its policy.

283. In view of above, it may be thus justifiably presumed that the attack was systematic in nature as it was aimed to

narrow down the significant local influence of pro-liberation Bengali civilians and freedom fighters of the crime locality. The accused indicted and the members of the gang belonging to 'auxiliary force' had consciously and actively participated to the attack knowing well about such policy.

284. It stands proved that the gang was formed of accused persons indicted and their accomplice Razakars. We may deduce that the accused persons consciously and knowing consequence of their act and conduct were actively engaged in effecting forcible capture of the victim. The attack occurred in day time. The relative who witnessed that gang conducting the attack disclosed it instantly to victim's son (P.W.12) .

285. It transpires that despite attempt made the relatives of victim failed to have trace of the detained victim. Rather, later on they came to know that Razakar commander Abdul Khalek Mondol and Razakar Zahirul Islam (died during trial) annihilated the detained victim, the father of P.W.12 at the jute field behind the Boikari BOP Razakar camp and dumped the dead body.

286. It transpires from the reply to defence question put to P.W.14, in cross-examination that none of their family initiated any case over the event of killing his uncle Abul Hossain Gazi, after independence. It rather adds further assurance to the commission of the event arraigned. Be that as it may, we are forced to conclude that accused persons indicted were also concerned even with the act of killing the victim. Because the first phase of attack was chained to the killing, the ending phase of the attack and it stands proved that the accused persons actively participated in accomplishing the act of forcible capture of the victim, by launching attack, being part of collective criminality.

287. Based on proved facts chained to the event it is unerringly deduced that the accused Abdul Khalek Mondol and Razakar Zahirul Islam (died during trial) being the mastermind of the attack and the attack was calculated to annihilate the victim. Even in absence of any direct evidence in this regard it may be well presumed.

288. Recovery or tracing the dead body may not be feasible in context of war time situation. We got it from evidence of witnesses that due to existing horror of Razakars they could

not collect the dead body. It is immaterial to ask for proof as to when how and where the victim was killed. We are constrained to conclude that accused's act and conduct in effecting the forcible capture of the victim were 'specifically directed' to the actual commission of the principal crime, the killing.

289. Besides, recovery of dead body is not required to prove the killing happened in war time situation. In this regard it has been observed by the **ICTY Trial Chamber** in the case of **Krnojelac** that --

“Proof beyond reasonable doubt that a person was murdered does not necessarily require proof that the dead body of that person has been recovered. [T]he fact of a victim's death can be inferred circumstantially from all of the evidence presented to the Trial Chamber.”[**Krnojelac, (Trial Chamber), March 15, 2002, para. 326**]

290. Tribunal next reiterates that the offence of murder as a crime against humanity does not require the prosecution to prove that the accused personally committed the killing or to

prove where and when the victim was liquidated. It is now settled jurisprudential proposition.

291. In the case in hand, the proved fact of active participation of accused at the first phase of attack indubitably connects the accused even with the act of killing the detained victim. Circumstances lead to conclude that accused Md. Abdul Khalek @ Abdul Khalek Mondol, in exercise of his dominance over the Satkhira Razakar Bahini had acted as the key player in accomplishing criminal acts at all phases of the event arraigned.

292. Besides, personal commission is only one of the modes of responsibility. Culpable and conscious act and conduct of the accused in course of first phase of attack is sufficient to connect him even with the ending phase of the event of attack. In this regard it has been propounded in the case of ***Deronjic***[ICTY Appeals Chamber, July 20, 2005, para. 109] that—

“All other conditions being met, a single or limited number of acts on [the accused’s] part would qualify as

a crime against humanity, unless those acts may be said to be isolated or random.”

293. Facts unveiled thus force us to deduce that several persons including the accused indicted forming group of attackers were together engaged in one common purpose and all of them consented and facilitated the commission of the offences, with the knowledge of preconceived or premeditated result.

294. Role and mode of participation of accused persons indicted in conducting the attack lead to the conclusion that the accused persons sharing the common intention remained physically present at the scene of occurrence and they did not opt to dissuade themselves from the intended criminal act, the upshot of the attack for which they rather shared the common intention. It is thus not needed to show that the accused had indulged in overt acts.

295. In our considered view, all the facts and circumstances proved by the prosecution form a chain of circumstances on the basis of which it can safely and unerringly be deduced

that the accused persons indicted forming part of ‘collective criminality’ committed the murder of the detained victim and except their guilt as to commission of the principal crime, the killing no other hypothesis can be inferred.

296. The victim was a civilian belonging to the family the inmates of which joined the war of liberation as freedom-fighters. This was the reason which prompted the accused and his accomplice Razakars in accomplishing the attack. The crimes committed during the period of war of liberation in 1971 in the territory of Bangladesh, in violation of international humanitarian law were the consequence of part of a ‘systematic’ attack directed against the unarmed pro-liberation civilian population.

297. Presumably, the criminal acts forming systematic attack created a climate of terror and coercion amongst the pro-liberation civilians of the crime vicinity that validly suggests that the intention of the attackers was to resist the civilians who took stance in favour of the war of liberation. Of course a criminal act with such intention is considered as an attack directed against unarmed ‘civilian population’ which

constituted the offence of crimes against humanity. It is to be noted that civilian population does not include the entire population. Even a limited number of civilians constitute ‘civilian population’ particularly when they are systematically attacked intending to commit offences of crimes against humanity, in violation of international law.

298. All the criminal acts proved happened in context of war time situation, directing civilian population in a systematic manner. Killing even of a single civilian on discriminatory grounds occurred in such context thus constitutes the offence of crime against humanity. It is now well settled proposition. ICTR Trial Chamber in the case of **Seromba** observed that -

“A single murder may constitute a crime against humanity if it is perpetrated within the context of a widespread or systematic attack.”

[Seromba, (Trial Chamber), December 13, 2006, para. 357:

299. Tribunal notes that in adjudicating culpability of the person accused of criminal acts , context and situations prevailing at the relevant time i.e. the period of war of

liberation in 1971[March 25 to December 16 1971] together with acts, conducts of the accused is to be considered. The facts and circumstances unveiled before us unmistakably have proved the 'contextual requirement' to qualify the offences for which the accused has been charged with as crimes against humanity.

300. The above 'context' itself prompts even a person of common prudence that the offences of 'crimes against humanity' as mentioned in section 3(2)(a) were inevitably the effect of part of designed or systematic attack which first effected unlawful capture of victim when he had been engaged in cultivating land.

301. Two accused (1) Md. Abdul Khalek @ Abdul Khalek Mondol and (2) Zahirul Islam @Zahurul Haque @ Tekka Khan have been indicted in this charge. We have got evidence in respect of culpable involvement and participation of both of them. But of these two accused indicted one accused Zahirul Islam @Zahurul Haque @ Tekka Khan died during trial and thus proceeding so far as it related to him stood abated. Thus, we refrain from rendering finding as to his guilt.

302. In view of above deliberation based on reasoning on appraisal of evidence adduced we finally come to conclude that accused **Md. Abdul Khalek @ Abdul Khalek Mondol** , a potential Razakar as an active associate of the group of local Razakars which was in fact a 'criminal enterprise' is found guilty for participating, abetting and substantially contributing the actual commission of the act of '**abduction**' and '**murder** 'as crimes against humanity as enumerated in section 3(2)(a)(g)(h) of the Act of 1973 and as such he incurs liability under section 4(1) of the Act .

Adjudication of Charge No.06(02 accused indicted of whom 01 died during trial)

[Offences of abduction, confinement and torture of Sanaullah Sardar @ Nonai Sardar, Md. Abdul Malek, Md. Abdul Ahad and Md. Basir Ahmed of village-Aichpara under Police Station Kalaroa of District[now] Satkhira

303. Charge: That on 19 August, 1971 group of attackers formed of Pakistani army and Razakars unlawfully detained **Md. Basir Ahmed**, a freedom fighter when he was on move to Bashdoho Bazar under Police Station-Satkhira from WAPDA turn[Morh] and took him away to the army camp set up at Agardari Union Council Office where he was subjected

to cruel torture in captivity which resulted in injury on his hand and leg.

On 27 August, 1971 at about 11/11:30 A.M a group of Pakistani occupation army and Razakars forcibly captured Sanaullah Sarder @ Nonai Sarder. his son Md. Abdul Malek Sarder and a non-combatant freedom-fighter Abdul Ahad son of Gopal Gain by launching attack at the house of A.M. Sanaullah Sarder at village- Aichpara under Police Station- Kolaroa of District[now] Satkhira and took them away to the army camp set up at Agardari Union Council Office where they were subjected to torture.

On 05 September, 1971 at about 12 P.M the four detainees were taken to Kadamtola Hatkhola Bazar Razakar camp wherefrom they were next taken to 'Diamond Hotel' at Boro Bazar Road in Satkhira town by a vehicle. The detainees were subjected to torture keeping in captivity, **the accused M. Abdullah-Al-Baki (died during trial), accused Khan Rokunuzzaman @ Rokunuzzaman** and their accomplices brutally tortured and scolded them in different manners in the name of grilling.

On 15 September, 1971 at about 04:00 A.M detainees **Sanaullah Sardar, Abdul Malek Sardar and Abdul Ahad** got release from captivity on intervention of Shahabuddin[now dead] the uncle of A. Malek , in exchange of ransom money. On the same day, in evening another detainee **Md. Basir Ahmed** managed to escape from the Diamond Hotel and went to India and joined the war of liberation.

Therefore, the accused (1) M. Abdullah-Al-Baki @ Abdullahel Baki(died during trial) and (2) Khan Rokonuzzaman @Rokunuzzaman have been charged for participating, abetting, facilitating, contributing and complicity in committing ‘**abduction**’ ‘**confinement**’ and ‘**torture**’ as crimes against humanity, as part of systematic attack directing against unarmed civilians as specified in section 3(2)(a)(g)(h) of the Act of 1973 which are punishable under section 20(2) of the Act for which the accused persons have incurred liability under section 4(1) of the Act.

Evidence of witnesses Examined

304. Arraignment brought in this charge involves criminal acts constituting the offences of abduction, confinement

and torture caused to four unarmed civilians, by launching systematic attack. Prosecution in order to substantiate the accusations adduced two witnesses who have been examined as P.W.15 and P.W.16. Before we weigh their testimony let us first see what they have described before Tribunal.

305. P.W.15 Md. Basir Ahmed (79) is a resident of village-Samonta under police station-Maheshpur of District-Jhenidah. He is one of victims of the prohibited acts leading to abduction, detention and as have been arraigned in charge no.06. He is a freedom-fighter.

306. P.W.15 stated that on 28 March in 1971 he along with some others collected fire arms breaking the Maheshpur Thana armory and joined Bongaon freedom-fighters camp in India. They received training there for 20/25 days. Then to join the liberation war he was shifted to Sector no.08 at Hakimpur. On the 2nd day of Bhadra in 1971 he had been on duty at Bashdaha when on instruction of his team commander Habildar Shafi Ahmed he moved to Bazar to bring tea and on his way Razakars and Pakistani army men detained him and

took him away to Agardari Pakistani army camp where he was subjected to inhumane torture.

307. P.W.15 next stated that 8/10 days later, during his detention Sanaullah Sarder, Malek and Ahad were brought at the camp. 8/10 days later they the detainees were handed over to the Pakistani army men, engaged in guarding Kadomtola Bridge of Satkhira town. Next, there from they were kept detained at Razakar camp set up at Diamond hotel in Satkhira town. 10/12 more civilians were kept detained there. Razakar Abdullah Al Baki(died during trial), Rokunuzzaman, Zahurul Haque and other Razakars used to torture and torment them in captivity. Abdullah Al Baki set the detainees Sanaullah Sarder, Malek and Ahad released in exchange of money. 8/10 days later, he (P.W.15) managed to flee from the Razakar camp and went to Hakimpur freedom-fighters camp.

308. In cross-examination, P.W.15 denied defence suggestions that accused Abdullah Al Baki joined in Razakar Bahini intending to save local civilians and freedom-fighters; that the accused persons had no affiliation with the event he narrated; that what he testified was untrue and tutored.

309. P.W.16 Md. Abdus Samad Sarder (65) is a resident of village- Aichpara under police station-Kalaroa of District-Satkhira. He is the son of one victim Sanaullah Sarder. He is a hearsay witness to the event arraigned in this charge no.06. At the relevant time he was engaged in freedom-fight. Victim Abdul Malek happened to be his brother. He stated that on the 10th day of Bangla month Bhadra in 1971 Razakars and Pakistani army men forcibly captured his father Sanaullah Sarder, Brother Abdul Malek Sarder and unarmed freedom-fighter Ahad from their house and took them away to the Razakar and army camp set up at Agardari Union Parishad building.

310. P.W.16 testified that he is a freedom-fighter. In 1971 he joined the freedom-fighters camp at Hakimpur under sector no.08. During his staying around the locality of Taluigachi border he became aware that on the 10th day of Bangla month Bhadra in 1971 Razakars and Pakistani army men forcibly captured his father Sanaullah Sarder, brother Abdul Malek Sarder and unarmed freedom-fighter Ahad from their house and took them away to the Razakar and army camp set up at Agardari Union Parishad building. Two days later, he came to home and asked his maternal uncle Shahabuddin (now dead)

to bring back his father and brother on release. But despite attempts he could not get them released.

311. P.W.16 next stated that on the 19th day of Bangla month Bhadra in 1971 his father, brother and unarmed freedom-fighter Ahad were made shifted to Razakar camp at Diamond hotel in Satkhira town where they were subjected to torture and inhumane torment by accused Abdullah Al Baki (died during trial), Razakar Rokunuzzaman, Zahurul Haque and their accomplices. Later on, his (P.W.16) maternal uncle Shahabuddin in exchange of Taka 4,000 got his (P.W.16) father, brother and Ahad released. He (P.W.16) later on heard the event of causing torture victims in protracted captivity from his father and brother.

312. In cross-examination, P.W.16 stated in reply to defence question put to him that they did not initiate any case over the event he narrated and that he did not know about any other event happened at the Razakar camp at diamond hotel in Satkhira town.

313. P.W.16 denied the defence suggestions that he did not hear the event he narrated; that the accused were not

Razakars; that the accused persons were not occupied in perpetrating the criminal acts arraigned and that what he testified implicating the accused persons was untrue and tutored.

Finding on Evaluation of Evidence Adduced

314. This charge arraigns the act of forcible capture of father, brother of P.W.16, Ahad and P.W.15, an unarmed freedom-fighter; keeping them detained at Razakar camp along with many other detained civilians and causing untold torture to them in captivity.

315. Ms. Rezia Sultana Begum, the learned prosecutor drawing attention to the evidence adduced argued that to further policy and plan of Pakistani occupation army the accused persons indicted and their accomplices got the victims forcibly captured and caused were concerned in causing torture to them in captivity at Razakar camp. The accused persons indicted having explicit and dominant affiliation with the Razakar camp and they had consciously acted in accomplishing the criminal acts with extreme aggression to the detained victims.

316. The learned prosecutor further argued that P.W.15 is a victim and at the time of his forcible capture he was noncombatant freedom-fighter. Three other victims were father, brother and relative of P.W.16, a freedom fighter who heard the event from his father and brother who got release in exchange of ransom money. Defence could not impeach what has been narrated by P.W.15 and P.W.16. Defence simply mechanically denied what has been testified by this witness in examination-in-chief. But mere denial is not sufficient to taint the testimony of witnesses, the learned prosecutor added..

317. On contrary, the learned state defence counsel Mr. Gazi M.H Tamim defending the absconding accused Khan Rokunuzzaman @ Rokunuzzaman submits that the P.W.15 had no reason of recognizing the accused at the Razakar camp; P.W.15 and P.W.16 testified mere presence of accused and not his any activity or act ; that this accused had no concern in any manner with the alleged Razakar camp and he did not belong to Razakar Bahini and that the hearsay testimony of P.W.16 does not carry any value.

318. In order to adjudicate the arraignment brought in this charge the matters require to be resolved are that --

- (i) The victims were kept confined at Razakar camp at Diamond hotel in Satkhira, on forcible capture accomplished by launching systematic attack;
- (ii) That the detained victims were subjected to inhumane torture in captivity;
- (iii) That three victims, at a stage, got release in exchange of ransom money after keeping them in protected captivity;
- (iv) That one victim P.W.15, a non-combatant freedom fighter managed to flee from the camp; and
- (v) That the accused persons indicted had actively acted and participated in accomplishing the criminal acts leading to abduction, confinement and torture of unarmed civilians.

319. We got it proved that P.W.15 Md. Basir Ahmed is one of victims. Defence does not dispute it. It has been divulged from his sworn testimony that he received training from Bongaon freedom-fighters camp in India to join the war of

liberation. He (P.W.15) as a freedom-fighter got stationed in Sector no.08 at Hakimpur.

320. In respect of the attack leading to forcible capture ocular testimony of P.W.15 demonstrates that on the 2nd day of Bhadra in 1971 on being instructed by his team commander Habildar Shafi Ahmed he moved to Bazar to bring tea and on his way Razakars and Pakistani army men detained him and took away to Agardari Pakistani army camp where he was subjected to heartless torture. Defence does not seem to have been able to impeach this crucial narrative chained to forcible capture of victim P.W.15, a non-combatant freedom-fighter.

321. Above testimony relates to first phase of attack and it mirrors that P.W.15 was a non-combatant freedom-fighter when he got forcibly captured by the gang formed of accused indicted and accomplice Razakars. It may be presumed that movement of an unarmed freedom-fighter somehow got revealed to the local Razakars who then calculated the design of detaining him.

322. What happened next? It also transpires from testimony of P.W.15 that 8/10 days later, during his detention other

captured civilians Sanaullah Sarder, Malek and Ahad were taken at the camp and then 8/10 days later all the detainees were handed over to the Pakistani army men, engaged in guarding Kadomtola Bridge of Satkhira town. It could not be shaken by the defence. Thus, keeping the victims confined at the camp for days together and inflicting torture to them in captivity are found to have been proved.

323. It stands proved too from unimpeached testimony of P.W.15, one of victims that next, they were kept detained at Razakar camp set up at Diamond hotel in Satkhira town where he found 10/12 more civilians detained there. Razakar Abdullah Al Baki, Rokunuzzaman and other Razakars used to torture and torment them in captivity at the said camp.

324. The facts of keeping the civilians including P.W.15 detained at the Razakar camp set up at Diamond hotel in Satkhira town as stated by P.W.15, one of victims could not be impeached by cross-examining the P.W.15. The camp set up at Diamond Hotel in Satkhira town was thus a torture cell to which the accused and his accomplice Razakars had dominant and culpable affiliation. Indisputably criminal acts

were conducted violating the rights of detainees on approval and consent of accused.

325. It is found from narrative made by P.W.15, a survived victim that during his detention at the camp he had occasion of hearing conversation of Razakars calling name of each other and thus he became aware of the identity of the accused. This was indeed a natural opportunity of being aware of identity of the accused persons. It could not be refuted in any manner by the defence in cross-examination.

326. It is undisputed that in 1971 there existed a Razakar camp set up at Diamond hotel in Satkhira town. It was rather a torture cell. Thus, and since the accused belonged to Razakar Bahini it may be unerringly inferred that the accused had acted actively in causing torture to the detainees including the P.W.15, keeping them confined at this torture cell.

327. This charge arraigns forcible capture of father, brother of P.W.16, Ahad and P.W.15 keeping them detained at Razakar camp along with many other detained civilians. At a stage,

maternal uncle of P.W.16 managed to get these three detainees i.e. father, brother of P.W.16 and Ahad released from captivity.

328. The above unimpeached fact of getting release of three detainees in exchange of ransom money seems to have been corroborated by P.W.15. What fate the detainee P.W.15 had to face? It appears from his testimony that he (P.W.15) eventually managed to flee from the Razakar camp and went to Hakimpur freedom-fighters camp.

329. P.W.15 is a freedom-fighter. Defence does not dispute it. But at the time when he was forcibly captured his status was non-combatant, i.e. *hors de combat*. The gang of attacker's violating international humanitarian law conducted the attack in effecting his forcible capture, to further policy and plan of the Pakistani occupation army.

330. Causing tormenting torture to detainees; setting three detainees release and later on another detainee P.W.15, a freedom-fighter managed to flee from the camp remained undisputed. Defence could not impeach these facts related to the criminal design to which accused M. Abdullah-Al-Baki

(died during trial) and accused Khan Rokunuzzaman @ Rokunuzzaman were culpably active part. Their dominant affiliation with the Razakar camp, as has been found proved from facts, leads to conclude that they knowingly and actively participated in confining the unarmed civilians and causing brutal torture to them in captivity. Presumably, the criminal acts they consciously committed were intended to resist unarmed pro-liberation civilians.

331. High-flying dominance of accused with the camp where the victims were kept unlawfully confined itself is sufficient to conclude that the accused actively assisted and facilitated untold torture to the detained victims in protracted captivity. In this regard we may eye on the observation of ICTR Trial Chamber in the case of **Kamuhanda** which is as below:

“....acts of assistance need not have actually caused the consummation of the crime by the actual perpetrator, but must have had a substantial effect on the commission of the crime by the actual perpetrator.” [**Kamuhanda, ICTR Trial Chamber, January 22, 2004, para. 597**]

332. Thus, acts of the accused facilitated victims' unlawful confinement and caused torment in protracted captivity and it may be justifiably inferred that such conscious culpable conduct of accused persons amounted to explicit approval and encouragement of committing the offences of confinement and torture. In this way, the accused aided, abetted and participated to the commission of these prohibited acts constituting the offence of 'confinement' and 'torture' as crimes against humanity.

333. The reason of causing torture in captivity is quite clear. It may be inferred that naturally, the accused and his accomplice Razakars were antagonistic to the pro-liberation civilians and freedom-fighters. At the time of effecting forcible capture the victim P.W.15, a freedom-fighter was non-combatant. The group of attackers formed of accused persons indicted and their accomplices by conducting systematic attack got the victim P.W.15 captured.

334. All the prohibited acts leading to the detention and torture perceptibly formed part of 'systematic' and 'designed' attack, to further the policy of the Pakistani occupation army.

The three other civilians detained along with the P.W.15 were subjected to inhumane torture, for same reason. Torture inflicted to victims in confinement was intended to annihilate the victims' rights and to deny the inherent dignity of human being. Such acts were absolutely prohibited under any circumstances. This prohibition forms part of customary international law.

335. It stands proved that at a stage, Shahabuddin, maternal uncle of P.W.16 managed to get the three detainees i.e. father, brother of P.W.16 and Ahad released from captivity. The above fact of release of three detainees in exchange of ransom money seems to have been corroborated by P.W.15. Extracting ransom money from victims detained under coercion and intimidation also was a prohibited act which denied the rights of human being, constituting the offence of 'torture', we deduce.

336. What fate the detainee P.W.15 had to face? It appears from his testimony that he (P.W.15) in the end managed to flee from the Razakar camp and went to Hakimpur freedom-fighters camp. This version of P.W.15, a brave freedom-fighter remained undisputed.

337. Two accused M. Abdullah-Al-Baki and accused Khan Rokunuzzaman @ Rokunuzzaman have been indicted in this charge. But it appears that on closure of evidence accused M. Abdullah-Al-Baki died. Another accused Khan Rokunuzzaman @ Rokunuzzaman has been absconding. It appears that P.W.15 denied defence suggestions that accused Abdullah Al Baki joined in Razakar Bahini intending to save local civilians and freedom-fighters.

338. Thus, it is admitted that accused M. Abdullah-Al-Baki [now dead] was a potential Razakar. Defence could not refute it that accused Abdullah Al Baki (died during trial) made the detainees Sanaullah Sarder, Malek and Ahad released in exchange of money and 8/10 days later, P.W.15, another detained victim managed to flee from the Razakar camp and went to Hakimpur freedom-fighters camp. Narrative made by P.W.15 a survived victim inspires credence of judicial mind.

339. Accused M. Abdullah-Al-Baki @ Abdullahel Baki died during trial and thus proceeding so far related to him stood abated. However, on effective evaluation of evidence presented it stands proved that accused Khan Rokunuzzaman

@ Rokunuzzaman (absconding) being active part of the joint criminal enterprise by his deliberate, culpable and conscious acts participated, abetted, facilitated, contributed in committing ‘**abduction**’ ‘**confinement**’ and ‘**torture**’ of unarmed civilians constituting the offences as crimes against humanity, as specified in section 3(2)(a)(g)(h) of the Act of 1973 which are punishable under section 20(2) of the Act for which the accused persons have incurred liability under section 4(1) of the Act.

Adjudication of Charge No.07(02 accused indicted of whom 01 died during trial)

[Event no. 07 as narrated at page 64-66 of the Formal Charge]

[Offences of abduction, confinement, torture and rape allegedly committed on Amirun and Sofura Khatun of villages- Kathanda and Boikari under Police Station Satkhira]

340. Charge: That at the end of May, 1971 pursuant to an announcement made in a meeting with the local villagers led by accused Abdul Khalek Mondol and accused Zahirul Islam @ Zahurul Haque @ Tekka Khan (died during trial) that the Awami League activists and freedom fighters were *kaffirs*[nonbelievers] and thus their households and wives were considered for others’ enjoyment. Such inciting

announcement was followed by looting households and burning down the houses of freedom-fighters and Awami League activists of villages- Kathanda and Boikari under Police Station Satkhira of District [now] Satkhira.

In conjunction with such attack the accused Abdul Khalek Mondol and accused Zahirul Islam @ Zahurul Haque @ Tekka Khan(died during trial) being accompanied by two Pakistani army men forcibly captured Amirun[now dead] of village Kathanda and taking her at the kitchen of the house committed sexual invasion upon her. Most. Safura Khatun of Boikari village was also sexually ravished keeping her detained at the house of Shariat Ullah by Pakistani occupation army.

Therefore, the accused (1) Md. Abdul Khalek @ Abdul Khalek Mondol and (2) accused Zahirul Islam @ Zahurul Haque @ Tekka Khan have been charged for participating, abetting, facilitating, contributing and complicity in committing '**confinement**' '**rape** and '**other inhumane act**' as crimes against humanity, as part of systematic attack directing against unarmed civilians as specified in section

3(2)(a)(g)(h) of the Act of 1973 which are punishable under section 20(2) of the Act for the accused persons have incurred liability under section 4(1) of the Act.

Evidence of witnesses examined

341. This charge involves devastating activities carried out pursuant to inciting announcement in making which the accused inducted had active role and in conjunction of such activities by launching attacks two women were sexually ravished in accomplishing which the accused Md. Abdul Khalek @ Abdul Khalek Mondol and accused Zahirul Islam @ Zahurul Haque @ Tekka Khan [died during trial] had active contribution and participation.

342. To substantiate the arraignment brought prosecution adduced two witnesses who have been examined as P.W.08 and P.W.09. Of them P.W.08 is one rape victim. Now, first let us see what the witnesses have narrated before Tribunal.

343. **P.W.08 Most. Safura Khatun (67)** is a resident of village-Boikari under police station-Satkhira Sadar of District

(now) Satkhira. She is one victim of sexual ravishment committed upon her, as alleged.

344. P.W.08 in narrating the horrific event she experienced stated that in 1971 she was pregnant and had three kids. In the mid of Bangla month Joistha in 1971 accused Abdul Khalek Mondol and Zahurul Islam @ Tekka Khan being accompanied by Pakistani army men attacked their house and forcibly captured her husband. Then they the attackers dragged her to her husband's brother Shariatullah's dwelling room where the Pakistani army men committed rape upon her and at a stage she became senseless. Later on, her husband made her sense back by pouring water. Four days after this event happened she gave birth of a dead fetus.

345. P.W.08 also stated that accused Abdul Khalek Mondol and accused Zahurul Islam @ Tekka Khan [died during trial] used to move through the road adjacent to their house and thus she knew them beforehand.

346. In cross-examination P.W.08 denied the defence suggestions that she did not know the accused persons she named; that the accused persons were not involved with the

event she testified and that what she testified implicating the accused persons was untrue and tutored.

347. P.W.09 Md. Iman Ali (64) is a freedom-fighter and a resident of village- Kathanda under police station-Satkhira Sadar of District (now) Satkhira. He is a hearsay witness. He stated that in the mid of Bangla month Joistha in 1971 he got attached at Itinda camp at Bashirhat in India to join the war of liberation. During his staying at Bhojadanga freedom-fighters camp he got information through source that Razakar Abdul Khalek Mondol and Zahirul Islam had a meeting with the Pakistani army men at Kathanda Primary School when they announced the decision to devastate the houses of those who joined the war of liberation, terming them *kaffir*.

348. P.W.09 next stated that he also knew through source that on the same day Razakar Abdul Khalek Mondol and Zahirul Haque being accompanied by Pakistani army men committed rape upon the wife of Golam Rahman of village Kathanda and the wife (P.W.08) of Momtaj Sarder of village-Boikari.

349. P.W.09 continued stating that on 07 December , 1971 Satkhira town got liberated and then they moved to

Kadomtola Bazar where they found Razakar Abdul Khalek Mondol and Abu Bakkar[now dead) captured being tied up by the freedom-fighters and later on they were handed over to Satkhira Thana. He (P.W.09) later on heard the event from two rape victims.

350. In cross-examination, defence simply suggested to P.W.09 that what he testified implicating accused persons was untrue, false and tutored and out of political rivalry

Finding on Evaluation of Evidence Adduced

351. Ms. Rezia Sultana Begum, the learned prosecutor argued that in a case involving the offence of crimes against humanity even a single witness's testimony is sufficient. One rape victim as P.W.08 has testified how barbaric assault was done in robbing her supreme honour, by launching systematic attack at her conjugal home. Defence could not impeach her testimony in any manner. Presence of accused persons indicted at the crime site indisputably suggests the inference that they actively facilitated, aided and assisted the army men in accomplishing the grave sexual violence upon P.W.08 who was pregnant at the relevant time.

352. It has been further argued on part of prosecution that P.W.09 is a hearsay witness who is a freedom-fighter. Naturally, he became aware of the event happened in his locality through source. His testimony in this regard carries probative value and gets corroboration from testimony of P.W.08. It shall reveal that defence simply denied accused persons' participation in carrying out the attack which resulted in torture and sexual ravishment upon P.W.08, the learned prosecutor added. Committing sexual invasion upon the victim does not appear to have been denied.

353. On contrary, the learned counsel Mr. Abdus Sobhan Tarafder defending the accused Abdul Khalek Mondol argued that the P.W.08 did not have any reason of knowing or recognizing the accused; that she testified implicating this accused out of rivalry; the P.W.08 does not claim that the accused committed rape upon her; that P.W.09 is a hearsay witness which does not carry value; that the accused was not with the gang of attackers; that P.W.09 is a hearsay witnesses and his testimony does not carry probative value and testimony of P.W.08 remained uncorroborated. Prosecution could not prove the accusation brought against this accused.

354. It appears that prosecution relied upon two witnesses i.e. P.W.08 and P.W.-09 to substantiate this charge. Of two witnesses P.W.08 is one victim of sexual ravishment. The charge framed arraigns that the accused Abdul Khalek Mondol and Zahurul Haque@ Tekka Khan (died during trial) accompanied the Pakistani occupation army men in launching the attack at the conjugal home of P.W.08 when the accused persons facilitated, aided and substantially contributed in committing brutal sexual invasion upon P.W.08.

355. Tribunal reiterates that not the quantity but the quality of evidence is to be assessed. In the case in hand, we may safely act upon the sworn testimony of P.W.08, a rape victim who has been carrying trauma she sustained in exchange of her supreme honour. At the same time hearsay evidence is not inadmissible *per se* if it gets corroboration from circumstances. Thus, hearsay version of P.W.09 may also be considered together with other circumstances and testimony of P.W.08, one victim.

356. Defence suggested P.W.08 that accused Abdul Khalek Mondol has been implicated by her out of rivalry and she (victim) had no reason of knowing the accused. But why a

rural woman(P.W.08) had rivalry with a person whom she did not know as has been suggested to P.W.08 by defence? Defence could not bring any positive indication in support of such unfounded suggestions put to P.W.08 in cross-examination. Thus, mere such denial does not impact on credence of narrative made by P.W.08. Defence also suggested P.W.08 in cross-examination that the accused was not with the gang of attackers. P.W.08 denied it. But the core of this defence suggestion put to P.W.08 has rather affirms the attack launched by the gang of attackers.

357. Launching attack at the relevant time and committing rape upon P.W.08 do not appear to have been denied even. Besides, we do not find any reason to keep the testimony of P.W.08 aside treating it untrue. No woman shall opt to stigmatize her self-worth by telling untrue story. Defence could not refute and deny even the criminal acts leading to the commission of crimes arraigned. One accused indicted Zahurul Haque @ Tekka Khan died during trial and thus now criminal culpability of another accused Abdul Khalek Mondol needs to be determined.

358. Victim is the best and sole witness to the diabolical act of rape committed upon her. We restate that no women would prefer to bring a false accusation that stamps stigma on her life and honour. We find no reason to disbelieve victim's testimony. In the case in hand, P.W.08 Safura Khatun, the rape victim came on dock as a gallant woman to voice the innumerable trauma she sustained which was indeed worse than death. Victim P.W.08 was pregnant at the relevant time. The perpetrators diminished her supreme honour in a beastly manner which also resulted in abortion of her immature fetus.

359. It has been unveiled too that in conjunction with the attack, on the same day another woman the wife of Golam Rahman of village-Kathanda was also ravished by the same group formed of accused persons and army men. Defence does not seem to have made any effort to impeach these crucial facts.

360. Accused persons did not physically commit the horrific act of sexual violence, true. But they knowingly accompanied the army men in launching the attack and actively participated in getting the husband of P.W.08 apprehended. Also their culpable presence as 'approving spectators' at the crime site

i.e. at the house of the victim itself unerringly indicates that the accused persons substantially assisted, contributed, facilitated and aided the army men in committing the barbaric sexual violence upon P.W.08 which resulted in abortion of her immature fetus. In this way the accused being part of the joint criminal enterprise ‘participated’ in perpetrating the crimes arraigned, sharing common intent.

361. Devastating activities, grave mistreatment directing pro-liberation civilians of the locality were the upshot of inciting announcement made immediate before conducting attacks by the perpetrators accompanied by the accused. Facts and circumstances unveiled in trial suggest us to deduce it unerringly that accused persons indicted having significant dominance in Razakar Bahini accompanied the army men intending to contribute substantially in accomplishing the attack in systematic manner which resulted in devastating activities and beastly attack upon the supreme honour of two women.

362. Culpable presence of accused persons at the crime site, the conjugal home of victim P.W.08 combined with their significant affiliation in local Razakar Bahini and their

knowledge about the intent of the criminal enterprise are considered sufficient to find them guilty for the crimes arraigned.

363. The accused persons indicted in this charge are thus justifiably said to have ‘participated’ in accomplishing the dreadful act of sexual violence upon P.W.08. The phrases ‘knowing the intent’ and ‘sharing intent’ can be well inferred from facts chained to the commission of the crime. The act of substantial assistance, contribution, endorsement and approval of accused persons present at the crime site inevitably make them criminally responsible for the commission of the offence of dreadful sexual violence.

364. P.W.09 is a heresy witness. In 1971 he was engaged in war of liberation as a freedom-fighter. It was quite natural of hearing existing situation, events happened around the locality he belonged. Thus, hearing the event of attack conducted at the house of P.W.08 and devastating the supreme honour of P.W.08 and the wife of one Golam Rahman of village-Kathanda from his source is quite believable. Besides, just after independence P.W.09 heard the

event also from two victims including P.W.08. All these have not been denied even in cross-examination.

365. Tribunal notes that corroboration is not a legal requirement if hearsay evidence is found to have carried probative value. Merely 'hearsay character' does not deprive the evidence of its probative value. Hearsay testimony of P.W.09 gets corroboration from other facts including the fact of sexual violence committed upon P.W.08, by launching systematic attack at her house.

366. Further, hearsay evidence is admissible and the court can act on it in arriving at decision on fact in issue, provided it carries reasonable probative value [Rule 56(2) of the ROP] . This view finds support from the principle enunciated in the case of **Muvunyi** which is as below:

“Hearsay evidence is not per se inadmissible before the Trial Chamber. However, in certain circumstances, there may be good reason for the Trial Chamber to consider whether hearsay evidence is

supported by other credible and reliable evidence adduced by the Prosecution in order to support a finding of fact beyond reasonable doubt.” [Muvunyi, (ICTY Trial Chamber), September 12, 2006, para. 12]

367. In cross-examination of P.W.09 it has not been denied even that the accused Abdul Khalek Mondol , his accomplice Razakars had a meeting with the Pakistani army persons , before they conducted the attack, at Kathanda Primary School when they announced the inciting decision to devastate the houses of those who joined the war of liberation, terming them *kaffir*.

368. Therefore, it may be indisputably inferred that being imbued by such inciting announcement the criminal activities were carried out and the accused persons indicted being active part of the criminal enterprise had played the role as lynchpins.

369. It also transpires that the attack was carried out at the house of victim P.W.08 on the day the inciting decision was announced to devastate the pro-liberation civilians of the locality. The Pakistani army men naturally did not have acquaintance about the locality and the place or persons to be attacked or targeted. It may be thus unerringly inferred that the accused and his accomplices, sharing intent of the mission accompanied the army men in perpetrating the crimes.

370. The accused, his cohorts and Pakistani army men collectively conducted criminal acts, pursuant to ‘inciting announcement’ which constituted blatant denials of fundamental rights of the local civilian population and resulted in committing rape upon two women.

371. Rape or sexual violence committed under duress is indeed a despicable act which invades the very core of human dignity and physical integrity and the community the victim belongs. Article 27 of the Geneva Convention provides that – “women shall be especially protected against any attack on their honour, in particular against rape, enforced prostitution, or any form of indecent assault.”

372. But what we see in the case in hand? Facts chained to the event of systematic attack force us to deduce that through their presence accused Abdul Khalek Mondol and Zahurul Haque @ Tekka Khan [died during trial] forming part of the criminal enterprise substantially aided, assisted and encouraged the army men actively and in this way they took part in committing the sexual assault upon defenceless women, under grave duress and by getting the husband of victim P.W.08 forcibly detained.

373. It stands proved that the actual perpetrators the army men being substantially facilitated, aided and encouraged by the accused Abdul Khalek Mondol and accused Zahurul Haque @ Tekka Khan (died during trial) had carried out the act of sexual violence as an instrument of threat to the civilians who took stance in favour of war of liberation.

374. Accused's acts were extremely culpable in nature which substantially contributed and facilitated the army men forming the group in committing sexual violence to victim P.W.08 by keeping her husband forcibly detained in conjunction of the event at the crime site. The accused persons indicted [one of whom already died during trial] thus

equally incurred liability for perpetration of the offences of torture and rape arraigned.

375. It is evinced from uncontroverted testimony of victim P.W.08 that the accused Abdul Khalek Mondol, a potential Razakar of Satkhira culpably and actively facilitated the Pakistani occupation army in committing the beastly sexual violence upon P.W.08. It may be deduced that the *mens rea* criminal enterprise was the shared intent of all members of the group of attackers. The term 'committed' includes participation in a JCE. Thus, the JCE-I resembles co-perpetration and as such can be considered as 'commission'.

376. The accused being enthused by extreme perverted and aggressive mindset had made space to the army men by providing facilitation and approval in robbing supreme honour of a rural married woman, keeping her husband detained. In this way the accused knowingly participated to the commission of horrific act of sexual ravishment upon the victim by the army men. The act of such endorsement and approval inevitably makes him [accused] criminally responsible for the commission of the offence.

377. It is now well settled that liability concerning the commission of offences enumerated in section 3(2) of the Act of 1973 under the doctrine of JCE [Basic Form] need not involve the physical commission of crimes by all the members of the JCE. Thus, it is immaterial to show with specificity as to how the accused being the member of the enterprise had acted, to further the agreed object of the criminal mission. However, in the case in hand, it has been proved that the accused being active part of collective criminality had played substantial and culpable part in committing the sexual ravishment to P.W.08 and torture to her husband.

378. Crimes arraigned in this charge have been proved. These were not isolated crimes, rather 'group crimes' perpetrated jointly and thus each of the enterprise shall be liable as a perpetrator. From this point of view the accused Abdul Khalek Mondol who was with the gang at the crime scene, sharing common object incurred liability as a perpetrator of crimes committed.

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

"[.....]a crime can be committed individually or jointly with others, that is, there can be several perpetrators in relation to the same crime where the conduct of each one of them fulfils the requisite elements of the definition of the substantive offence." [**Case No. IT97-24-T, Judgment: 31 July 2003, Para528**]

380. In the case in hand, we are thus forced to deduce justifiably that the accused Abdul Khalek Mondol incurred ‘individual criminal responsibility’ to trigger the object of the joint criminal mission, being an active part thereof. In 1971, during the war of liberation the perpetrators had carried out the act of brutal sexual violence as a tool of intimidation to the civilians who took stance in favour of war of liberation. Testimony of P.W.08, one victim is a mere fragment of

horrific portrayal of barbaric physical invasion committed upon the countless women by the Pakistani occupation army and their local collaborators, in the territory of Bangladesh in 1971, during the war of liberation.

381. The appalling event of robbing supreme honour of defenseless women happened in war time situation. We emphatically reiterate that rape as a weapon in war time affects not only the rape victim, but her family and community she belongs. The attack was thus directed not only on the body of the victims but it aimed to cripple the integrity of their family, the community and the society they belonged. Here we consider it relevant to reiterate the observation the Tribunal-2[ICT-2] rendered in adjudicating the charge involving the offence of sexual violence upon one detained woman in the case of **Syed Md. Qaiser** which is as below:

“The research on war time rape shows that in war time, the soldiers assume the use of rape as an effective weapon of launching attack not simply against an individual, but against social and gender stigmas aiming for the advancement of societal break-

down. When rape is used as a weapon instead of a bullet, the weapon continues to exert its effect beyond the primary victim and it eventually outrages the civility....”

[ICT-2; Chief Prosecutor vs. Syed Md. Qaiser; judgment 23 December 2014; para,709]

382. It has been found proved from totality of facts and circumstances that the perpetrators opted to use the barbaric act of rape as a weapon of war, intending to coerce and terrorize the pro-liberation group and community the victims belonged, we deduce.

383. In light of above reasoned finding based on evaluation of evidence adduced and circumstances emerged we are persuaded to at conclusion that prosecution has been able to prove that the accused Abdul Khalek Mondol, having dominance in local Razakar Bahini deliberately and knowing consequence participated by acts of assistance, substantial contribution and approval, being part of the joint criminal enterprise in committing ‘**confinement**’ , ‘**torture**’ and ‘**rape**’ constituting the offences of crimes against humanity as enumerated in section 3(2)(a)(g)(h) of the Act of 1973 and

thus the accused Abdul Khalek Mondol incurred criminal liability under section 4(1) of the Act of 1973.

XI. Conclusion

384. The appalling events of group crimes directing non-combatant pro-liberation civilians, as found proved demonstrate the fragmented portrayal of the blood-bathed history of the birth of our dear motherland—Bangladesh. Bengali nation achieved its long cherished independence in exchange of untold and huge sacrifice. Conducting deliberate grotesque atrocities in the territory of Bangladesh began on the mid-night of 25 March, 1971 with the launch of ‘Operation Searchlight’ and it continued till the nation achieved its victory on 16 December 1971.

385. Infamous Razakar Bahini formed of local pro-Pakistan people and the notorious people belonging to Jamat e Islami and pro-Pakistan political parties had acted as an ‘auxiliary force’ as defined in section 2 of the Act of 1973. Such *para militia* force was engaged in collaborating with the Pakistani occupation army in conducting grave wrongs to civilian population. In the case in hand, it has been proved that the

accused persons in exercise of their mighty affiliation with local pro-Pakistan political party Jamat E Islami and Razakar Bahini did not keep them abstained from collaborating with the Pakistani occupation army to further its policy and plan.

386. Accused persons are found to have committed the ‘group crimes’ arraigned which are found to have been perpetrated in ‘systematic’ manner and in context of war of liberation in 1971. The trauma the victims and relatives of victims sustained shall never erase. The accused persons notoriously got engaged in conducting horrendous atrocities directing noncombatant civilians, on discriminatory grounds and intending to activate the policy of resisting the war of liberation and crippling the pro-liberation Bengali civilians.

387. Trial of offences committed in 1971 during the war of liberation in the territory of Bangladesh is indeed a voyage of discovery in which truth is the quest. The truth unveiled through trial before this Tribunal evidently shall make the nation and especially the new generation enthused to go with the spirit of the war of liberation.

388. At the same time, trial in Tribunal shall make space to the global community of knowing in exchange of what extent of sacrifice the Bengali nation achieved its long cherished independence and independent motherland—**Bangladesh**. It will be relevant to note that ‘Genocide Watch’, an Washington DC based NGO recently recognized the genocide committed in 1971 in Bangladesh and at the same time has urged the United Nations and international communities to come forward to recognize the horrific genocide and crimes against humanity committed directing ethnic, religious and national group of Bangladesh.

XII. Verdict on Conviction

389. It is to be noted that during trial two accused (1) Zahurul Islam @ Zahurul Haque @ Tekka Khan and (2) Abdullah-Al-Baki died on 12.05.2019 and 13.07.2020 respectively and accordingly proceeding so far as it related to them stood abated. Therefore, charges have been adjudicated only in respect of alleged criminal liability of two other accused (1) Abdul Khalek Mondol and (2) Khan Rokunuzzaman (absconding).

390. We say again the settled principle that burden of proving guilt or responsibility of the accused persons indicted squarely lies upon the prosecution. In the case in hand, in proving arraignments brought in each count of six charges (excepting charge no.04), the standard has been found to be reasonably met as the accused (1) Abdul Khalek Mondol and (2) Khan Rokunuzzaman (absconding) are found to have incurred liability for the atrocious crimes which have been proved beyond reasonable doubt.

391. On having cautious and judicial appraisal of all the evidences presented before us and arguments advanced by both sides and also based upon settled and evolved jurisprudence, the Tribunal [ICT-1] **UNANIMOUSLY** finds-

Two accused (1) Md. Abdul Khalek @ Abdul Khalek Mondol and (2) Khan Rokunuzzaman (absconding)

Charge No.01:GUILTY of participating, abetting, assisting, substantially contributing, by their act and conduct forming part of systematic attack, to the actual commission of the offences of **'abduction, 'confinement', 'torture'** and

'murder' 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 and they be convicted and sentenced under section 20(2) of the said Act.

One accused (1) Khan Rokunuzzaman @ Rokunuzzaman (absconding)

Charge No.02:GUILTY of participating, substantially contributing, aiding and abetting in committing criminal acts which resulted in **'abduction', 'confinement', 'torture' and 'murder'** of an unarmed civilian as crimes against humanity as enumerated in section 3(2)(a)(g)(h) of the Act of 1973 for which he incurred liability under section 4(1) of the Act of 1973 which are punishable under Section 20(2) of the Act and he be convicted and sentenced under section 20(2) of the said Act.

One accused (1) Khan Roknuzzaman @ Rokunuzzaman (absconding)

Charge No.03:GUILTY of participating by his act and conduct forming part of systematic attack directed against the civilian population in accomplishing the offences of **‘abduction’**, **‘confinement’** , **‘torture’** and **‘murder’** of Sabdar Ali Sarder as crimes against humanity as specified in section 3 (2)(a)(g)(h) of the International Crimes Tribunal Act of 1973 for which he incurred liability under section 4(1) of the Act of 1973 which are punishable under Section 20(2) of the Act and he be convicted and sentenced under section 20(2) of the said Act.

Two accused (1) Md. Abdul Khalek @ Abdul Khalek Mondol and (2) Khan Roknuzzaman @ Rokunuzzaman (absconding)

Charge No.04: NOT GUILTY. Since prosecution has dropped this charge we are not going to render any finding on adjudication of the accusation brought in this charge.

One accused (1) Md. Abdul Khalek @ Abdul Khalek Mondol

Charge No.05: GUILTY of participating, abetting, facilitating, contributing and complicity in committing **‘abduction’ and ‘murder’** as crimes against humanity, as part of systematic attack directing against unarmed civilians as specified in section 3(2)(a)(g)(h) of the International Crimes Tribunal Act of 1973 for which he incurred liability under section 4(1) of the Act of 1973 which are punishable under Section 20(2) of the Act and he be convicted and sentenced under section 20(2) of the said Act.

One accused (1) Khan Rokunuzzaman @ Rokunuzzaman (absconding)

Charge No.06: GUILTY of participating, abetting, facilitating, contributing and complicity in committing **‘abduction’ ‘confinement’ and ‘torture’** as crimes against humanity, as part of systematic attack directing against unarmed civilians as specified in section 3(2)(a)(g)(h) of the International Crimes Tribunal Act of 1973 for

which he incurred liability under section 4(1) of the Act of 1973 which are punishable under Section 20(2) of the Act and he be convicted and sentenced under section 20(2) of the said Act.

One accused (1) Md. Abdul Khalek @ Abdul Khalek Mondol

Charge No.07: GUILTY of participating abetting, facilitating, contributing and complicity in committing ‘**confinement**’ ‘**rape** and ‘**other inhumane act**’ as crimes against humanity, as part of systematic attack directing against unarmed civilians as specified in section 3(2)(a)(g)(h) of the International Crimes Tribunal Act of 1973 for which he incurred liability under section 4(1) of the Act of 1973 which are punishable under Section 20(2) of the Act and he be convicted and sentenced under section 20(2) of the said Act.

XIII. Verdict on Sentence

392. Ms. Rezia Sultana Begum the learned prosecutor submits that the accused Abdul Khalek Mondol and Khan

Rokunuzzaman (absconding) have been found guilty of offences with which they have been indicted. The proved offences reflect extreme dreadfulness against unarmed protected civilians forming part of civilian population. The accused persons knowing consequence and sharing intent of the criminal enterprise participated and substantially contributed in committing the crimes arraigned. Manner of attack leading to the commission of offences and mode of participation of accused persons in perpetrating the crimes demonstrate aggravating factor. Thus, the accused persons deserve only capital punishment which shall be proportionate to the gravity and magnitude of the offences proved.

393. On the other hand, Mr. Abdus Sobhan Tarafder and Mr. Gazi M.H Tamim the learned counsels defending the accused persons opposing the submission made on part of prosecution submit that no charge could be proved beyond reasonable doubt; that participation of accused persons in committing the alleged offences could not be proved and thus they deserve acquittal.

394. Tribunal notes that it is now well settled that in awarding sentence in a case involving offences as crimes against humanity pertinent criteria for assessment of the gravity requirement includes the nature, scale, manner of commission of the crimes including human rights violated, the impact of attack on victims, the role and degree of the accused's participation and also discriminatory intent of perpetrators.

395. In awarding sentence, the Tribunal must eye on the nature and extent of the offences committed, their scale, the role the convicted accused had played and mode of his participation to the perpetration of the crimes proved. At the same time the trauma and harm sustained by the victims and their families also significantly act as factor in assessing the gravity of offences.

396. In 1971 the entire territory of Bangladesh was under atrocious attack of the Pakistani occupation army directing non-combatant civilians on having collaboration and assistance of Razakars and other para militia forces. In the case in hand too we find that the accused persons who are found guilty had acted culpably, in exercise of their affiliation

with local Razakar Bahini and Jamat e Islami in accomplishing the crimes arraigned.

397. The convicted accused persons consciously made them part of collective criminality which eventually resulted in killing , torturing, confining of numerous pro-liberation civilians and also beastly ravishment upon women , as already found proved in the case in hand.

398. It stands proved that the accused persons in exercise of their explicit involvement with pro-Pakistan political party got enrolled in Razakar Bahini of Satkhira. It has been found proved too that they had dominant affiliation with Razakar camp set up at Diamond Hotel in Satkhira town. This camp was in fact meant to act as a torture cell.

399. It has been evinced that the accused Abdul Khalek Mondol, Khan Rokunuzzaman @ Rokunuzzaman and their accomplice Razakars used to keep civilians including victims of offences as arraigned in all the charges detained in this camp set up in Diamond Hotel in Satkhira town. Such unlawful acts were done to further policy and plan of

Pakistani occupation army. Intent was to resist the pro-liberation civilians from being stood in support of the war of liberation.

400. The convicted accused persons are found to have had active participation in gunning down two wounded naval commandos to death, when they were non-combatant [**as listed in charge no.01**]. It was committed in violation of international humanitarian law. It stands proved that on encouraging order of accused Abdul Khalek Mondol two non-combatant wounded naval commandos were annihilated with extreme aggression and brutality. It has been established that the accused Abdul Khalek Mondol ordered and endorsed the commission of the killing. The accused persons thus consciously acted in accomplishing the killing [**as listed in charge no.01**].

401. It also stands proved that accused Abdul Khalek Mondol consciously and deliberately being part of criminal enterprise substantially contributed to the commission of killing one unarmed civilian[**as listed in charge no.05**]. Pattern of the

attack and mode of accused's participation therewith deserve to be considered as an aggravating factor.

402. Commission of offences as arraigned in **charge no.01 and 05** itself portrays enormity, gravity and diabolical nature of the crimes. The act of the accused persons, by its consequences, objectively formed part of attack.

403. It has been found proved that accused Khan Rokunuzzaman @ Rokunuzzaman [absconding] had active role and participation in getting pro-liberation civilians forcibly captured by launching systematic attack [**as listed in charge nos. 2 and 3**]. The victims were kept detained in captivity at Razakar camp set up in Diamond Hotel, Satkhira town. Later on the victims were annihilated.

404. Deliberate criminal acts of accused Khan Rokunuzzaman @ Rokunuzzaman forming part of systematic attack leading to abduction, confinement of numerous civilians and causing torture to them demonstrates his conscious participation in committing those criminal acts [**as listed in charge no. 06**]

with grave aggression to pro-liberation civilian population of the locality.

405. The above manner and mode of explicit acts of accused Khan Rokunuzzaman @ Rokunuzzaman in committing the crimes against civilian population in violation of international humanitarian law rather amount to aggravating factors.

406. It is found proved too that accused Abdul Khalek Mondol being part of the criminal enterprise knowingly facilitated the Pakistani occupation army men to throttle down the Bangalee womanhood, under coercion and horror[**as listed in charge no.07**]. In conjunction with the attack defenseless husband of victim P.W.08 was subjected to torture and grave intimidation. Accused Abdul Khalek Mondol actively 'promoted' and 'encouraged' the attack of sexual invasion against two defenceless women including victim P.W.08, forming part of civilian population.

407. It is evinced that being substantially aided and facilitated by the convicted accused persons the army men, the actual perpetrators committed sexual violence upon P.W.08 when

she was pregnant and few days later the beastly event resulted in abortion of a dead fetus. What a tragedy! What a tragic experience a traumatized woman narrated in a court of law! The trauma she sustained shakes the humanity indeed.

408. The accused Abdul Khalek Mondol is equally responsible for the beastly felony, conducted in course of systematic attack. It was not an isolated incident of rape. Such beastly attack of woman's supreme worth was intended to send a message of intimidation to the pro-liberation Bengali civilians. The perpetrators had carried out the act of sexual violence as an instrument of threat to the civilians who took stance in favour of war of liberation.

409. We reiterate that war time rape victims are the greatest mothers and sisters of the soil indeed. They are the integral part of our war of liberation. They are our pride. They fought for our independence, in exchange of their supreme self honour and bravery. The nation salutes them, their sacrifices.

410. Letters of law considers the level and gravity of the offences for which the offender is found guilty. Due weight is

to be given to some factors including magnitude and seriousness of crimes committed and mode of participation of the accused, in the determination of an appropriate punishment. The intrinsic gravity of the offence may be regarded as 'the litmus test' in awarding an appropriate sentence.

411. In the case in hand the accused persons Abdul Khalek Mondol has been found guilty and convicted for barbaric atrocities committed directing unarmed civilian population. Old age of this convicted accused cannot have any determinative impact because of the other explicit aggravating factors. Thus, the mere fact that an accused is a man of old age is not, in and of itself, considered as a mitigating factor in awarding sentence, particularly when the accused is found guilty of committing grave atrocious crimes.

412. In the case in hand, the offences proved were of gravest nature that shakes human conscience, the humanity and civilization. Indeed the convicted accused deserve appropriate sentence proportionate to the intrinsic gravity of the offences proved.

413. Letters of law cannot remain mute in awarding proper sentence on eyeing to the nature of the offence and depending upon the degree of criminality, and all attended circumstances

414. All the horrific events indubitably prove that the convicted accused persons were notorious Razakars having prominent dominance over the locally formed Razakar Bahini in 1971 and they being imbued by the policy and plan of Pakistani occupation army deliberately and systematically attacked the pro-liberation civilians with extreme hostility and antagonistic mindset in accomplishing barbaric atrocities.

415. The atrocious events proved were enormously appalling indeed. Mode of participation of the convicted accused as has been found proved, in accomplishing the killings and in causing untold harm deserves justifiable consideration in awarding sentence. In the appeal of Mir Quasem Ali the **Appellate Division** observed that –

“The offences of crimes against humanity or genocides are by nature serious and heinous type of offences because the perpetrators committed those offences

against unarmed innocent civilians. These crimes cannot be compared with ordinary crimes. They are of incomparable scale and seriousness. **[Criminal Appeal No.144 of 2014; Judgment: 8th March, 2016 ; page-242]**

416. The convicted accused persons have been found guilty not for committing any isolated offence as codified in normal penal law and as such the proved offences enumerated in the Act of 1973 itself portrays magnitude, gravity and diabolical nature of the crimes.

417. It has been proved that the convicted accused persons being aware of the consequence made them enthusiastically engaged in perpetrating prohibited criminal acts voluntarily, perceptively and with premeditation. Mode of their participation in perpetrating the offences of ‘crimes against humanity’ aggravates their liability which deserves to be considered in awarding sentence. Proved crimes mirror the extreme brutality which harmed humanity and civilization as well.

418. In view of above discussion together with settled proposition and considering the nature and proportion to the gravity of offences proved and also keeping the factors as discussed herein above into account we are of the **UNANIMOUS** view that justice would be met if the accused **Md. Abdul Khalek @ Abdul Khalek Mondol and Khan Rokunuzzaman @Rokunuzzaman [absconding]** who have been found guilty beyond reasonable doubt for the crimes proved (**as arraigned in 06 charges i.e. charge nos. 1,2,3,5,6 and 7**) are condemned and sentenced as below, under the provision of section 20(2) of the Act of 1973:

Hence, it is ORDERED

That the accused **Md. Abdul Khalek @ Abdul Khalek Mondol** son of late Lutfor Rahman @ Lal Chand Mondol and late Deljan Bibi of village-Khalilnagar under Police Station-Satkhira of District [now] Satkhira is found guilty of the offences of ‘crimes against humanity’ (**as listed in charge no.01, 05 and 07**), as enumerated in section 3(2) (a)(g)(h) of the International Crimes (Tribunals) Act, 1973 .

Accused Khan Rokunuzzaman @ Rokunuzzaman son of late Mohabbat Ali Khan and late Ohida Khanam of village-Dkahhin Palashpol under Police Station-Satkhira of District [now] Satkhira is found guilty of the offence of ‘crimes against humanity’(as listed in charge no.01, 02, 03 and 06), as enumerated in section 3(2) (a)(g)(h)of the International Crimes (Tribunals) Act, 1973.

Accordingly, accused **Md. Abdul Khalek @ Abdul Khalek Mondol** be convicted and condemned to the sentence as below for three charges, 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;

‘Sentence of death’ for the crimes as listed in **charge no.05** and he be hanged by the neck till he is dead, under section 20(2) of

the International Crimes (Tribunals) Act,
1973;

AND

‘Sentence of death’ for the crimes as listed
in **charge no.07** and he be hanged by the
neck till he is dead, under section 20(2) of
the International Crimes (Tribunals) Act,
1973;

The **‘sentences of death’** as awarded above, in respect of
charge nos. 01, 05 and 07 will get merged.

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

Accused **Md. Abdul Khalek @ Abdul Khalek Mondol** and
Khan Rokunuzzaman @ Rokunuzzaman [absconding]are

found **UNANIMOUSLY not guilty** of offences as arraigned in **charge no.04** and thus they be acquitted thereof.

Accused Khan Rokunuzzaman @ Rokunuzzaman [absconding] be convicted and condemned to the sentence as below for four charges, 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;

‘Sentence of death’ for the crimes as listed in **charge no.02** and he be hanged by the neck till he is 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 he be hanged by the

neck till he is dead, under section 20(2) of the International Crimes (Tribunals) Act, 1973;

AND

‘Sentence of imprisonment for 10 (ten) years’ for the crimes as listed in **charge no.06**, under section 20(2) of the International Crimes (Tribunals) Act, 1973;

The **‘sentences of death’** as awarded above to convict **Khan Rokunuzzaman @ Rokunuzzaman [absconding]**, in respect of **charge nos. 01, 02 and 03** shall get merged.

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

The sentence of imprisonment as awarded Against the accused Khan Rokunuzzaman @ Rokunuzzaman shall commence from the date of his arrest or surrender as required under Rule 46(2) of the Rules of Procedure, 2010(ROP) of the Tribunal-1.

Convicted accused Md. Abdul Khalek @ Abdul Khalek Mondol [present on dock as brought from prison] be sent to prison with conviction warrant.

Let conviction warrant be issued accordingly. Let a copy of the Judgment be transmitted together with the conviction warrant to (1) the Secretary, Ministry of Home Affairs, (2) the Inspector General of Police, Bangladesh Police, Police Head Quarters, Dhaka and (3) the District Magistrate, Dhaka and (4) The Senior Jail Super Dhaka Central Jail, Keraniganj, Dhaka for information and necessary action and 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 Khan Rokunuzzaman @v Rokunuzzaman.

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

The convict accused **Md. Abdul Khalek @ Abdul Khalek Mondol** shall have right to prefer appeal before the Appellate Division of Bangladesh Supreme Court with the time stipulated in law. Thus let certified copy of the judgment be furnished to this convict at once.

If the convict accused Khan Rokunuzzaman @ Rokunuzzaman 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