

International Crimes Tribunal-1

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

Old High Court Building, Dhaka, Bangladesh.

ICT-BD [ICT-1] Case No.02 of 2018

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

Present:

Justice Md. Shahinur Islam, Chairman

Justice Md. Abu Ahmed Jamadar, Member

Justice K.M. Hafizul Alam, Member

The Chief Prosecutor

Vs.

(1) Md. Rezaul Karim alias Montu

(2) Md. Shahid Mandol and

(3) Md. Nazrul Islam [absconding]

For prosecution:

Mr. Golam Arief Tipoo, Chief Prosecutor

Mr. Mokhlesur Rahman Badal, Prosecutor

Mr. Md. Sultan Mahmud, Prosecutor

Mr. Abul Kalam, Prosecutor

Mrs. Sabina Yesmin Khan, Prosecutor

Mr. Tapas Kanti Baul, Prosecutor

For defence:

Mr. Abdus Sattar Palwan, Advocate, Supreme Court of Bangladesh: Engaged for accused (1) Md. Rezaul Karim alias Montu, (2) Md. Shahid Mandol

Mr. Gaji M.H Tamim, Advocate, Supreme Court of Bangladesh: State defence Counsel for accused (3) Md. Nazrul Islam [absconding]

Date of delivery of Judgment: 31 May, 2022

JUDGMENT

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

I. Opening words

1. The judgment which we are going to render today, on wrapping up of trial will be the 46th judgment. Three accused (1) Md. Rezaul Karim alias Montu (2) Md. Shahid Mandol and (3) Md. Nazrul Islam have been tried in this case. Of them accused Md. Nazrul Islam has been absconding. Trial relates to the offences as enumerated in section 3(2) of the International Crimes (Tribunals) Act, 1973 allegedly committed in the localities under police station-Badalgachi of District (now) Naogaon in 1971 during the war of liberation.

2. At the outset we extend our appreciation for the commendable and proficient efforts focusing on pertinent issues involved in the case placed on part of the learned prosecutors and the learned defence counsels during trial.

3. The accused persons indicted have been tried for committing internationally recognized crimes i.e. crimes against humanity which are among the most egregious harms to human dignity perpetrated in 1971 in the territory of Bangladesh, during the War of Liberation, under the International Crimes (Tribunals) Act, 1973.

4. Now, having regard to 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. Introductory Words

5. This International Crimes Tribunal (hereinafter referred to as the “Tribunal”) was established under the International Crimes (Tribunals) Act enacted in 1973 (hereinafter referred to as the “Act”) by Bangladesh Parliament to provide for the

detention, prosecution and punishment of persons responsible for genocide, crimes against humanity, war crimes, and other crimes committed in the territory of Bangladesh, in violation of customary international law.

6. It is to be noted that the notion of fairness and due process as have 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 Act is to be assessed with reference to the national wishes such as, the long denial of justice to the victims of the horrific atrocities involving hefty magnitude of violence committed during the war of liberation 1971 and the nation as a whole, together with the recognized norms and jurisprudence evolved.

7. Tribunal notes that the ICTR and SCSL the adhoc Tribunals backed by the United Nations (UN) have been constituted under their respective retrospective Statute. Only the International Criminal Court (ICC) is founded on prospective Statute [Rome Statute].

8. The Act XIX enacted in 1973 which is meant to prosecute 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 and the offence of genocide.

III. Jurisdiction of the Tribunal

9. The Act of 1973 has been enacted intending to prosecute, try and punish not only the armed forces but also the perpetrators who belonged to ‘auxiliary forces’, or who committed the offences enumerated in section 3(2) as an ‘individual’ or a ‘group of individuals’ or ‘organisation’ [as amended with effect from 14.7.2009].

10. It is manifested from section 3(1) of the Act of 1973 that even any person (individual), if he is *prima facie* found accountable either under section 4(1) or 4(2) of the Act of 1973 for the perpetration of offence(s), can be brought to justice under the Act.

11. We reiterate that the Tribunal formed under the Act of 1973 is absolutely a domestic Tribunal but meant to try ‘internationally recognized crimes’ or ‘system crimes’ committed in violation of international humanitarian law during the war of liberation in 1971 in the territory of Bangladesh. Merely for the reason that the Tribunal is preceded by the word “international” and possessed jurisdiction over crimes such as Crimes against Humanity, Crimes against Peace, Genocide, and War Crimes, it will be mistaken to assume that the Tribunal must be treated as an “International Tribunal”.

IV. Brief Historical Background

12. Appalling atrocities constituting the offences of genocide and crimes against humanity were committed during the nine-month-long war of liberation in 1971. In exchange of innumerable sacrifice the nation achieved its independence and the independent motherland of the Bangalee nation--
Bangladesh.

13. Let us eye on the historical truth. The Bangalee nation started experiencing grave disparity and deprivation since August, 1947 when 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.

14. In 1952 the Pakistani authorities attempted to impose 'Urdu' as the only State language of Pakistan ignoring Bangla, the language of the majority population of Pakistan. The people of the then East Pakistan started movement to get Bangla recognized as a state language and eventually turned to the movement for greater autonomy and self-determination and finally independence.

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

16. In the early hour of 26th March, following the onslaught of “Operation Search Light” by the Pakistani Military on 25th March, Bangabandhu declared Bangladesh independent immediately before he was arrested by the Pakistani authorities.

17. The ‘operation’ was designed to disarm and liquidate Bangalee policemen, soldiers and military officers, to arrest and kill nationalist Bangalee politicians, soldiers and military officers, to arrest and kill and round up professionals, intellectuals, civilians belonging to Hindu community and students. Afterwards, criminal actions conducted in concert with its local collaborator militias, Razakar, Al-Badar and the key pro-Pakistan political organisation Jamat E Islami (JEI) were intended to stamp out the Bangalee national liberation movement and to mash the national feelings and aspirations of the Bangalee nation. We take this settled history in judicial notice.

18. The Pakistan government and the military formed Peace Committee as an ‘associate organization and number of auxiliary forces such as the Razakars, the Al-Badar and the

Al-Shams etc, essentially to act as a team with the Pakistani occupation army in identifying and eliminating all those who were perceived to be pro-liberation, individuals belonging to minority religious groups especially the Hindus, political groups belonging to Awami League and Bangalee intellectuals and unarmed civilian population of Bangladesh.

19. Incontrovertibly the ways to self-determination for the Bangalee nation was strenuous, swabbed with enormous blood, strive and sacrifices. In the present-day world history, conceivably no nation paid as extremely as the Bangalee nation did for its self-determination.

20. After the independence achieved the government of Bangladesh enacted the International Crimes (Tribunals) Act 1973 for investigation, prosecution and punishment of the perpetrators of those crimes. But no judicial forum under the said Act could be formed due to military coup followed by the killing of the Father of the Nation. Inaction on part of the military rulers who captured state power rather added endorsement to the culture of impunity. Presumably, the accused persons too taking advantage of such unconstitutional endorsement remained untouched for years together.

21. Despite enacting the statute in sovereign parliament the perpetrators of the heinous crimes could not be brought to book, and this left a deep scratch on the country's political awareness and the whole nation. The impunity the potential perpetrators enjoyed held back political stability, saw the rise of militancy, and destroyed the nation's Constitution.

22. We must keep it in mind that incontrovertibly the ways to self-determination for the Bangalee nation was arduous, swabbed with enormous blood, strive and sacrifices. 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 is indebted to their unprecedented and heroic sacrifices.

V. Procedural History

Initiation of Investigation

23. The investigation Agency of the Tribunal started investigation pursuant to compliant register serial no. 72 dated 18.10.2016, in respect of commission of offences enumerated in section 3(2) of the Act of 1973 allegedly perpetrated by (1) Md. Rezaul Karim alias Montu, (2) Md.

Shahid Mandol, (3)Md. Nazrul Islam [absconding] and (4) Ishak Ali[died at pre-trial stage]

Arrest of suspected accused

24. During investigation, the IO prayed for causing arrest of the suspected accused persons through the Chief Prosecutor, for the purpose of proper and effective investigation. In execution of warrant of arrest issued by the Tribunal three suspected accused (1) Md. Rezaul Karim @ Montu (2) Md. Shahid Mandol (3) Ishak Ali were arrested and were produced before the Tribunal on 30.04.2017 when they were sent to prison.

Interrogation of suspected Accused

25. Tribunal considering the prayer on part of investigation agency permitted to interrogate those three suspected accused on 08.05.2017 and 09.05.2017 in Dhaka Central Jail Gate Room. Detained accused Ishak Ali died at pre-trial stage when he had been in prison.

Submission of Report

26. On conclusion of investigation, the IO submitted its report together with documents and materials collected and statement of witnesses, against suspected accuse (1) Md. Rezaul Karim @ Montu (2) Md. Shahid Mondol and (3)

Nazrul Islam(absconding) before the Chief Prosecutor on 30.11.2017.

Submission of Formal Charge

27. The Chief Prosecutor, on the basis of the report and documents submitted therewith by the Investigation Agency, placed the 'Formal Charge' on 05.04.2018 under section 9(1) of the Act of 1973 before this Tribunal alleging that the above mentioned three accused persons had committed the offence of crimes against humanity including 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 locality of Police Station-Badalgachi, District-Naogaon .

Taking Cognizance of Offences

28. The Tribunal, under Rule 29(1) of the Rules of Procedure, took cognizance of offences as mentioned in section 3(2) read with section 4(1) of the Act of 1973 on 07.05.2018 against the above mentioned three accused persons, by application its judicial mind to the Formal Charge and materials and documents submitted therewith.

Publication of Notification for holding proceeding in absentia of one accused

29. Out of three [03] accused one Md. Nazrul Islam could not be arrested. After having the report in execution of warrant of

arrest issued against him the Tribunal, for the purpose of holding proceeding in absentia against him ordered publication of notice in two national daily news papers. But the accused Md. Nazrul Islam did not turn up and as such treating him absconded Tribunal by its order dated 08.10.2018 appointed Mr. Gaji M.H Tamim, Advocate as state defence counsel, at the cost of government to defend the absconding accused Md. Nazrul Islam and fixed 26.11.2018 for hearing on charge framing matter.

Commencement of trial on Charge Framing

30. The Tribunal, on consideration of deliberations made by both sides and the formal charge together with the materials and statement of witnesses submitted by the prosecution, finally framed as many as 03 counts of charges against the accused (1) Md. Rezaul Karim alias Montu (2) Md. Shahid Mandol and(3) Md. Nazrul Islam [absconding] on 15.01.2019 which were read over and explained to the two accused present in Tribunal, in open court, to which they pleaded not guilty and claimed to contest the charges so framed.

Opening Statement and examination of prosecution Witnesses

31. Prosecution after placing opening statement on 26.02.2019 started examining witnesses. In all 17 witnesses including the

IO have been examined. The learned counsels defending the accused persons duly cross-examined the P.W.s. On closure of prosecution evidence defence declined to adduce and examine any witness.

Summing up

32. However next, both parties started placing summing up on 14.02.2021 and it ended on 26.04.2022. On closure of summing up the case was kept in CAV i.e. for delivery and pronouncement of judgment.

VI. Brief Account of Accused Persons

33. Before we render reasoned finding based on evidence tendered on charges framed we consider it indispensable to eye on the brief account of the accused persons, as has been narrated in the formal charge.

(1).Md. Rezaul Karim alias Montu (68)

Accused Md. Rezaul Karim alias Montu (68) , son of late Majir Uddin Mandol and late Rahima Begum of village-Goalvita, Police Station-Badalgachhi, District-Naogaon. Present address: Modern School (Razakar Building), Jamalganj Road, Professor Para, Police Station-Joypurhat Sadar, District-Joypurhat. He was born on 09.02.1950

(according to his NID). He passed M.Sc. (B. Ed) from the University of Rajshahi. During Liberation War accused Md. Rezaul Karim alias Montu was a student of Rajshahi University and active member of Jamaat-e-Islami. In 1971 he got enrolled in Razakar Bahini on having training under Pakistani army and formed a Razakar camp at his locality under Badalgachhi Police station under Naogaon Sub-Division (now District) and got involved in committing atrocious activities, prosecution alleges.

(2)Md. Shahid Mandol (62)

Md. Shahid Mandol (62), son of late Md. Abul Hossain and late Khoteza Bibi of village-Chapadal under Police Station-Badalgachhi, District-Naogaon and was born on 15.06.1955 (as per his NID). During Liberation War he was an active supporter of Jamaat-e-Islami. He joined the locally formed Razakar Bahini and participated in atrocious activities as an accomplice of his commander accused Md. Rezaul Karim alias Montu, prosecution alleges.

(3)Md. Nazrul Islam (64)

Md. Nazrul Islam (64), son of late Faraz Uddin Mandol and late Nayajan Bibi of village-Darishan under Police Station-Badalgachhi, District-Naogaon and was born on 30.09.1953

(as per his NID). He passed H.S.C from Mollikpur High School, Joypurhat. During Liberation War he was an active supporter of Jamaat-e-Islami and joined the locally formed Razakar Bahini and participated in committing atrocious activities as an accomplice of accused Razakar Commander Md. Rezaul Karim @ Montu, prosecution alleges

VII. Summing Up

Summing up by the Prosecution

34. **Mr. Tapas Kanti Baul**, the learned prosecutor in placing summing up drawing attention to the evidence tendered submitted that the accused persons got affiliated as notorious members of locally formed Razakar Bahini and they actively and knowingly collaborated with the Pakistani occupation army in carrying out criminal activities directing unarmed civilians as arraigned in all the three counts of charges which resulted in grave devastating activities and killing of numerous unarmed civilians.

35. It has also been argued that testimony of witnesses examined who are the locals under Badalgachhi Police Station were familiar with the identity of the accused persons beforehand as their notoriety made them widely known

around the locality. Thus, the uncontroverted testimony of witnesses in this regard and recognizing the accused persons when they accompanied the group of attackers at the crimes sites in accomplishing crimes proves that the accused persons belonged to Razakar Bahini and they consciously participated in criminal activities conducted in course of the event of attacks arraigned. Thus, despite absence of sufficient document it stands proved that they accused persons had explicit affiliation with the local Razakar Bahini, the learned prosecutor added.

36. The learned prosecutor also submitted that the papers **Material Exhibit-I** Series forming part of the ‘prosecution documents volume’ [page 07-16] also lends assurance as to accused persons’ membership in local Razakar Bahini.

37. The learned prosecutor then started arguing on commission of offences and participation and complicity of the accused persons therewith. However, argument so placed may be well addressed while each charge will be adjudicated independently.

38. Mr. Abdus Sattar Palwan, the learned counsel defending two accused (1) Md. Rezaul Karim alias Montu and (2) Md. Shahid Mandol argued that it could not be proved that these two accused were Razakars; that in 1971 the accused Md. Rezaul Karim alias Montu was a student of Rajshahi University and thus he had not been in the locality in 1971; that many of witnesses relied upon by the prosecution were minor in 1971 and thus it is not practicable for them to recount the event alleged and thus what they have testified does not carry credibility. The learned defence counsel placed his argument in respect of each count of charges which we think appropriate to focus and address when each charge will be determined.

39. Mr. Gazi M.H Tamim the learned state defence counsel defending the absconding accused Md. Nazrul Islam submitted that prosecution case suffers from credible evidence; that the testimony of witnesses suffers from inconsistency and contradiction on crucial aspect; that this accused was not a Razakar and he had no manner of involvement with the events arraigned; that he has been implicated in this case out of rivalry. In addition to above submission, the learned state defence counsel also argued to

negate alleged complicity and participation of this accused with the arraignments brought against him which may be well addressed at the time of adjudicating each charge independently.

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

40. The learned prosecutor submitted that the accused persons were affiliated in local Razakar Bahini. The witnesses recounted the event of attack and they stated that in course of attack they could recognize the accused persons accompanying the group of attackers. Their testimony could not be controverted. The accused persons were from the neighbouring or same locality and thus the witnesses knew them beforehand. Presence of accused persons accompanying the gang sharing intent itself is sufficient to prove their affiliation with local Razakar Bahini. Besides, lists of 2010 (prosecution volume documents page nos. 7-16) adds assurance as to affiliation of accused Rezaul Karim @ Montu and accused Md. Nazrul Islam.

41. The learned defence counsel **Mr. Abdus Sattar Palwan** submitted that the alleged list relied upon by the prosecution does not state the name of accused Shahid Mondol and the list is not exhaustive and thus it is not credible. The alleged list has been created for the purpose of this case. No document or list of 1971 showing the accused persons' such affiliation could be brought by prosecution.

42. **Mr. Tapas Kanti Baul**, the learned prosecutor, on contrary, submitted that it is really challenging and difficult indeed to collect document to substantiate affiliation of individuals in Razakar Bahini. The list of Razakars relied upon carries value. The I.O could not collect any document in relation to affiliation of accused Shahid Mondol with Razakar Bahini. But his affiliation with Razakar Bahini is found to have been proved from oral testimony which involves his active participation in committing the crimes, being part of the gang of attackers.

43. The learned prosecutor also added that mere absence of any list or document does not negate affiliation of another accused Md. Shahid Mondol. Ocular testimony proves his nexus in local Razakar Bahini.

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

45. It transpires that the Investigation Officer (IO) has been examined as P.W.17. He proved the documents i.e. the lists of Razakars as **Exhibit-I Series (Prosecution Documents volume page nos. 7-16)**. It appears from the list dated 27.12.2010 under signature of the Upazila Nirbahi Officer, Badalgachhi that name of accused Rezaul Karim @ Montu and accused Md. Nazrul Islam find place in serial nos. 24 and 25. The list dated 19.12.2010 prepared by Bangladesh Muktijodhdha Sangsad, Badalgachhi Upazila also depicts that the name of these two accused find place in this list too. Both the lists seem to have been signed long before initiation of

investigation of the instant case. Thus, the same carries credence.

46. The I.O P.W.17 admits in cross-examination that accused Shahid Mondol's name does not find place in any of the said lists. It is really a challenging task indeed to collect documentary evidence long decades after the event happened in 1971. Thus, depending on ocular testimony of witnesses we may arrive at decision on this matter.

47. The formal charge itself states that the accused Shahid Mondol's date of birth is 15.06.1955 (as per his NID card). Defence does not appear to have put suggestion to any of prosecution witnesses that this accused was minor in 1971. Thus, and since presence of this accused with the gang of attackers at the time of conducting the event has been testified by the direct witnesses it may be justifiably deduced that this accused had explicit affiliation with the local Razakar Bahini and the date of birth as has been shown in his NID is not conclusive proof of his actual date of birth. In our society it is experienced that showing lesser age in NID card or any such document has become a habitual practice.

48. It transpires that the witnesses knew all the three accused beforehand as they were from their locality. It is unerringly inferred that association with local Razakar Bahini in committing monstrous activities indisputably made the accused persons known to locals. In the case in hand, we do not find any reason of implicating the accused Shahid Mondol falsely with the crimes arraigned.

49. Context existing in 1971 during the war of liberation for the reason of activities carried out by such infamous militia force a member of it became well known to the locals for his notorious acts and it may thus be proved even by oral testimony of the witnesses particularly who experienced and observed the acts related to the commission of horrific offences alleged. We consider that there can be no bar even to rely solely upon oral testimony in determining the fact of accused persons' nexus and association with the local Razakar Bahini.

50. The matter of accused persons' affiliation with the gang of attackers formed of Pakistani occupation army and accomplice Razakars may be well determined when we will move to adjudicate the charges framed. In view of reasoned

discussion made above oral testimony of the prosecution witnesses too lends assurance to the finding that all the three accused persons belonged to locally formed Razakar Bahini as rendered above, on cumulative appraisal of documents and related papers. However, the issue may be well adjudicated when the commission of crimes and participation of accused persons therewith as arraigned brought in each count of charge will be determined.

51. Now at this stage, on totality of evidence tendered in respect of alleged affiliation of the accused persons with the locally formed Razakar Bahini it reveals patently that the accused persons were seen moving very often around the locality as testified by the witnesses examined and as such the witnesses had fair occasion of knowing them beforehand. This rational reason of knowing the accused persons beforehand remained uncontroverted.

52. In 1971 Razakars became branded around their locality for their notoriety. In 1971 during the war of liberation, the Razakars had to maintain close nexus and attachment with the Pakistani occupation army stationed in their locality and the Razakar Bahini, in exercise of their membership in Razakar

Bahini, it may safely be presumed. From this settled point of view we arrive at decision that the accused persons' presence and culpable alliance with the gang of attackers lead to the conclusion that they were members of locally formed Razakar Bahini.

53. In addition to narrating the facts related to the event of attack arraigned P.W.02 stated that in 1971 on recommendation of peace committee formed in Badalgachhi police station created Razakar Bahini by entrusting Md. Rezaul Karim @ Montu (accused) as its commander. 70/80 people including accused Nazrul Islam, Ishak Ali (now dead), Shahid Mondol got enrolled as members of this Razakar Bahini. It appears that this piece of crucial version could not be controverted in any manner by the defence. Thus, it indisputably adds assurance as to membership of three accused with the locally formed Razakar Bahini

54. Further, in cross-examination done on part of accused Nazrul Islam P.W.02 stated that accused Nazrul Islam had quitted the locality after independence of Bangladesh achieved. Why this accused opted to quit the locality after the independence achieved? It may be justifiably inferred that to

get exonerated of the liability of committing atrocious crimes arraigned he thought it safe to depart the locality.

55. It also transpires that in recounting the events arraigned in all the three counts of charges the prosecution witnesses consistently stated that the accused persons accompanied the group when it conducted the attacks arraigned. Defence could not impeach it. No indication whatsoever could be demonstrated by cross-examining the prosecution witnesses that the version they made in respect of affiliation of the accused persons with locally formed Razakar Bahini and Pakistani occupation army stationed in the locality suffers from any degree of doubt.

56. Nexus and affiliation with Razakar Bahini which was created to collaborate with the Pakistani occupation army became anecdote, especially for its notoriety around the locality of witnesses examined. This logical proposition together with the oral evidence presented has thus made it unerringly proved that all the three accused persons were the members of locally formed Razakar Bahini. Documents forming part of Prosecution Documents Volume together with oral testimony have thus made it unerringly proved that the

three accused persons were culpably affiliated with the locally formed Razakar Bahini.

IX. Applicable laws

57. The proceedings before the Tribunal shall be guided by the International Crimes (Tribunals) Act 1973, the Rules of Procedure 2010 formulated by the Tribunal under the powers conferred in section 22 of the Act. Section 23 of the Act of 1973 prohibits the applicability of the Code of Criminal Procedure, 1898 and the Evidence Act, 1872.

58. 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]. The Tribunal may admit any evidence [Section 19(1) of the Act].

59. The Tribunal shall have discretion to consider hearsay evidence by weighing its probative value [Rule 56(2)]. Cross examination is significant in confronting evidence. The defence shall have liberty and right to cross-examine prosecution witness challenging his credibility and to take contradiction of the evidence given by him [Rule 53(ii)].

60. The Tribunal may receive in evidence statement of witness recorded by Magistrate or Investigation Officer only when the witness who has subsequently died or whose attendance cannot be procured without an amount of delay or expense which the Tribunal considers unreasonable [Section 19(2) of the Act]. But in the case in hand no such statement of witness has been received.

61. 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.

62. Since the Act of 1973 is meant to prosecute and try the persons responsible for the offence of crimes against humanity, committed in violation of international humanitarian law, the Tribunal however is not precluded from seeking guidance from international reference and relevant evolved jurisprudence, if needed to resolve legal issues related to charges and culpability of the accused.

X. The way of adjudicating the charges

63. Before we start adjudicating the charges we deem it necessary to focus on the way of adjudicating the charges framed. In the case in hand, the evidence produced by the prosecution in support of respective arraignment was mainly testimonial. Some of prosecution witnesses allegedly directly experienced the appalling events they have recounted in Tribunal. Their testimony seems to be invaluable to the Tribunal in its search for the truth on the alleged atrocious events that happened in 1971 war of liberation directing the Bangalee civilian population, after duly weighing value, relevance and credibility of such testimonies.

64. We require examining the facts constituting the offences arraigned and complicity of the accused therewith in a most dispassionate manner, keeping it in mind that the accused is presumed innocent.

65. Tribunal also notes that it should be kept in mind that the alleged incidents took place five decades back, in 1971 and as such memory of live witness may have been faded. Therefore, in a case involving the offences enumerated in the Act of 1973 allegedly committed in 1971 during the war of

liberation we are to depend upon **(i)** facts of common knowledge **(ii)** documentary evidence **(iii)** old reporting of news paper, books etc. having probative value **(iv)** relevant facts **(v)** circumstantial evidence **(vi)** careful evaluation of witnesses' version **(vii)** Political status of the accused at the relevant time and **(viii)** the jurisprudence evolved on these issues in the *ad hoc* tribunals, if deemed necessary to adjudicate any point of law.

66. The Tribunal is to determine the probative value of all relevant evidence admitted. Hearsay evidence, in a trial under the Act of 1973, is not inadmissible *per se*, but that such evidence should be considered with caution and if it carries reasonable probative value.

67. Tribunal reiterates that the prosecution, in the light of the charges framed, is burdened to prove-**(i)** commission of the crimes alleged **(ii)** mode of participation of the accused in committing any of crimes alleged **(iii)** how he acted in aiding or providing encouragement or moral support or approval to the commission of any of alleged crimes **(iv)** what was his complicity to commission of any of crimes alleged **(v)** context of committing the alleged crimes **(vi)** the elements necessary

to constitute the offence of crimes against humanity (vii) liability of the accused.

Adjudication of Charge No.01 **[03 accused indicted]**

[Offences of ‘abduction’, ‘plundering’, ‘arson’, ‘other inhumane acts’ and ‘murder’ of 04 [four] civilians committed at village-Ronahar under Police Station-Badalgachhi of District Naogaon].

68. Charge: That on 07.10.1971 at about 4:00 P.M a group formed of the accused (1) Md. Rezaul Karim alias Montu, (2) Md. Shahid Mandol, (3) Md. Nazrul Islam and (4) Md. Ishak Ali (now dead) , their 15/20 cohort Razakars and 100/150 Pakistani occupation army by launching systematic attack at village-Ronahar under Police Station- Badalgachhi of District[now]-Naogaon apprehended **Shaheb Ali and Akam Uddin** and handed them over to the Pakistani occupation army and started moving towards west of the crime site. The accused persons and their cohorts began to beat the detained victims and at one stage shot them to death. In conjunction with the attack the accused persons and their accomplices looted 10/12 houses and set those on fire.

On the same day at about 04:30/05:00 P.M the same group accompanied by the accused persons by launching attack also

apprehended two other civilians Mozaffar Hossain and Azim Uddin Mandal forcibly and eventually gunned them down to death.

Therefore, the accused (1) Md. Rezaul Karim alias Montu, (2) Md. Shahid Mandol and (3) Md. Nazrul Islam by such criminal acts forming part of systematic attack directing non combatant civilian population, to further policy and plan of the Pakistani occupation army participated, facilitated, abetted, aided and substantially contributed to the commission of the offences of **'abduction'**, **'plundering'**, **'arson'**, **'other inhumane acts'** and **'murder'** as crimes against humanity as enumerated in section 3(2)(a)(g)(h) read with section 4(1) of the International Crimes (Tribunals) Act, 1973 which are punishable under section 20(2) of the said Act of 1973.

Evidence of Witnesses Examined

69. This count of charge involves arraignment of committing looting, arson, torture and murder of four unarmed civilians by launching systematic attack. The gang of attackers allegedly formed of Pakistani army men, accused persons and their accomplice Razakars.

70. Four civilians Saheb Ali, Akam Uddin, Mozaffar Hossain and Azim Uddin Mandol were allegedly gunned down to death, in conjunction with the systematic attack as arraigned in this charge. The accused persons indicted had played active role in accomplishing the crimes, the charge framed arraigns.

71. Prosecution in order to prove the arraignment brought in this charge adduced and examined as many as 07 witnesses most of whom are sons and close relatives of victims and they experienced the activities carried out in conjunction with the attack launched which resulted in killing the unarmed civilians. Before weighing the narrative the witnesses recounted in Tribunal first now let us see what these witnesses testified.

72. P.W.01 Md. Towhidul Islam (63/64) of village Ronahar under police station-Badalgachhi of District Naogaon is a direct witness to the act of killing as arraigned in charge no.01. In 1971 he was a student of class VIII. In narrating the event he experienced P.W.01 stated that on 20th day of Bangla month Ashwin in 1971 at about 04:00 P.M he had been at their home when a gang formed of 15/20 armed Razakars, 100/150 Pakistani army accompanied by accused Razakar

Rezaul Karim @ Montu, Razakar Nazrul Islam, Razakar Ishaq Ali and Razakar Shahid Mondol entered their village and then being scared he (P.W.01) coming out of home went into hiding inside a nearer bush wherefrom he saw the perpetrators bringing Saheb Ali and Akam Uddin on capture and took them toward 50 yards west to their house with beating where the said Razakars gunned them down to death. P.W.01 stated that seeing this they became scared.

73. P.W.01 stated that next they saw the Razakars he named and army men committing looting households of 12/14 houses including their house and they set those on fire which resulted in burn injury to Harun , one and half year old brother of Tara Mia.

74. P.W.01 also stated that at about 07:30 P.M on the same day after the gang had left the site he heard that the gang had gunned down Azim Uddin Mandol and Mozaffar Hossain to death and burnt down their houses after committing looting. P.W.01 finally stated that he knew the accused persons as they were from their locality.

75. In cross-examination, in reply to defence question put to him P.W.01 stated that he did not see any other excepting Saheb Ali and Akam Uddin when they were taking away. P.W.01 denied defence suggestion that no event he testified happened; that the accused were not Razakars; that they did not have any involvement with the event alleged and that what he testified implicating the accused persons was untrue and tutored.

76. P.W. 02 Shamsuddin Mondal (67/68) a resident of village-Ronahar under police station- Badalgachhi of District (now) Naogaon is the cousin brother of one victim Mozaffar Ahmed. In 1971 he was a student of 2nd year Intermediate in Joypurhat Government College. He is a direct witness to the second phase of the event of attack.

77. P.W.02 stated that in 1971 on recommendation of peace committee formed in Badalgachhi police station created Razakar Bahini by entrusting Md. Rezaul Karim @ Montu (accused) as its commander. 70/80 people including Accused Nazrul Islam, Ishak Ali (now dead) and Md. Shahid Mondol got enrolled as members of this Razakar Bahini.

78. In respect of the event P.W.02 stated that on 07.10.1971 corresponding to 20th Aswin at about 04:30/05:00 P.M he had been at home when a group formed of Pakistani occupation army, 15/20 armed Razakars and accused Rezaul Karim @ Montu, Ishak Ali(now dead) and Razakar Md. Shahid Mondol had besieged their village. With this they the inmates of their family quitted home and remained stayed in hiding beside the wall north to the house of his uncle Tafiz Uddin.

79. P.W.02 further stated that from the hiding place he saw the Razakars he named forcibly capturing his cousin brother Mozaffar Ahmed entering the house of his uncle and then Razakar commander Rezaul Karim @ Montu and Razakar Nazrul Islam shot him to death. Seeing it he (P.W.02) ran away, being scared.

80. P.W.02 continued stating that few times later he heard from villagers that the said Razakars (accused persons) had gunned down Azim Uddin, Akam Uddin and Saheb Ali of their village to death and had 10/12 houses of the village including that of their and his uncle looted their house and set

those ablaze. The Razakars and Pakistani army moved back to Jamalganj Razakar camp at about 07:30 P.M.

81. Finally P.W.02 stated that on the following day they the villagers buried four martyred. The Razakars he named were from his neighboring village and thus he knew them beforehand.

82. P.W02 in cross-examination admitted that accused Rezaul Karim @ Montu used to study in intermediate class in Carmichael College since 1965 to 1968. But P.W.02 denied defence suggestion that the accused Rezaul Karim @ Montu was a student of Rajshahi University in 1971 and had been outside the locality since prior to the alleged event and that he had not been in the locality at the relevant time and that at that time he had been staying in Joypurhat at his father-in-law's locality.

83. P.W.02 also denied defence suggestions that he did not see the alleged event; that the event he testified did not happen; that he did not see what he narrated; that the accused persons were not Razakars; that out of rivalry he testified falsely implicating the accused persons

84. P.W.03 Md. Lutfar Rahman (60) is a resident of village-Ronahar under police station Badalgachhi of District-Naogaon. He is the son of victim Akam Uddin. He is a direct witness to the criminal acts leading to killing his father by launching attack.

85. P.W.03 stated that on 20th day of Bangla month Ashwin in 1971 at about 04:00 P.M he had been at home when he saw Razakar Rezaul Karim @ Montu, Razakar Ishak Ali (now dead), Razakar Nazrul Islam and Razakar Shahid Mondol, their accomplice 15/20 armed Razakars and 100/150 Pakistani army men attacking their house and they started inflicting torture to his father and maternal uncle Shaheb Ali, detaining them on capture. Razakars scolded them and thus they moved back. At that time Razakars he (P.W.03) named gunned down his father and maternal Uncle Shaheb Ali to death and they set their houses and neighboring houses on fire after committing looting. At that time his (P.W.03) one and half year old brother Harun sustained burn injury on his back.

86. P.W.03 also stated that later on, he also heard that on the same day the Razakars he named and army men also annihilated Mozaffar and Azim Uddin of their village.

87. In respect of reason of knowing the accused persons P.W.03 stated that he knew the accused persons as they were from their neighbouring localities.

88. In cross-examination, in reply to defence question put to him P.W.03 stated that they did not initiate any case over the event he narrated against the accused persons. P.W.03 denied defence suggestions that the accused persons were not involved with the event he testified; that the event he narrated did not happen and that he did not see or hear the event alleged and that he did not know the accused persons.

89. P.W.04 Tara Miah (62) is the son of victim martyr Akam Uddin. In 1971 he was student of class V. He had been at home when the group of attackers besieged their house. P.W.04 stated that on 20th day of Bangla month Ashwin in 1971 at about 04:00 P.M the group formed of Razakar Rezaul Karim @ Montu, Razakar Ishak Ali (now dead) Razakar Shahid Mondol and Razakar Nazrul Islam, 10/15 accomplice Razakars and 100/150 army men had attacked their house and apprehended his father and maternal uncle Saheb Ali and took them away toward west with beating. They obstructed them when they attempted to follow them. Then he saw Razakar

Rezaul Karim @ Montu gunning down his father and maternal uncle to death.

90. P.W.04 also stated that Razakars and army men carried out looting some houses including their house and set those on fire. That resulted in burn injury to back of his (P.W.04) younger brother Harun.

91. P.W.04 next stated that later on he heard that Razakars and army men on their way back gunned down Azim Uddin Mondol and Mozaffar Hossain to death.

92. P.W.04 stated that accused persons were residents of the locality about one and half/two kilometers far from their house and thus he knew them beforehand.

93. In cross-examination done on part of accused Rezaul Karim @ Montu and Md. Shahid Mondol(absconding) P.W.04 stated in reply to defence question put to him that he could not say his date of birth and on which date his mother died. P.W.04 denied defence suggestions that he did not know the accused persons; that accused Rezaul Karim @ Montu had been staying outside locality since prior to the war

of liberation; that he was not involved with the event he testified and that this accused was not Razakars.

94. P.W.04 also stated in reply to defence question put to him on part of accused Nazrul Islam that they initiated case with local police station over the event he narrated in 1971 against the accused persons. P.W.04 denied defence suggestion that this accused was not Razakar and that he was not involved with the event alleged and that what he testified implicating this accused was untrue and tortured.

95. P.W.05 Md. Babu (58) is the son of victim martyr Shaheb Ali. In 1971 he was a student of primary school. He too recounted what he experienced in conjunction with the attack arraigned. P.W.05 stated that on 20th day of Bangla month Ashwin in 1971 the gang formed of 15/20 armed Razakars, 100/150 Pakistani army men and Razakar Ishak Ali(now dead), Razakar Rezaul Karim @ Montu, Razakar Shahid Mondol and Razakar Nazrul Islam by launching attack apprehended his father and took him toward west side with beating.

96. P.W.05 continued stating that they started following them (the gang of attackers) but the Razakars obstructed them. They then saw Razakar Rezaul Karim @ Montu gunning down his father Shaheb Ali and Akam Uddin (his father's sister's husband) to death. Then the gang had carried out looting many houses including that of their and burnt down those on fire that resulted in burning injury to his one and half year old cousin brother Harun. Then the Razakars and army men had left the site.

97. P.W.05 also stated that later on he heard from people that the Razakars he named and Pakistani army men had killed Azim Uddin and Mozaffar Hossain and burnt down their houses on fire.

98. In cross-examination done on part of accused Rezaul Karim @ Montu P.W.05 denied defence suggestions that he did not see the event he narrated; that the accused Rezaul Karim @ Montu had been staying outside of his locality since 1965; that he had never seen this accused and did not know him and that he was not a Razakar.

99. P.W.05 in reply to question put to him in cross-examination done on part of accused Nazrul Islam that in 1971 he was a student of class III; that he did not know this accused and that what he testified implicating this accused was untrue and tutored.

100. Prosecution tendered **P.W.06 Md. Harun Miah (49)**. He is the son of victim martyr Akam Uddin. In 1971 he was one and half years old. Defence declined to cross-examine him.

101. P.W.07 Md. Golam Ahad (58) is the son of victim martyr Azim Uddin Mondol. In 1971 he was student of class V. At the relevant time he had been at home. P.W.07 stated that on 07 October 19071 at about 04:00/05:00 P.M the group formed of 15/20 Razakars and 100/150 Pakistani army and accused Razakar Rezaul Karim @ Montu, Nazrul Islam, Ishak Ali(now dead) and Shahid Mondol besieged their village. Seeing them moving toward their house he and his father attempted to flee by running when the Razakars gunned down his father to death. He then managed to take shelter at his sister's house at neighbouring village.

102. P.W.07 also stated that he heard from villagers that the Razakars he named and army men on the same day shot down Akam Uddin, Shaheb Ali and Mozaffar Mondol to death. The Razakars and army men looted 10/15 houses burnt those on fire. The Razakars he named were from their neighbouring village and thus he knew them beforehand.

103. In cross-examination done on part of accused Rezaul Karim @ Montu P.W.07 denied defence suggestions that he did not know the accused; that this accused had not been in the locality in 1971 as he was student of Rajshahi university; that this accused was not a Razakar and not involved with the alleged event and what he testified implicating this accused was untrue and tutored. P.W.07 also denied the defence suggestion put to him on behalf of accused Nazrul Islam that this accused was not a Razakar; that he was not involved with the event he narrated and that what he testified implicating this accused was untrue and tutored.

Finding on Evaluation of Evidence

104. The learned prosecutor **Mr. Tapas Kanti Baul** argued drawing attention to the evidence adduced that consistently corroborative evidence of direct witnesses, the sons and

relatives of victims it has been proved that the accused persons being part of the gang of attackers actively participated in getting the victims captured who were shot to death. The attack was systematic and designed as it occurred in context of war of liberation directing pro-liberation civilians. Defence could not controvert the ocular account the witnesses recounted.

105. Mr. Gazi M.H. Tamim the learned state defence counsel defending the absconding accused Md. Nazrul Islam argued that this accused was not at all present at the crime site with the gang; that the witnesses testified implicating him falsely; that this accused Md. Nazrul Islam is not the Nazrul Islam as found in the alleged list of Razakars relied upon by the prosecution. It has been further argued that no case was initiated over the event alleged after independence achieved and thus now the testimony of witnesses in respect of alleged arraignment does not carry credibility for the reason of delayed prosecution.

106. The learned defence counsel **Mr. Abdus Sattar Palwan** defending the two other accused detained in prison, on contrary, argued that the witnesses relied upon by the

prosecution were tendered in 1971; that it is not practicable for them to recollect the event allegedly happened about five decades back. What they testified thus turned out to be untrue. Alleged participation of accused persons with the event arraigned could not be proved with specificity by credible evidence.

107. It appears that the charge framed alleges that devastating acts resulted in arbitrary looting and killing of four unarmed civilians in an extremely brutal and aggressive manner. The criminal gang conducting the attack consisted of Pakistani occupation army men, accused (1) Md. Rezaul Karim alias Montu, (2) Md. Shahid Mandol and (3) Md. Nazrul Islam and their accomplices.

108. The issues need to be resolved in this count of charge are that –(i) systematic attack was conducted directing civilians, (ii) prohibited criminal acts leading to killing of four unarmed civilians were accomplished and (iii) the accused persons being part of the criminal enterprise knowingly participated in their act and conduct in accomplishing the crimes.

109. Tribunal reiterates that it was not practicable for an individual to see or observe the entire phase of the event as it happened in war time situation. The witnesses, as it appears, testified what they observed and heard in respect of the event arraigned. The facts materially chained to the event and participation of accused persons indicted therewith unveiled in testimony of witnesses now need to be evaluated in integrated way, in arriving at decision.

110. **P.W.01 Md. Towhidul Islam was a neighbour of victims** Saheb Ali and Akam Uddin. The event of attack happened in their village in day time. Launching attack by the gang accompanied by the accused persons as narrated by the P.W.01 could not be impeached in cross-examination.

111. It depicts from the account recounted by the P.W.01 that being scared sensing the attack he (P.W.01) went into hiding inside a bush nearer to home wherefrom he saw the perpetrators bringing Saheb Ali and Akam Uddin on capture and they took them toward 50 yards west to their house with beating where the accused Razakars indicted gunned them down to death. It is evinced that before the victims were

annihilated the perpetrators confined them unlawfully which was a grave breach of the Geneva Conventions of 1949.

112. Presence of accused persons indicted with the gang at the crime site and their substantial contribution in achieving the object of the attack are found to have been proved from evidence of P.W.01 who had rational reason of knowing the accused persons beforehand. This pertinent fact could not be impeached in any manner. This fact is unerring and sufficient indicia of their participation to the commission of the crimes, the outcome of the systematic attack.

113. In no way the above crucial ocular version could be tainted by cross-examining the P.W.01. Defence, it appears, simply denies what has been narrated in examination-in-chief. But mere denial does not diminish the truthfulness and credibility of testimony of witness.

114. Mr. Abdus Sattar Palwan the learned counsel defending the accused Rezaul Karim @ Montu and Shahid Mondol that prosecution could show the motive of killing the victims arraigned. In absence of motive the offences cannot be deemed to the offences as crime against humanity and the alleged killing should have been prosecuted as isolated crimes

under the Penal Law. The alleged killings had no nexus with the war of liberation.

115. In reply to above submission **Mr. Tapas Kanti Baul** the learned prosecutor submitted that the crimes arraigned in context of the war of liberation and the squad of attackers formed of Pakistani occupation army, accused persons and their accomplice Razakars. It could not be impeached in any manner and thus it may be inferred that the victims, the pro-liberation civilans of the vicinity and primary object of launching attack to spread horror by annihilating the victims, the unarmed civilans forming part of civilian population.

116. The uncontroverted ocular account made by P.W.01 also depicts that the Razakars he named and army men committed looting households of 12/14 houses including their house and they set those on fire which resulted in burn injury to Harun, one and half year old brother of Tara Mia. It remained unshaken too in cross-examination. Thus, it stands proved that the horrendous devastating activities detrimental to normal livelihood of protected civilians were deliberately carried out. Such prohibited acts formed part of 'systematic attack'.

117. In a case involving the offence of crimes against humanity we do not require to seek corroborative evidence. Evidence of single witness is sufficient to prove the accusation if it inspires value and credibility. Testimony even of a single witness on a material fact does not, as a matter of law, require corroboration. The established jurisprudence is clear that corroboration is not a legal requirement for a finding to be made. In this regard in the case of **Nchamihigo ICTR Trial Chamber observed that --**

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

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

118. However, in the case in hand, we see that what the P.W.01 has recounted seems to have been corroborated by sons of victims Akam Uddin, Shaheb Ali, Azim Uddin who have testified as P.W.03, P.W.04, P.W.05, P.W.06 and

P.W.07 and relative of victim Mozaffar Hossain who has testified as P.W.02.

119. The above witnesses are direct witnesses. Before Tribunal they too recounted what horrific activities they experienced in course of the event of attack conducted in their locality. Testimony of all these direct witnesses is consistently corroborative to each other and also provides corroboration to the testimony made by P.W.01 in relation to facts chained to the horrific attack.

120. It is true that in 1971 all of these witnesses (P.W.02, P.W.03, P.W.04, P.W.05, P.W.06 and P.W.07) were tendered aged. The learned defence counsel contended that their testimony does not carry any probative value and credibility in proving the accusation against the accused persons indicted in this charge as in 1971 they were tender aged which creates clog in recollecting what they really experienced.

121. We are not with the above defence submission. Tribunal has rendered its reasoned finding on this issue in earlier cases. We reiterate that mere tender age, at the time of the event arraigned does not diminish one's testimony if it inspires

credence. Mere tender age cannot be a ground to discard one's testimony if the same appears to be natural and gets corroboration from other evidence. Tribunal also considers it remarkable to note that in the case of *Ali Ahsan Muhammad Mujahid* the **Appellate Division of the Supreme Court of Bangladesh**, on this aspect, observed that –

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

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

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

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

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

123. Now, let us see what the other ocular witnesses (P.W.02, P.W.03, P.W.04, P.W.05, P.W.06 and P.W.07) have testified in relation to facts linked to the event of attack. We have already viewed that testimony of these witnesses seems to be consistently corroborative and natural.

124. Testimony of P.W. 02 Shamsuddin Mondal the cousin brother of one victim Mozaffar Ahmed demonstrates that he **saw the** group formed of Pakistani occupation army, 15/20 Razakars and accused Rezaul Karim @ Montu, Ishak Ali (now dead) and Razakar Md. Shahid Mondol besieging their village. With this he and inmates of the family quitting home remained stayed in hiding beside the wall north to the house of his uncle Tafiz Uddin.

125. It depicts too that P.W. 02 saw the Razakars he named forcibly capturing his cousin brother Mozaffar Ahmed, one victim entering the house of his uncle and then Razakar commander Rezaul Karim @ Montu and Razakar Nazrul Islam shot him to death. That is to say P.W.02 experienced how and who liquidated one victim Mozaffar Ahmed.

126. It is also evinced from ocular testimony of P.W.02 that few times later he heard from villagers that the said Razakars (accused persons) had gunned down Azim Uddin, Akam Uddin and Saheb Ali of their village to death. This piece of hearsay version gets corroboration from testimony of other witnesses. Besides, defence could not controvert it in any manner.

127. P.W.03 Md. Lutfar Rahman the son of one victim Akam Uddin also consistently recounted how his father and maternal uncle were gunned down to death by the Razakars. It transpires that the accused persons accompanied the gang of attackers. Defence simply denied it but could not bring anything to taint its credibility. P.W.04 Tara Miah is another son of victim martyr Akam Uddin. He too corroborating P.W.03, his brother recounted the horrific event of attack that resulted in killing his father and maternal Uncle Saheb Ali.

128. Learning the killing two other civilians Azim Uddin Mondol and Mozaffar Hossain in conjunction with the attack by the same gang as stated by P.W.04 could not be shaken by defence. Rather, it gets corroboration from ocular testimony

of two other direct witnesses, the close relatives of these two victims.

129. P.W.05 Md. Babu is the son of victim martyr Shaheb Ali too testified consistently how the first phase of attack was conducted and how his father and Akam Uddin were shot to death and how the accused persons participated in accomplishing the crimes arraigned.

130. P.W.07 Md. Golam Ahad is the son of victim martyr Azim Uddin Mondol described what he experienced in course of the event of attack conducted. His ocular narrative seems to be consistently corroborative to narrative made by other direct witnesses who had natural occasion of seeing the criminal acts perpetrated in course of the attack.

131. P.W.05 and P.W.07 too later on heard the killing of two other civilians Azim Uddin and Mozaffar Hossain by the same group of attackers and in conjunction with same attack. It remained unshaken. Besides, this piece of hearsay evidence seems to have been corroborated by P.W.02 and P.W.07 the direct witnesses to facts of killing these two civilians, in course of second phase of attack.

132. Accused Razakars Rezaul Karim @ Montu, Nazrul Islam, Ishak Ali (now dead) and Shahid Mondol were with the criminal enterprise at the crime sites. It stands proved. It also depicts that the accused persons indicted actively assisted and substantially contributed in committing killing four civilians, the outcome of the attack.

133. It has been arraigned that in course of first phase of attack the gang formed of accused persons indicted burnt down their house by fire which resulted in burning injury of P.W.06 Md. Harun Mia who was only one and half years old in 1971. His brothers P.W.03 and P.W.04 recounted this brutality. Defence could not controvert it.

134. P.W.06 however has been tendered with P.W.04 and defence declined to cross-examine him. This criminal act as found to have been proved indisputably demonstrates extreme aggression of the criminal gang accompanied by the accused persons indicted. In conducting the attack a gravely panicking situation was created by accomplishing numerous unlawful acts, facts unveiled tends to conclude it.

135. Based on facts and circumstances divulged we may justifiably deduce that such aggressive and active participation of accused persons in accomplishing such prohibited criminal act is fair indicia of designed and systematic attack conducted by the criminal enterprise of which the accused persons were active part, sharing intent and common purpose of the gang.

136. The gang of attackers simultaneously and in conjunction with the attack violently carried out pillaging and burnt down numerous houses. The witnesses, the sons and relatives of victims had natural occasion of seeing such aggravated destruction detrimental to normal livelihood of civilians.

137. We have got that P.W.01 also saw the Razakars he named and the army men committing looting households of 12/14 houses including their house and they set those on fire. P.W.02 the cousin brother of one victim Mozaffar Ahmed corroborating the above version of P.W.01 also stated that the perpetrators had looted 10/12 houses of the village including that of their and his uncle and set those ablaze.

138. P.W.04 son of victim Akam Uddin also stated that Razakars and army men carried out looting some houses

including their house and set those on fire. That resulted in burn injury to back of his (P.W.04) younger brother Harun. It could not be controverted in any manner.

139. Testimony of P.W.07 Md. Golam Ahad the son of victim martyr Azim Uddin Mondol too depicts that the gang of attackers accompanied by the accused persons indicted and army men carried out arbitrary pillaging at 10/15 houses and burnt down those on fire.

140. The event happened in day time. Defence does not dispute it. The witnesses had reason of knowing the accused persons. Thus, naturally the narrative they made implicating the accused persons with the event happened inspires credence.

141. Based on above consistent and corroborative account made by direct witnesses it is evinced that the event of attack was 'systematic' and 'designed' and intending to materialize the object of the attack the gang also opted to carry out devastating activities i.e. pillaging and arson, in addition to killing civilians.

142. It is not required to show which accused carried out pillaging at which house and set which house on fire. Since it stands proved that the accused persons knowing consequence consciously were with the gang at the crime site it may be justifiably inferred that they substantially assisted and contributed in accomplishing the destructive activities as well.

143. Thus, accused persons too incurred liability even for the aggravated destruction of civilians' property which presumably intended to spread horror and panic amongst the pro-libration civilians of the locality.

144. The acts of such wanton and extensive destruction, stubborn damage and looting of residential properties may amount to the method used to coerce, intimidate, terrorize the civilians. Act of pillaging followed by arson committed in conjunction with the attack constituted aggravated form of destruction of civilians' property which is explicitly prohibited by international humanitarian law (IHL) and grave breach of Geneva Convention.

145. No one should forget that personal property belonging to private persons is protected. But it appears that the criminal

gang accompanied by the accused persons deliberately and in pursuant to designed plan recklessly destructed such protected property belonging to civilians by committing reckless and wanton '**looting**' and '**arson**' which indubitably caused huge suffering to the civilians affected and attacked constituting the offence of '**other inhumane act**' as crimes against humanity.

146. It is now jurisprudentially settled that an act directed against a limited number of victims, or even against a single victim, can constitute a crime against humanity, provided it forms part of a 'systematic' attack against a civilian population.

147. In the case in hand, it has been proved beyond reasonable doubt that the group accompanied by the accused persons indicted participated in apprehending four (04) unarmed pro-liberation civilians who were annihilated by gun shot. The killing was the upshot of the systematic attack.

148. Mr. Abdus Sattar Palwan the learned counsel defending the accused Rezaul Karim @ Montu and Md. Shahid Mondol submitted that prosecution could not show the motive of killing the victims arraigned. In absence of motive

the offences cannot be deemed to the offences as crime against humanity and the alleged killing should have been prosecuted as isolated crimes under the Penal Law. The alleged killings had no nexus with the war of liberation.

149. In reply to above submission **Mr. Tapas Kanti Baul** the learned prosecutor submitted that the crimes arraigned in context of the war of liberation and the squad of attackers formed of Pakistani occupation army, accused persons and their accomplice Razakars. It could not be impeached in any manner and thus it may be inferred that the victims, the pro-liberation civilans of the vicinity and primary object of launching attack to spread horror by annihilating the victims, the unarmed civilans forming part of civilian population.

150. The submission advanced by the learned defence counsel does not have any jurisprudential support. We are not agreed with this submission. It stands proved that the group of attackers was formed of Pakistani occupation army, accused persons and their accomplice Razakars and the attack was 'systematic' and was directed against civilian population. Mere omission to state by the witnesses that the victims

annihilated sided with the war of liberation does not make the crimes 'isolated' in nature.

151. The acts of the accused persons and the members of the gang were not isolated and thus the attack carried out was amounted to a course of prohibited conduct against 'civilian population'. Civilian population does not mean the entire population of the vicinity attacked.

152. Facts and pattern of the attack patently impel the unerring conclusion that the perpetrators perceived the victims to be the potential pro-liberation civilans and it was the reason of targeting them. The victims forming part of the civilans population of the locality attacked was the primary object of the attack launched. Intention of perpetrating such crimes by launching systematic attack was to spread intimidation and terror around the vicinity to further policy of resisting the war of liberation.

153. Mr. Gazi M.H. Tamim submitted that no case was initiated over the event alleged after independence achieved and thus now the testimony of witnesses in respect of alleged arraignment does not carry credibility for the reason of delayed prosecution.

154. The above submission seems to be devoid of merit. We consider it imperative to reiterate our earlier finding on this issue, in brief. Time bar is not applicable to the prosecution of human rights crimes. Neither the Genocide Convention of 1948, nor the Geneva Conventions of 1949 contain any provisions on statutory limitations to war crimes and crimes against humanity.

155. Article I of the Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes Against Humanity adopted and opened for signature, ratification and accession by General Assembly resolution 2391 (XXIII) of 26 November 1968 provides protection against even any statutory limitation in prosecuting crimes against humanity, genocide etc. Thus, criminal prosecutions are always open and not barred by time limitation.

156. Thus, there can be no recognised hypothesis to insist that such a 'system crime' can only be pursued within a given number of years. Therefore, delayed prosecution does not rest as a clog in prosecuting and trying the accused and creates no mystification about the atrocities committed in 1971.

157. It stands proved that the accused persons were with the gang of attackers when by launching attack victims were gunned down to death. Defence simply denied accused persons' presence with the gang of attackers at the crime site. But it could not impeach, in any manner, what has been testified by the direct witnesses in respect of the first phase of attack.

158. Mr. Abdus Sattar Palwan the learned counsel defending the accused Rezaul Karim @ Montu submitted that in 1971 this accused had not been in the locality as he was at that time a student of Rajshahi University. It creates doubt as to his alleged presence at the locality when the event arraigned happened.

159. The above defence submission it appears that the plea of alibi has been taken by this accused. The burden lies upon the defence to prove this plea of alibi. It is now settled norm that defence bears no onus of proof of the facts forming defence case to get absolved of liability. During the trial, the accused shall have tight to adduce evidence, including evidence of alibi, intending to move up reasonable doubt regarding the prosecution case. But it appears that no

evidence whatsoever has been brought before Tribunal in support of this plea. It is to be noted that Rule 51(2) of the International Crimes Tribunal-1 Rules of Procedure, 2010 (ROP-1) states that –“The onus of proof as to the plea of ‘alibi’ or to any particular fact or information which is in the possession or knowledge of the defence shall be upon the defence.”

160. What we see in the case in hand? Defence suggested the prosecution witnesses that at the relevant time this accused had not been in the locality attacked. Prosecution witnesses denied it. But defence does not seem to have made any effort to bring any evidence to prove the plea of alibi. Thus, we are not at all ready to take this plea into account, particularly when the prosecution has been able to prove the event arraigned and accused persons’ involvement therewith. The mere argument placed on part of defence in respect of plea of alibi does not tend to conclude that ‘reasonable doubt’ has been created as to this accused’s participation and complicity in committing the criminal acts proved.

161. Based on evidence we have found it proved that the accused persons remained physically and culpably associated

with the group of perpetrators at the crime site when the attack was being carried out. It unerringly proves their requisite intent of accomplishing the killing of detained victims.

162. The accused persons were with the gang being part of 'collective criminality' in achieving the object of the joint criminal endeavor. All participants including the accused persons indicted in the JCE are thus regarded as co-perpetrators of the criminal acts leading to horrendous killing of four civilians. Thus, they are held equally responsible as co-perpetrators.

163. On totality of evidence adduced we are of the view that the prosecution has been able to prove beyond reasonable doubt that the accused (1) Md. Rezaul Karim alias Montu, (2) Md. Shahid Mandol and (3) Md. Nazrul Islam being part of collective criminality participated and facilitated the accomplishment of looting, arson of civilians' property and killing four (04) unarmed pro-liberation civilians pursuant to policy and common design.

164. In this way the three accused (1) Md. Rezaul Karim alias Montu, (2) Md. Shahid Mandol and (3) Md. Nazrul Islam

being part of the criminal enterprise and by their act and conduct forming part of systematic attack in materializing the culpable mission 'participated' , 'aided' and substantially 'contributed' to the actual commission of the offences arraigned and thereby they are found **guilty** for the offences of ' **abduction**', '**plundering**', '**arson**' and '**other inhumane act** ' and '**murder**' as crimes against humanity enumerated in section 3(2)(a)(g)(h) of the Act of 1973 which are punishable under section 20(2) and thus they incurred criminal liability under section 4(1) of the Act of 1973.

Adjudication of Charge 02

[03 accused indicted]

[Offences of Abduction, Plundering, arson, other inhumane acts and murder of 01[one] civilian committed at village-Khojagari under Police Station-Badalgachhi of District [now] Naogaon].

165. Charge: That on 08.10.1971 at about 1:30 P.M a group formed of the accused (1) Md. Rezaul Karim alias Montu, (2) Md. Shahid Mandol , (3) Md. Nazrul Islam and (4) Md. Ishak Ali (now dead) , 20/25 armed Razakars and 100 Pakistani occupation army by launching systematic attack at village-Khojagari under Police Station- Badalgachhi of District[now]-Naogaon forcibly captured one Nurul Islam and handed over him to the Pakistani occupation army and then he

was shot to death. In conjunction with the attack the accused persons and their accomplices after looting 15/20 houses set those on fire.

Therefore, the accused (1) Md. Rezaul Karim alias Montu, (2) Md. Shahid Mandol and (3) Md. Nazrul Islam by such criminal acts forming part of systematic attack directing non combatant civilian population, to further policy and plan of the Pakistani occupation army participated, facilitated, abetted, aided and substantially contributed to the commission of the offences of **'abduction', 'plundering', 'arson', 'other inhumane acts' and 'murder'** as crimes against humanity as enumerated in section 3(2)(a)(g)(h) read with section 4(1) of the International Crimes (Tribunals) Act, 1973 which are punishable under section 20(2) of the said Act of 1973.

Evidence of Witnesses Examined

166. This charge rests upon testimony of 04 witnesses of them 03 have been examined as P.W.08, P.W.09 and P.W.10. Another witness P.W.11 has been tendered. Before we weigh their testimony let us first see what they have recounted in relation to the event arraigned in charge no.02

167. P.W.08 Md. Asraful Alam (62) is a resident of village-Khojagari under police station-Badalgachhi of District (now)-Naogaon. He is allegedly a direct witness to the act of killing arraigned in this count of charge. He is relative of the victim.

168. P.W.08 testified that in 1971 he was student of class-V. On 21st day of Bangla month Ashwin in 1971 at about 01:30 P.M he had been at home when he saw the gang formed of Pakistani army men, Razakars accompanied by accused Razakars Rezaul Karim @ Montu, Md. Nazrul Islam, Ishak Ali(now dead) and Razakar Shahid Mondol besieging their village. With this he being scared he went into hiding inside a ditch west to their house wherefrom he started seeing the event conducted. The Razakars and Pakistani army men looted 20/2 5 houses including that of their own and set those ablaze.

169. P.W.08 also stated that in course of the event his cousin sister's husband and Imam of the mosque Nurul Islam jumped into the ditch, being scared. But the Razakars dragged him out there from and shot him to death. He (P.W.08) saw this event remained in hiding, 100 hands far from the site. The accused

persons were from their locality and thus he knew them beforehand.

170. In cross-examination P.W.08 denied defence suggestions that he did not know the accused persons; that the accused persons were not Razakars and had no involvement with the event alleged ; that in 1971 the accused Rezaul Karim @ Montu had not been in the locality and that what he testified implicating the accused persons was untrue and tutored.

171. P.W.09 Md. Jahurul Islam (60) is a resident of village-Khojagari under police station-Badalgachhi of District (now)-Naogaon. In 1971 he was a student of class IV. He is a **close relative to victim Nurul Islam**. P.W.09 had natural occasion of seeing the criminal acts perpetrated in course of attack launched at their village.

172. P.W.09 stated that on 21st date of Bangla month Ashwin in 1971 at about 01:30 P.M he had been at home when he saw the gang formed of Pakistani army men, Razakars accompanied by accused Razakar Rezaul Karim @ Montu, Nazrul Islam, Ishak Ali(now dead) and Razakar Shahid

Mondol attacking their village. Sensing the attack they the inmates went into hiding inside a bush of a ditch west to their house.

173. P.W.09 continued stating that remaining stayed inside the bush he saw the Razakars looting household of their house and 15/20 other houses and they set those ablaze. At that time his Fufa (husband of father's sister) Nurul Islam attempted to flee when the said Razakars got him apprehended and handed him over to Pakistani army who then gunned him down to death. Then the perpetrators had left the site. They buried the dead body of Nurul Islam afterward. P.W.09 finally stated that the Razakars he named were from their neighbouring localities and thus he knew them beforehand.

174. In cross-examination in reply to defence question put to him P.W.09 stated that he heard that accused Rezaul Karim @ Montu used to study staying outside of his own locality since prior to the war of liberation ensued. In cross-examination done on part of accused Nazrul Islam P.W.09 stated that accused Nazrul Islam had quitted the locality after independence of Bangladesh achieved.

175. P.W.09 denied offence suggestions that he did not know the accused persons; that the event he testified did not happen; that the accused persons were not Razakars; that he did not see the event happened as he was minor aged boy in 1971 and that what he testified implicating the accused persons was untrue and tutored.

176. P.W.10 Md. Moazzem Hossain Mondol (67) is a resident of village- Khojagari under police station-Badalgachhi of District (now)-Naogaon. In 1971 he was a student of class X. Victim Nurul Islam was his sister's husband. P.W.10 allegedly witnessed the event of attack conducted.

177. P.W.10 in recounting the event arraigned stated that on 21st day of Bangla month Ashwin in 1971 at about 01:30 P.M he was engaged in saying prayer at their village mosque. On hearing screaming outside he came out of the mosque and saw the accused Razakar Rezaul Karim @ Montu , Razakar Nazrul Islam, Razakar Ishak Ali (now dead), Razakar Shahid and their accomplice 20/25 Razakars and 100 Pakistani occupation army men conducting attack at their village. They the perpetrators looted their house and 18/20 other houses and set those ablaze.

178. P.W.10 also stated that he (P.W.10) then went into hiding inside a bush of a ditch where from he saw the said Razakars apprehending his sister's husband the Imam of the mosque Nurul Islam when being scared he attempted to flee and then Pakistani army men gunned him down to death. Then the Razakars and army men moved back leaving the site. Afterward they buried the dead body of Nurul Islam. He knew the accused persons as they were from their locality.

179. In cross-examination, in reply to defence question put to him on part of accused Rezaul Karim @ Montu P.W.10 stated that this accused used to study staying outside since 1965. But he could not say whether he studied in Rajshahi University for four years even after independence achieved.

180. P.W.10 denied defence suggestions that he did not see the event alleged; that the accused persons were not involved with the event he testified; that the accused persons were not Razakars and that what he testified implicating the accused persons was untrue and tutored.

181. Instead of examining **P.W.11 Md. Abdul Gafur (67)** prosecution tendered him with P.W.09 and P.W.10. Defence however declined to cross-examine him.

Finding on Evaluation of Evidence adduced

182. Mr. Tapas Kanti Baul, the learned prosecutor argued that by launching systematic attack devastating activities and killing one unarmed civilian were carried out by the gang of attackers formed of Pakistani army, the accused Razakars and their accomplice Razakars. The event happened in day time and thus the witnesses the relatives of victim remaining in hiding naturally could see the acts accomplished and participation of the accused persons therewith.

183. It has been further argued that merely for the reason that the accused Rezaul Karim @ Montu was a student of Rajshahi University since prior to the war of liberation ensued it cannot be said that this accused had not been in the locality at the relevant time, in 1971 and had no affiliation with the locally formed Razakar Bahini. Defence could not controvert the narrative the direct witnesses made in recounting the barbaric event of attack.

184. Mr. Gazi M.H. Tamim the learned state defence counsel for absconding accused Md. Nazrul Islam argued that what the witnesses testified in respect of the alleged event was untrue and tutored. It was not practicable of seeing the

alleged event remaining in hiding as claimed by the prosecution witnesses. Rather, sensing attack the surrounding people were supposed to flee away and thus claim of seeing the alleged event remaining in hiding at nearer place was rather not natural. Testimony of witnesses in respect of the alleged killing also suffers from major inconsistency. All these together create reasonable doubt as to alleged involvement of this accused with the event arraigned.

185. It has also been submitted by the learned state defence counsel that the witnesses had no reason of knowing this accused. What they have testified in respect of the reason of knowing this accused beforehand is simply untrue and thus their testimony implicating this accused with the alleged event does not carry any credibility.

186. The learned state defence counsel in support of his above assertion drew attention to the cross-examination of P.W.08, P.W.09 and P.W.10. These witnesses knew the accused Md. Nazrul Islam of village-Darishan but none of them knew any other resident of this village. Thus knowing only the accused of this village does not seem to be believable and thus testimony implicating this accused is not at all credible.

187. **Mr. Abdus Sattar Palwan** the learned counsel defending the two accused Rezaul Karim @ Montu and Shahid Mondol submitted that the testimony of witnesses in respect of the event arraigned in this charge is not credible; that the accused persons were not Razakars and did not have any form of involvement with the alleged event ; that testimony of prosecution witnesses does not depict the motive of alleged event of attack and all these create reasonable doubt benefit of which goes in favour of these accused.

188. It appears that the witnesses relied upon to substantiate this charge are from rural vicinity. What is the principle of due appreciation of evidence of a rustic witness who is not well educated and is from rural vicinity? The **Appellate Division of the Supreme Court of Bangladesh** in the case of **A.T.M. Azharul Islam** which in respect of appreciation of evidence adduced by witnesses relied on the principle expounded in the case of *State of Uttar Pradesh V. Krishna Master and others*, (2010) 12 S.C.C. 324 wherein in paragraph No.24, it has been stated as under:

“The basic principle of appreciation of evidence of a rustic witness who is not educated and comes from poor strata of

society is that the evidence of such a witness should be appreciated as a whole. The rustic witness as compared to an educated witness is not expected to remember every small detail of the incident and the manner in which the incident had happened more particularly when his evidence is recorded after a lapse of time. Further, a witness is bound to face shock of the untimely death of his near relative(s). Therefore, the court must keep in mind all these relevant factors while appreciating evidence of a rustic witness.”

[A.T.M. Azharul Islam vs. The Chief Prosecutor, International Crimes Tribunal: Cr Appeal No.12 of 2015 para-98]

189. Now keeping the above principle in mind lets us now weigh the evidence presented. P.W.08 Md. Asraful Islam happens to be one relative of victim Nurul Islam. His ocular testimony demonstrates that first, he saw the gang being accompanied by the accused Razakar Rezaul Karim @ Montu, Nazrul Islam, Ishak Ali (now dead) and Razakar Shahid Mondol besieging their village.

190. It stands proved that the attack happened in day time i.e. at about 01:30 P.M. Thus, the nearer people had opportunity

of observing the attack launched. The accused persons were from their locality and thus P.W.08 knew them beforehand. Thus, recognizing the accused persons present at the crime site was natural and believable.

191. It also depicts from ocular account made by P.W. 08 that Razakars and Pakistani army men looted 20/25 houses including that of their own and set those ablaze. That is to say at the initial phase of the attack launched the gang wantonly and recklessly destructed civilians' property by looting and arson. It may be presumed that such aggravated destruction was intended to extend dismay and terror amongst the pro-liberation civilian population, as part of policy of the Pakistani occupation army.

192. It transpires from testimony of P.W.08 that the act of apprehending the victim Nurul Islam was accomplished at the ending phase of the event when being scared Nurul Islam jumped into the ditch to escape. Ocular testimony of P.W.08 depicts that then the Razakars dragged him out there from and then he was shot to death. P.W.08 saw this phase of the event remained in hiding, 100 hands far from the site. It could not be impeached in cross-examination.

193. But the learned state defence counsel **Mr. Gazi M.H. Tamim** argued that sensing the attack naturally the nearby people were supposed to flee away and thus going into hiding merely to see the alleged event is not credible.

194. We are not agreed with this defence contention. First, it transpires that defence simply denied what has been narrated by the P.W.08 in examination-in-chief. Besides, evidence of P.W.08 in this regard gets consistent corroboration from P.W.09, another direct witness.

195. P.W.09 Md. Jahurul Islam a resident of village attacked also observed the initiation of the attack sensing which he went into hiding inside a bush adjoining to their home. There from he too saw the accused Razakars and Pakistani army looting household of their house and 15/20 other houses and the invaders set those ablaze. Defence could not taint this ocular version crucially linked to the attack in any manner.

196. It is evinced too from ocular account made by P.W.09 that sensing the attack launched his Fufa (husband of father's sister) Nurul Islam attempted to flee when the said Razakars apprehended him and handed him over to Pakistani army who

then gunned him down to death. Defence is not found to have refuted this piece of ocular version by cross-examining the P.W.09.

197. It has been stated by P.W.09 in cross-examination that the accused Nazrul Islam had quitted the locality after independence of Bangladesh achieved. It has rather affirmed the incriminating conduct of this accused which relates to his involvement with the atrocities committed in 1971 around the locality.

198. P.W.09 admits the defence suggestion that accused Rezaul Karim @ Montu used to study staying outside of his own locality since prior to the war of liberation ensued. Based on this contention it has been attempted by Mr. Abdus Sattar Palwan, the learned counsel defending this accused raised that in 1971 the accused Rezaul Karim @ Montu had not been in his locality under police station Badalgachhi. That is to say on part of this accused plea of alibi has been raised.

199. But mere admission that accused Rezaul Karim @ Montu used to study staying outside of his own locality since prior to the war of liberation ensued in 1971 does not at all

prove the above defence plea of alibi to be true. Alibi is rather an excuse which the accused takes intending to absolve of liability. It is incumbent upon the accused who adopts the plea of alibi.

200. Burden of proving plea of alibi with absolute specificity to exclude possibility of this accused's presence at the vicinity where the attack was conducted thus lies upon the defence, particularly when the prosecution is found to have been able to prove its burden in proving the arraignments. But no such effort has been made in this regard on part of this accused.

201. Thus and since prosecution is found to have been able in proving the arraignment such plea of alibi raised by this accused seems to be devoid of merit and unfounded. Such plea of alibi has been adopted by this accused simply as a futile effort to negate accused's involvement with the event arraigned. Besides, mere fact that this accused was a student of Rajshahi University does not prove in any manner that the accused Rezaul Karim @ Montu had never been in his locality during the entire period of the war of liberation in 1971.

202. It has been argued by **Mr. Gazi M.H. Tamim defending the** absconding accused Md. Nazrul Islam that the charge framed arraigns that the Razakars forcibly captured the victim Nurul Islam and handed over him to the Pakistani occupation army and then he was shot to death. But the P.W.08 testified a different version. According to him the Razakars gunned down the victim to death which is contradictory to the arraignment. Such contradictory version makes the involvement of this accused with the commission of alleged event of killing.

203. We reiterate that due to lapse of long passage of time inconsistency and contradiction may naturally occur in testimony of witnesses and thus merely for this reason one's testimony as a whole cannot be kept aside from consideration as such inconsistency and contradiction readily does not taint truthfulness of his evidence.

204. About long five decades after the crimes committed during the war of liberation in 1971 a witness may not always be reasonably expected to memorize detail and accurate precision. Therefore, argument advanced by the learned defence counsel Mr. Gazi M.H. Tamim on inconsistencies

between witnesses does not stand on legs. The ICTR in the case of **Nyiramasuhuko** has considered this issue by observing that –

“Many witnesses lived through particularly traumatic events and the Chamber recognizes that the emotional and psychological reactions that may be provoked by reliving those events may have impaired the ability of some witnesses to clearly and coherently articulate their stories. Moreover, where a significant period of time has elapsed between the acts charged in the indictments and the trial, it is not always reasonable to expect the witness to recall every detail with precision.”

[ICTR, *The Prosecutor v. Pauline Nyiramasuhuko et al.*, ICTR-98-42-T, Judgement, 24 June 2011, para. 179]

205. To prove the arraignment 03 witnesses have testified and they claim to have witnessed the event that resulted in killing Nurul Islam. Of them P.W.08 appears to have narrated a bit different version as to actual perpetrator of the act of killing which is contradictory to the narrative made in the charge. But two other witnesses’ corroborative testimony

demonstrates consistency to what has been arraigned in the charge framed.

206. Well, if we keep the testimony of P.W.08 from consideration what will be the consequence? Tribunal notes that the testimony even of a single witness on a material fact does not, as a matter of law, require corroboration. The established jurisprudence is clear that corroboration is not a legal requirement for a finding to be made.

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

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

207. In this regard we also recall the observation rendered by the **Appellate Division of the Supreme Court of Bangladesh** in the case of **A.T.M. Azharul Islam** which is as below:

“.....There can be some contradictions or discrepancies in the

evidence of the witnesses who depose before the court/tribunal after such a long period..... Though there are some minor contradictions and discrepancies in their evidence considering the very fact that these witnesses have deposed before the tribunal after a long period of 42 years, we do not think that these minor discrepancies and contradictions in the evidence of the prosecution witnesses are fatal at all and these can raise any suspicion or doubt about the truth of their evidence or about the trustworthiness of the witnesses.....”

[A.T.M. Azharul Islam vs. The Chief Prosecutor, International Crimes Tribunal: Cr Appeal No.12 of 2015 para-97]

208. It appears that P.W.08 stated that in course of the event his cousin sister’s husband and Imam of the mosque Nurul Islam jumped into the ditch, being scared. But the Razakars dragged them out there from and then he was shot to death. But the version of P.W.08 does not depict that the accused Razakars themselves gunned down the detained victim to death.

209. Now let us see what the two other witnesses i.e. P.W.09 and P.W.10 testified on this crucial part of the event

arraigned. Testimony of P.W.09 depicts that Nurul Islam attempted to flee when the said Razakars apprehended him and handed him over to Pakistani army who then gunned him down to death.

210. This ocular version of P.W.09 gets corroboration from testimony of P.W.10 who too witnessed the accused Razakars apprehending his sister's husband the Imam of the mosque Nurul Islam when being scared he attempted to flee and then Pakistani army men gunned him down to death.

211. In war time situation, on the face of systematic attack obviously a resident of the site attacked, instead of being a bystander did not have any alternative excepting to go into hiding wherever he could, to save own life. Thus, what the P.W.08, P.W.09 and P.W.10 saw remaining in hiding inside a bush as testified by them carries value and credence.

212. It stands proved from evidence of these witnesses that in accomplishing the act of brutal killing of a defenceless civilian obviously the accused persons, being active part of the criminal enterprise indicted substantially contributed and facilitated the Pakistani army. Therefore, we do not find any

pertinent contradiction between testimony of P.W.08 and two other witnesses i.e. P.W.09 and P.W.10, as raised on part of defence.

213. To hold an accused criminally responsible for his participation in the commission of a crime arraigned other than through direct commission, it should be demonstrated that he intended to participate in the commission of the crime and that his deliberate and conscious acts contributed directly and substantially to the commission of the crime.

214. That is to say, it is to be seen how and by acting in which manner the accused contributed in accomplishing the crimes by the group of attackers. In this regard it has been observed by the ICTY Trial Chamber in the case of Tadic that--

“In sum, the accused will be found criminally culpable for any conduct where it is determined that he knowingly participated in the commission of an offence that violates international humanitarian law and his participation directly and substantially affected the commission of that offence through supporting the actual commission before, during, or after the incident. He will also be responsible for all that naturally results from the commission of the act in question.”

**[ICTY Trial Chamber, *Tadic*, Trial
Judgement, para. 692: 7 May 1997]**

215. In the case in hand, on cumulative evaluation of evidence it stands proved that the accused (1) Md. Rezaul Karim alias Montu, (2) Md. Shahid Mandol and (3) Md. Nazrul Islam knowing consequence of their acts and conduct deliberately accompanied the gang of attackers and substantially contributed and facilitated even in wiping out one defenceless civilian on getting him forcibly captured.

216. It could not be refuted too that in conjunction with the attack the victim Nurul Islam attempted to flee by jumping into the ditch where from the accused Razakars apprehended him. Ocular testimony of P.W.09 and P.W.10 depicts that on getting the victim apprehended he was handed over to the Pakistani army men who then gunned him down to death.

217. Forcible capture of victim Nurul Islam and eventually causing his death by gunshot could not be impeached by defence. Defence does not assert that Nurul Islam was not annihilated at the relevant time by the gang of attackers accompanied by the accused persons. Thus, mere insignificant inconsistency occurred in testimony of P.W.08 does not make the event of barbaric killing of victim Nurul

Islam by launching attack and assistance and contribution of the accused persons indicted in perpetrating this designed crime untrue.

218. Context and situation 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 persons require to be considered in arriving at decision on assessing evidence adduced. The facts and circumstances unveiled before us unambiguously have proved the 'contextual requirement' to qualify the offences for which the accused persons have been arraigned as crimes against humanity.

219. The killing of unarmed civilian Nurul Islam was not an isolated one. It occurred systematically in context of the war of liberation directing 'civilian population'. The evidence presented in this case amply suggests the conclusion that the event of attack arraigned against the civilians of village attacked was organized and 'systematic'.

220. The word 'population' does not refer to the entire population of the geographical entity. Even a single individual forms part of population if the systematic attack

targeting him constitutes the offence of crimes against humanity. Thus, merely for the reason of annihilation of a single civilian the event of killing by launching systematic attack cannot be said an isolated.

221. Aggravated destruction of civilians property by looting household and setting numerous houses ablaze together with the act of killing one civilian lead to conclude that the attack was designed and systematic. The destruction by committing act of plunder and arson was rather the method to coerce, intimidate and terrorize the civilians which indubitably caused mental harm to them and thus such criminal acts constituted the offence of 'other inhumane acts' as crimes against humanity.

222. In this count of charge, it stands proved that a single civilian was brutally liquidated by the gang accompanied by the accused persons, pursuant to common object and by launching systematic attack. It is not required to show killing of numerous civilians to constitute the offence of murder as crime against humanity. Tribunal notes that 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:

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

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

224. In view of above settled legal proposition evolved in adhoc Tribunals and since the killing arraigned happened in context of the war of liberation, in systematic manner we are

forced to conclude that the barbaric murder of unarmed civilian who was apprehended by launching attack constituted the offence of crime against humanity.

225. In 1971 during the war of liberation wanton destruction of civilians' property by looting and arson was rather used as an instrument to keep the pro-liberation civilians panicked and coerced. We have already got it proved that in conducting attack as arraigned in charge no.01 the gang of perpetrators accompanied by the accused persons conducted devastating acts of looting and arson not for any justification. Devastating activities carried out as arraigned in this charge no.02 also were not for any justification.

226. Having considered the facts and circumstances unveiled we deduce it unerringly that the pro-liberation civilian population was the primary object of the attack arraigned. It has been established that the acts of the accused persons indicted were not isolated, but rather, by their nature and consequence, are objectively part of the 'systematic attack' and the crimes committed were chained to the event of attack directed against civilian population.

227. On integrated appraisal of evidence presented on part of prosecution we eventually arrive at decision that the prosecution has been able to prove that the accused (1) Md. Rezaul Karim alias Montu, (2) Md. Shahid Mandol and (3) Md. Nazrul Islam are found criminally liable under section 4(1) of the Act of 1973 for participating, abetting, assisting and substantially contributing, by their act and conduct forming part of systematic attack, to the accomplishment of devastating criminal activities and killing of unarmed civilian constituting the offences of **‘other inhumane act’** and **‘murder’** as crimes against humanity as enumerated in section 3(2)(a)(g)(h) of the Act of 1973 which are punishable under section 20(2) of the said Act.

Adjudication of Charge 03

[03 accused indicted]
[Offences of ‘abduction’, ‘confinement’, ‘plundering’, ‘arson’, ‘other inhumane acts’ and ‘murder’ of 02 [two] civilians committed at village-Malanha under Police Station Badalgachhi of District [now] Naogaon].

228. Charge: That on 08.10.1971 at about 5:00 P.M a group formed of the accused (1) Md. Rezaul Karim alias Montu, (2) Md. Shahid Mandol , (3) Md. Nazrul Islam and (4) Md. Ishak Ali (now dead), 20/25 armed Razakars and 100 Pakistani

occupation army launched an attack at village-Malancha under Police Station- Badalgachhi of District[now]- Naogaon. Sensing the attack villagers Md. Kenar Uddin Mandol, Md. Akkas Ali, Md. Abbas Ali, Md. Matiar Rahman, Abdul Hakim and Aklima Khatun went into hiding in different places wherefrom they saw the accused persons and their accomplices plundering valuables from 40/50 houses and burning down those houses. In conjunction with the attack the accused persons and their accomplices unlawfully captured **Md. Kenar Uddin Mandol and his son Akkas Ali** and took them away to the Pakistani army camp at Khanjanpur of Joypurhat and on 09-10-1971 at 5.00 PM they were gunned down to death taking them to the Khanjanpur Kuthibari bridge and their bodies were thrown into the river.

Therefore, the accused (1) Md. Rezaul Karim alias Montu, (2) Md. Shahid Mandol and (3) Md. Nazrul Islam by such criminal acts forming part of systematic attack directing non combatant civilian population, to further policy and plan of the Pakistani occupation army participated, facilitated, abetted, aided and substantially contributed to the commission of the offences of **'abduction', 'confinement', 'plundering', 'arson', 'other inhumane acts' and 'murder'** as crimes

against humanity as enumerated in section 3(2)(a)(g)(h) read with section 4(1) of the International Crimes (Tribunals) Act, 1973 which are punishable under section 20(2) of the said Act of 1973.

Evidence of Witnesses Examined

229. This count of charge involved the event of attack at village-Malancha under Police Station- Badalgachhi of District [now]- Naogaon leading to plundering valuables from 40/50 houses and burning down those houses by setting fire and killing two unarmed civilians Md. Kenar Uddin Mandol and his son Akkas Ali by taking them on forcible capture to the Pakistani army camp at Khanjanpur of Joypurhat.

230. The witnesses relied upon from the arraignments brought in this charge are P.W.12, P.W.13, P.W.14 and P.W.15. Before we arrive at decision based on evidence first let us see what these witnesses have recounted in relation to the event arraigned in Tribunal.

231. P.W.12 Md. Matiar Rahman (64) is a resident of village-Malancha under police station-Badalgachhi of District (now)- Naogaon. In testifying the event he narrated what he experienced in course of first phase of attack which resulted

taking away the victims, his relatives on forcible capture. In 1971 he (P.W.12) was a student of class X.

232. P.W.12 stated that on 08 October 1971 at about 05:00 P.M he had been at home when they sensed that a group formed of Razakar Rezaul Karim @ Montu, Razakar Isahak Ali(now dead), Razakar Nazrul Islam and Razakar Shahid Mondol, their accomplice 20/25 Razakars and 100 Pakistani occupation army had launched attack at their village- Malancha when they set 40/50 houses ablaze and committed looting household. He (P.W.12) remaining in hiding inside the sugarcane field adjacent to their house saw the event and also saw the perpetrators taking away his grand-father Kinar Uddin and uncle Akkas Ali who also remained in hiding inside the sugarcane field toward Khanjanpur Razakar camp , by army truck with beating.

233. P.W.12 also stated that on the following morning he and his father moved to Khanjanpur Razakar camp where they found Razakar Rezaul Karim @ Montu whom they requested for release of his grand-father and uncle. But he did not respond and entering inside the camp brought out his grand-

father, uncle and other detainees and took them away by a truck with the help of Pakistani army.

234. P.W.12 next stated that then they (P.W.12 and his father) remained seated on road. Few times later Rezaul Karim @ Montu and his accomplices came back when he being asked by his (P.W.12) father disclosed that the detainees including his (P.W.12) grand-father and uncle were gunned down to death taking them on the Kuthibarui bridge and their dead bodies were dumped into the river. They could not have trace of dead bodies. P.W.12 finally stated that he knew the accused persons as they were from their neighbouring localities.

235. In cross-examination done on part of accused Rezaul Karim @ Montu and Md. Shahid Mondol P.W.12 denied defence suggestions that accused Rezaul Karim @ Montu had not been in locality since 1968 to 1973 as he during that period studied in Rajshahi university and that since 1973 he started residing in Joypurhat permanently. P.W.12 also denied defence suggestions that the accused persons were not Razakars and were not involved with the event alleged and

what he testified implicating these accused was untrue and tutored.

236. In cross-examination done on behalf of absconding accused Md. Nazrul Islam P.W.12 denied defence suggestion that this accused did not belong to Razakar Bahini; he did not know him; that this accused was not involved with the commission of alleged offences and that what he testified implicating this accused was untrue and tutored.

237. P.W. 13 Abdul Hakim (62) is the son of one victim martyr Akkas Ali. He could see how and when the attack was conducted and how the gang took away his father and grandfather on forcible capture.

238. In recounting the first phase of the event P.W.13 narrated that on 08 October 1971 at about 05:00 P.M a group of attackers formed of Razakar Rezaul Karim @ Montu, Razakar Ishak Ali(now dead), Razakar Nazrul Islam and Razakar Shahid Mondol, their accomplice 15/20 Razakars and 100 Pakistani occupation army had launched attack at their village-Malancha. Sensing the attack they went into hiding inside the sugarcane field nearer to their house

wherefrom they saw the Razakars committing looting the houses and they set those ablaze. Then besieging the sugarcane field Razakar Rezaul Karim @ Montu and his accomplices forcibly captured his father Akkas Ali and grandfather Kenar Uddin and took them away with beating toward Joypurhat by truck.

239. What happened next? In relation to facts subsequent to the first phase of attack P.W.13 is a hearsay witness. He stated that on the following morning his uncle Abbas Uddin and cousin brother Matiar Rahman (P.W.12) moved to Khanjanpur camp and requested Razakar Rezaul Karim @ Montu for release of his (P.W.13) father and grandfather. But without responding to the appeal he (accused Rezaul Karim @ Montu) entering inside the camp brought out his (P.W.13) father and grandfather and took them away toward Kuthibari Bridge by army truck. His uncle and cousin brother (P.W.12) coming back home also disclosed that Razakar Rezaul @ Karim Montu informed them that his (P.W.13) father Akkas Ali and grandfather Kenar Uddin were shot to death taking them on the Kuthibari bridge and their dead bodies were dumped into river. They did not have trace of dead bodies.

240. In cross-examination done on part of accused Rezaul Karim @ Montu and Md. Shahid Mondol P.W.13 denied defence suggestions that accused Rezaul Karim @ Montu had not been in locality since 1968 to 1973 as he during that period studied in Rajshahi University and that since 1973 he started residing in Joypurhat permanently. P.W,13 also denied defence suggestions that the accused persons were not Razakars and were not involved with the event alleged and what he testified implicating these accused was untrue and tutored.

241. In cross-examination done on behalf of absconding accused Md. Nazrul Islam P.W.13 stated in reply to defence question put to him that he could not say where this accused had been staying after independence. P.W.13 denied defence suggestion that this accused did not belong to Razakar Bahini; he did not know him; that this accused was not involved with the commission of alleged offences and that what he testified implicating this accused was untrue and tutored.

242. P.W. 14 Md. Nurul Islam (67) is a resident of village- Malancha under police station- Badalgachhi of District (now) Naogaon. He is a direct witness to the attack that resulted in

devastating acts and other criminal acts related to the event arraigned.

243. In describing the event of attack he experienced P.W.14 stated that on the 21st day of Bangla month Ashwin in 1971 at about 05:00 P.M he had been at home when he heard screaming near their house and with this he came out and saw the gang formed of Razakar Rezaul Karim @ Montu, Razakar Nazrul Islam, Razakar Ishak Ali (now dead) and Razakar Shahid Mondol, their accomplice 20/25 Razakars and 100 Pakistani army men attacking their village. Being scared he went into hiding inside a bamboo bush adjacent to their house wherefrom he could see the Razakars and army men looting 40/50 house including that of their own and setting those ablaze. Then he saw the Razakars he named and Pakistani army bringing Akkas Ali and Kenar Uddin on forcible capture and tying them up took away with beating toward Jamalganj Razakar camp by a vehicle.

244. In respect of next phase of the event P.W.14 is a hearsay witness. P.W.14 stated that on the following day detainee Kenar Uddin's son Abbas Uddin and his son Matiar Rahman (P.W.12) moved to Jamalganj Razakar camp and they knew

that detained Akkas Ali and Kenar Uddin were taken away to Joypurhat. Then Abbas and Matiar Rahman moved to Joypurhat when they knew that detained Akkas Uddin and Kenar Uddin were shot to death taking on the Kuthibari Bridge and their dead bodies were abandoned in the river. Their dead bodies could not be traced even. P.W.14 in respect of reason of knowing the accused persons stated that the accused persons were residents of their neighbouring locality.

245. In cross-examination done on part of accused Rezaul Karim @ Montu and Md. Shahid Mondol P.W.14 stated in reply to questions put to him that accused Rezaul Karim @ Montu was the chairman of Badalgachhi peace committee in 1971 and he could not say who was the commander of Razakar in Badalgachhi; that no case was initiated over the event he narrated after independence.

246. P.W.14 denied defence suggestions that these accused were not Razakars; that no event he testified happened and the accused persons were not involved with the event alleged; that accused Rezaul Karim @ Montu had not been in the locality since 1965 to 1973 as he studied in Carmichael College and Rajshahi University.

247. In cross-examination done on part of accused Md. Nazrul Islam P.W.14 denied defence suggestion that this accused did not belong to Razakar Bahini; that he was not engaged in committing the event he testified and that what he narrated was untrue and tutored.

248. P.W.15 Most. Ayada Khatun (70) is a resident of village Malancha under police station- Badalgachhi of District (now)-Naogaon. She is a direct witness to facts chained to the first phase of attack arraigned.

249. P.W.15 in recounting the event stated that in 1971 she had been staying at her conjugal home. On 21st day of Ashwin in 1971 at about 05:00 P.M she had been at her conjugal home when she saw the gang formed of Razakar Rezaul Karim @ Montu, Razakar Nazrul Islam, Razakar Ishak Ali (now dead) and Razakar Shahid Mondol, their accomplice 20/25 Razakars and 100 Pakistani army men attacking their village being equipped with arms.

250. P.W.15 next stated that seeing the attack launched she became scared and then went into hiding inside a sugarcane field adjacent to their house wherefrom she could see the

Razakars and army men looting about 50 houses including that of their own and setting those ablaze. She could see too that the Razakars he named and Pakistani army bringing Akkas Ali and Kenar Uddin at the courtyard of their house on forcible capture and then they tying them up took away with beating toward Jamalganj Razakar camp by a vehicle.

251. P.W.15 also stated that later on she heard that victim Kenar Uddin's son Abbas Uddin and his son Matiar (P.W.12) failed to have trace of the detainees despite moving to Jamalganj Razakar camp and then they moved to Joypurhat when they became aware that two detainees were gunned down to death taking on the Khanjanpur Kuthibari Bridge and their dead bodies were dumped into the river. Finally, P.W. 15 stated that the Razakars she named were the neighbouring residents of her father and husband and thus she knew them beforehand.

252. In cross-examination defence simply denied what has been testified in examination-in-chief by P.W.15 in respect of the event arraigned P.W.15 also denied defence suggestions that what she testified implicating the accused persons indicted was untrue and tutored; that the event alleged did not

happen and the accused persons were not involved in committing the event alleged and that they did not belong to Razakar Bahini.

253. Prosecution tendered P.W.16 Md. Khalilur Rahman with P.W.14. In cross-examination on behalf of accused Nazrul Islam simply one question has been put to P.W.16 to which he replied that Paschim Kuthibari village is about one mile west from village-Khanjanpur. This cross-examination has been adopted by accused Rezaul Karim @ Montu and Md. Shahid Mondol.

254. P.W.17 Md. Helal Uddin PPM-Bar, PPM Seba (Retired Additional Police Super) is the investigation officer (I.O). He testified how he investigated into the arraignments. He stated that during investigation he interrogated three accused in central Jail on having necessary order of Tribunal. One suspected accused Md. Ishak Ali died after being arrested.

255. In cross-examination P.W.17 stated in reply to defence question that he found that accused Rezaul Karim @ Montu passed Honours examination from Rajshahi University in 1972; that he could not collect any list prepared in 1971

showing membership of this accused in Razakar Bahini; that accused Shahid Mondol's name does not find place in the list of Razakars (prosecution documents volume page- 15); that he could not say whether accused Nazrul Islam was a student in 1971. P.W.17 denied defence suggestions that the accused persons were not Razakars; that he being influenced submitted untrue investigation report implicating the accused persons.

Finding with reasoning on Evaluation of Evidence

256. **Mr. Tapas Kanti Baul**, the learned prosecutor drawing attention to the evidence presented to substantiate this count of charge argued that two unarmed civilians were forcibly captured from their house and taken away to the camp and finally taking them to the Khanjanpur Kuthibari Bridge they were shot to death. Their dead bodies could not be traced. In conjunction with the first phase of attack the gang of invaders accompanied by the accused persons had also carried out massive looting and arbitrary arson to civilians' property. The event happened in day time. The witnesses relied upon in support of this charge are relatives of victims and naturally they witnessed the criminal acts conducted remaining in

hiding inside a nearer bush. Defence could not impeach these facts by cross-examining the witnesses.

257. **Mr. Abdus Sattar Palwan**, the learned counsel defending the accused Rezaul Karim @ Montu and Md. Shahid Mondol submitted that prosecution could not prove the arraignment by credible evidence; that these accused had no manner of involvement with the commission of crimes arraigned; that there is no evidence that these two accused participated in accomplishing the alleged killing; that the accused Rezaul Karim @ Montu was a student of Rajshahi University and thus he had been staying there and not in his locality where the alleged events happened.

258. **Mr. Gazi M.H. Tamim**, the learned state defence counsel for absconding accused Md. Nazrul Islam argued that there is no evidence to show that this accused had nexus with the alleged crimes including the killing of detained civilans; that since his alleged affiliation with local Razakar Bahini could not be proved by any documentary evidence he cannot be held guilty for the crimes arraigned.

259. This count of charge involves the criminal acts of looting, arson of civilians' property and abduction, confinement and murder of two unarmed civilians, by launching systematic attack. The group formed of Pakistani occupation army, the accused persons and their accomplice Razakars allegedly conducted the attack in concerted manner. The event arraigned in this count of charge seems to be a fragmented portrayal of continuing mayhem accomplished in 1971 during the war of liberation in the territory of Bangladesh

260. **Mr. Gazi M.H. Tamim**, the learned state defence counsel for absconding accused Md. Nazrul Islam [absconding] argued that this accused did not belong to Razakar Bahini and thus he had no reason of accompanying the gang at the relevant time; that the testimony of witnesses relied upon by the prosecution suffers from truthfulness; that the witnesses testified implicating this accused with the event arraigned was untrue and tutored.

261. **Mr. Abdus Sattar Palwan**, the learned counsel defending the two accused Md. Rezaul Karim alias Montu and Md. Shahid Mandol argued that the prosecution witnesses

testified implicating these accused out of rivalry; that they did not know these accused; that these accused had no involvement with the event alleged and that the testimony made by witnesses does not carry value and credibility.

262. It appears from the charge framed that the attack was launched at village-Malancha in day time. The first phase of the event of attack resulted in wanton destructive activities including looting and arson of civilians' property. Next, the invaders unlawfully apprehended two civilians Md. Kenar Uddin Mandol and his son Akkas Ali and then took them away to the Pakistani army camp at Khanjanpur of Joypurhat and on the following day they were gunned down to death taking them to the Khanjanpur Kuthibari bridge and their bodies were thrown into the river.

263. It transpires from the arraignment that none had opportunity of seeing the act of killing detained civilians. Criminal acts accomplished in conjunction with the first phase of attack seem to have been witnessed by relatives and neighbours of victims.

264. P.W.12 Md. Matiar Rahman, a relative of victims witnessed the attack launched at their village-Malancha when the group of invaders formed of Razakar Rezaul Karim @ Montu, Razakar Md. Nazrul Islam, Razakar Ishak Ali (now dead), Razakar Md. Shahid Mondol, their accomplice Razakars and Pakistani army set 40/50 houses ablaze and committed looting household.

265. The above narrative demonstrates that the gang of attackers started its criminal mission directing civilian population by conducting wanton and aggravated destructive activities. Defence could not controvert commission of this pertinent part of the attack.

266. Ocular testimony of P.W.12 in relation to the act of looting and arson carried out by the gang accompanied by the accused persons gets corroboration from uncontroverted testimony of P.W. 13 Abdul Hakim who is the son of one victim martyr Akkas Ali. Ocular testimony of P.W.12 demonstrates that he too sensing the attack went into hiding inside the sugarcane field nearer to their house where from he saw the accused Razakars, their accomplices and Pakistani

army men committing looting the houses and setting the houses on fire.

267. Corroborating P.W.12 and P.W.13 another direct witness P.W.14 too remaining in hiding inside a bamboo bush adjacent to their house could see the Razakars and army men committing looting 40/50 house including that of their own and setting those ablaze. P.W.15 also could see the Razakars and army men looting about 50 houses including that of their own and setting those ablaze.

268. Two other direct witnesses P.W. 14 Md. Nurul Islam and P.W.15 Most Ayada Khatun also recounted how the gang accompanied by the accused persons launched the attack and carried out reckless destruction of civilians' property, by looting and arson. Their narrative too corroborates to what has been recounted by the P.W.12 and P.W.13.

269. It stands proved that horrific wanton destructive activities happened within the sight of the witnesses and other people of the locality attacked. It indeed caused severe pain and harm to them which constituted the offence of '**other inhumane act**' as crime against humanity. In this regard we

recall the observation rendered by Tribunal-1(ICT-BD-1) in the case of **Shamsul Hossain Tarafdar @ Ashraf and four others** which is as below:-

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

[Shamsul Hossain Tarafdar @ Ashraf and four others, 10 January 2018, ICT-1, para213]

270. Defence could not impeach the above crucial fact of wanton destruction which was the starting phase of the attack arraigned, by cross-examining the above witnesses. Defence simply denied the event happened and involvement of the accused persons therewith. But mere denial is not at all sufficient to stain what is narrated in examination-in-chief.

271. Based on facts and circumstances unveiled we are of the view that presumably, the accused persons knowingly and consciously by accompanying the gang substantially contributed and facilitated the accomplishment of such dreadful devastating activities, sharing common purpose and intent.

272. The gang of attackers did not end its criminal mission simply by carrying out wanton destruction of civilians' property. What happened next? We got it proved from the narrative the above four witnesses i.e. P.W.12, P.W.13, P.W.14 and P.W.15 recounted consistently that the perpetrators apprehended Kenar Uddin Mandol and his son Akkas Ali who also remained in hiding inside the sugarcane field and took them away toward Khanjanpur Razakar camp, by army truck with beating.

273. It depicts from unimpeded testimony of P.W.13 that besieging the hiding place sugarcane field Razakar Rezaul Karim @ Montu and his accomplices forcibly captured his father Akkas Ali and grand-father Kenar Uddin and took them away with beating toward Joypurhat by truck.

274. Another eye witness P.W.15 Most. Ayada Khatun saw the accused Razakars and Pakistani army men bringing Akkas Ali Mandol and Kenar Uddin (victims) at the courtyard of their house on forcible capture and then they tying them up took away with beating toward Jamalganj Razakar camp by a vehicle. It thus proved that after getting the victims apprehended from the sugarcane field they were first taken at the courtyard of their house and then were taken away to Razakar camp by a vehicle.

275. Till the phase of taking away the detained civilians the accused persons being active part of the criminal enterprise culpably participated in perpetrating the crimes of reckless destruction of civilians' property and taking away two unarmed civilians by effecting forcible capture. We do not find the defence to have made any effort to refute these pertinent facts chained to the ending phase of the attack the killing of victims, by cross-examining the witnesses.

276. It transpires from narrative made by the above four direct witnesses to the first phase of the event of attack that without thinking the consequence the relatives of victims however made an attempt to have trace of the abducted

victims by moving to the Jamalganj Razakar camp on the following day. Extreme worry for the dear ones made Kenar Uddin's son Abbas Uddin and his son Matiar Rahman (P.W.12) imbued of taking such perilous effort. However, what result eventually they had by initiating such effort?

277. According to testimony of P.W.12 Matiar Rahman it transpires that on the following morning he (P.W.12) and detainee Kenar Uddin's son Abbas Uddin moved to Khanjanpur Razakar camp where they found Razakar Rezaul Karim @ Montu whom they requested for release of the detainees. But he did not respond and entering inside the camp brought out the detainees and took them away with beating toward Joypurhat by truck.

278. Testimony of P.W.12 also demonstrates that few times later, after taking away the detainees toward Joypurhat accused Rezaul Karim @ Montu and his accomplice Razakars came back when he being asked by his (P.W.12) father disclosed that the detainees including his (P.W.12) grandfather and uncle were gunned down to death taking them on the Kuthibarui bridge and their dead bodies were dumped into the river. Defence could not controvert the testimony of

P.W.12 made in respect of facts happened on the following day when P.W.12 had been staying in front of the Razakar camp to have trace of the detainees.

279. Naturally, due to context existing in 1971 none had opportunity of seeing the killing the detained civilians, particularly when they were taken away to the killing site which was far from the Razakar camp. But the above piece of crucial fact unveiled in sworn testimony of P.W.12 was clearly chained to the act of killing the detainees and accused persons' participation and concern therewith. Its stands proved. Besides, it is settled jurisprudence that a victim's death may be established by circumstantial evidence provided that the *only* reasonable inference is that the victim is dead as a result of the acts or omissions of the accused.

280. Defence could not controvert the testimony of P.W.12 made in respect of facts happened on the following day when P.W.12 had been staying in front of the Razakar camp to have trace of the detainees.

281. Victims Akkas Ali and Kenar Uddin Mandol were kept confined at Jamalganj Razakar camp and later on they were

taken away there from toward Joypurhat. It stands proved too that since then the relatives of victims did not have their trace. Abbas Uddin and Matiar Rahman the relatives of victims moved to Joypurhat when they knew that detained Akkas Ali and Kenar Uddin Mandol were shot to death taking on the Kuthibari Bridge and their dead bodies were abandoned in the river. Their dead bodies could not be traced even.

282. The dead body of the detainees could not be traced even. However, recovery of victim's dead body it is not required to prove the murder constituting the offence of crime against humanity. It is now well settled proposition.

283. The killing of victims was a 'group crime' which was perpetrated in a context of war and in an organised and systematic way. It was thus not an isolated murder and it did not happen in times of normalcy, although the event relates to killing of two civilian. It is thus inappropriate to apply rules of national systems that require the production of a body as proof to death.

284. P.W. 13 Abdul Hakim, the son of one victim martyr Akkas Ali and P.W. 14 Md. Nurul Islam heard the facts

happened on the following day from P.W.12 and detainee Kenar Uddin's son Abbas Uddin. It was quite natural. Hearsay testimony of P.W.13 and P.W.14 is not anonymous and it gets significant corroboration from P.W.12.

285. There is no evidence whatsoever in respect of the killing the detained victims. It did not happen within the sight of any of relatives of victims. The fact of victims' annihilation after keeping them, confined at Razakar camp can be unerringly inferred circumstantially from all of the evidence presented provided that the *only* reasonable inference is that the victims' death happened as a result of the acts and conscious concern of the accused persons indicted.

286. It has been settled by the **ICTY** Appeal Chamber in the case of *Kvočka* [Judgment, February 28, 2005, para. 260] that all that is required to be established is the only reasonable inference from the evidence that the victim is dead as a result of acts or omissions of the accused or of one or more persons for whom the accused is criminally responsible.

287. Evidence of witnesses depicts that after taking away the victims their relatives could not have opportunity of knowing

about them. Even on the following day moving to Razakar camp the relatives of victims did not have any chance of meeting the victims. Rather, they became aware that the detainees were taking away toward Joypurhat.

288. It appears that on the day following the event of attack conducted at village-Malancha accused Rezaul Karim @ Montu and his accomplices were seen taking away detainees including the victims toward Joypurhat, as testified by the P.W.12 who witnessed it. It does not appear from testimony of P.W.12 that two other accused too were with the accused Rezaul Karim @ Montu in taking away the detainees bringing them out of the Razakar camp. But it does not exonerate these two accused of liability.

289. It is not required to show that the accused persons physically perpetrated the commission of the killing the detainees. It is now settled by all legal authorities that where a common design of a group of attackers exists and the group has carried out its purpose, then no distinction can be drawn between the 'finger man' and the 'trigger man'. This view finds support from the observation made by the **ICTY Appeal Chamber**, in the case of *Tadic*, that –

“Although only some members of the group may physically perpetrate the criminal act (murder, extermination, wanton destruction of cities, towns or villages, etc.), the participation and contribution of the other members of the group is often vital in facilitating the commission of the offence in question. It follows that the moral gravity of such participation is often no less – or indeed no different – from that of those actually carrying out the acts in question.”

[ICTY Appeal Chamber, Tadic Case No.: IT-94-1-A, Judgment 15.7.1999, para 191]

290. The accused persons are found equally liable for committing the offence of killing two detainees as their act and conduct amid the first phase of attack and prior to the phase of killing, the upshot of the attack formed part of systematic attack. Since they were with the gang when it conducted attack at village-Malancha which resulted in forcible capture of two civilians and keeping them confined at Razakar camp it may safely be inferred that these two accused too were concerned even with the act of killing the detainees, sharing intent of the gang of attackers.

291. The task of determination of culpability of a person accused of offences enumerated in section 3(2) of the Act of

1973 involves a quite different jurisprudence. Proof of all forms of criminal responsibility, through participation in any manner can be given by direct or circumstantial evidence. It is now settled jurisprudence.

292. In the case in hand, it stands proved that the accused persons were knowing participants in a common criminal design and thus they may be held liable as principal perpetrators for all the prohibited acts that streamed from the design orchestrated, irrespective of whether they were personally involved in the acts constituting the crimes arraigned.

293. Predominantly we are to see how accused persons' acts formed part of chained criminal acts and whether it had any substantial effect on the actual commission of murder of two unarmed civilians after keeping them in captivity at Razakar camp. Thus, we reiterate that it is immaterial to argue that the accused persons were not the actual perpetrators or they themselves did not physically participate to the commission of the killing arraigned.

294. Facts and circumstances lead us to the conclusion that the accused persons knowingly assisted by their act and conduct in courts of the first phase of the event of attack that resulted in unlawful confinement of the victims at Razakar camp and thus they are held liable even for aiding and abetting the commission of the killing the detainees. Aiding and abetting may assume a variety of forms of assistance, including mere presence at the scene of the crime which encouraged and assisted the perpetrators or facilitated them psychological support which was specifically directed to the commission of the killing, the upshot of the attack conducted.

295. An offence of crime against humanity involves the commission of certain prohibited acts as part of systematic attack directed against civilian population. The act of abetment which is punishable in the Act of 1973 encompasses ‘approval’, ‘encouragement’ and ‘assistance’ or ‘support’ that contributes substantially to the perpetration of the crimes arraigned. In the case in hand, the act of the accused persons as found proved was “part of”—and not simply coincide with—the attack [systematic] directed against civilian population that resulted in abduction, confinement and murder of two detained civilians. The accused persons’ act

was thus significantly linked to the designed attack leading to killing of two unarmed civilians after keeping them in confinement at Razakar camp.

296. Presence of accused persons with the group chiefly formed of army men at the crime site demonstrates that they were not only perfectly aware of the discriminatory nature of the joint criminal mission but also that they knowingly encouraged and assisted it. The accused (1) Md. Rezaul Karim alias Montu (2) Md. Shahid Mandol and (3) Md. Nazrul Islam [absconding] by providing active and practical assistance and aid to the army men shared the goal of the attack.

297. Individual criminal responsibility can arise when several individuals with a common purpose embark on criminal activity that is then carried out either jointly or by some members of this plurality of persons. Anyone who being part of the group contributes to the criminal activity in order to carry out a common criminal purpose may be held criminally liable. This mode of liability is referred to as 'joint criminal enterprise' (JCE- basic form).

298. Facts and circumstances unveiled lead to conclude that the accused persons indicted in this count of charge had acted as co-perpetrators by acting pursuant to a common purpose, possessing the same criminal intent and thus they are liable for the crimes committed under the theory of JCE [Basic Form]. It has been found proved that accused persons' contribution as has been found was manifestly decisive and thus we are convinced to conclude that their participation in carrying out the attack was significant enough to demonstrate their membership in JCE.

299. Based on totality of evidence as discussed above coupled with settled legal principles it has been proved beyond reasonable doubt that accused (1) Md. Rezaul Karim alias Montu (2) Md. Shahid Mandol and (3) Md. Nazrul Islam [absconding] being active part of the criminal enterprise by initiating the attack carried out aggravated destruction of civilians' property causing detriments to the fundamental rights of civilian, forcibly took away two unarmed civilians, caused mental harm to the relatives of victims, kept the detainees confined at Razakar camp and finally annihilated them taking them to the killing site. By such prohibited acts and activities accused (1) Md. Rezaul Karim alias Montu (2)

Md. Shahid Mandol and (3) Md. Nazrul Islam [absconding] committed, abetted and facilitated the offence of **‘abduction’**, **‘confinement’**, **‘other inhumane act’** and **‘murder’** as crimes against humanity as specified in section 3(2) (a) (g) (h) of the Act which are punishable under section 20(2) read with section 3(1) of the Act and thus they incurred liability under section 4(1) of the Act, for the above offences.

XI. Conclusion

300. Dreadfulness and aggression of individuals having explicit affiliation with Pakistani occupation army and auxiliary force created to collaborate with it as found proved in the case in hand paints alike portrayal of notoriety and brutality committed directed against the pro-liberation civilians in 1971 during the nine-month war of liberation. It is hard to believe that despite being Bengali people the accused persons opted to get connected with the Pakistani occupation army and being imbued by their policy they joined in Razakar Bahini an auxiliary force.

301. The government of Bangladesh enacted the International Crimes (Tribunals) Act, 1973 for investigation, prosecution and punishment of the perpetrators of those crimes. But no

judicial forum under the said Act could be formed due to military coup followed by the killing of the Father of the Nation. Inaction on part of the military rulers who captured state power added endorsement to the culture of impunity. The accused persons too taking advantage of such endorsement remained untouched for years together.

302. The speech of the glorious architect of independent Bangladesh Bangabandhu Sheikh Mujibur Rahman reflected the intense urge of prosecuting the local perpetrators of atrocious acts committed in 1971 during the war of liberation.

Bangabandhu in his speech he made in Mymensingh on 05 April 1972 robustly expressed that ---

০ 30 জ্যৈষ্ঠ ত্রৈলোক্য গণিত মিত্র | গণিতিক এক লম্বিত
 নতুনত | তেবদেব নতুনত | মসমি বিলি
 নতুনত | অবিভক্ত ত্রৈলোক্য নি-এমি বিলিত
 নতুনত চিই জ | চিত্রিত কিত্ত, অবি
 গিত্ত ইবিবি, অবিই বিত্ত চিত্রিত
 মিত্ত ত্রৈলোক্য কিত্ত অবি বিবি মিত্ত
 নতুন কিত্ত | বিবিবি বিত্ত কিত্ত ত্রৈলোক্য
 যিত্ত নতুন | বিত্তিত্ত বিবিবি, বিবিবি-
 অবিই বিবি কিত্ত ত্রৈলোক্য যিত্ত নতুন
 ত্রৈলোক্য বিবি নতুন | বিত্তিত্ত বিবিবি
 অবিবি | ০

[mĤt Ō ¼vimgMÖt e½eÜž vbeuPZ fvl†Yi
kÖj vc0, cŏv-70-71, HvZn" cÖkbx, 2017]

303. But due to black culture of impunity existing for decades the sufferers and victims remained pained and the individuals who sided with the Pakistani occupation army in 1971 and participated in committing crimes directing the civilian population got rehabilitated. What a shame for the nation! However, finally in 2010 on 25 March this domestic judicial forum has been formed to prosecute, try and punish the offenders who committed the crimes enumerated in the Act of 1973. Now, in coming out from the culture of impunity the nation must honour the firm and ethical intent of the Father of the Nation reflected in his above speech which was rather manifestation of raising voice to protect humanity and ensure justice.

304. In the case in hand, it has been proved that the accused (1) Md. Rezaul Karim alias Montu (2) Md. Shahid Mandol and (3) Md. Nazrul Islam [absconding] being potential associates of locally formed Razakar Bahini made them explicitly engaged in committing barbaric atrocities including killing numerous civilians as arraigned in all the three counts

of charges and they did such criminal acts to further policy and plan of Pakistani occupation army.

305. Razakar force was formed in May 1971 with the aim of resisting the '*miscreants*' and to wipe out the '*anti state elements*' with the aid of army [**Source: 'The Daily Dainik Pakistan'**, 16 May 1971]. Peace Committees were also formed with the identical plan. Ghulam Azam the then Amir of Jamat E Islami and member of Central Peace Committee almost since the beginning of war of liberation started appealing the Pakistan government for arming the people who believed in solidarity of Pakistan and to combat the '*miscreants*' [**Source: The Daily Sangram**, 21 June 1971, **Press conference of Ghulam Azam; see also The daily Sangram** 20 June 1971] **See also ICT-BD Case No. 03 of 2012; ICT-2 ; judgment 09 May 2013, Chief Prosecutor vs. Muhammad Kamaruzzaman : paragraph 594**].

306. We reiterate that in 1971 in the territory of Bangladesh auxiliary and para militia forces were formed in aiding the implementation of the policy of targeting the self-determined non combatant pro-liberation civilian population.

307. Thus, it appears that in the name of protecting solidarity of Pakistan the pro-liberation civilians were perceived to be *miscreants*' and to wipe out them, the Razakars and individuals having affiliation therewith collaborated with the Pakistani occupation army in carrying out systematic attacks directed against the pro-liberation civilians. In the case in hand too it has been unveiled that the accused persons despite being Bangalee sided with the Pakistani occupation army and got engaged in accomplishing monstrous activities constituting the offences of crime against humanity as arraigned in **charge nos. 01, 02 and 03**, to further policy.

308. It has been proved that all the three accused persons knowingly and agreeing with the common purpose of the criminal squad remained physically and actively engaged with it till significant phase of attacks which eventually ended in killing of detained pro-liberation civilians.

309. In addition to killing numerous civilians the criminal gang accompanied by the accused persons also carried out aggravated destruction of civilians' property by committing looting and arson. Such grave aggression amplified the extent of magnitude of the event of attacks conducted in the

localities under police station-Badalgachhi of District [now]-Naogaon. All the three accused are found to have had conscious and active participation in materializing the object and purpose of the attacks which resulted in killing of a number of unarmed pro-liberation civilians.

310. The events of attacks proved were with objective to annihilate the Bangalee pro-liberation civilians. Accused persons' conscious and culpable conduct---antecedent, contemporaneous and subsequent, as have been found proved---all indubitably point to their guilt and are well consistent with their 'participation' in the commission of the crimes proved.

311. The three counts of charges involve the diabolical offences of '**confinement,** **torture**', '**abduction**' , '**other inhumane act**' and '**murder**' as crimes against humanity. The accused persons are found to have had participation in committing the crimes proved which are 'group crimes' committed in 'systematic' manner and in context of the war of liberation.

312. On rational and integrated evaluation of evidence provided by the prosecution, we have already arrived at conclusion that all the three counts of charges have been found proved beyond reasonable doubt. Three accused persons indicted have been found criminally responsible for the offences of grave nature in violation of international humanitarian law and the laws of war, arraigned in all the three counts of charges.

313. We reiterate that ‘no innocent person be convicted, let hundreds guilty be acquitted’—this principle has been changed in the present time. In this regard it has been observed by the Indian Supreme Court that—

“A judge does not preside over a criminal trial, merely to see that no innocent man is punished. A Judge also presides to see that a guilty man does not escape. Both are public duties.”

[Per Viscount Simon in *Stirland vs. Director of Public Prosecution: 1944 AC (PC) 315: quoted in State of U.P Vs. Anil Singh: AIR 1988 SC 1998]*

314. In view of above, therefore, the Tribunal notes that no person who has been found criminally liable should be allowed to walk free, merely for any faint doubt, particularly

in a case involving prosecution of crimes against humanity committed in 1971 in violation of customary international law during the War of Liberation.

XII. VERDICT ON CONVICTION

315. Burden of proving the guilt or responsibility of the accused persons indicted squarely lies upon the prosecution. In the case in hand, in proving each count of charges brought against the accused persons, this settled standard has been found to be reasonably met as the accused (1) Md. Rezaul Karim alias Montu (2) Md. Shahid Mandol and (3) Md. Nazrul Islam [absconding] are found to have incurred liability for the dreadful crimes committed in 1971 during the war of liberation which have been proved beyond reasonable doubt.

316. Having careful and judicial appraisal of all the evidences presented before us and arguments advanced by both parties and based upon settled and evolved jurisprudence, the Tribunal [ICT- 1] **UNANIMOUSLY** finds the accused-

(1) Md. Rezaul Karim alias Montu (2) Md. Shahid Mandol and (3) Md. Nazrul Islam [absconding]

CHARGE NO.1: GUILTY of the offences of ‘abduction’, ‘plundering’, ‘arson’, ‘other

inhumane act’ and **‘murder**’ as crimes against humanity enumerated in section 3(2)(a)(g)(h) of the Act of 1973 and thus they incurred criminal liability under section 4(1) of the Act of 1973 and they be convicted and sentenced under section 20(2) of the said Act.

CHARGE NO.2: GUILTY of the offences of **‘abduction’, ‘plundering’, ‘arson’, ‘other inhumane act’ and ‘murder’** ‘as crimes against humanity enumerated in section 3(2)(a)(g)(h) of the Act of 1973 and thus they incurred criminal liability under section 4(1) of the Act of 1973 and they be convicted and sentenced under section 20(2) of the said Act.

CHARGE NO.3: GUILTY of the offences of **abduction’, ‘confinement’, ‘plundering’, ‘arson’, ‘other inhuman act’ and ‘murder’** as crimes against humanity enumerated in section 3(2)(a)(g)(h) of the Act of 1973 and thus they incurred criminal liability under section 4(1) of the Act of 1973 and they be convicted and sentenced under section 20(2) of the said Act.

XII. VERDICT ON SENTENCE

317. **Mr. Tapas Kanti Baul**, the learned Prosecutors finally by placing submission in respect of sentence to be awarded argued that all the three convicted accused should face the

highest sentence, being a sentence of death, as they are proved to have substantially facilitated, contributed and participated and aided to the commission of horrific criminal acts constituting the offences of causing brutal murder and devastating activities directed against unarmed pro-liberation civilians as crimes against humanity.

318. The inherent magnitude and pattern of criminal acts forming part of systematic and designed attack was in furtherance of common purpose and design constituting the offences as crimes against humanity deserves to be considered as an 'aggravating factor' in awarding the appropriate sentence, the learned prosecutor submitted.

319. On contrary, defence simply submitted that the accused persons were not in any way connected with any of criminal activities arraigned for which they have been indicted and that prosecution could not prove that the accused persons had nexus with the Razakar Bahini and thus they deserve acquittal.

320. It is to be kept in mind that aggravating factors in awarding sentence refer to facts and circumstances about how

the crimes arraigned took place and about how the convicted accused persons had acted in carrying out the attack arraigned. In assessing the aggravating factors Tribunal must eye on the trauma and grave harm sustained by the victims and their families.

321. In the case in hand, the convicted accused (1) Md. Rezaul Karim alias Montu (2) Md. Shahid Mandol and (3) Md. Nazrul Islam [absconding] have been found criminally responsible not for committing any isolated offence punishable under the normal Penal Law. Rather, they are found to have had ‘participation’ to the commission of ‘group crime’, the offence as enumerated in the Act of 1973 which itself portrays enormity, gravity and diabolical nature of the crimes.

322. The convicted accused persons have been found guilty for the offences of murder, torture and other inhumane act as crimes against humanity committed in 1971 during the war of liberation. We restate that the term “crimes” in the expression “crimes against humanity” indubitably refers to the grave prohibited acts committed in violation of international

humanitarian law and the meaning of the term “humanity” may be understood as referring to all human beings.

323. In 1971 the entire territory of Bangladesh was under rampant atrocious attacks of the Pakistani occupation army who had carried out crimes against the non combatant civilians having explicit and deliberate collaboration and assistance of Razakars and other para militia forces. The Razakar force was an auxiliary force formed intending to assist the army and it used to act and collaborate remaining under control of the army.

324. In the case in hand, the convicted accused persons deliberately and knowingly collaborated with the Pakistani occupation army and had carried out brutal annihilation of numerous unarmed civilians (**as arraigned in all the 03 charges**). They are found to have had active and substantial contribution and facilitation in accomplishing the goal of the event of attack. The convicted accused persons were aware of the consequence of the attacks the upshot of which was killing civilians (**as arraigned in all the 03 charges**).

325. Perpetration of dreadful criminal activities including killing and aggravated destruction of civilians’ property at

rural vicinity would not have been easier without the vigorous assistance and support on part of the convicted accused persons , the members of local infamous Razakar Bahini. The offence proved was of a gravest nature that shakes human conscience, the humanity and civilization. Thus the convicted accused persons must and must deserve the appropriate sentence which shall be proportionate to the pattern and extent of magnitude of offences proved.

326. We got it proved that the convicted accused (1) Md. Rezaul Karim alias Montu (2) Md. Shahid Mandol and (3) Md. Nazrul Islam [absconding] got consciously engaged in committing the barbaric killings, in exercise of their culpable and explicit nexus with the auxiliary force. Tribunal already rendered its reasoned finding based on evidence about the mode of their participation and the role they had played in accomplishing the upshot of the event of attack which aggravates their liability.

327. The convicted accused persons are found to have had physical participation in perpetrating the killing of four unarmed civilians by gunshot (**as arraigned in charge no.01**), by launching attack in day time. The accused persons

being part of the killing squad had committed such dreadful atrocities. Such mode of participation of the convicted accused persons indisputably may be added as an aggravating factor

328. The convicted accused persons are found to have had conscious and substantial contribution in perpetrating the criminal acts including the forcible capture of unarmed victims, causing torture to them and their brutal killing (**as arraigned in charge no.s 02 and 03**). The accused persons did not accompany the gang of attackers as mere spectators. Rather they substantially facilitated the squad formed of army and accomplice Razakars in conducting the systematic attacks directed against pro-liberation civilian population.

329. All the events as arraigned in all the three counts of charges happened in day time and as such naturally the witnesses including the relatives and residents of the crime vicinities had occasion of watching the criminal activities carried out by the accused persons being active part of the gang of attackers. The relatives and locals obviously sustained severe mental harm as the barbaric events including

the aggravated destruction of their property took place within their sight.

330. The victims of the grave violence as found proved in this case form part of three millions martyrs. It increases the gravity of the offences proved. On account of the intrinsic gravity the offences committed in systematic manner must be punished appropriately.

331. We reiterate that inappropriate lesser sentence causes injustice not only to the victims of crimes but sometimes to the whole society and the nation as well. Thus, Letters of law cannot remain non responsive to the victims and relatives of martyrs and the nation too who have been still carrying colossal and appalling trauma.

332. Awarding sentence to the convicted accused chiefly depends upon the magnitude of the crimes proved and the role the convicted had played in perpetrating the same. In the case in hand, the inherent nature and pattern of the violence and aggression conducted as found proved [as arraigned in all the three charges] indisputably makes the issue of awarding just punishment extremely imperative.

333. In view of deliberation as made above and considering the intrinsic gravity of the offences, mode of participation of convicted accused persons in committing the offences proved and also keeping the factors as focused above into account we are of the **UNANIMOUS** view that justice would be met if the convicted accused (1) Md. Rezaul Karim alias Montu (2) Md. Shahid Mandol and (3) Md. Nazrul Islam [absconding] who have been found guilty beyond reasonable doubt for the horrendous crimes proved are condemned and sentenced as below, under the provision of section 20(2) of the Act of 1973:

Hence it is
ORDERED

That the accused (1) **Md. Rezaul Karim alias Montu**, son of late Majir Uddin Mandol and late Rahima Begum of village-Goalvita, Police Station-Badalgachhi, District-Naogaon, present address: Modern School (Razakar Building), Jamalganj Road, Professor Para, Police Station-Joypurhat Sadar, District-Joypurhat, (2) **Md. Shahid Mandol**, son of late Md. Abul Hossain and late Khoteza Bibi of village-Chapadal under Police Station-Badalgachhi, District-Naogaon **AND (3) Md. Nazrul Islam (Absconding)**, son of late Faraz Uddin Mandol and late Nayajan Bibi of village-Darishan

under Police Station-Badalgachhi, District-Naogaon are found guilty of the offences of ‘crimes against humanity’ (**as listed in charge no.01, 02, and 03**), as enumerated in section 3(2) (a)(g)(h) of the International Crimes (Tribunals) Act, 1973 .

Accordingly, accused **(1) Md. Rezaul Karim alias Montu (2) Md. Shahid Mandol and (3) Md. Nazrul Islam (Absconding)** 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 they be hanged by the neck till they are dead, under section 20(2) of the International Crimes (Tribunals) Act, 1973;

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

AND

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

The **‘sentences of death’** as awarded above to convict **(1) Md. Rezaul Karim alias Montu (2) Md. Shahid Mandol and (3) Md. Nazrul Islam (Absconding)** in respect of all the three (03) counts of charges shall get merged.

Since the convicted accused **Md. Nazrul Islam** has been absconding the **‘sentence of death’** as awarded above to him shall be executed after causing his arrest or when he surrenders before the Tribunal, whichever is earlier.

The **‘sentence of death’** as awarded 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.

Convicted accused **Md. Rezaul Karim alias Montu and (2) Md. Shahid Mandol** [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 Md. Nazrul Islam**.

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

The convict accused **Md. Rezaul Karim alias Montu (2)** **Md. Shahid Mandol** shall have right to prefer appeal before the Appellate Division of the Supreme Court of Bangladesh with the time stipulated in law. Thus, let certified copy of the judgment be furnished to these two convicts at once free of cost.

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

Justice Md. Shahinur Islam, Chairman

Justice Md. Abu Ahmed Jamadar, Member

Justice K.M. Hafizul Alam, Member