

**International Crimes Tribunal-1**  
**Old High Court Building, Dhaka, Bangladesh.**  
**ICT-BD [ICT-1] Case No.09 of 2017**

**Present:**

**Justice Md. Shahinur Islam, Chairman**

**Justice Md. Abu Ahmed Jamadar, Member**

**Justice K.M. Hafizul Alam, Member**

The Chief Prosecutor

Vs.

Mohammad Khalilur Rahman (absconding)

**For Prosecution**

**Mr. Golam Arief Tipoo, Chief Prosecutor**

**Mr. Syed Haider Ali, Prosecutor**

**Mr. Rana Das Gupta, Prosecutor**

**Mr. Mokhlesur Rahman Badal, Prosecutor**

**Mr. Md. Sultan Mahmud, Prosecutor**

**Ms. Rezia Sultana Begum, Prosecutor**

**Mrs. Sabina Yesmin Khan, Prosecutor**

**Mr. Tapas Kanti Baul, Prosecutor**

**For defence**

**Mr. Gazi M.H. Tamim, Advocate, Supreme Court of Bangladesh: State defence Counsel: For accused Mohammad Khalilur Rahman [Absconding]**

**Date of delivery of Judgment: 13 September, 2022**

## **JUDGMENT**

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

### **I. Introductory Words**

1. Trial of this case commenced on framing five counts of charges against four (04) accused namely, Mohammad Khalilur Rahman, Md. Azizur Rahman, Ashok Ali and Md. Shahnewaj. But in course of trial, three (03) accused Md. Azizur Rahman, Ashok Ali and Md. Shahnewaj indicted died on different dates. Accordingly, proceeding so far as it relates to them stood abated on necessary order rendered by Tribunal. Accordingly, trial of the case eventually concluded only against accused Mohammad Khalilur Rahman who has been absconding since pre-trial stage.

2. The charges framed against the accused Mohammad Khalilur Rahman (absconding) relate to the atrocious events allegedly committed around the localities under police station Durgapur and Kalmakanda of District (now) Netrokona in 1971, during the war of liberation, directing the civilian population and protected group, aiming to terrify and wipe them out, in furtherance of policy and plan of the Pakistani occupation army.

3. The case involves the offences enumerated in section 3 of the International Crimes (Tribunals) Act, 1973. The accused has been arraigned of internationally recognized crimes i.e. ‘crimes against humanity’ and ‘genocide’ which are among the most egregious harms to human dignity and human rights, perpetrated in 1971 in the territory of Bangladesh, during the War of Liberation.

4. This Tribunal [ICT-1], a domestic judicial forum constituted under the International Crimes (Tribunals) Act, 1973 is sitting today to render its unanimous Judgment and verdict in this case.

5. Before we render our verdict we take the opportunity to endorse the stamp our appreciation to the commendable performance and assistance in elucidating jurisprudential aspects, provided by both sides, at all stages of proceedings.

6. 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. Formation and Jurisdiction of the Tribunal

7. The Tribunal [ICT-1] has been set up on 25 March 2010 under the Act XIX enacted in 1973 in our sovereign parliament. The Statute is *ex-post facto* legislation. It is fairly permitted. The notion of fairness and due process as has been contemplated in the Act. Tribunal framed the Rules of Procedure, 2010 (ROP) under the powers conferred in section 22 of the principal.

8. 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 crimes enumerated in the Act of 1973.

9. We reiterate that the Act of 1973 has been enacted to prosecute, try and punish not only the armed forces but also the perpetrators who belonged to 'auxiliary forces', or who committed the offence as an 'individual' or a 'group of individuals' or 'organisation'.

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) in violation of international humanitarian law, can be brought to justice under the Act.

11. We consider it imperative to note that this Tribunal set up under the Act of 1973 is absolutely a domestic judicial forum formed of panel of three judges which is meant to prosecute, try and punish ‘internationally recognized crimes’ or ‘system crimes’ committed in violation of customary international law, during the war of liberation in 1971 in the territory of Bangladesh. Merely for the reason that the Tribunal is preceded by the word “international” and possessed jurisdiction over crimes such as Crimes against Humanity, Genocide, and War Crimes, it will be mistaken to assume that the ‘Tribunal’ must be treated as an ‘International Tribunal’.

### **III. Brief Historical Background**

12. First, let us eye on the historical background leading to war of liberation in 1971 and achievement of independent motherland. The history portrays that in August, 1947, the partition of British India based on two-nation theory, gave birth to two new states, one a secular state named India and the other the Islamic Republic of Pakistan. The western zone was named West Pakistan and the eastern zone was named East Pakistan, which is now Bangladesh.

13. Since such partition, the Bangalee nation of the eastern part of Pakistan started experiencing grave disparity and exploitation

in all spheres of their livelihood. In 1952 the Pakistani authorities attempted to impose 'Urdu' as the only State language of Pakistan ignoring Bangla, the language of the mainstream population of Pakistan. The people of the then East Pakistan then bravely started movement to get Bangla recognized as a state language and eventually turned to the movement for greater autonomy and self-determination.

14. In the general election of 1970, the Awami League under the leadership of Bangabandhu Sheikh Mujibur Rahman the Father of the Nation 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 in his momentous speech of 7th March, 1971, called on the Bangalee nation to start struggle for independence if people's verdict is not respected. History portrays it.

15. Next, in the early hour of 26th March, 1971 following the onslaught of "**Operation Search Light**" by the Pakistani Military on 25th March, Bangabandhu Sheikh Mujibur Rahman declared Bangladesh independent immediately before he was arrested by the Pakistani authorities.

16. The Bangalee nation unreservedly supported and participated in the call to free Bangladesh. But members of a number of different religion-based pro-Pakistan political parties, particularly Jamat E Islami (JEI) and its student wing Islami Chatra Sangha (ICS), Muslim League, Convention Muslim League joined and/or collaborated with the Pakistani occupation army to aggressively resist the conception of independent Bangladesh.

17. The individuals having affiliation with those pro-Pakistan political parties and auxiliary forces got explicitly engaged in committing and facilitating the commission of appalling atrocities directing civilian population in the territory of Bangladesh, in 1971. This is now a settled history of which this Tribunal takes judicial notice as permitted by the Act of 1973 and the ROP.

18. In the case of Muhammad Kamaruzzaman, Ali Ahsan Muhammad Mujahid it has been taken to judicial notice that JEI culpably assisted and facilitated the Pakistani occupation army by forming Al-Badr, a Para militia force of the workers of ICS, its student wing. And the Al Badr force had acted as an 'action section' of JEI. The para militia forces had acted

maintaining ‘**static relation**’ with the armed force for ‘**operational**’ purpose. But the mayhem started since 25 March 1971 intending to stamp out the Pro-liberation Bangalee civilians could not thrive to foil the highest sacrifice of the nation.

19. The author of the book titled “**History of the Liberation War**’, citing **Jagjit Singh Aurora** states an statistics showing the strength of locally formed *para militia* and other forces intending to provide collaboration with the Pakistani occupation army in 1971 and it is as below—

“During the liberation war in Bangladesh, there were about eighty thousand Pakistani soldiers, twenty five thousand militia, twenty five thousand civilian forces, and fifty thousand Razakars, Al- Badr, and Al-Shams members. On the other side there were about one hundred and seventy five thousand freedom fighters. Near the end of the war another two hundred and fifty thousand Indian soldiers joined the freedom fighters. At the end of the war after the surrender, about ninety one thousand Pakistani prisoners were transported to India”

**[Source: Figures from the Fall of Dacca by Jagjit Singh Aurora in the**



**Illustrated Weekly of India, 23  
December, 1973]**

20. But countless horrendous atrocious resistance on part of thousands of local collaborators having affiliation with the auxiliary forces could not impede the nation's gallant voyage to freedom. Undeniably the ways to self-determination for the Bangalee nation was strenuous, swabbed with enormous blood, struggle and immense sacrifices.

21. We once again reiterate that in the present-day world history, conceivably no nation paid as extremely as the Bangalee nation did for its self-determination and independence. The nation shall remain ever indebted to those best sons and daughters of the soil who paid supreme sacrifices for an indelible motherland – **Bangladesh.**

#### **IV. Brief account of the Accused**

22. Tribunal notes that trial commenced on framing five counts of charges against four (04) accused namely, Md. Azizur Rahman, Ashok Ali, Md. Shahnewaj and Mohammad Khalilur Rahman. But in course of trial three accused Md. Azizur Rahman, Ashok Ali, and Md. Shahnewaj, detained in prison died on different dates and thus proceeding so far as it related to them stood abated. Tribunal on appraisal of necessary papers

including respective death certificate and on hearing both sides rendered necessary orders in this regard.

23. In view of above, trial proceeded and concluded only against one accused Mohammad Khalilur Rahman (absconding). Thus, now before we render our decision on charges arraigned let us have a look what has been stated in the formal charge about the identity of this sole accused person in 1971.

### **Accused Mohammad Khalilur Rahman (absconding)**

Accused Mohammad Khalilur Rahman is the son of late Nabi Hossain and late Kadbanu of Village-Noagaon under Police Station Durgapur of District [now]-Netrokona. He is 72 years old as found in investigation although his National Identity Card shows 01.07.1954 as his date of birth. He passed Kamil (Hadith) in 1976 and served as a teacher of Dwin-e-Dakhil Madrasa, Durgapur. In 1971 he was a member of Islami Chhatra Sangha, the student wing of Jamaat-e-Islami [JEI] and joined in the locally formed Razakar Bahini. Subsequently, he became the commander of the local Al-Badr Bahini and got engaged in committing heinous crimes, prosecution alleges.

## **V. Procedural History**

### ***Pre-trial stage***

**(i) Initiation of Investigation**

24. The Investigation Agency of the Tribunal constituted under the Act of 1973 started investigation on 30.04.2015 pursuant to complaint register's serial no. 49 dated 01.04.2015, in respect of commission of offences enumerated in section 3(2) of the Act of 1973 allegedly perpetrated by five suspects including the accused (1) Mohammad Khalilur Rahman, (2) Md. Azizur Rahman, (3) Ashok Ali (4) Md. Shahnewaj and (5) Ramjan Ali.

**(ii) Detaining the accused in execution of warrant of arrest**

25. On prayer of the IO the Tribunal by its order dated 12.04.2016 issued warrant of arrest [WA] seeking arrest of all the five suspects including the accused Mohammad Khalilur Rahman. In execution of warrant of arrest four were arrested and produced before the Tribunal on 13.04.2016 when they were sent to prison, for the purpose of effective and proper investigation. Suspect accused Mohammad Khalilur Rahman could not be arrested.

**(iii) Interrogation of detained accused**

26. The four detained accused were interrogated by the Investigation Officer as permitted by Tribunal's order dated 26.4.2016. In course of investigation suspect accused Ramjan

Ali, detained in prison died on 30.09.2016 in the Dhaka Medical College Hospital.

**(iv) Submission of Investigation Report**

27. The Investigation Officer [IO], submitted its report together with documents and materials collected and statement of witnesses before the Chief Prosecutor on 30.01.2017, on wrapping up of the task of investigation.

**(v) Submission of Formal Charge**

28. The Chief Prosecutor, on the basis of the investigation report and documents submitted therewith by the Investigation Agency, after completion of investigation, submitted the 'Formal Charge' on 03.05.2017 under section 9(1) of the Act of 1973 before this Tribunal recommending prosecution of four accused persons alleging that they had committed the offences of genocide and crimes against humanity, including abetting and also for complicity to commit such crimes narrated in the formal charge during the War of Liberation in 1971 around the localities under the Police Station- Durgapur and Kalmakanda of the then Netrokona Sub-Division.

**(vi) Taking Cognizance of Offences**

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

**(vii) Trial in Absentia against accused Mohammad Khalilur Rahman**

30. The law enforcement agency could not secure arrest of one accused Mohammad Khalilur Rahman as he remained absconded and there was no immediate prospect of causing his arrest. 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 as required by law. But this accused did not turn up despite such publication of such notification and as such treating him absconded the Tribunal ordered for hearing on charge framing matter by appointing Mr. Gazi M.H. Tamim the state defence counsel, at the cost of Government, to defend the absconding accused Mohammad Khalilur Rahman.

## ***Trial stage***

### **(viii) Charge Framing Order**

31. On hearing charge framing matter the Tribunal by its order dated 12.03.2018 framed five counts of charges, on having considered the Formal Charge and materials annexed therewith and also on hearing both sides. The charges so framed against four accused were read over and explained to the three accused present on dock (later on died during trial) as brought from prison. These three accused pleaded not guilty and claimed to be tried according to law. But these three accused died during trial on different dates. Accused Mohammad Khalilur Rahman was on the run since pre-trial stage.

### **(ix) Opening statement and examining prosecution witnesses**

32. On 18.04.2018 prosecution, after placing opening statement, started examining witnesses to substantiate the crimes arraigned. In course of trial three accused detained in prison died, we already stated. Accused Ashok Ali, Md. Shahnewaj and Md. Azizur Rahman died on 28.11.2018, 15.11.2021 and 09.3.2022 respectively and thus proceeding so far as it relates to them accordingly stood abated respectively on 19.12.2018, 05.12.2021 and 30.03.2022. Accordingly, the trial continued only against the absconding accused Mohammad Khalilur Rahman and it ended on closure of examining prosecution

witnesses on 04.11.2019. Defence declined to adduce any evidence.

**(x) Summing up of case**

33. Prosecution started placing summing up on 26.02.2020 and it seems to have been concluded on 14.02.2021. Next, the learned state defence counsel concluded his summing up on 18.7.2022. On closure of summing up on 18.7.2022 the case was kept CAV i.e. for delivery and pronouncement of judgment

## **VI. Applicable laws**

34. The offences prosecuted and tried under the Act of 1973 are known as ‘system crimes’ and not isolated crimes. Thus, we feel it imperative to focus on some matters related to trial of this nature of crimes. Section 23 of the Act of 1973 prohibits the applicability of the Code of Criminal Procedure, 1898 and the Evidence Act 1872, in dealing with the crimes enumerated in the Act of 1973. Provisions as contemplated in the International Crimes (Tribunals) Act, 1973 and the Rules of Procedure, 2010 formulated by the Tribunal [ICT-1] under the powers given in section 22 of the Act are applicable to the proceedings before the Tribunal. 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].

**35.** The Tribunal may admit any evidence considering its probative value [Section 19(1) of the Act]. The Tribunal shall have discretion to consider hearsay evidence by weighing its probative value [Rule 56(2)]. The defence shall have liberty to cross-examine prosecution witness questioning his credibility and to take contradiction of the evidence given by him [Rule 53(ii)]. Tribunal ensures defence right to examine witnesses [Section 10(1) (f) of the Act of 1973].

36. In a trial involving the offences enumerated in the Act of 1973 cross-examination is significant in confronting evidence. The Act of 1973 provides this right of accused to cross-examine the prosecution witnesses. 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]**.

37. It is to be noted that in the case in hand that such statement of five (05) vital witnesses made to the Investigation Officer (IO)



has been received in evidence under section 19(2) of the Act of 1973 (vide Tribunal's order no.24 dated 03.11.2019) in respect of events arraigned in charge nos. 01,03,04 and 05, as prayed by prosecution on ground that those witnesses whose name finds place in serial nos.3,30,39,63 and 70 of the volume of witnesses statement of them three already died during trial and two other witnesses are now not fit to stand on dock as they have been suffering from severe ailment. Prosecution urges it by filing necessary papers as well.

38. It has been contemplated in section 19(2) of the Act of 1973 that –“A Tribunal may receive in evidence any statement recorded by a Magistrate or an Investigation Officer being a statement made by any person who, at the time of the trial, is dead or whose attendance cannot be procured without an amount of delay or expense which the Tribunal considers unreasonable.”

39. It is not obligatory to receive the statement of a person recorded by the IO in evidence. It involves judicial discretion in exercise of which the Tribunal considers the prayer initiated on part of prosecution to receive the statement made to the IO by those five witnesses on ground that three of them already died

during trial and two others are now not fit to move due to their grave old age complications, chiefly to see and determine consistency of their statement made to the IO with testimony of witnesses examined in Tribunal.

40. The Act of 1973 and the Rules of Procedure (ROP) formulated by the Tribunal together 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.

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

## **VII. Summing Up**

**Summing up: By the prosecution**

42. **Mr. Rana Das Gupta**, the learned prosecutor in advancing summing up drew attention to the oral testimony of direct witnesses and the documents relied upon to substantiate the contention that the accused Mohammad Khalilur Rahman belonged to Al Badr Bahini and had dominating position in it. The witnesses testified in this regard as they knew the accused and his identity in 1971, chiefly for the reason of his notoriety around the locality. The reason they testified could not be impeached by the defence.

43. By placing categorical submission the learned prosecutor argued too that the accused knowingly and sharing intent of the criminal enterprise participated in accomplishing the object of the criminal mission which resulted in abduction, confinement, other inhumane act, rape, murder of civilians and wiping out the protected group, in exercise of his leading affiliation in Al Badr Bahini and the accused culpably collaborated with the murderous enterprise formed of Pakistani occupation army, Razakars and Al Badrs .

44. The learned prosecutor in advancing argument submitted too that the arraignments brought in all counts of charges have been proved beyond reasonable doubt from the ocular evidence of witnesses examined majority of whom are victims and relatives

of victims. Defence could not dislodge what they recounted on material facts relating to complicity and involvement of the accused Mohammad Khalilur Rahman with the commission of offences for which he has been charged. However, the detail argument advanced on each count of charge may be well attended while the charges will be adjudicated independently. Trial took place in absentia of accused Mohammad Khalilur Rahman which may be considered as an incriminating fact that fairly lends assurance to his culpable role that he had in 1971 in perpetrating the crimes arraigned, the learned prosecutor added.

### **Summing up by the defence**

**45. Mr. Gazi M.H. Tamim**, the learned state defence counsel defending the sole absconding accused Mohammad Khalilur Rhaman submitted that this accused did not have any form of affiliation in local Al Badr Bahini, as alleged by the prosecution. Alleged list of Al Badrs/Razakars is not authoritative document. The person involved in preparing this list has not been cited as witness and as such defence could not have opportunity of cross-examining him questioning its authenticity and reliability.

46. The learned defence counsel also submitted that the prosecution witnesses did not have reason of knowing the accused beforehand. Their testimony in this regard is tutored. In

respect of the charges framed the learned state defence counsel placed categorical submission chiefly contending that the witnesses did not have occasion of seeing what they testified and the accused was not involved with the commission of alleged crimes. Tribunal thinks it proper that it would be convenient to focus on argument advanced by defence together with that of prosecution at the time of independent adjudication of each charge.

### **VIII. General Considerations Regarding the Evaluation of Evidence in a case of Crimes against Humanity**

47. We consider it imperative to state the matters to be considered necessary for the purpose of determining the arraignment by evaluating evidence presented. The accused Mohammad Khalilur Rahman who allegedly had potential affiliation in Al Badr Bahini, an 'auxiliary force' as defined in section 2(a) of the Act of 1973 has been indicted for the offences enumerated in section 3(2) of the Act of 1973. The offences for which he has been indicted were 'system crimes' committed in violation of international humanitarian law, in the territory of Bangladesh in 1971, during the war of liberation.

48. The accused has been brought to justice about five decades after the horrendous offences committed directing civilian population, during the war of liberation. Sometimes it also happens that due to the nature of international crimes, their chaotic circumstances, and post-conflict instability, these crimes usually may not be well-documented by post-conflict authorities. Thus the case in hand so far as it relates to the alleged facts of criminal acts constituting the alleged offences is predominantly founded on oral evidence presented by the prosecution.

49. It is to be noted that in the case in hand, mostly the victims and witnesses who allegedly experienced the facts substantially related to the principal events came on dock to testify. Together with the circumstances to be divulged it would be expedient to have a look to the facts of common knowledge of which Tribunal has jurisdiction to take into its judicial notice [Section 19(3) of the Act of 1973], for the purpose of unearthing the truth. Inevitably, determination of the related legal issues will be of assistance in arriving at decision on facts in issues.

50. In adjudicating the atrocious events alleged and participation of the accused therewith we require to keep the 'context' in mind in the process of assessment of evidence adduced. The

reason is that the term ‘**context**’ refers to the events, organizational structure of the group of perpetrators, *paramilitia* forces, policies that furthered the perpetration of alleged crimes in 1971 during the war of liberation.

51. It is to be noteworthy too that testimony even of a single witness on a material fact does not, as a matter of law, require corroboration for a finding to be made. This jurisprudence as propounded by our own jurisdiction shall seem compatible to the principle enunciated by *ad hoc* Tribunal [ICTR] wherein it has been 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, November 12, 2008, para. 14].

52. It has already been settled by this Tribunal in earlier cases that hearsay evidence is not readily inadmissible *per se* but it is to be evaluated in light of probability based on corroboration by ‘other evidence’. This view finds support too from the principle enunciated in the case of *Muvunyi* which is as below:

Hearsay evidence is not per se inadmissible before the Trial Chamber. However, in certain circumstances, there may be good reason for the Trial Chamber to consider whether hearsay evidence is supported by other credible and reliable evidence adduced by the Prosecution in order to support a finding of fact beyond reasonable doubt.

[*Muvunyi*, (ICTY Trial Chamber), September 12, 2006, para. 12]

53. Due to lapse of long passage of time inconsistency may occur between testimonies of witnesses. But an insignificant discrepancy or inconsistency does not tarnish witness's testimony in its entirety. Any such discrepancy, if found, needs to be contrasted with surrounding circumstances and testimony of other witnesses. Jurisprudence evolved in *ad hoc* Tribunals endorses it.

54. Tribunal requires to keep due care in determining the incriminating facts chained to the event arraigned, on the basis of assessment of the totality of the evidence adduced. Credibility of evidence adduced is to be weighed in context of its relevance and circumstances.



55. Atrocities as arraigned in the charges framed were committed in wartime situation. Tribunal notes that in adjudicating liability of the person accused of criminal acts, context and situation prevailing at the relevant time i.e. the period of war of liberation in 1971 [ March 25 to December 16 1971] is to be considered.

56. Tribunal has kept due concentration to the universally recognised jurisprudence and the provisions as contained in the ROP that onus squarely lies upon the prosecution to establish accused person's liability, acts or conducts, and omission forming part of attack that resulted in actual commission of the offences of crimes against humanity and genocide as enumerated in section 3(2) of the Act of 1973 for which he has been arraigned. Therefore, until and unless the accused is found guilty beyond reasonable doubt he shall be presumed innocent. Keeping this universally recognised principle in mind Tribunal proceeded with the task of evaluation of evidence provided.

## **IX. Role and status the accused had in 1971 and whether he had affiliation in Al Badar Bahini**

57. **Mr. Rana Das Gupta**, the learned prosecutor drawing attention to evidence and materials relied upon submits that the

accused Mohammad Khalilur Rahman was affiliated with the student wing (ICS) of JEI and after the war of liberation ensued he first got affiliated in local Razakar Bahini and then became the commander of local Al Badr Bahini. In 1971 Al Badr Bahini was the action section of JEI formed of persons having affiliation in ICS. For the reason of notoriety the accused Mohammad Khalilur Rhaman had in 1971 he was known to the locals of the vicinities attacked. Competent witnesses could naturally recognize the accused accompanying the gang in perpetrating the crimes arraigned, by launching systematic attack. Defence could not controvert it.

58. On contrary, **Mr. Gazi M.H. Tamim**, the learned state defence counsel submits that it could not be proved that the accused Mohammad Khalilur Rahman was Razakar and then became the commander of Al Badr Bahini. Testimony of witnesses in this regard is inconsistent. There is no authenticated and old document to show his alleged affiliation as commander of Al Badar Bahini. The witnesses testified falsely terming him as commander of Al Badr. The papers relied upon by the prosecution have been created for the purpose of the case.

59. It is a fact of common knowledge that the Pakistani occupation army with the assistance of Jamat E Islami, a pro-

Pakistan political party organized Razakar and Al Badr Bahini intending to have their active support and assistance in implementing atrocious activities directing civilian population, in furtherance of plan and policy.

60. It depicts explicitly from testimony of witnesses, the residents of the localities attacked allegedly that first the accused Mohammad Khalilur Rhaman got affiliated with locally formed Razakar Bahini and then became member of locally formed Al Badr Bahini as he was involved with the politics of Islami Chatra Sangha (ICS), the student wing of JEI. It gets substantiated from the list of Al Badr Bahini of Chandigar Union under police station Durgapur **Exhibit-I (prosecution documents volume page nos. 10 and 59)**.

61. This piece of document **Exhibit-I series** prepared by local Muktijodhdha Sangsad patently goes to show that the accused Mohammad Khalilur Rahman was associated with politics of Islami Chatra Sangha (ICS) and in 1971 became commander of local Al Badr Bahini. Affiliation of the accused with ICS could not be refuted by defence. It thus indisputably proves his nexus in Al Badr Bahini as its commander. We do not find any reason to disbelieve this documentary evidence.

62. The narrative made in the book titled “**Sunset at Midday**” reflects that –

“To face the situation Razakar Force, consisting of Pro-Pakistan elements was formed. This was the first experiment in East Pakistan, which was a successful experiment. Following this strategy Razakar Force was organized throughout East Pakistan. This force was, later on named Al-Badar and Al-Shams and Al-Mujahid. The workers belonging to purely Islami Chatra Sangha were called Al Badar.....”

[**Source: Sunset at Midday: Mohi Uddin Chowdhury, a leader of Peace Committee, Noakhali District in 1971 who left Bangladesh for Pakistan in May 1972 (Publisher’s note) : Qirtas Publications, 1998, Karachi, Pakistan, Paragraph two at page 97 of the book**]

63. What was the objective of forming such para militia force Al Badr Bahini? Fox Butterfield wrote in the **New York Times, January 3, 1972** that –

“Al Badar is believed to have been the action section of Jamat-e-Islami, carefully organised after the Pakistani crackdown last March.”

[**Source: Bangladesh Documents Vol. II page 577, Ministry of External Affairs, New Delhi**]

64. The another document, the communication made by the Court Inspector, CJM Court, Mymensingh **Exhibit-I (prosecution documents volume page nos. 68, 69 and 70)** demonstrates that two cases were initiated in Kalmakanda police station against the accused Mohammad Khalilur Rahman, his brother Azizur Rahman (died during trial) and others in 1972, presumably under the Collaborators Order, 1972. It also depicts that no information as to trial and fate of these cases could be obtained. However, information so far it has been stated in this document clearly adds to the fact of role and status the accused Mohammad Khalilur Rahman had in 1971, as commander of Al Badr Bahini.

65. Testimony of P.W.01 demonstrates that accused Mohammad Khalilur Rahman was three years senior to him in Madrasa. It emerges too from testimony of P.W.02 that on 30 April in 1971 Pakistani occupation army got stationed at Birishiri PC Noll Memorial High School where they formed their camp. After formation of this camp peace committee, Razakar Bahini and then Al Badr Bahini were formed in Durgapur.

66. P.W.04 and P.W.05 consistently testified that accused Al Badr Commander Mohammad Khalilur Rahman was the

resident of their neighbouring village and they used to move around the local bazaars and as such they knew them beforehand. Majority of witnesses knew the accused as he was a neighbouring resident. They could recognize him accompanying the gang as Al Badr commander, in launching attacks. Defence simply denied it. But it could not controvert it in any manner.

67. In view of above, taking the oral evidence presented into account it may be safely and justifiably deduced that the accused Mohammad Khalilur Rahman was a potential member of Al Badr Bahini. It is evinced from the testimony of P.W.14 that peace committee member of Chandigar Union Nabi Hossain (now dead) was the father of accused Mohammad Khalilur Rahman and accused Azizur Rahman (died during trial) and of them accused Mohammad Khalilur Rahman was first got affiliated with Razakar Bahini and then became commander of Al Badr Bahini.

68. It is now settled history that Jamat E Islami the pro-Pakistan political party had played the key role first in forming Razakar Bahini and then Al Badr Bahini in the name of providing aid to Pakistani occupation army to further its policy and such *paramilitia* forces got culpably engaged in accomplishing

unspeakable atrocities directed against civilian population, in the name of preserving Pakistan.

69. The Act of 1973 contemplates that even any individual can be prosecuted and tried for the offences enumerated in the Act of 1973 if it is not established that he was affiliated with any auxiliary force. But in view of reasoned discussion as made above it is manifested that the accused Mohammad Khalilur Rahman was a notorious commander of Al Badr Bahini.

## **X. Way of Adjudication of Charges**

70. Four accused (1) Md. Azizur Rahman, (2) Ashok Ali (3) Md. Shahnewaj and (4) Mohammad Khalilur Rahman have been indicted in this case. In course of trial three accused Md. Azizur Rahman, Ashok Ali and Md. Shahnewaj died on different dates and as a result proceeding so far as it related to them stood abated. Tribunal passed orders in this regard.

71. In view of above, there is no space of rendering finding as to guilt of these three accused, on evaluation of evidence presented. Simply to determine the commission of the events arraigned testimony of witnesses implicating these three accused who already died during trial may come forward.

72. Under this circumstance we require adjudication of ‘guilt’ and ‘participation’ of only one accused Mohammad Khalilur Rhaman who has been absconding. Therefore, we do not consider it imperative to eye on the cross-examination of witnesses done on part of these three accused.

73. Role and status the accused Mohammad Khalilur Rahman had during the war of liberation in 1971 undeniably has to be kept in mind in determining his liability for the offences with which he has been charged.

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

**[04 accused indicted of whom 03 died during trial]**

**[Event no.01 as narrated at page 23-26 of the formal charge]**

**[ Offences of ‘abduction’, ‘confinement’, ‘torture’, 'looting', ‘arson’, ‘other inhumane act’ and ‘murder’ by launching attack at village Bhulipara]**

74. Charge: That in the second week of May, 1971 a gang formed of 20/25 Razakars, Pakistani occupation army and the accused (1) Mohammad Khalilur Rahman(absconding), (2) Md. Azizur Rahman (died during trial) , (3) Ashok Ali (died during trial) and (4) Md. Shahnewaj(died during trial) launched attack at village- Bhulipara under Police Station- Durgapur of District[now] Netrokona when one army man, in connivance



with the accused persons attempted to commit sexual ravishment upon Tarikunnesa, the mother of Samsul Haque , a freedom fighter. The attempt of such criminal act was in vein as Md. Nurul Islam snatched away the arms of the said army man with bravery. The gang then by launching attack forcibly captured Innas Ali the father of Nurul Islam from his house, looted households and burnt down the house.

The gang, in conjunction with the attack also forcibly captured Ayub Ali, a follower of Awami League and then it keeping the two detainees with them headed towards the army camp set up at Birisiri and on the way at 05:00 P.M shot the detainee Ayub Ali to death on the bank of the river Someswari and threw the dead body into the river. Another detainee Innas Ali got released after one-week captivity at the army camp on condition of facilitating surrender of his son Nurul Islam with the arms that he snatched away from an army man.

Therefore, the accused (1) Mohammad Khalilur Rahman, (2) Md. Azizur Rahman (died during trial), (3) Ashok Ali (died during trial) and (4) Md. Shahnewaj (died during trial) have been charged for participating, abetting, facilitating, contributing and complicity in committing '**abduction**',

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

## **Evidence of Witnesses Examined**

75. All the four accused persons recommended for prosecution have been indicted in this count of charge. But during trial 03 accused persons died on different dates. Accordingly, proceeding so far as it relates to them stood abated. However, despite it, we require to see what the witnesses testified in respect of the event and thus naturally evidence implicating the above three accused who later on died during trial shall come forward for the purpose of determining the event arraigned and the charge brought against the sole absconding accused Mohammad Khalilur Rhaman and of course not to render any finding about the guilt of those three accused.

76. This charge involves the offence of abduction, confinement, torture, looting, arson, other inhumane acts and murder of one civilian Ayub Ali by launching attack at village- Bhulipara. The

arraignment rests upon testimony of three witnesses who have recounted the event standing on dock as P.W.01, P.W.02, and P.W.03. Before we weigh their testimony first let us see what they have narrated in Tribunal.

**77. P.W. 01 Md. Nurul Islam (65/66)** is a resident of village-Bhulipara under police station- Durgapur of District Netrokona is a valiant freedom-fighter. He testified facts related to the event of attack as narrated in charge no.01 and affiliation of the accused person therewith.

78. In respect of the event alleged P.W. 01 stated that on 10<sup>th</sup> May in 1971 at around 04:00 P.M. while he was at home, he found that 20/25 Razakars along with 03 Pakistani occupation army men standing on the road, about 200/250 yards far from their house. He (P.W.01) also witnessed that on signal of Razakars one Pakistani army entered inside the house of Ali Ahmed Sukani (now dead), adjacent to their house. He then heard the piercing cry of Sukani's wife Tarikunnesa seeking help. At that time Shamsul Haque (now dead), son of Tarikunnesa had been in Tura in India to undergo training of freedom-fighter.

79. P.W.01 next stated that having heard the scream, he, his brother-in-law Khorshed Alam and his brother Abul Kalam moved to Tarikunnesa's home and witnessed the Pakistani army man taking off her clothes to commit sexual ravishment. Then they three clasped the Pakistani army from his back and instantly tied him up with rope and he(P.W.01) snatched away his arms and started beating him and ran away taking the snatched arms with them from the place as the Razakars and two army men were coming toward Tarikunnesa's house on hearing uproar. Later, they (P.W.01 and his allies) got themselves hidden in the nearby bush, about 100 yards far from their house, as self defence.

80. P.W.01 also stated that remaining in hiding they witnessed the gang of Razakars and the Pakistani invaders launching attack first at their house (house of P.W.01). He saw the accused Razakars Mohammad Khalilur Rahman, Azizur Rahman(died during trial), Ashok Ali(died during trial), Ramjan Ali and Md. Shahnewaj(died during trial), accompanying the gang whom he knew beforehand. The accused persons and their accomplices looted household, forcefully took away 14 cows and 6/7 goats and captured his father Md. Innas Ali (now dead).

81. P.W.01 continued stating that afterwards, with his detained father and looted cattle the accused persons moved to Ayub Ali's home, about 10/15 yards far from that of their own and tied him up as well. Ayub Ali was a follower of Awami League. Later, he saw the Razakars and army men moving back toward the army camp based in P C Noll Memorial High School, taking two detainees and looted domestic animals with them.

82. P.W.01 next stated that he along with Khorshed Alam and Abul Kalam then started following the gang secretly. At about 05:00 P.M. they heard gunshot and then coming on the bank of Someswari River they found the dead body of Ayub Ali lying there. They also saw the gang crossing the river taking looted cattle and his (P.W.01) father and finally his father was taken into Birishiri Army camp. They waited there secretly for an hour in front of the camp and they being disheartened eventually came back home when his father did not get release. Then coming back home they found their house ablaze. His mother, sisters and brother along with neighbours managed to keep them saved by going into hiding at the time of the event of attack happened. He also disclosed them what he witnessed and what he had done.

83. P.W.01 continued stating that he along with Khorshed Alam and Abul Kalam went to Baghmara refugee camp of Meghalaya, India, taking the arms kept hidden with them. They were then sent to Baghmara recruitment training camp for receiving training as freedom fighters. He disclosed the event to his neighbour Joynal Abedin and others who got sheltered there. In morning on the same day he arrived in India and he met Captain Murari of Indian BSF going to his camp and handed over the arms he snatched away from Pakistani army and disclosed the detail of the event happened. Captain Murari then sent them to Baghmara recruit camp to undergo freedom-fighters training.

84. P.W.01 next stated that after a week he (P.W.01) came to know that his father along with family inmates reached Baghmara refugee camp. He (P.W.01) moved to them and found his father severely sick. He heard from his father that he was mercilessly tortured and eventually the invaders released him on condition of making him (P.W.01) handed over with the looted weapon in the Birishiri Army camp. However, to save his son's (P.W.01) life, his father fled to India.

85. P.W.01 continued stating that he came back to Bangladesh after receiving training and joined the war of liberation and after

the independence achieved he took back his father and family inmates from India. On visiting Ayub Ali's house they found it burnt down by fire. He disclosed the event of killing Ayub Ali and fact related to what he witnessed. They (the family inmates of victim Ayub Ali) told that 2/3 days after the event happened they found dead body of Ayub Ali lying on bank of the river Someswari.

86. How the P.W.01 came to know the Razakars? P.W.01 stated that accused Razakar Mohammad Khalilur Rahman was three years senior to him in Madrasa (*a special kind of religious educational system for Muslims*) and others were from the neighbouring union, they used to go to the same market place; that's why he knew the accused persons from long before.

87. In cross-examination on behalf of the absconding accused Mohammad Khalilur Rahman P.W.01 stated that Durgapur Razakar camp was in Birishiri; that during the Liberation War Peace Committee Chairman was Fazlul Karim who belonged to Jamaat-e-Islami; that he heard that in 1972 a case was initiated against the accused Mohammad Khalilur Rahman; that he or any of their family inmates did not initiate any case over the event he narrated as the situation was not favourable.

88. P.W.01 denied the defence suggestions that he did not see the event he testified; that the event he narrated did not happen; that he did not know the accused persons; that the accused persons did not belong to Razakar Bahini and that what he testified implicating the accused was untrue and tutored.

**89. P.W. 02 Md. Joynal Abedin (68/69)** is a resident of village-Dhulipara under Police Station-Durgapur of District Netrokona. P.W.02 studied up to class IV. P.W.02 is a hearsay witness in respect of the event arraigned. He allegedly heard the event from P.W.01 Md. Nurul Islam.

90. Before narrating the event arraigned in charge no.01 P.W.02 stated that their home was about two kilometers far from Birishiri PC Noll Memorial High School. On 30 April in 1971 Pakistani occupation army got stationed at the said school where they formed their camp. After formation of this camp peace committee, Razakar Bahini and Al Badr Bahini were formed in Durgapur.

91. In respect of the event arraigned P.W.02 next stated that on 10 May in 1971 at about 04:00 P.M Pakistani army along with Razakars arrived at their village and sensing it he fled away to



another village and there from at about 08:00 P.M. in night moved toward Baghmara refugee camp in India.

92. P.W.02 continued stating that in the same night at about 03:00/04:00 A.M. his neighbour Nurul Islam (P.W.01), his (P.W.01) sister's husband Khorshed Alam (now dead) and his (P.W.01) brother Kalam (now dead) arrived at Baghmara refugee camp when Nurul Islam (P.W.01) was carrying a fire arms with him. Nurul Islam (P.W.01) told them that on the day of the event happened Pakistani army attempted to sexually ravish one woman Tarikunnesa, their neighbour when he (P.W.01), his sister's husband Khorshed Akam (now dead) and his brother Kalam (now dead) grabbed the Pakistani attacker from the back, tied him up and eventually snatched away his weapon from him.

93. P.W.02 stated that he also came to know from Nurul Islam (P.W.01) that two army men and Razakars staying at place, a bit far from Tarikunnesa's house started coming toward the site when Nurul Islam and two others went into hiding inside a bush where from he (P.W.01) saw the Pakistani army men and Razakars detaining Nurul Islam's father Innas Ali and setting their house on fire, by launching attack. Afterward, the group of

assailants started violent attack at local Awami League leader Ayub Ali's house and burnt down the house by setting fire. Those eye witnesses also informed him that the group of attackers shot down Ayub Ali to death and threw the dead body into Someswari River, on their way back to Birisiri P C Noll Army Camp. However, they kept Innas Ali detained at the army camp.

94. P.W.02 also stated that P.W.01 told him that among the Razakars they identified Mohammad Khalilur Rahman, Azizur Rahman (died during trial), Ramjan Ali (died during trial), Ashok Ali (died during trial) and Md. Shahnewaj (died during trial). Later on, Nurul Islam moved to India taking the arms he snatched away from one army man and surrendered the weapon before Captain Murari and then he got engaged in freedom-fighters training at Tura camp and joined the war of liberation.

95. P.W.02 finally stated that after the independence achieved, he (P.W.02) returned back home and came to know from Innas Ali (father of P.W.01) that he got released on condition that he would hand over his son (P.W.01) to the Pakistani army with the military weapon snatched away within a week.

96. In cross-examination on behalf of the absconding accused Mohammad Khalilur Rahman P.W.02 denied the defence suggestions that he did not hear the event he narrated and what he testified was untrue.

**97. P.W. 03 Ayesha Begum (59/60)** is a resident of village-Bhulipara under police station- Durgapur of District Netrokona. In respect of the event arraigned P.W.03 is a direct witness and daughter of victim martyr Ayub Ali.

98. P.W.03 testified that on 26<sup>th</sup> day of Bangla month Boishakh in 1971 at around 04:00 P.M. she had been at her parental home when she coming out of house noticed some Razakars and Pakistani army men standing at the place nearer to their home. After some time, she moving to the place in front of Tarikunnesa's house witnessed Nurul Islam (P.W.01), Khorshed Alam and Abul Kalam snatching away the weapon from one Pakistani Army man. Then she also watched the Pakistani army men and Razakars coming toward Tarikunnesa's house when she returned back home. Then she also witnessed the group of attackers coming toward their house taking detained Innas Ali, the father of Nurul Islam (P.W.01) and looted cattle with them

and the gang then also burnt down the house of Nurul Islam on fire.

99. P.W.03 also stated that the gang then forcibly captured her father and tied him up and with this she ran away and took shelter at the house of one Garo indigenous people where her mother and brother remained in hiding. Then she heard gunshot. Later, on the same day she came to know that her father Ayub Ali was gunned down to death and his dead body was dumped into Someswari River. After 2/3 days they found her father's dead body and finally, they fled to India.

100. In cross-examination on behalf of absconding accused Mohammad Khalilur Rahman P.W.03 denied the defence suggestions that he did not hear the event he narrated and what he testified was untrue.

### **Finding with Reasoning on Evaluation of Evidence**

**101. Mr. Rana Das Gupta**, the learned prosecutor drawing attention to the evidence presented to substantiate the arraignment brought in this count of charge argued that two direct witnesses who are son and daughter of two victims recounted the event and defence could not controvert it in any

manner. Their testimony shall depict that the first criminal act was done to commit sexual ravishment upon one Tarikunnesa, neighbour of P.W.01 and P.W.03 and then they forcibly captured two unarmed civilians one of whom Ayub Ali, the father of P.W.03 was killed by gunshot and another detainee Innas Ali, the father of P.W.01 was taken away to Birishiri army camp where he was subjected to torture in protracted captivity.

102. It has been also argued by the learned prosecutor that P.W.01 and P.W.03 have consistently narrated the material particular indicating unerringly that the accused Mohammad Khalilur Rahman was actively involved with the act of devastating activities, forcible capture of two unarmed civilians followed by the act of killing on detainee Ayub Ali and as such the accused incurred liability under section 4(1) of the Act of 1973.

103. The learned prosecutor further submitted that all the criminal acts leading to the crimes committed were perpetrated on active assistance, facilitation and substantial contribution of the accused Mohammad Khalilur Rahman and his cohorts indicted. However, since three accused have already died during trial the sole accused Mohammad Khalilur Rhaman

(absconding), being conscious part of the criminal enterprise incurred liability for the proved atrocious acts, the learned prosecutor added.

**104. Mr. Gazi M.H. Tamim**, the learned state defence counsel argued that the accused Mohammad Khalilur Rahman was not a Razakar and Al Badr and had no manner of complicity with the alleged event. The witnesses' testimony does not carry credence as they had no reason of knowing the accused beforehand. Besides, P.W.02 was a minor boy in 1971 and thus he is not supposed to recollect any fact relating to alleged event.

105. Prosecution is burdened to prove the accusation brought. The crimes were allegedly committed in 1971 during the war of liberation directing civilian population, by launching systematic attack. Of three witnesses relied upon by the prosecution two are direct witnesses. In recollecting the facts relating to the event of attack happened long more than five decades back one might not have been able to portray detail of the event. The core essence in respect of the event arraigned unveiled in their testimony is to be weighed in rational way.

106. The matters to be determined in resolving the arraignment brought in this count of charge are---

- (i) The systematic attack was launched at the house of Innas Ali and Ayub Ali and in course of attack one Tarikunnesa was subjected to sexual assault;
- (ii) The group of attackers was formed of Pakistani occupation army, accused Mohammad Khalilur Rahman and his cohorts;
- (iii) That the attack also resulted in looting, arson and forcible captures of two unarmed civilians Innas Ali and Ayub Ali;
- (iv) That one detainee Ayub Ali was killed by gunshot and another detainee was kept in protracted confinement at the army camp where he was subjected to torture;
- (v) That the accused Mohammad Khalilur Rahman knowingly in exercise of his potential affiliation with Razakar Bahini and Al Badr Bahini participated by assisting, aiding and encouraging the perpetration of criminal acts.

107. At the outset we prefer to reiterate that not the quantity but the quality of evidence presented is to be considered as it is settled that evidence even a single witness is sufficient to prove the facts related to the event arraigned. Here we see that in order

to substantiate the arraignment alleged in this count of charge two witnesses (P.W.01 and P.W.03) recounted what they witnessed in course of the event of attack.

108. It demonstrates from unshaken testimony of P.W.01, a direct witness that the gang formed of accused Mogammad Khalilur Rahman, his cohort Razakars including the three accused indicted who died during trial and the 03 Pakistani army forming a group conducted the systematic attack first at the house of Ali Ahmed Sukani's (now dead) . In conjunction with this phase of attack one army man forming the group explicitly attempted to stain the supreme honour of Sukani's wife Tarikunnesa. It could not be controverted by the defence in any manner.

109. It could not be impeached that the P.W.01 knew the accused Mohammad Khalilur Rahman and other accused persons indicted who died during trial before hand as they were from his neighbouring Union and accused Mohammad Khalilur Rahman was three years senior to him in Madrasa. Thus there can be no reason to say that P.W.01 had no reason of seeing the accused at the crime scene with the gang.



110. It stands proved that the Razakars including the accused Mohammad Khalilur Rhaman accompanying the gang substantially aided by making space of directing violent attack upon the supreme honour of a woman Tarikunnesa. It was grave violation of human rights of protected person.

111. Defence does not dispute it too that on hearing piercing cry of Sukani's wife Tarikunnesa seeking help P.W.01 and two others moved to her home when he witnessed one Pakistani army man taking off her clothes to commit sexual ravishment. Tarikunnesa was the mother of freedom-fighter Shamsul Haque (now dead). Defence does not dispute it. Presumably, this was the reason of launching attack at their house with intent to spread coerce and terror amongst the pro-liberation civilians of the locality.

112. It depicts that on seeing such devilish act he (P.W.01) and his two companions clasped the member of the Pakistani army from his back and immediately tied him up by rope with supreme bravery and snatching away his arms started beating him and then ran away from the place. Later, they (P.W.01 and his allies) got themselves hidden in the nearby bush as self defence. It is evinced that P.W.01 and two other by their gallant

effort eventually accumulated Tarikunnesa from being sexually ravished. But the attempt the army man made was simply an indicia of beastly act of sexual assault which indisputably caused grave mental harm to Tarikunnesa and it constituted the offence of '**other inhumane act**'.

113. It depicts that the accused persons indicted including the three accused who already died during trial were with the gang when such devilish criminal act was committed. P.W.01 remaining in hiding saw them present at the site. It stands proved. Obviously they were not mere spectators. Since they belonged to auxiliary force it may be indubitably deduced that they all being part of the criminal enterprise substantially aided and assisted and contributed in committing such horrific beastly act.

114. That is to say, the accused Mohammad Khalilur Rahman in exercise of his dominant position in auxiliary force consciously and knowingly assisted and aided in perpetrating such prohibited criminal acts causing grave harm to a woman's supreme honour. We may safely deduce it on appraisal, of facts unveiled.

115. Such prohibited act was rather serious outrageous upon personal dignity of Tarikunnesa. The army man accompanying the gang had conducted such ghastly attempt on having substantial assistance and aid of the accused Mohammad Khalilur Rahman and his cohorts who remained present at the site with the gang, knowing the consequence.

116. It has been divulged that heated and heroic resistance on part of P.W.01 and two others instantly resisted the army man and could save the supreme honour of Tarikunnesa from being degraded and extremely humiliated. It stands proved. Universally accepted norms of international humanitarian law prohibit such serious assault on supreme honour of a woman.

117. True, the accused Mohammad Khalilur Rahman did not directly participate in committing such degrading prohibited act. But his presence at the site would be sufficient to constitute the *actus reus* of aiding and abetting, and also the relevant *mens rea* required to accompany this action for responsibility to ensue.

118. It may be justifiably inferred that the accused Mohammad Khalilur Rahman being part of the criminal enterprise consciously allowed such prohibited act to take place. Any such

participation in the enterprise is sufficient to conclude that the accused substantially assisted and facilitated the perpetration of the crimes arraigned. It has been observed by the ICTY Trial Chamber in the case of Brdjanin that--

“The *mens rea* of aiding and abetting consists of knowledge – in the sense of awareness – that the acts performed by the aider and abettor assist in the commission of a crime by the principal offender.”

**[Brdjanin, (Trial Chamber), September 1, 2004, para. 272]**

119. It is settled jurisprudence that act of assistance need not be tangible. It may be indisputably inferred from the facts unveiled that the accused being an approving spectator remained present with the gang when the criminal acts were perpetrated by the gang. Such culpable presence of accused Mohammad Khalilur Rahman indisputably encouraged, aided and assisted the commission of those crimes arraigned, by his conduct and thus he incurred liability, we deduce.

120. Acts of deliberate looting and arson were also carried out in course of the attack. P.W.01 witnessed the gang accompanied by the accused Mohammad Khalilur Rahman and his

accomplices committing looting household, forcefully taking away 14 cows and 6/7 goats and taking away his (P.W.01) father Md. Innas Ali (now dead) on forcible capture. Ocular testimony of P.W.01 in this regard remains unimpeached.

121. The acts committed in course of the attack included violent attempt to commit sexual sadism upon a woman, the mother of a freedom-fighter, looting household and cattle, abduction of P.W.01's father and detaining him unlawfully at Birishiri army camp, and causing torture to him in protracted captivity and on the way back to camp the gang committed killing of one unarmed detained civilian Ayub Ali.

122. It has been divulged from ocular narrative of P.W.03 that next the group of attackers coming toward their house taking detained Innas Ali, the father of Nurul Islam (P.W.01) and looted goods with them and the gang then also burnt down the house of Nurul Islam on fire. It gets consistent corroboration from ocular narrative of P.W.03, the daughter of victim Ayub Ali, a follower of Awami League. It is evinced too that the gang then moved back taking two detainees, namely Innas Ali and Ayub Ali with them toward the army camp based in P C Noll Memorial High School.

123. Causing harm by committing looting and burning down the properties of civilians indeed involved serious despondency to the victims of the attack. Such prohibited acts lead to conclude that the gang had the malicious intent behind such destructive activities. Devastating destruction of properties belongings to innocent civilians by launching such deliberate attack was indeed explicit and grave contempt for the civilians and their normal livelihood.

124. Defence argued that there is no evidence to show that the accused Mohammad Khalilur Rahman himself participated in perpetrating the act of looting and arson and thus his presence at the crime site becomes unbelievable.

125. We are not with such defence submission. First, all the persons forming the criminal enterprise were equally involved with the indiscriminate destructive activities. Next, it is immaterial to prove that the accused persons indicted directly participated to the criminal act of looting and arson.

126. In view of above, presence of the accused Mohammad Khalilur Rahman with the group of attackers by itself is sufficient to unerringly conclude that on his express

endorsement, abetment and substantial contribution such devastating activities were carried out and thus he is equally responsible with the perpetrators who actually committed the act of such looting and arson of civilians' property.

127. It has been divulged from ocular version of P.W.03 that being panicked with the criminal acts she ran away and took shelter at the house of one Garo indigenous people where her mother and brother remained in hiding. Then she heard gunshot.

128. It transpires that P.W.01 and Khorshed Alam and Abul Kalam also heard gunshot when the gang was on way back taking the detainees with them. P.W.01 heard such gunshot as he was following the gang secretly when it was moving back to Birishiri Army camp. P.W.01 afterward moving on the bank of Someswari River found the dead body of Ayub Ali lying there. These facts were chained to the act of killing. Besides, the act of killing Ayub Ali by gunshot does not seem to have been controverted.

129. It depicts from narrative made by P.W.01 that his father Innas Ali was subjected to merciless torture in captivity at Birishiri Army camp. Innas Ali eventually got conditional

release and deported to India. Naturally, P.W.01 had fair opportunity of hearing from his father as to how grave mistreatment was inflicted to his detained father Innas Ali.

130. Dead body of detained victim Ayub Ali was dumped into Someswari River and after 2/3 days they found her (P.W.03) father's dead body and finally, they fled to India, P.W.03 stated. This piece of version remained uncontroverted. Thus, hearing gunshot just little time after the gang had left the site taking the detainee Ayub Ali and 2/3 days after the event happened finding his dead body as testified by P.W.03 were crucially chained to the act of killing.

131. The coercive situation arising out of the horrific attack leading to killing, looting and arson forced the inmates of victim Ayub Ali to deport to India. It reveals from ocular version of P.W.03. Such coercive displacement caused harm and mental suffering which constituted the offence of '**deportation**' as crime against humanity.

132. In cross-examination P.W.01 stated that victim Ayub Ali's family did not file any complaint over the event happened anywhere because the situation was not favourable. That is to say, commission of the event arraigned in other word has been



affirmed and next, non initiation of any case instantly after the event happened does not create any clog to go on with the present prosecution and delay is not at all any bar in prosecuting the crimes for which now the accused has been indicted.

133. The event of attack leading to looting, arson, torture, sexual assault, abduction, confinement, deportation and murder of civilian as testified by P.W.03 has not been denied and controverted. Defence simply suggested that what she testified was untrue. It appears that the facts related to the event of attack recounted by P.W.03, the daughter of victim Ayub Ali gets consistent corroboration from other key eye witness P.W.01 Md. Nurul Islam.

134. P.W.03 was the neighbour of P.W.01. The attack was conducted at the house of Tarikunnesa and then at the house of P.W.03. Naturally, P.W.01 and P.W.03 had fair likelihood of seeing the criminal acts conducted in course of the attack launched. We do not find any reason to keep the traumatic ocular narrative of these two witnesses made on oath aside from consideration. No rate of untrustworthiness is seen in their ocular testimony.

**135. P.W. 02 Md. Joynal Abedin** heard the event from P.W.01 Md. Nurul Islam. After the event of attack happened, P.W.02 eventually quitting the locality moved toward Bagmara refugee camp in India. At the said camp he had occasion of knowing the event from P.W.01. We already got it proved that P.W.01 took refuge at the said camp, after the event happened.

136. Defence could not refute that P.W.02 due to terrorizing situation existed in consequence of the event of attack leading to arson, looting, sexual assault, abduction and killing fled to India and took refuge at a camp there. Be that as it may, it was natural of hearing the event from P.W.01 who also got sheltered at the said refugee camp. P.W.02 heard the event also from the survived victim Innas Ali, the father of P.W.01, after the independence achieved.

137. The secondary evidence of P.W.02 seems to have been corroborated by P.W.01 and P.W.03, the two direct witnesses. Thus, hearsay evidence of P.W.02 carries probative value and credence. Besides, the arraignment does not rest solely upon the hearsay testimony of P.W.02.

138. Defence does not seem to have made any effort of impeaching the ocular narrative in relation to the event

happened, made by P.W.01 and P.W.03. Besides, it was quite natural for P.W.01 and P.W.03 of seeing the criminal acts including looting and arson carried out in course of attack launched.

139. Defence contended that in 1971 P.W.02 was a minor boy and as such he had no opportunity of seeing the event alleged and thus what he narrated is not trustworthy.

140. We are not with the above defence submission. First, the arraignment brought in this count of charge does not rest upon hearsay testimony of P.W.02 who heard the event chiefly from P.W.01. Prosecution primarily relied upon P.W.01 and P.W.03, two direct witnesses to the event happened.

141. Next, we reiterate that mere tender age cannot be a ground to discard one's testimony if the same appears to be natural and gets corroboration from other evidence. It depicts that P.W.02 heard the event from P.W.01, the key direct witness when P.W.02 took refuge at the same refugee camp in India, after the event happened. Defence could not controvert it.

142. Tribunal further notes that in the case of *Ali Ahsan Muhammad Mujahid* the **Appellate Division of 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]**

143. 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]**

144. It stands proved that P.W.01 with immense brave resisted an army man when he attempted to commit sexual violence upon his neighbour Tarikunnesa. P.W.01 snatched away the arms from the said army man. P.W.03 is a close neighbour of

P.W.01 and daughter of victim Ayub Ali. Both the P.W.01 and P.W.03 had rational reason of knowing the accused Mohammad Khalilur Rahman accompanying the gang of attackers.

145. It is evinced that Innas Ali, the father of P.W.01 was subjected to torture in protracted captivity. P.W.03 witnessed how her father Ayub Ali was taken away on forcible capture. These two key direct witnesses had natural juncture of observing how the perpetrators being accompanied by accused Mohammad Khalilur Rahman and his cohorts by launching attack committed looting, arson and forcible capture of Ayub Ali and Innas Ali. Obviously such deliberate prohibited criminal acts experienced by the P.W.01 and P.W.03 caused immense trauma and mental harm to them constituting the offence of '**other inhumane act**'.

146. Defence, by cross-examining the P.W.01 and P.W.03 could not bring any hint which may lead to doubt that these witnesses had no fair and relational reason of knowing the accused person beforehand and seeing him accompanying the gang of attackers in committing the crimes.

147. We do not find any reason of disbelieving the ocular version of these two witnesses, namely P.W.01 and P.W.03.

Besides, defence could not bring anything in their cross-examination which may lead to conclude otherwise. It appears that defence simply denied what these witnesses narrated in examination-in-chief. But it is not sufficient to taint their ocular version. Mere denial is not at all sufficient to cast any degree of doubt to the testimony of ocular witness.

148. It appears that in addition to evidence of witnesses examined in Tribunal in support of this count of charge, statement made to the IO by one witness, namely Most. Dhanbia Khatun whose name finds place in serial no. 03 of the volume of statement of witnesses has been received in evidence under section 19(2) of the Act of 1973 in support of this charge, as prayed by prosecution on ground of her old age complications.

149. It appears that Most. Dhanbia Khatun is the wife of one victim Innas Ali(father of P.W.01) of the event arraigned in this count of charge and the statement of this witness made to IO gets corroboration from evidence of direct witnesses examined in Tribunal, in relation to the event arraigned. Despite being cited as witness she could not be adduced and examined in Tribunal due to her old age complications.

150. We have gone through her statement made to IO. It demonstrates that she being the wife of one victim Innas Ali naturally experienced the criminal activities carried out in conjunction with the attack arraigned. We do not find any inconsistency between the statement of this witness made to IO and the testimony of witnesses examined in Tribunal, in relation to the event arraigned.

151. It is arraigned that the group of attackers accompanied by the accused Mohammad Khalilur Rahman and his cohorts gunned down Ayub Ali to death on their way back to Birishiri P C Noll Army Camp and threw the dead body in Someswari River. None witnessed as to which member of the criminal gang accomplished the act of killing Ayub Ali. Tribunal reiterates that in context of war time situation all phases of attack conducted are not committed within the sight of other people.

152. It is evinced from testimony of P.W.01 that one hour later, after the gang had left the site taking two detainees including his (P.W.01) father Innas Ali and Ayub Ali, the father of P.W.03 with them, he heard gun firing. Since the dead body of detainee Ayub Ali was found lying on the bank of the river Someswari after he was taken away on forcible capture it thus may be well

presumed that the gang had conducted the act of killing, on their way back and threw the body in Someswari River. We, based on facts unveiled arrive at this unerring conclusion.

153. It is not required to show that the offence of ‘murder’ as a crime against humanity as enumerated in the Act of 1973 was perpetrated by the accused personally is merely one of the modes of responsibility.

154. In the case in hand, considering the entirety of facts pertinently chained to the event of attack we arrive at decision that the accused Mohammad Khalilur Rahman on the basis of his act and conduct constituting the act of ‘participation’ provided assistance, aid, express approval and encouragement that substantially facilitated the commission of killing arraigned, pursuant to an orchestrated attack to which he was a conscious part.

155. Existence of Durgapur army and Razakar camp seems to have been affirmed by defence in cross-examination of P.W.01. There is no specific information or document before Tribunal in respect of which crime the accused was prosecuted under the Collaborators Order, 1972. But the fact of initiation of case



against the accused under the Collaborators Order, 1972 as unveiled in cross-examination of P.W.01 and also from the documentary evidence **Exhibit-I series** add assurance to alleged dominant status of the accused Mohammad Khalilur Rahman in exercise of which he got knowingly involved in perpetrating the atrocious acts arraigned.

156. Launching systematic attack has been proved. It happened in day time and directed against the pro-liberation civilans. Defence does not dispute it. Evidence tendered on it remained uncontroverted. Defence simply denied accused person's presence at the site with the group of invaders.

157. The act of killing detainee Ayub Ali was not distanced from the horrific prohibited criminal acts done in accomplishing his forcible capture. The act of taking away Ayub Ali by detaining him unlawfully eventually led to his killing. It stands proved.

158. There is no requirement to show that the victim was linked to any particular side. We are to chiefly decide whether the attack was carried out targeting civilians violating an absolute prohibition of customary international law. However, it

transpires that victim Ayub Ali was pro-liberation civilian and a follower of Awami League. The attack conducted was the patent reflection of grave aggression against the unarmed pro-liberation Bangalee civilians.

159. It would not have been possible to conduct systematic attack directing the civilians only by the Pakistani army as they were not acquainted to localities, roads through which to move and the civilians to be targeted. Their local collaborators belonging to auxiliary forces thus had to assist and aid them in effecting the object of the attack to be launched.

160. It stands proved that the accused Mohammad Khalilur Rahman was the commander of local Al Badr Bahini. Presumably, he along with his cohorts opted to guide, aid and assist the criminal enterprise and his presence with the gang thus had a significant effect in committing the crimes arraigned. The accused by his conduct and presence with the gang rather promoted to activate the object of the attack. This view finds support from the observation rendered by the ICTY Trial Chamber in the case of Aleksovski, which is as below:

“Mere presence constitutes sufficient participation under some circumstances so long as it was proved that the presence had a

significant effect on the commission of the crime by promoting it and that the person present had the required *mens rea*.”

**[Aleksovski, (ICTY Trial Chamber), June 25, 1999, para. 64]**

161. In what context the offences were committed? We require seeing it. The accused Mohammad Khalilur Rahman being part of the collective criminality, as it appears, deliberately and sharing common purpose selected the victims, the pro-liberation civilians. The crimes happened in war time situation. It is thus the ‘*context*’ that transforms an individual’s act or conduct into a crime against humanity and it may be validly presumed that the accused being aware of this context, participated the commission of crimes by his culpable act or conduct.

162. In the case in hand, it has been proved that the crimes under adjudication were related to the attack on a civilian population, occurred in war time situation. This ‘*context*’ itself is sufficient to prove the existence of a ‘*systematic attack*’ on Bangladeshi self-determined population in 1971.

163. Finally, on due evaluation of evidence together with settled legal positions, as above we arrive at decision that prosecution has been able to prove beyond reasonable doubt that

the accused Mohammad Khalilur Rahman(absconding) in exercise of his potential position in auxiliary force and being part of the criminal enterprise aided, abetted, assisted and participated in committing **‘other inhumane act’, ‘sexual assault’ ‘abduction’, ‘confinement’, ‘torture’, ‘deportation’** and **‘murder’** constituting the offence of **crimes against humanity** as enumerated in section 3(2)(a)(g)(h) read with section 4(1) of the International Crimes (Tribunals) Act, 1973 which are punishable under section 20(2) of the Act.

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

**[04 accused indicted of whom 03 died during trial]  
[Event no.02 as narrated at page 26-29 of the formal charge]  
[Offences of ‘looting’ and ‘arson’ as crimes against humanity]**

164. Charge: That on 11 September, 1971 at about 10/11 A.M a group formed of 10/12 Pakistani occupation army and 50/60 Razakars being accompanied by the accused (1) Mohammad Khalilur Rahman (absconding) and his accomplices (2) Md. Azizur Rahman(died during trial), (3) Ashok Ali(died during trial) and (4) Md. Shahnewaj (died during trial) launched attack at the house of Haji Jiban Mia the father of Abdul Matin, a freedom-fighter of village-Anandapur under Police Station-Kalmakanda of District[now] Netrokona to get them captured. But finding them not available the gang looted households and

destroyed their house and that of Manju Mia the brother of Haji Jiban Mia and burnt down the same.

In conjunction with the attack the gang accompanied by the accused persons attacked the house of Abdul Jabbar Mandal [now dead] and Abdul Gafur[now dead], a freedom fighter of village Noagaon under Police Station- Durgapur of District[now] Netrokona at about 11:30 A.M when they carried out looting of households and destroyed the houses by setting fire.

Therefore, the accused (1) Mohammad Khalilur Rahman, (2) Md. Azizur Rahman (died during trial), (3) Ashok Ali (died during trial) and (4) Md. Shahnewaj (died during trial) have been charged for participating, abetting, facilitating, contributing and complicity in committing **‘looting’** and **‘arson’** as crimes against humanity, as part of systematic attack directing against unarmed civilians as specified in section 3(2)(a)(g)(h) of the Act of 1973 which are punishable under section 20(2) of the Act for which the accused persons have incurred liability under section 4(1) of the Act.

## Evidence of Witnesses Examined

165. This charge involves the offences of indiscriminate looting and arson at civilian's property. In order to substantiate the arraignments brought in this charge prosecution relied upon five witnesses i.e. P.W.04, P.W.05, P.W.12, P.W.13 and P.W.14. First, let us see what the witnesses have narrated in relation to the event arraigned in this count of charge

**166. P.W. 04 Md. Nesar Ahmed (60/61)** is a resident of village-Noagaon under police station-Durgapur of District Netrokona. He is a direct witness to facts chained to the event arraigned in this count of charge (charge no.02). He is the grand-son of one victim Mamruj Mia who got murdered by the gang of attackers, as arraigned in charge no.04.

167. In respect of the event arraigned in charge no.02 P.W.04 stated that on 11<sup>th</sup> September at around 09:00/09:30 A.M he and his cousin brother Abul Hasen were engaged in catching fish at the north side of Haji Jibon Mia's house, on the bank of Ubdakhali River. Suddenly a group formed of 10/12 Pakistani occupation army accompanied by 50/60 Razakars arrived near them and Al Badr commander Mohammad Khalilur Rahman

asked to help in taking them to the other side of the river and threatened that otherwise they would be killed. His (P.W.04) companion Abul Hasen managed to flee out of fear. During crossing the river (with the gang), he (P.W.04) also could recognize Razakars Md. Azizur Rahman (died during trial), Ramjan Ali (now dead), Ashok Ali (died during trial), Shahnewaj (died during trial), Hasu Dofadar (now dead) and Razakar Ali Newaj (now dead ) accompanying the gang .

168. P.W.04 next stated that Razakars, Al Badrs and Pakistani army made him terrified at gunpoint and thus against his will, he helped the group of invaders in moving toward the house of Haji Jibon Mia, in search of his son freedom fighter Abdul Matin. But being unable to find him (freedom fighter Abdul Matin) there available the intruders set the house on fire. The invaders looted the household of neighbour Manju Miah and burnt down his house and at a stage he (P.W.04) managed to flee and came back home.

169. P.W.04 further stated that on the same day in evening, he and others visited Jibon Miah's house and found it burnt down by fire. Then he came to know from villagers that the Pakistani occupation army and their local collaborators Razakars, Al

Badrs also looted household and burnt down the house of freedom fighter Abdul Gofur (now dead) and Abdul Wahed.

170. In cross-examination done on part of accused Mohammad Khalilur Rahman P.W.04 stated that he could not say the date of his parents' death; that he did not initiate any case anywhere over the event alleged. P.W.04 denied defence suggestions that he did not know the accused; that he did not see and hear the event he narrated and that what he testified was untrue and tutored.

**171. P.W. 05 Abul Hasen (59/60)** is a resident of village-Noagaon under police station- Durgapur of District Netrokona. P.W.05 studied up to class IV. He testified facts materially linked to the commission of crimes arraigned.

172. In addition to the event of attack as arraigned in charge no.04 P.W.05 recounted what he witnessed in respect of the facts chained to the event of attack arraigned in charge no.02.

173. P.W.05 stated that on 11<sup>th</sup> September 1971 at around 09:00/09:30 A.M he and his cousin brother Nesar Ahmed (P.W.04) were engaged in catching fish in Ubdakhali river, north side of the river where the house of Haji Jibon Mia was



located. Suddenly they found that the group formed of 10/12 Pakistani army men and 50/60 Razakars Al Badrs arrived at the place, 25/30 hands far from the north bank of the river when Al Badr commander Mohammad Khalilur Rahman accompanying the gang asked Nesar Ahmed (P.W.04) to bring a boat to them. Then they moved to them with a boat where they found Al Badar Commander/Razakar Khalilur Rahman, Peace Committee Member Nabi Hossain (now dead), Razakar Ashok Ali (died during trial), Razakar Ramjan Ali (now dead), Razakar Shahnewaj (died during trial), Razakar Ali Newaj (now dead), Razakar Azizur Rahman (died during trial) accompanying the gang.

174. P.W.05 also stated that after helping the gang in crossing the river for once, he (P.W.05) tactfully managed to quit the site and went into hiding inside a jungle on the south bank of the river. Nesar Ahmed however could not flee and he helped the invaders to cross the river by boat. He (P.W.05) remaining in hiding also observed that Nesar Ahmed (P.W.04) accompanied the gang in moving toward the house of Haji Jibon Mia and then he (P.W.05) returned back home and he could see the flame of fire at the house of Jibon Mia.

175. P.W.05 next stated what he later heard from Nesar Ahmed (P.W.04). P.W.05 stated that he came to know from Nesar Ahmed (P.W.04) that the Pakistani army men and Razakars by launching attack could not trace of freedom-fighters Jibon Mia, Abdul Matin and Manju Mia at the house of Jibon Mia and then Pakistani army and Razakars looted household and burnt down the house and then had left the site. He (P.W.05) two hours later moved to the house of Jibon Mia and found the house of Jabbar Mondol and freedom-fighter Abdul Gafur ablaze.

176. In respect of reason of knowing the accused P.W.05 stated that the accused persons were the residents of his neighbouring village and they used to move around the local bazaars and as such he knew them beforehand.

177. In cross-examination on behalf of the absconding accused Mohammad Khalilur Rahman P.W.05 stated that he did not lodge any complaint against this accused over the event he testified. P.W.05 denied defence suggestion that he did not see and hear the event he narrated and that the event he narrated did not happen and that the accused was not the Al Badr commander.

**178. P.W.12 Md. Abul Hashem** (63/64) is a resident of village-Anandapur under police station Kalmakanda of District Netrokona. He is the son of Haji Jibon Mia. He recounted some pertinent facts related to the event arraigned in charge no.02.

179. P.W.12 stated that on 11 September in 1971 at about 10:00/11:00 A.M. he heard that a group formed of 10/12 Pakistani army and 40/50 Razakars, Al Badrs was coming toward their house and with this he attempted to flee when he saw peace committee member Nabi Hossain (now dead), his son Al Badr Mohammad Khalilur Rahman, his another son Razakar Azizur Rahman(died during trial), Razakar Ramjan Ali(now dead), Razakar Ashok Ali (died during trial), Razakar Shahnewaj (died during trial) accompanying the gang. He (P.W.12) knew them beforehand as they were from their neighbouring localities.

180. P.W.12 next stated that on his indication his father too fled away. He (P.W.12) then got sheltered at the house of Abed Ali of village-Haripur wherefrom he saw their house and that of others ablaze. After the gang had left the site he returned back home and on his way he found the house of freedom-fighter Gafur and Abdul Wahed ablaze. On coming back home he saw

their seven rooms burnt down by fire after carrying out looting household. He also heard from Nesar Ahmed and Abul Hasen (P.W.04 and P.W.05) that the Razakars he named and army men committed looting and arson.

181. In cross-examination done on part of accused Mohammad Khalilur Rahman it has been simply denied what has been testified in respect of the event arraigned. P.W.12 stated in reply to defence question that in 1971 he was a student of M.K.C.M High School at Durgapur and after the war of liberation ensued he came back home. P.W.12 denied defence suggestion that he did not know the accused and the accused was not involved with the event he narrated and that what he testified was untrue.

**182. P.W.13 Dr. Md. Emran Hossain (57/58)** is a resident of village- Anandapur under police station Kalmakanda of District Netrokona. Now he is an Associate Professor of department of Political Science, University of Dhaka. He being a direct witness recounted crucial facts related to the event arraigned in this count of charge.

183. P.W. 13 stated that on 2/3 April in 1971 his elder brother Md. Abdul Matin joined the war of liberation. Pakistani army commander Sultan Ahmed announced 5,000 taka reward for

securing apprehension of his freedom-fighter brother and his father.

184. P.W.13 next stated that on 11<sup>th</sup> September in 1971 at about 10:00/11:00 A.M. he heard that 10/12 Pakistani army and 40/50 Al Badr, Razakars were on move toward their house and with this he and his elder brother Md. Abdul Mannan attempted to go into hiding when they saw the peace committee member Nabi Hossain Member (now dead), his son Al Badr commander Mohammad Khalilur Rahman, his another son Razakar Azizur Rahman(died during trial), Razakar Ramjan Ali (now dead), Razakar Ashok Ali (died during trial), Razakar Shahnewaj (died during trial) accompanying the gang at the site.

185. P.W.13 also stated that remaining in hiding inside a jungle on the other bank of river Ubdakhali he saw their house and that of others ablaze. On returning home at about 03:00 P.M. he saw that the gang looted household and burnt down the house on fire.

186. In cross-examination P.W.13 denied defence suggestions that he did not know the accused; that he testified implicating the accused out of family rivalry and what he narrated was untrue and tutored.

**187. P.W. 14 Md. Abdul Matin (66/67)** is a resident of village-Anandapur under police station Kalmakanda of District Netrokona. He is another son of Haji Jibon Mia whose house was attacked as arraigned in this count of charge. In 1971 he was SSC examinee and was involved with politics of student wing of Awami League. He is a freedom-fighter. Now he is an Advocate of Dhaka District Judge Court. He is a hearsay witness in respect of the event arraigned.

188. P.W.14 stated that on 2/3 April in 1971 he went to India to receive freedom-fighter's training and on completion of training he returned back Bangladesh at the end of June 1971 and joined the war of liberation under Sector no.11. Afterward, he came to know through sources that commander Captain Sultan of Pakistani army camp at Birishiri P.C Noll Memorial High School announced reward of Taka 5,000/- for securing capture of him and his father, live or dead. With this announcement his father became panicked and started staying in hiding.

189. P.W.14 also stated that at the end of September in 1971 he came to know through people that on 11 September at about 10:00/ 11:00 A.M. peace committee member of Chandigar Union Nabi Hossain (now dead), his first son Razakar and later

on Al Badr commander Mohammad Khalilur Rhaman and his another son Razakar Azizur Rahman (died during trial), Razakar Shahnewaj (died during trial), Razakar Ramjan Ali (now dead), Razakar Ashok Ali (died during trial) being accompanied by 50/60 Razakars and 10/12 Pakistani army by launching attack at their house and that of his uncle Manju Mia looted household and set those on fire. At that time his (P.W.14) parents, brothers and sisters managed to flee in self defence.

190. P.W.14 finally stated that after the war of liberation ceased, he depositing arms in Mymensingh came back home and found their houses burnt down by fire, nothing remained intact. Then he heard the event from his parents and neighbours (**at this stage the P.W.14 burst into tears**).

191. In cross-examination P.W.14 stated in reply to defence question that Birishiri army camp was about 6/7 Kilometers far from their house; that during the war of liberation he used to become aware of whereabouts of his family through people.

192. P.W.14 denied defence suggestion that he did not hear the event he narrated; that the accused was not Razakar or Al Badr

and that he was not involved with the event he testified and that what he testified was untrue and tutored.

**193. P.W. 19 Md. Abdur Rahman (72)** is a resident of village-Anandapur under police station Kalmakanda of District Netrokona. In 1971 he was student of class X. He is a hearsay witness in respect of the facts related to the event arraigned in this charge. In addition to the event arraigned in charge nos. 03 and 04 P.W.19 stated what he heard about the event arraigned in charge no.02.

194. P.W.19 stated that one and half months prior to the event of attack conducted at their house (arraigned in charge no.03) he heard that the Razakars and Al Badrs, namely, Al Badr Mohammad Khalilur Rahman, Razakar Azizur Rahman (died during trial), Razakar Shahnewaj (died during trial), Razakar Ramjan Ali (now dead), Razakar Ashok Ali (died during trial) and Razakar Rajab Ali (now dead) being accompanied by Pakistani army by launching attacks at the house of freedom-fighter Abdul Matin (P.W.14) of their village and Abdul Wahed and freedom-fighter Abdul Gafur of village-Noagaon committed looting and arson. The Razakars and Al Badrs he named were



from their neighbouring villages and thus he knew them beforehand.

195. In cross-examination P.W.19 denied defence suggestion that the event he heard did not happen; that the accused was not Al Badr and had no complicity with the commission of alleged event and that what he testified implicating the accused was untrue and tutored.

### **Finding with Reasoning on Evaluation of Evidence**

**196. Mr. Rana Das Gupta**, the learned prosecutor argued that the accused Mohammad Khalilur Rahman knowingly accompanied the gang, in exercise of his affiliation with auxiliary force and thereby aided, abetted and substantially facilitated in committing looting and arson of civilians' property which has been proved by ocular testimony of direct witnesses. Object of the attack was to get freedom-fighters and pro-liberation civilians captured. But finding them not available the gang in extreme manner carried out looting and devastating activities by arson constituting the offences of crimes against humanity.

197. The learned prosecutor added that defence could not controvert what has been recounted by the witnesses and even the commission of criminal acts has not been specifically denied even. The learned prosecutor further argued in reply to defence contention that mere non initiation of case earlier does not make the event arraigned untrue. There is no time limit in prosecuting criminal offence.

**198. Mr. Gazi M.H. Tamim**, the learned state defence counsel argued that the testimony of witnesses relied upon by the prosecution is not credible and they had no rational reason of knowing the accused. A case could be initiated at an early stage, if really the event alleged happened. Thus, delayed prosecution creates doubt as to the truthfulness of the commission of offences alleged and complicity of the accused therewith.

199. This charge arraigns commission of devastating looting and arson directing houses of pro-libration civilians of the vicinity attacked systematically. The gang of invaders formed of accused Mohammad Khalilur Rahman, his cohort Razakars and Pakistani army men. The event happened in day time. Naturally, the witnesses who testified before Tribunal and others had opportunity of seeing and knowing the act of criminal acts perpetrated by the gang.

200. First attack was launched at the house of **Haji Jibon Mia** in search of his son freedom-fighter Abdul Matin. The gang took help of P.W.04 in crossing river intending to launch the attack. P.W.04 had to help the gang in fear. The invaders then committed looting at the house of neighbour **Manju Miah** and burnt down his house. Defence could not refute the narrative that patently depicts that P.W.04 under grave threat and coercion had to assist the gang accompanied by the accused and his cohorts to cross the river for launching attack at the targeted site.

201. Prosecution relied upon direct witnesses to prove the systematic and devastating attack leading to looting and arson arraigned. P.W.04 and P.W.05 are direct witnesses to the devastating attack. P.W.12 and P.W.13 are the sons of Jibon Mia. His house was subjected to aggravated destruction by looting and arson.

202. It depicts that at the relevant time P.W.04 was engaged in catching fish on the bank of Ubdakhali River, at the north side of Haji Jibon Mia's house. The gang accompanied by the accused Mohammad Khalilur Rahman, his cohorts including the three accused who died during trial and 10/12 Pakistani army

men arrived there and forced P.W.04 to help them in moving toward the house of Haji Jibon Mia, by crossing river by boat in search of his son freedom fighter Abdul Matin.

203. It is not disputed that Abdul Matin, the son of Jibon Mia was a freedom-fighter. The attack was thus intended to activate the goal of forcible capture of freedom-fighter Abdul Matin. Launching attack would not have been possible to conduct without substantial facilitation and assistance of the accused and his accomplices as the Pakistani occupation army naturally did not have any acquaintance about the location and the way to arrive at the site to be attacked.

204. What happened in course of the attack conducted? No, the gang failed to get freedom-fighter Abdul Matin at his house and it presumably made them aggressive and such aggression was followed by devastating destruction of civilians' property. The unimpeached narrative of P.W.04 a direct witness to the event of attack demonstrates that the gang then looted and burnt down the house of Haji Jiban Mia.

205. It has been divulged too from ocular testimony of P.W.04 that then the gang in conjunction with the attack looted the household of neighbour Manju Mia and burnt down his house

too and at a stage he (P.W.04) managed to flee and came back home. However, P.W.04 had opportunity of witnessing the criminal activities happened till this phase.

206. It also stands proved from testimony of P.W.04 that on the same day in evening P.W.04 on making a visit along with others found the house of Jibon Miah destroyed by fire. His testimony also demonstrates that the gang in conjunction with the attack carried out looting and arson at the house of freedom fighter Abdul Gofur (now dead) and Abdul Wahed.

207. Prohibited acts of the gang did not end here. It stands proved from the testimony of P.W.04 that in evening, on the same day he came to know from villagers that the Pakistani occupation army and their local collaborators accompanied by Razakars, Al Badrs also looted household and burnt down the house of freedom fighter Abdul Gofur (now dead) and Abdul Wahed. This part of testimony of P.W.04 carries probative value and it could not be shaken in any manner.

208. The entire attack leading to successive looting and arson committed directing civilians' properties happened in day time and by the same criminal gang to which the accused Mohammad Khalilur Rahman was an active part, in exercise of

his potential position in local Al Badr Bahini and sharing intent. Object was to get freedom-fighters forcibly captured. But in failure to accomplish the object the gang opted to commit indiscriminate looting and arson of civilians' property.

209. Such destructive acts were intended to spread intimidation and coercion which indeed caused mental harm and adverse impact on normal livelihood of the residents of the vicinities attacked which constituted the offence of crimes against humanity.

210. It has been argued on part of defence drawing attention to what has been stated by P.W.04 in cross-examination that they did not initiate any case anywhere over the event and thus now the event arraigned is doubtful and the accused has been falsely implicated therewith.

211. We are not agreed with the above contention. Mere non initiation of any legal proceeding over the event arraigned instantly after it happened does not leave any doubt and at the same time does not create any clog to prosecute the crimes arraigned even long time after the event happened. There is no bar in prosecuting criminal offences, the system crimes.

212. It also depicts too that at the relevant time P.W. 05 Abul Hesin was with his cousin brother Nesar Ahmed (P.W.04) and they were engaged in catching fish in Ubdakhali River. Thus, he too had opportunity of seeing the accused, his cohorts accompanying the gang when it arrived there and ordered to help them in crossing the river. This piece of version is corroborative to what has been narrated by P.W.04.

213. It appears that after helping the gang in crossing the river for once, he (P.W.05) tactfully managed to quit the site and went into hiding inside a jungle on the south bank of the river and remaining in hiding he could see the gang moving toward the house of Haji Jibon Mia.

214. That is to say, intention of the gang was to conduct attack at the house of Haji Jiban Mia and we got it proved from evidence of P.W.04 that the gang had carried out deliberate attack there. Defence does not seem to have made any effort to refute it. Rather, it gets explicit corroboration from ocular testimony of P.W.04.

215. P.W.05 later heard from Nesar Ahmed (P.W.04) that the gang looted household and burnt down the house of Jibon Mia.

This piece of hearsay evidence too gets consistent corroboration from ocular testimony of P.W.04. Besides, two hours later he (P.W.05) moved to the house of Jibon Mia and found the house of Jabbar Mondol and freedom-fighter Abdul Gafur ablaze. Defence could to impeach it. Thus, testimony of P.W.04 and P.W.05 together leads to the unerring conclusion that the gang had carried out indiscriminate devastating activities directing civilians' properties.

216. It stands proved too from hearsay evidence of P.W.12 Md. Abul Hashem, the son of Haji Jiban Mia that later he heard that on the same day and the same gang accompanied by the accused Mohammad Khalilur Rahman conducted systematic attack that resulted in devastating looting and arson at the house of freedom-fighter Gafur and Abdul Wahed.

217. It appears that at the relevant time on his (P.W.12) indication his father too fled away. He (P.W.12) then got sheltered at the house of Abed Ali of village-Haripur and wherefrom he saw their house and that of others ablaze. After the gang had left the site he returned back home and on his way he found the house of freedom-fighter Gafur and Abdul Wahed ablaze.



218. The above pertinent fact related to the event of attack as narrated by P.W.12, the son of Haji Jiban Mia remained unimpeached and it gets corroboration from P.W.04 who was forced to accompany the gang in moving toward the site attacked by crossing the river. P.W.12 also heard the presence of the accused Mohammad Khalilur Rahman, his cohorts including the three accused who died during trial.

219. It is depicted from testimony of P.W. 13 that on 2/3 April in 1971 his elder brother Md. Abdul Matin joined the war of liberation and thus the Pakistani army commander Sultan Ahmed announced 5,000 taka reward for securing apprehension of his freedom-fighter brother and his father. **P.W. 14 Md. Abdul Matin**, a freedom-fighter and another son of Haji Jibon Mia whose house was attacked as arraigned in this count of charge also came to know it through sources.

220. It may be thus validly presumed that such inciting act of announcing reward by Pakistani army commander Sultan Ahmed prompted to conduct orchestrated attack with the object of getting the targeted freedom-fighter brother of P.W.13. Defence could not refute this piece of crucial fact chained to the event happened.

221. Testimony of P.W.13 depicts that sensing the attack P.W.13 went into hiding wherefrom he saw the Al Badr commander accused Mohammad Khalilur Rahman and his cohorts attacking their house which was set ablaze and after the gang had left the site they found that the gang had looted household. That is to say, on failure of getting their target captured the gang had carried out devastating activities in aggressive manner directing civilians' property which was prohibited.

222. After the war of liberation ceased, P.W.14 the freedom-fighter son of Haji Jiban Mia came back home and found their houses burnt down by fire, nothing remained intact. He heard the event from his parents and neighbours (**at this stage the P.W.14 burst into tears**). Indubitably the event of attack followed by devastating destruction caused immense mental harm and pain to the victims suffered.

223. P.W.14 is one son of Haji Jiban Mia. Naturally, the horrific criminal acts made him pained and traumatized and it has been patently reflected in his demeanor the Tribunal observed when he testified on oath. In no way defence could controvert what the P.W.14 testified.

224. We reiterate that hearsay evidence is not inadmissible per se in a case involving the offences which are recognized as international crimes, if it is found to have been corroborated by other evidence. In the case in hand, we see that hearsay testimony of P.W.14 has been consistently corroborated by his brother P.W.13 and other direct witnesses.

225. Thus, hearsay narrative made by P.W.14 carries probative value and credence. P.W.14 is a freedom-fighter and thus naturally he very often used to have information of his parents, brother and sisters and in course of such vigilance P .W.14 naturally knew the attack launched at their house by the accused and his cohorts and Pakistani army.

226. It transpires that the event of attack leading to looting and arson committed at the house as testified by P.W.13 does not seem to have been denied even. Defence simply suggested that the accused was not involved with the event alleged. Be that as it may we deduce that what the P.W.14 testified, as hearsay witness carries credence and thus committing destructive activities by committing looting and arson at the house of Haji Jibon Mia stands proved.

227. Hearing the act of attack conducted in the nearer locality as testified by the P.W.19 as well was quite likely. The act of attack leading to looting and arson arraigned could not be controverted in any rate, in cross-examination. Thus, hearsay narrative of the P.W.19 cannot be kept aside from consideration. Besides, it gets consistent corroboration from other witnesses including the direct witnesses.

228. Pakistani occupation army naturally did not have any acquaintance of the locality and the civilians to be targeted. The attack leading to criminal acts constituting the offences of looting and arson targeting the freedom-fighter and pro-liberation civilian would not have been possible without active and substantial support of the accused Mohammad Khalilur Rahman and his cohort Razakars and Al Badrs.

229. Besides, since it stands proved that the accused and his cohorts belonging to auxiliary force consciously were with the gang of attackers it may be indubitably deduced that knowing the consequence and sharing common object they participated by aiding, abetting and substantially contributing in perpetration of devastating activities by looting and arson which constituted the offence of '**other inhumane act**' as crimes against humanity. Tribunal reiterates that the criminal acts of arson and

wanton destruction of civilians' properties causing the disruption of 'normal livelihood and mental injury' comes within the ambit of '**other inhumane act**' constituting the crimes against humanity.

230. The event of attack seems to have been rather affirmed in cross-examination. It appears that P.W.04 in reply to defence question put to him stated that they did not initiate case anywhere over the event. That is to say, the event arraigned happened but no case was initiated over it. But we have already stated that mere non initiation of case earlier does not make the event of attack untrue, particularly when it stands proved from ocular version of P.W.04.

231. Besides, the act of looting and arson conducted in course of attack has not been specifically denied even. Defence does not seem to have made any effort to controvert the event happened.

232. The Tribunal finds that there is sufficient indication unveiled in testimonial evidence made by witnesses to support the finding beyond reasonable doubt that the described unlawful devastating acts against properties of the pro-liberation civilians were carried out with the primary object of getting freedom-fighters captured by creating an ambiance of

intense fear among the population of the vicinity attacked. At the same time the prohibited attack resulted in extensive damage to civilian objects.

233. Such unlawful criminal acts were committed systematically and intentionally and not for satisfying personal essential needs of accused. They were committed in the ‘**context**’ of the 1971 war of liberation. This ‘context’ itself is sufficient to prove the existence of a ‘*systematic attack*’ on Bangladeshi self-determined population in 1971. Rather, it was to further policy and plan of the Pakistani occupation army, we deduce it.

234. The pertinent evidence tendered by the witnesses most of whom observed material facts chained to the event provides irresistible indication of accused person’s ‘concern’ and ‘participation’ to the criminal acts leading to the act of looting and arson.

235. It is now well settled that ‘direct contribution’ does not necessarily require the participation in the ‘physical commission’ of the illegal act. That participation in the commission of the crime does not require an actual physical presence or physical assistance to the actual perpetrator. In this

regard we recall the observation made by the ICTY Trial Chamber in the case of **Stakic** that --

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

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

236. It has been proved that the accused Mohammad Khalilur Rahman was the commander of Al Badr Bahini, an auxiliary force. In exercise of his potential position in such para militia force the accused accompanied the gang of attackers to the crime site not for any pious purpose, we emphatically deduce it.

237. Presence of the accused with the gang of invaders in exercise of affiliation with the auxiliary force, as found proved signifies that his intention was to assist and substantially facilitate in materializing the object of the attack, possessing the requisite *mens rea* as he had acted knowing consequence.

238. It stands proved that the accused Mohammad Khalilur Rahman and his cohort Razakars were engaged in conducting aggressive process of destruction which leads to suggest inferring that such prohibited act of rampant looting and burning down houses of protected civilians were not justified by military necessity.

239. The offence of crimes against humanity is often the cumulative outcome of conducts and acts of individuals forming part of the group of attackers. Facts unveiled cumulatively proves that culpable intention of the accused Mohammad Khalilur Rhaman in accompanying the gang to the site was to further the object of the criminal squad.

240. Cumulative evaluation of evidence as above offers the irresistible conclusion that the accused was knowingly part of the 'collective criminality' in carrying out criminal mission and prohibited destructive activities against civilians. Intent was to cause substantial harm and resistance to the pro-liberation civilians who actively sided with the war of liberation of Bangladesh.



241. Therefore, the accused Mohammad Khalilur Rhaman even if not found to have had physically participated to the actual commission of looting and arson, incurred equal criminal liability for his act and conduct forming part of systematic attack.

242. Finally, we are unanimously persuaded to arrive at decision on having due appraisal of evidence tendered that the prosecution has been able to prove beyond reasonable doubt that the accused Mohammad Khalilur Rahman (absconding) participated, aided, abetted and substantially contributed to the accomplishment of **'looting'** and **'arson'** of civilans' properties, the outcome of systematic attack constituting the offence of **'other inhumane act'** as **'crimes against humanity'** as enumerated in section 3(2)(a)(g)(h) of the Act of 1973 which is punishable under section 20(2) read with section 3(1) of the Act and thus the accused person incurred liability under section 4(1) of the Act for the above offences.

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

**[04 accused indicted of whom 3 died during trial]**

**[Event no.03 as narrated at page 29-33 of the formal charge]**

**[Offences of 'looting', 'arson', 'abduction', 'confinement', 'murder' and 'genocide']**

243. Charge: That on 26 October, 1971 in between 10:00 A.M to 08:00 P.M. a gang formed of 15/16 Pakistani occupation army and 50/60 Razakars being accompanied by the accused (1) Mohammad Khalilur Rahman, (2) Md. Azizur Rahman (died during trial), (3) Ashok Ali(died during trial) and (4) Md. Shahnewaj(died during trial) by launching attack at the house of Ahmed Ali of village-Baraenud forcibly captured Ahmed Ali and his younger son Abdul Hamid and then the gang taking the two detainees with them, by launching attack at about 11:00 A.M. forcibly detained Moslimuddin from his house at village Anandapur under Police Station Kalmakanda.

In conjunction with the attack the gang being accompanied by the accused persons by launching attack forcibly captured Muktal Hossain Talukder of village-Choto Krishnapur under Police Station Kalmakanda and then also detained Abdul Hamid Talukder, Abdul Wahed Talukder, Maheruddin Fakir and Abdus Sattar. Then the gang headed towards Nazirpur taking the 08 detainees with them when Abdul Sattar, a neighbour of detainee Muktal Hossain was forced to carry the ammunition box and on the way, at a place of Fulpur Madrasa 02 detainees namely, Abdul Hamid and Abdus Sattar got release, on request of a teacher of the Madrasa. The 06 detainees were then at about

08:00 P.M. taken on the bank of the river Bakla, at the eastern side of Nazirpur Bazar where the accused persons and the army men gunned them down to death. On the following day the dead bodies were buried by the locals at Kashban near the bank of the river Bakla.

The victims belonged to Awami League, a pro-liberation political party and the gang targeted them to wipe out, by launching attack with intent to destroy a 'political group', either whole or in part.

Therefore, the accused (1) Mohammad Khalilur Rahman, (2) Md. Azizur Rahman(died during trial), (3) Ashok Ali (died during trial) and (4) Md. Shahnewaj(died during trial) have been charged for participating, abetting, facilitating, contributing and complicity in committing the offence of **'genocide'** as enumerated in section 3(2)(c)(i)(g)(h) of the Act of 1973 or in the alternative in committing the offences of **'looting'** , **'arson'**, **'abduction'**, **'confinement'** and **'murder'** as crimes against humanity, as part of systematic attack directing against unarmed civilians as specified in section 3(2)(a)(g)(h) of the Act of 1973 which are punishable under

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

## **Evidence of Witnesses Examined**

244. Prosecution adduced seven (07) witnesses of whom five (05) have been examined as P.W.19, P.W.20, P.W.21, P.W.22 and P.W.24. Two other witnesses namely, P.W.23 and P.W.25 have been tendered. P.W.19, P.W.20, P.W.21 are the key direct witnesses to the event arraigned. Now, let us first see what the witnesses testified in Tribunal.

**245. P.W.19 Md. Abdur Rahman (72)** is a resident of village-Anandapur under Kalmakanda Police station of District Netrokona. During the War of Liberation he was a student of class X. He allegedly experienced the attack conducted and facts materially related to the commission of principal crimes as narrated in this charge no.03.

246. P.W.19 stated that on 26<sup>th</sup> October in 1971 at around 11:00 A.M. he had been at home when he saw a gang formed of 15/16 Pakistani occupation army and 50/60 Razakars being accompanied by Al Badr Mohammad Khalilur Rahman, Razakar Azizur Rahman (died during trial), Ashok Ali (died

during trial) and Shahnewaj (died during trial) coming toward their house and with this he and his brother Sobhan Mondol went into hiding inside the paddy field, south to their house. The Razakars and Pakistani army men entering inside their house looted household and forcibly captured his father. The invaders then moved back toward Krishnapur taking his captured father and Ahmed Ali Member and his son Abdul Hamid detained from neighbouring village-Boroind with them. Then he (P.W.19) returned back home.

247. P.W.19 also stated that on the following day Safor Ali (P.W.20) of their village came to their house and informed them that leaving their house the Razakars he named along with Pakistani occupation army moved toward village-Chhoto Krishnapur where they by launching attack at Talukdar's house forcibly captured Muktal Hossain Talukder, Abdul Hamid Talukder, Abdul Wahed Talukder, Abdus Sattar and Maheruddin Fakir and then moved back toward Nazirpur Bazar taking eight(08) detainees with them . On their way back to Nazirpur Bazaar, the gang released detainees Abdul Hamid and Abdus Sattar on request of Sultan Ahmed, (now dead), Superintendent of Fulpur Madrasa.

248. P.W.19 kept on saying that Safar Ali (P.W.20) also informed that the six (06) detainees including his father were kept sitting in front of Nazirpur Land office and at around 08:00 P.M. taking them on the bank of Bakla river the Razakars he named gunned them down to death **(at this stage of narrating the event the witness burst into tears)**.

249. P.W.19 finally stated that on the following day they also came to know about killing of detainees including his farther from Ansar Ali (now dead), son-in-law of Muktal Hossain Talukder. They could not move toward the killing site in fear of Razakars and Al Badrs. After the independence achieved they visited the site of 'mass killing'. P.W.19 also testified that the accused persons were from their neighbouring localities and as such he knew them beforehand.

250. In cross-examination P.W.19 stated in reply to defence question put to him that in 1971 he had been living at home together with family inmates; that they did not initiate any compliant over the event he testified, after independence achieved and that after independence accused Khalilur Rahman used to stay at his home and was engaged in teaching profession in Madrasa.

251. P.W.19 denied defence suggestions that he did not see and hear the event he narrated; that the accused was not Razakar and was not involved with the event arraigned and that what he testified was tutored and impracticable and that being influenced by the group of rivals of the accused he testified falsely implicating this accused.

**252. P.W.20 Safor Uddin Fakir (80/81)** is a resident of village-Rongsinpur under police station Kalmakanda of District Netrokona. Since initiation of the War of Liberation, their family used to afford every kind of help to freedom fighters by ensuring their shelter or food. P.W.20 stated.

253. In respect of the event of attack arraigned P.W.20 stated that on 08<sup>th</sup> Kartik corresponding to 6<sup>th</sup> Ramadan in 1971 at around 12:00 P.M. he had been at home when he came to know that Pakistani Army, Razakars and Al Badrs besieged the Talukder house, about 400/500 yards far from their house. With this he moved to the place near the Talukder house and he got himself hidden inside a bamboo bush wherefrom he saw the injured body of his brother Maher Uddin Fakir lying on the bank of the pond.

254. P.W.20 also stated that he found a group formed of 50/60 Razakars and 15/16 Pakistani occupation army staying at Talukder house. He also saw the invaders taking away Muktal Hossain Talukder, Abdul Hamid Talukder, Abdul Wahed Talukder and Abdus Sattar toward the bank of the pond, on forcible capture. At that time amongst the Razakars and Al Badrs (accompanying the gang) he (P.W.20) could recognize Mohammad Khalilur Rahman, Azizur Rahman (died during trial), Rajab Ali (now dead) and Ashok Ali (died during trial) as they were the residents of their neighbouring localities.

255. P.W.20 continued stating that he also witnessed that Ahmed Ali Member of village-Borwind, his sons Abdul Hamid and Moslem Uddin of their village were kept detained on the bank of the pond from earlier. Next, he saw the invaders moving back to north-west taking the detainees with them. Then he came back home.

256. P.W.20 further stated that one hour later detainee Abdus Sattar came to their house and informed that on request of Madrasa Super he and detainee Abdul Hamid were set at liberty and the rest six detainees including his (P.W.20) brother Maher Uddin Fakir were taken away toward Nazirpur Bazar.



257. P.W.20 finally stated that on the following day, Ansar Ali, the son-in-law of detainee Muktal Hossain Talukder disclosed that Pakistani army, Razakars and Al Badrs gunned down the six detainees including his (P.W.20) brother, taking them on the bank of the river Bakla. After independence achieved they visited the site of the mass killing.

258. In cross-examination on behalf of accused Mohammad Khalilur Rahman P.W.20 stated in reply to defence question that this accused was a resident of village-Noagaon, about one and half miles far from their home; that he could not recall the date of death of his (P.W.20) father and that he could not say the name of peace committee member or Razakar commander or Al Badr commander of Nazirpur Union.

259. P.W.20 denied defence suggestions that he did not know the accused; that the accused was not Al Badar; that he was not involved with the event alleged and that what he testified implicating him was untrue and tutored.

**260. P.W.21 Md. Abdul Hamid (69/70)** is a resident of village-Borwind under police station-Durgapur of District Netrokona. In 1971 he was a student of Alim second year in Hoibat Nagar

Kamil Madrasa in Kishoreganj. He is the son of one victim martyr Ahmmed Ali.

261. P.W.21 stated that after the war of liberation ensued, he on returning back home became aware that his elder brother Abdul Aziz joined the war of liberation (as a freedom fighter). He described, as eye witness, the facts related to the event of attack leading to killing his father and other civilians as arraigned in this count of charge.

262. P.W.21 stated that on 26<sup>th</sup> October in 1971 at around 10:00 A.M. he was with his father when he was washing jute in the pond, north-east to their house. At that time, a group of 50/60 invaders including Al Badr commander Mohammad Khalilur Rahman, Razakar Azizur Rahman (died during trial), Razakar Ashok Ali (died during trial) Razakar Ramjan Ali (now dead), Razakar Ali Newaj (now dead), Razakar Shahnewaj (died during trial) and 15/16 Pakistani army besieging their house captured him (P.W.21) and his father and tied them up and committed looting household. On the same day at about 11:00 A.M. the invaders carried out looting at the house of Muslim Uddin and detained him too.

263. P.W.21 continued stating that the group then launched attack in Talukder's house at Choto Krishnapur village, taking them, the three detainees with them. By launching attack the gang forcibly captured Muktal Hossain Talukder, Abdul Hamid Talukder, Abdul Wahed Talukder and Maheruddin Fakir and carried out looting. Then on their way back to Nazirpur taking the detainees with them, the group of invaders forcibly detained Abdus Sattar and forced him to move with them carrying the bag of ammunition on head. On the way back, on endorsement of Madrasa teacher Sultan Ahmed the gang set him (P.W.21) and Abdus Sattar at liberty. But the invaders took his father and other detainees away toward Nazirpur. On coming back home he disclosed the event to all.

264. P.W.21 next stated that on the same day in night at about 08:00 P.M. he heard frequent gun firing from the end of Nazirpur. On the following day his Fufa (father's sister's husband) coming to their house informed that on the preceding day at about 04:00 P.M. he saw the detainees seated together in front of Nazirpur Land Office and afterward heard gun firing in night and on the following morning his Fufa moved to the bank of river Bakla, east to the Nazirpur bazaar where he found six

bullet hit dead bodies (of detainees) and he then with the help of locals buried the bodies on the bank of Bakla river.

265. Finally, in respect of reason of knowing the accused P.W.21 stated that he knew the Razakars he named as they were from their neighbouring localities and he had occasion of meeting them.

266. In cross-examination done on part of accused Mohammad Khalilur Rahman P.W.21 stated in reply to defence question that after the independence achieved a case was lodged with police station over the event he testified, but he did not get justice; that the present accused persons indicted were made accused in the said case and they were not summoned to depose in court in relation to the said case and he could not say whether the present accused had been in prison after independence achieved.

267. P.W.21 denied defence suggestions that the accused was not Al Badr; that he had no complicity with the event alleged; that he did not see and hear the event he described and that what he testified was untrue and tutored.

**268. P.W.22 Abdul Rashid (66/67)** is a resident of village-Noagaon under police station- Durgapur of District Netrokona.

He testified what he allegedly saw in relation to the event of attack arraigned.

269. P.W.22 stated that on 06<sup>th</sup> Ramadan in 1971 at around 10:00 A.M. he had been at home when he saw a group formed of 15/16 Pakistani occupation army and 50/60 Razakars approaching toward Ali Ahmmed Member's house. With this he running to that house informed it and he got himself hidden and observed the Peace Committee member Nabi Hossain, Al Badr commander Mohammad Khalilur Rahman, Razakar Rajab Ali, (now dead), Razakar Azizur Rahman (died during trial), Razakar Shahnewaj (died during trial), Razakar Ramjan Ali (now dead), Razakar Ali Newaz (now dead) forcibly capturing Ahmed Ali and his son Abdul Hamid who were engaged in washing jute in the pond. Then they were tied up, their household were looted, and they were taken away to Anandapur village.

270. P.W.22 next stated that at 03:00 P.M. Abdul Hamid (P.W.21) coming to their house informed them that the gang of attackers moved to Anandapur village, captured Muslim Uddin and looted their house. Then the group then moved to Chhoto Krishnapur where from the invaders unlawfully captured Muktal

Hossain Talukder, Abdul Hamid Talukder, Abdul Wahed Talukder and Maheruddin Fakir. Abdul Hamid (P.W.21) also informed that on their way back the gang forcibly captured Abdus Sattar who was forced to carry the box of ammunition. Furthermore, on the request of Madrasa teacher Sultan Huzur, he (P.W.21) and Abdus Sattar were set released. But the rest six detainees were taken away toward Nazirpur.

271. P.W.22 kept on saying that at that night at around 08:00 P.M. he heard the knock of 7/8 gun firing. On the following morning at about 08:00/09:00 A.M. Hasu Mia (Fufa of P.W.21 Abdul Hamid) of village-Haichakandi, adjacent to Nazirpur Bazar came to Abdul Hamid's home. Then he (P.W.22) moved there. Hasu Mia disclosed that he saw that the six detainees were made seated together in front of Nazirpur Land Office on the preceding day at about 04:00 P.M. and then in night he heard 7/8 gun firing and on the following morning moving to the bank of river Bakla he (Hasu Mia) found bullet hit dead bodies of six detainees lying there and then he (Hasu Mia) with the assistance of locals buried the bodies on the bank of river.

272. Finally, the P.W.22 stated that accused persons were residents of their neighbouring villages and were seen often moving and as such he [P.W.22] knew them beforehand.

273. In cross-examination on behalf of absconding accused Mohammad Khalilur Rahman P.W.22 stated that he could not remember the date of death of his parents; that about 12 years ago he bought land in Noagaon; that after independence Khalilur Rahman was a teacher of Durgapur Madrasa and used to stay at own home.

274. P.W.22 also stated in reply to defence question that he heard that a case was initiated against the accused under the Collaborators Order, 1972 and the accused persons had been in prison in connection with that case and later on got released. He (P.W.22) did not depose in that case as he was not summoned.

**275. P.W.23 Abdul Haque (70/71)**, a resident of village-Borwind under police station Durgapur of District Netrokona has been tendered with what has been stated by P.W.22. Defence adopted cross-examination of P.W.22.

**276. P.W.24 Md. Abdul Hannan Talukder (68)** is a resident of village- Chhoto Krishnapur under police station- Kalmakanda of District Netrokona. In 1971 he was student of class X. He is a direct witness to the event of attack as arraigned in charge

no.03. He is the son of one victim martyr Muktal Hossain Talukder.

277. P.W.24 recounted by narrating that on 26<sup>th</sup> October in 1971 at around 12:00 P.M. he had been at home when he heard that Pakistani army invaded their village. Then he and his father came out of home when 8/9 Razakars and Al Badrs obstructed them. Then he saw 50/60 Razakars and 15/16 Pakistani army besieging their house and some other entered inside their home. Their neighbour Al Badr commander Mohammad Khalilur Rahman, his brother Razakar Azizur Rahman (died during trial), Razakar Shahnewaj (died during trial), Razakar Rajab Ali(now dead), Razakar Nabi Hossain (now dead), Razakar Sadar Ali (now dead), Razakar Ali Newaj(now dead), Razakar Ashok Ali (died during trial), Razakar Ramjan Ali(now dead) were amongst the Razakars and Al Badrs forming the group. Then he (P.W.24) ran away toward the pond, east to their house in fear of his life.

278. P.W.24 next testified that his neighbouring uncle Maher Uddin Fakir came to the pond and notified him that the said Razakars, Al Badrs and army men detained his (P.W.24) father Muktal Hossain and Uncle Abdul Wahed Talukder. Then 3/4



Razakars coming to the bank of the pond attempted to capture them when Maher Uddin Fakir snatched away arms from two Razakars and one Razakar slipped down in the pond. Subsequently the said Razakar getting up from pond inflicted rifle blow on the head of Maher Uddin Fakir which resulted in bleeding injuries.

279. P.W.24 also stated that then being panicked he (P.W.24) went into hiding inside a bush and eventually he and his cousin brother Abdul Quddus Talukder got sheltered at the house of Harmuj Ali and there from he witnessed the event, at a stage of which he saw the invaders taking away his (P.W.24) father, two uncles, Maher Uddin, Ahammed Ali Member, Abdul Hamid and Moslem Uddin tying them up toward Borwind Bazar. At that time his (P.W.24) cousin brother Abdus Sattar was also taking away compelling him in carrying the box of ammunition on head.

280. P.W.24 then stated that at around 03:00 P.M. Abdus Sattar came to their house and informed that on request of Madrasa Superintendent he (Abdus Sattar) and Abdul Hamid were set released. Then the remaining six detainees were taken away toward Nazirpur Army Camp.

281. P.W.24 stated that on the next day i.e. on 27<sup>th</sup> October at around 03:00/04:00 P.M. his elder brother-in-law Ansar Ali Ahmed notified them that detained six persons were gunned down to death on 26<sup>th</sup> October night at around 08:00 P.M. On the next day the dead bodies were buried on the bank of Bakla River.

282. P.W.24 finally stated that he knew the accused persons beforehand as they belonged to same locality and used to move around bazaar very often.

283. In cross-examination on behalf of accused Mohammad Khalilur Rahman P.W.24 stated in reply to defence question that he had no idea about what profession the accused Mohammad Khalilur Rahman had after the independence; that he heard that a complaint was lodged in Netrokona Court against Mohammad Khalilur Rahman and others; that police report recommending prosecution was submitted and after the assassination of Bangabandhu they got released on general amnesty.

284. Defence suggested that the accused was not Al Badar commander and was not involved with the killing of his father and that what he testified implicating the accused person was untrue and tortured. P.W.24 denied it blatantly.

285. P.W.24 denied the defence suggestion that what he testified implicating the accused persons in relation to the alleged events narrated in charge no.03 was untrue and tutored and that he did not hear the event as he claimed.

**286. P.W.25 Mofazzal Hossain Talukder**, a resident of village-Chhoto Krishnapur under police station Kalmakanda of District Netrokona has been tendered with what has been stated by P.W.24. Defence declined to cross-examine him.

### **Findings with Reasoning on Evaluation of Evidence**

**287. Mr. Rana Das Gupta**, the learned prosecutor at the outset of placing summing up in respect of this count of charge submitted that out of four accused indicted in this count of charge three accused died during trial on different dates and thus proceeding so far as it relates to them stood abated. Thus now, it is to be seen whether the event of attack happened and whether the accused Mohammad Khalilur Rahman was involved in committing the crimes arraigned, being part of the criminal enterprise with intent to activate the goal of the attack. Although testimony of witnesses narrates the involvement of those three accused indicted too who already died during trial.

288. The learned prosecutor argued drawing attention to ocular testimony of witnesses of whom most are relatives of victims described that the attack was conducted in gruesome manner directing pro-liberation civilians. The accused Mohammad Khalilur Rahman being part of the collective criminality and in exercise of his leading position in local Al Badr Bahini knowingly and actively participated in perpetrating the crimes by launching systematic attack. Defence could not refute the facts pertinently chained to the event leading to brutal killing of six civilians.

289. It has been also argued that the accused was from the neighbouring locality of the witnesses and thus they knew him beforehand. The witnesses remaining in hiding witnessed how the victims were forcibly captured by the gang accompanied by the accused Mohammad Khalilur Rhaman. Presence of the accused with the gang at the site is sufficient to prove that he had conscious concern and participation even in accomplishing the act of horrific killing of numerous detained civilians, the outcome of the attack.

290. The learned prosecutor also submitted that the group targeted the pro-liberation civilians having explicit stance in

favour of the war of liberation. The act of killings could not be tarnished. Since the accused actively participated in taking away the victims on forcible capture and the attack ended in killing it may be lawfully inferred that the accused being part of the criminal enterprise participated and substantially contributed even in perpetrating the killing of the detainees. Defence by cross-examining the witnesses could not bring anything which may create any rate of doubt as to complicity of the accused with commission of the crimes proved.

**291. Mr. Gazi M.H. Tamim**, the learned state defence counsel argued that the witnesses had no reason of knowing the accused; that no case was initiated instantly after the alleged event and thus now delay in prosecuting the accused creates doubt. Prosecution witnesses do not claim to have seen the act of alleged killing and thus testimony of any of witnesses implicating the accused with the act of killing is not believable.

292. It has been further submitted by the learned state defence counsel that the witnesses testified falsely. It has been admitted in cross-examination that after the independence achieved this accused used to stay at home and was engaged in teaching job in Madrasa. Thus, if really the accused had any complicity with the event alleged he would not have stayed home. Besides,

admittedly no case was initiated over the event against the accused instantly after the independence achieved. Now delayed prosecution creates doubt as to the arraignment brought.

293. Tribunal notes that the charge framed arraigns that the gang accompanied by the accused Mohammad Khalilur Rahman and his cohort Razakars and army men conducted systematic attack first at the house of Ahmed Ali of village-Borwind and forcibly captured Ahmed Ali and his younger son Abdul Hamid. This attack was followed by the attack conducted at village Anandapur wherefrom one civilian Moslimuddin was unlawfully detained.

294. It is also arraigned that then attack was conducted at village-Chhoto Krishnapur wherefrom the gang forcibly captured Muktal Hossain Talukder, Abdul Hamid Talukder, Abdul Wahed Talukder, Maher Uddin Fakir and Abdus Sattar. In this way the gang unlawfully detained eight civilans. Of them two detainees Abdul Hamid and Abdus Sattar got release, on request of a teacher of the Madrasa and the gang took away the rest six (06) detainees who were eventually gunned down to death.

295. In light of arraignment brought and argument advanced by both sides we require determining the following matters:-

- (i) The group of attackers formed of Pakistani occupation army and Razakars accompanied by the accused Al Badr commander Mohammad Khalilur Rahman and his cohorts had launched systematic attack directing pro-liberation civilians of the vicinities attacked;
- (ii) The accused knowingly accompanied the gang and thereby participated in effecting unlawful capture of eight civilians;
- (iii) The gang on its way back set two detainees released on request of one Madrasa teacher;
- (iv) The rest six detainees were taken away toward place nearer to the killing site;
- (v) On the same day in night, the six detainees were gunned down to death taking them on the bank of river Bakla.

296. It depicts that the gang started attacking the civilians on 26<sup>th</sup> October at around 11:00 A.M. P.W.19, the son of one victim saw the gang accompanied by the accused Al Badr commander Mohammad Khalilur Rahman launching the attack remaining in hiding inside the nearer paddy field, at the south of

their house. The accused persons indicted were from their neighbouring localities and as such he knew them beforehand.

297. It also depicts from ocular testimony of P.W.19 that the gang entering inside their house looted household and unlawfully captured his father. The invaders then moved back toward Krishnapur taking his captured father and Ahmed Ali Member and his son Abdul Hamid detained from neighbouring village-Boroiund with them.

298. The above pertinent fact gets corroboration from P.W.20 Safor Uddin Fakir who also witnessed the gang in accomplishing the attack leading to unlawful capture of civilians. It has also been divulged from ocular testimony of P.W.20 that the gang also unlawfully detained one Moslem Uddin of their village.

299. It depicts from ocular narrative of P.W.20 Safor Uddin Fakir, the brother of detainee Maher Uddin Fakir that in conjunction with the attack, remaining in hiding at the place near the Talukder house he saw the injured body of his brother Maher Uddin lying on the bank of the pond. This



uncontroverted fact also proved the fact of launching attack at Talukder house.

300. Unshaken ocular version of P.W.24 Md. Abdul Hannan Talukder the son of one victim martyr Muktal Hossain Talukder also demonstrates that detainee Maher Uddin Fakir sustained bleeding injuries due to infliction of rifle blow to him when he attempted to snatch away arms from two Razakars. But such brave effort could not save him. The Razakars by causing injuries to him eventually got him forcibly captured. Defence in no way could impeach this fragment of the horrific event of attack.

301. Thus, it stand proved that the gang in course of first phase of attack forcibly captured three civilians including the father of P.W.19.

302. How these detainees were treated by the gang? Ocular testimony of P.W.20 demonstrates that the invaders accompanied by the accused Al Badr commander Mohammad Khalilur Rahman took away detained Muktal Hossain Talukder, Abdul Hamid Talukder, Abdul Wahed Talukder and Abdus Sattar toward the bank of the pond, on forcible capture.

303. It stands proved from ocular narrative of P.W.21 that taking the three detainees with them the gang next by launching attack at Chhoto Krishnapur village forcibly captured Muktal Hossain Talukder, Abdul Hamid Talukder, Abdul Wahed Talukder and Maheruddin Fakir and carried out looting as well.

304. P.W.21 Md. Abdul Hamid is a survived victim. He too was taking away along with other detainees by the gang. But on the way back of the gang he and another detainee Abdus Sattar were set at liberty on request of Madrasa teacher Sultan Ahmed.

305. P.W.20 Safor Uddin Fakir witnessed that Ahmed Ali Member of village Borwind, his sons Abdul Hamid and Moslem Uddin of their village were kept detained on the bank of the pond from earlier. Next, he saw the invaders moving back to north-west taking the detainees with them.

306. Ocular testimony of P.W.21 Md. Abdul Hamid, the son of one victim martyr Ahmmed Ali also goes to show that the perpetrators being accompanied by the accused besieged their house on the same day at about 11:00 A.M. and forcibly captured him (P.W.21), his father and tied them up and committed looting household. The fact of detaining another

victim Muslim Uddin by the invaders and carrying out looting at his house has been recounted too by P.W.21.

307. The fact of unlawfully detaining Md. Abdul Hamid (P.W.21), one survived victim seems to have been corroborated by other direct witness P.W.22. It stands proved that at the relevant time on the date of event happened P.W.22 Md. Abdul Rashid got himself hidden and saw the perpetrators accompanied by the accused Al Badr commander Mohammad Khalilur Rahman forcibly capturing Ahmed Ali and his son Abdul Hamid (P.W.21) .

308. Defence could not impeach the above facts, narrated by P.W.22. Mere putting suggestion denying what has been testified in examination-in-chief does not taint this ocular narrative.

309. The unimpeached fact that accused was a resident of their neighbouring village and was seen often moving and as such he [P.W.22] knew him beforehand. This rational reason of knowing the accused was natural and thus cannot be disbelieved.

310. P.W.22 also heard the next phase of attack leading to unlawful detention of civilians from villages Anandapur and

Chhoto Krishnapur. Hearsay evidence of P.W.22 in respect of unlawful detention of civilians from those two villages inspires credence and gets corroboration from other facts unveiled from testimony of other direct witnesses. Besides, the source of such hearsay evidence is P.W.21, one survived victim who had ample and natural opportunity of seeing the prohibited activities carried out in conjunction with the successive attacks, till his release.

311. It has been divulged that P.W.24 Md. Abdul Hannan Talukder the son of one victim martyr Muktal Hossain Talukder sensing the attack went into hiding, east to their house wherefrom he saw the invaders taking away his (P.W.24) father, two uncles, Maher Uddin, Ahammed Ali Member, Abdul Hamid (P.W.21) and Moslem Uddin tying them up toward Borwind Bazar and his cousin brother Abdus Sattar (one survived victim) was also taking away with them compelling him in carrying the box of ammunition on head.

312. The above piece of unimpeached ocular narrative leads to the conclusion that eventually the gang was moving back taking eight (08) detainees with them and of them two were set at liberty.

313. It depicts from testimony of P.W.24 that few hours later detained Abdus Sattar coming to their house informed that on request of Madrasa Superintendent he and Abdul Hamid (P.W.21) were released and the rest six detainees were taken away to Nazirpur Army Camp. It remained unimpeached.

314. Corroborative testimony of P.W.21 Md. Abdul Hamid, a survived victim and P.W.22 Md. Abdul Rashid depicts that in course of the attack carried out at village Chhoto Krishnapur village the gang of attackers carried out looting household too, in addition to forcible capture of civilians, before their way back to Nazirpur taking the detainees with them. It was grave breach of recognized human rights. Such prohibited act indubitably impacted the normal livelihood of civilians and intended to spread coercion and intimidation causing harm to civilians affected which constituted the offence of '**other inhumane act**'.

315. Cumulative evaluation of evidence as discussed above we arrive at unerring decision that the gang formed of Pakistani occupation army, Razakars and the accused Al Badr commander Mohammad Khalilur Rahman committed the criminal acts deliberately by systematically conducting successive attacks directing the pro-liberation civilians. Object of such designed

attack was to broaden terror and to wipe out the pro-liberation civilians of the vicinities attacked.

316. Act of unlawfully detaining the victims, the unarmed civilians as found proved from testimony of witnesses itself caused mental harm also to the relatives of victims. But the context loaded of horrific ambiance naturally did not allow the relatives of victims to make any counter effort to rescue the civilians detained despite they had opportunity of seeing the act of taking away the unlawfully detained victims by the perpetrators.

317. Presumably, the attack leading to indiscriminate killing of numerous civilians was also intended to terrorize the pro-liberation civilian population of the locality attacked with a message that the people would have to face such consequence if they sided with the war of liberation.

318. Next, what fate the detainees had to face? How the event ended? It is arraigned that the six detainees were eventually gunned down to death taking them on the bank of the river Bakla. None of witnesses claims to have seen the act of killing the detainees. However, let us see what facts have been divulged in respect of the ending phase of the event of attack.

319. We already got it proved on evaluation of evidence presented that the six detainees were taken away toward Nazirpur Bazar. It depicts from testimony of P.W.22 that Hasu Mia (Fufa of P.W.21 Abdul Hamid) of village-Haichakandi, adjacent to Nazirpur Bazar came to Abdul Hamid's home, after then event ended in killing.

320. It could not be impeached that P.W.22 heard from said Hasu Mia that he saw that the six detainees were made seated together in front of Nazirpur Land Office on the day of the event at about 04:00 P.M and then in night he heard 7/8 gun firing and on the following morning on moving to the bank of river Bakla he (Hasu Mia) found bullet hit dead bodies of six detainees lying there and then he with the assistance of locals buried the bodies on the bank of river.

321. That is to say, the killing phase happened in night. Presumably, the perpetrators were waiting for darkness of night to accomplish the barbaric act of killing the detainees intending to keep it beyond the spectacle of people.

322. Hearsay evidence of P.W.22 in relation to the outcome of the event, the killing of six detainees on the bank of river Bakla

carries credence. Said Hasu Mia was a resident of village-Haichakandi, adjacent to Nazirpur Bazar. Being a nearer resident he had opportunity of seeing the detainees keeping seated together in front of Nazirpur Land Office. Killing site was the bank of river Bakla. In night Hasu Mia heard gun firing from that end and on the following morning he found the bullet hit dead bodies of victims lying there.

323. The above piece of pertinent version P.W.22 seems to have been corroborated by P.W.21 Md. Abdul Hamid who stated too corroborating P.W.22 that on the following morning his Fufa Hasu Mia moved to the bank of river Bakla, east to the Nazirpur bazaar where he found six bullet hit dead bodies (of detainees) and he then with the help of locals buried the bodies on the bank of Bakla river.

324. Hearsay testimony in relation to fact of keeping the detainees seated in front of Nazirpur Land Office and on the following morning finding their bullet hit dead bodies lying on the bank of the river Bakla carries probative value as it had a compatible nexus with the act of killing six detained civilians.

325. It appears too that on the following day P.W.24 also heard from his elder brother-in-law Ansar Ali Ahmed that detained six



persons were gunned down to death in the night and on the next day their dead bodies were buried on the bank of Bakla River.

326. Unimpeached testimony of P.W.19 also indisputably demonstrates that Safar Ali (P.W.20) informed that the six detainees including his (P.W.19) father were kept sitting in front of Nazirpur Land office and at around 08:00 P.M. taking them on the bank of Bakla river the Razakars he named including the accused gunned them down to death **(at this stage of narrating the event the witness burst into tears)**.

327. Another fact requires to be taken into consideration in proving the arraignment. It transpires that P.W.21 Md. Abdul Hamid, one survived victim and a key direct witness stated in reply to defence question that after the independence achieved a case was lodged with police station over the event he testified, but he did not get justice; that the present accused persons were made accused in the said case and they were not summoned to depose in court in relation to the said case and he could not say whether the present accused had been in prison after independence achieved.

328. The above fact unveiled in cross-examination of P.W.21, one survived victim rather affirms the commission of the event

arraigned and participation of accused therewith. Though there is no specific information or document to show the ultimate fate of the said case.

**329.** It transpires that P.W.22 Md. Abdul Rashid also heard that a case was initiated against the accused under the Collaborators Order, 1972 and had been in prison in connection with that case and later on got released. It has been affirmed in cross-examination of P.W.22.

330. It appears that in addition to evidence of witnesses examined in Tribunal in support of this count of charge, statement made to the IO by one witness, namely Abdus Sattar whose name finds place in serial no. 30 of the volume of statement of witnesses has been received in evidence under section 19(2) of the Act of 1973 in support of this charge, as prayed by prosecution on ground of his physical inability to move.

331. It appears that the cited witness Abdus Sattar is a close relative of victims of the event arraigned in this count of charge and the statement of this witness made to IO gets corroboration from evidence of direct witnesses examined in Tribunal, in

relation to the event arraigned. This witness Abdus Sattar could not be produced before Tribunal as now he is paralyzed.

332. We have gone through his statement made to IO. It demonstrates that he experienced the criminal acts conducted in course of attack arraigned in this count of charge. He being a close relative of victims naturally had occasion of experiencing the criminal activities carried out in conjunction with the attack arraigned. We do not find any inconsistency between the statement of this witness made to IO and the testimony of witnesses examined in Tribunal, in relation to the event arraigned. However, we do not feel it expedient to state the entire narrative what this witness stated before the IO.

333. It has been unveiled too in cross-examination of P.W.24, the son of one victim martyr Muktal Hossain Talukder that a complaint was lodged in Netrokona Court against accused Mohammad Khalilur Rahman and others in which the police report recommending prosecution was submitted. But after the brutal assassination of Bangabandhu they got released on general amnesty.

334. It is not clear as to the fate of such criminal prosecution and whether such compliant related to the event arraigned in the case in hand. But however, the above piece of version made in cross-examination adds patent assurance as to affiliation of accused Mohammad Khalilur Rahman in Al Badr Bahini and his involvement with the atrocities committed directing civilian population in 1971, during the war of liberation.

335. However, the document, the communication made by the Court Inspector, CJM Court, Mymensingh **Exhibit-I series** (prosecution documents volume page no.68-70) also demonstrates that a criminal case was initiated in Kalmakanda police station against the accused Mohammad Khalilur Rahman, his father Nabi Hossain (now dead) and others in 1972, presumably under the Collaborators Order, 1972.

336. However it has been affirmed in cross-examination that a case was initiated against this accused under the Collaborators Order, 1972 and subsequently he got released on general amnesty, after the brutal assassination of Bangabandhu. Next, there is nothing to show that trial of the said case was concluded and the accused was prosecuted for any of the events arraigned in the case in hand. Thus, the doctrine of double jeopardy is not

attracted. Rather, this affirmed fact proves the role and status this accused had in 1971, in exercise of which he participated in perpetrating the crimes directing the Bangalee civilans.

337. It is now settled history that after brutal assassination of Bangabandhu, the Father of the Nation military usurpers started ruling the country and it endorsed the culture of impunity which made the democracy and the rule of law halted. It was gravely shocking to the nation and civilization. The nation thus felt ashamed and extremely pained.

338. Presumably, the accused was prosecuted under the Collaborators Order, 1972 passed to prosecute and try the local collaborators for the offences committed during the war of liberation. But the Ordinance got repealed by the military ruler and as a result the individuals facing prosecutions were allowed to walk free. It was indeed a grave blow to the rule of law and the spirit of the war of liberation as well. In this way the military regime endorsed the culture of impunity, ignoring the right to justice.

339. Mere fact that after independence achieved the accused continued staying at his own home as stated by P.W.22 in cross-examination does not tend to deduce that he was not involved

with any atrocious activities arraigned during the war of liberation. For various reasons he might have space in continuing his staying at home. But it does not indicate any rate of his innocence. Rather, we have already got it affirmed that this accused Mohammad Khalilur Rahman had been in prison in connection with a case under the Collaborators Order, 1972. It has already been found affirmed in cross-examination of P.W.24 too that a complaint was lodged in Court against Khalilur Rahman in which he got the general amnesty.

340. It stands proved that the event of attack arraigned leading to indiscriminate killing of numerous pro-liberation civilians having stance in support of the war of liberation indisputably escalated to the grave form of demolition of the civilian population of the vicinities attacked.

341. The pertinent facts proved lead to conclude that the accused Mohammad Khalilur Rahman and his notorious cohorts of whom three were indicted too in this count of charge and died during trial knew the 'likely consequence' of the committed acts, the object of the goal-oriented attack.

342. Killing the six detainees by gunshot taking them on the bank of river Bakla as testified by P.W.22 and P.W.24 does not

seem to have been controverted in any manner. Horrendous annihilation of six unarmed civilians by gunshot stands uncontroverted. Such killing was thus the outcome of the systematic attack.

343. P.W.19 is the son of one victim. In recounting the extremely traumatic event P.W.19 could not keep his emotion controlled and thus burst into tears before Tribunal. It is indeed quite impossible to assess the pain and trauma the dear ones of victims sustained. They could not even move toward the killing site in fear of Razakars and Al Badrs. After the independence achieved they visited the site of 'mass killing'. The tragic reminiscence shall never erase the trauma the relatives of victims sustained.

344. Pattern of the barbaric killings, mode of participation and culpable conduct of the accused Mohammad Khalilur Rahman demonstrate that he and his cohorts consciously intended the destruction of the civilian population and to spread intimidation among the residents of the localities attacked, by carrying out designed crimes, sharing common purpose and intent which constituted the offence of crimes against humanity.

345. It is not required to show that the accused physically participated in perpetrating the killing of detained civilians. It is now well settled that in dealing with the offences of crimes against humanity which are known as 'group crimes' it would be immaterial to argue that the accused was not the actual perpetrator or he himself did not physically participate to the commission of the criminal acts.

346. Evidence as discussed above unerringly leads to the conclusion that the accused Al Badr commander Mohammad Khalilur Rahman was present with the gang at the sites attacked which suggests inferring it unerringly that knowing the consequence he rather encouraged, aided, assisted and contributed in accomplishing the act of unlawful detention of numerous civilians.

347. Tribunal reiterates that section 4(1) of the Act of 1973 includes participation in JCE (Joint Criminal Enterprise). Section 4(1) tends to cover the necessary elements of JCE. In line with the recognized principles almost common to all legal systems, since the accused took 'consenting part' in conducting the attack that ended in killing six civilians he was thus a 'participant' even in the act of killings, we deduce.



348. Such barbaric act of the accused Mohammad Khalilur Rahman indisputably fanned the flames of grave inducement on commission of the principal crimes and accordingly he too incurred liability. In this regard the ICTY Trial Chamber has observed in the case of **Furundija that--**

“Liability can be established by showing that the accused had intent to participate in the crime and that his act contributed to its commission. It is further submitted that such contribution does not necessarily require participation in the physical commission of the crime, but that liability accrues where the accused is shown to have been intentionally present at a location where unlawful acts were being committed.”

**[FURUNDIJA ICTY Trial Chamber: Judgment  
10 December 1998para 42**

349. On due and rational appreciation of the intrinsic value of evidence presented before us, in respect of facts materially related to the principal event of killing 06 unarmed pro-liberation civilians, we are unanimously persuaded to arrive at a finding that the prosecution has been able to prove beyond reasonable doubt that the accused Mohammad Khalilur Rahman by his culpable act and conduct forming part of systematic

attack directing non combatant civilians is criminally liable under section 4(1) of the Act of 1973 for participating, substantially abetting, facilitating and contributing in committing the criminal acts constituting the offences of ‘abduction’, ‘confinement’, ‘other inhumane act’ and ‘murder’ as crime against humanity’ as enumerated in section 3(2) (a) (g)(h) of the Act of 1973 which are punishable under section 20(2) read with section 4(1) of the Act and thus the accused person incurred liability under section 4(1) of the Act for the above offences.

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

**[4 accused indicted of who 3 died during trial]**

**[Event no. 04 as narrated at page 33-37 of the formal charge]**

**[Offences of ‘abduction’, ‘confinement’, ‘torture’, ‘looting’, ‘arson’, ‘murder’ and ‘genocide]**

350. Charge: That on 29 October, 1971 at about 04 P.M. a gang formed of 10/12 Pakistani occupation army, 40/50 Razakars being accompanied by the accused (1) Mohammad Khalilur Rahman, (2) Md. Azizur Rahman(died during trial) (3) Ashok Ali (died during trial) and (4) Md. Shahnewaj(died during trial) by launching attack at villages Noagaon and Nilakhali under Police Station- Durgapur of District [now] Netrokona forcibly captured **Faziluddin, Abdul Kadir @ Raza Mia**, his son **Abul Hossain, Chamiruddin**, his son **Sarafat Ali and Mamruj Ali**,

all were workers and supporters of Awami League, a political party. In conjunction with the attack the gang looted the households and burnt down the houses of detainees. The attack continued till 06 P.M. and it was with intent to destroy a 'political group', either whole or in part.

The gang then headed towards the army sub-camp set up at Nazirpur under Police Station Kalmakanda taking the six [06] detained civilians with them and on the way, at about 08:00 P.M. the gang of attackers made the detainees stand in a line on the bank of the river Katakhal and shot gun fire to them that resulted in killing of five [05] detainees and one detainee Abul Hossain got escaped by jumping into the river. The dead bodies were then carried in front of the army sub-camp intending to terrorize the civilians. Later on, the locals buried the dead bodies on the bank of the river Bakla, adjacent east to Nazirpur Bazar.

Therefore, the accused (1) Mohammad Khalilur Rahman, (2) Md. Azizur Rahman (died during trial), (3) Ashok Ali (died during trial) and (4) Md. Shahnewaj (died during trial) have been charged for actively participating, facilitating, abetting and substantially contributing to the commission of the offences of

**'genocide'** as the attack was directed against a 'political group with intent to destroy it, either whole or in part, as enumerated in section 3(2)(c)(g)(h) read with section 4(1) of the International Crimes (Tribunals) Act, 1973 or in the alternative to the commission of offences of **'abduction', 'confinement', 'torture', 'looting' 'arson' and 'murder' as crimes against humanity** as specified in section 3(2)(a)(g)(h) read with section 4(1) of the International Crimes (Tribunals) Act, 1973 which are punishable under Section 20(2) of the Act.

## **Evidence of Witnesses Examined**

351. The arraignment brought in this count of charge rests upon testimony of ten witnesses who have recounted the event coming on dock as P.W.04, P.W.05, P.W.06, P.W.07, P.W.08, P.W.09, P.W.10, P.W.11, P.W.19 and P.W.22, Majority of them happen to be sons and close relatives of victims and had occasion of seeing criminal activities carried out in course of the attack conducted by the criminal actors forming part of the squad. Let us see what the witnesses have described in respect of the event arraigned.

**352. P.W.04 Md. Nesar Ahmed (60/61)**, a resident of village-Noagaon under police station Durgapur of District Netrokona

recounted the material part of the event, in addition to the event arraigned in charge no.02.

353. P.W.04 stated that on 29 October in 1971 at about 06:00 P.M. a group formed of Pakistani occupation army, 40/50 Razakars and Al Badrs accompanied by the accused Mohammad Khalilur Rahman, Azizur Rahman (died during trial), Ramjan Ali (now dead), Shahnewaj (died during trial), Ali Newaj (now dead) and Ashok Ali (died during trial) attacked the house of his grand-father Mamruj Ali. At the time of launching the attack the gang came there bringing his (P.W.04) uncle Fazil Uddin, his sister's husband Abdul Kadir @ Raja Mia, his son Abul Hossain, neighbour Samir Uddin and his son Sharafat Ali tying them up on forcible capture with them and looted household. The gang also tied up Mamruj Ali. Then the accused and Pakistani army moved back toward Nazirpur taking the detainees with them. He (P.W.04) then saw his uncle Majnu Mia following the gang with cry. On the same day at about 08:00 P.M. he heard 7/8 gun firing from the north end.

354. P.W.04 next stated that at about 09:00/09:30 P.M. his uncle Majnu Mia coming back home and informed that the detainees were first kept stood on the bank of the river Katakhal and then

the perpetrators fired gunshots directing them when five died and one detainee Abul Hossain could save him by jumping into the river. On the following day Abul Hossain (P.W.08) disclosed the event to them.

355. In cross-examination defence simply suggested to P.W.04 that he did not know the accused; that he did not see and hear the event he testified; that the accused Mohammad Khalilur Rahman was not Al Badr or Razakar. P.W.04 denied these defence suggestions put to him.

**356. P.W.05 Abul Hasen (59/60)** is a resident of village-Noagaon under police station Durgapur of District Netrokona. In addition to the event arraigned in charge no.02 he also stated what he experienced in respect of the event arraigned in this count of charge i.e. charge no.04.

357. P.W.05 stated that on 29 October in 1971 at about 06:00 P.M. a group formed of 10/12 Pakistani occupation army being accompanied by the accused Al Badr and his cohorts 40/50 Razakars and Al Badrs by launching attack at the house of their neighbour Mamruj Ali committed looting and forcibly captured Mamruj Ali. He (P.W.05), remaining aside of the house, could

also see the perpetrators taking Fazil Uddin, Abdul Kadir @ Raja Mia, his son Abul Hossain, Chamir Uddin and his son Sharafat Ali at the house of Mamruj Ali, tying them up.

358. P.W.05 also stated that next the gang moved back toward Nazirpur taking the six detainees with them. Majnu Mia the son of Mamruj Ali started following the gang secretly. All the detainees used to provide assistance to freedom-fighters. At about 08:00 P.M. in night he (P.W.05) heard 7/8 gun firing from the end of Singpur, north bank of the river Katakhal. Next, at about 09:00/09:30 P.M. Majnu Mia (son of detainee Mamruj Ali) came back home and disclosed that the accused and his cohorts he named (in narrating the event arraigned in charge no.02) i.e. Al Badr commander accused Mohammad Khalilur Rahman, peace committee member Nabi Hossain (now dead), Razakar Ashok Ali(died during trial), Razakar Ramjan Ali(now dead), Razakar Shahnewaj(died during trial), Razakar Ali Newaj (now dead) and Razakar Azizur Rahman (died during trial)] gunned down five detainees to death and one detainee Abul Hossain could save his life by jumping into the river, by making his bind unfastened. Finally, P.W.05 stated that the accused and his cohorts he named were from their neighbouring villages.

359. In cross-examination, the P.W.05 denied defence suggestions that Majnu Mia did not disclose that the accused, his cohorts and Pakistani army fired gunshot to detainees in consequence of which five detainees died and one detainee Abul Hossain managed to escape by jumping into the river.

**360. P.W.06 Adam Ali [62/63]** is a resident of village-Noagaon under police station- Durgapur of District-Netrokona. During the Liberation War, his father and their family inmates used to assist the freedom-fighters, taking stance in support of the war of liberation. He is the son of victim martyr Chamir Uddin and brother of another victim Sharafat Ali who were allegedly gunned down to death, by conducting systematic attack, the charge framed arraigns.

361. P.W.06 in recounting the event arraigned stated that on 29<sup>th</sup> October in 1971 at around 05:00 P.M. their domestic aid informed them that a group formed of 30/40 Razakars, Al Badrs and Pakistani Army men was heading toward their house. Then Razakar Khalilur Rahman, Razakar Ramjan Ali (now dead), Razakar Ashok Ali (died during trial), Razakar Mokbul Hossain (now dead), Razakar Ali Newaj and their cohorts entering inside their house forcibly captured his father Chamir Uddin and his



brother Sharafat Ali and tied them up. They looted their household and then moved back taking his detained father and brother with them.

362. P.W.06 also stated that then he and his brother Marfat Ali came out of the house and saw Fazil Uddin, Abdul Kadir, Abul Hossain detained there. Then they (perpetrators) along with his detained father and brother headed toward Mamruj Ali's house and also detained him and then the gang started moving toward Singpur taking the detainees with them. Then he (P.W.06) started following the gang secretly but at a stage he returned back home. His (P.W.06) brother Marfat Ali and Majnu, the son of detainee Mamruj Ali continued following the gang.

363. P.W.06 next stated that on the same day at about 08:00/08:30 P.M. he heard 7/8 gun firing from the end of Singpur, about half mile far from their house. At about 9:00/09:30 P.M. his brother Marfat Ali came back home and informed that the detainees were made stood on the bank of the river Singpur Katakhalı and due to gun firing five detainees died and on detainee Abul Hossain managed to escape by jumping into the river. His brother Marfat Ali informed too that they could see this event of killing with the moonlight.

364. Finally, P.W.06 stated that after the independence achieved he came to know that the detainees who were killed were made dumped in the Kans grassland (bush of soft downy white flowers), adjacent to the bank of river Bakla, east to Nazirpur Bazar. As to the reason of knowing the accused persons indicted P.W.06 stated that they were from their neighbouring villages and that's why he knew them.

365. In cross-examination on behalf of the absconding accused Mohammad. Khalilur Rahman P.W.06 stated that in 2009 he lodged a complaint in Durgapur Judicial Magistrate Court; that before 2009 he did not lodge complaint anywhere; that the accused was always involved with politics of Jamaat E Islami. P.W.06 denied the defence suggestion that he testified falsely implicating the accused with the event alleged and what he narrated was untrue and out of rivalry.

**366. P.W.07 Md. Abdur Rashid (65)** is resident of village Noagaon, under police station Durgapur of District Netrokona. He is the grand-son of victim Mamruj Ali.

367. He testified that on 11<sup>th</sup> day of Bangla month Kartik in 1971 at around 06:00 P.M. while he had been at home, he heard

that 40/50 Razakars, Al Badrs and 10/12 Pakistani Army men were approaching toward their home to launch an attack. Then as soon as he came out of home, one Pakistani army asked him to get halted there, on identification by Razakar Ashok Ali(died during trial). At that time among the attackers there were Razakar Nabi Hossain, Al-Badr Commander Khalilur Rahman, Razakar Azizur Rahman (died during trial), Razakar Shahnewaj (died during trial), Razakar Ramjan Ali (now dead), Razakar Mogul Hossain (now dead) whom he could recognize as they were from their village and their neighbouring village. The attackers committed looting at their house, tied his grandfather Mamruj Ali on forcible capture, taking him in the courtyard.

368. P.W.07 also stated that few time later 2/3 Razakars who kept him guarded left the place on hearing whistle blow and then he came out to the east of their house where he found Razakars keeping Chamir Uddin Moral, Sharafat Ali, Abdul Kadir @ Raja Mia, his son Abul Hossain and his (P.W.07) uncle Fajil Uddin guarded, tying them up. His grand-father Mamruj Ali too was taken to those detainees, tying him up. Then the attackers including the accused he named and their accomplices moved back toward north taking six detainees with them. He also saw Majnu Mia, the son of detainee Mamruj Ali following

them secretly. He (P.W.07) could see all these with the moonlight.

369. P.W.07 also stated that he came back home and at around 08:00 P.M. they heard 7/8 gunshots from the end of Singpur, north to their house. They guessed that the Pakistani army and the accused he named killed the detainees by gunshots.

370. P.W.07 continued stating that in that night at about 9:00/09:15 P.M. Majnu Mia came back home and described with cry that he and Marfat Ali remaining in hiding saw the Pakistani army and the accused he named fired gunshots directing the six detainees which resulted in death of five detainees and one detainee managed to escape by jumping into the river Katakhal.

371. P.W.07 next stated that on the following morning at about 08:00 A.M. he moved to the house of his uncle Fajil Uddin where he found their neighbour Abul Hossain (survived victim), the son of Abdul Kadir present there. Abul Hossain described that they the six detainees were made stood on the bank of river Katakhal and at that time he by making himself unfastened

jumped into the river and then Razakars and Pakistani army gunned down the five detainees to death.

372. P.W.07 finally stated that four days after the event happened they the family inmates deported to India and returned back 4/5 days after the independence achieved and then came to know from Mokbul Moulana (now dead), the Imam of Nazirpur mosque that the dead bodies of five detainees were left in front of Nazirpur Land Office and then those were dumped in the Kans grassland (bush of soft downy white flowers), adjacent to the bank of river Bakla. All those detainees were followers of Awami League and organisers of the war of liberation.

373. In cross-examination on behalf of the absconding accused Mohammad Khalilur Rahman P.W.07 stated that he could not recall the Bengali or Arabic date of that day; that he could not recall the date of death of his parents and he could not recognize all the Razakars accompanying the gang. P.W.07 also stated in reply to defence question that his father initiated a case over the event arraigned after independence and the accused persons had been in prison in connection with that case and later they got release pursuant to general amnesty.

374. P.W.07 denied defence suggestions that this accused was not involved with the event alleged; that the accused was not Al Badr and that he did not see the event he testified and the event he described did not happen.

**375. P.W.08 Abul Hossain (73)** is resident of village Nilakhali, under police station Durgapur of District Netrokona. He being a survived victim is a star witness. He is the son of victim martyr Abdul Kadir. In conjunction with the attack launched, he was also forcibly captured and taken away to the killing site along with other detainees. However, he got survived. He recounted the horrendous event of attack as an ocular witness to it.

376. P.W.08 stated that on 11<sup>th</sup> day of Bangla month Kartik in 1971 corresponding to 9<sup>th</sup> day of Ramadan he had been at home. On that day their neighbour Fazil Uddin was engaged in catching fish in the river, north to their house and his (P.W.08) father Abdul Kadir @ Raja Mia had been working in the field, north to their house. In evening at about 04:00 P.M. he, his mother, two younger brothers and sister had been at home when a group formed of 10/12 Pakistani army and 40/50 Razakars and Al Badrs attacked their house and the house of Fajil Uddin.

377. P.W.08 continued stating that some of the invaders forming the group had conducted looting and destruction at their houses. He (P.W.08) could recognize peace committee member Nabi Hossain(now dead), Al Badr Khalilur Rahman, Razakar Azizur Rahman (died during trial), Razakar Ashok Ali(died during trial), Razakar Ramjan Ali(now dead), Razakar Shahnewaj (died during trial) and Razakar Ali Newaj(now dead) accompanying the gang as they were from their neighbouring localities. They committed looting at the house of Fazil Uddin and burnt down two houses on fire.

378. P.W.08 also stated that the gang then moved back toward north of their house and at that time his father and Fazil Uddin seeing the house ablaze were coming to house with screaming when the accused persons he named forcibly captured them and tied them up and started taking them away. Then he started following them and at a stage they detained him too, tied him up and started taking him away along with other detainees and on their way back they were kept tied up with the tree, east to the house of Chamir Uddin and the said invaders carried out attack at the house of Chamir Uddin, committed looting and also unlawfully detained Chamir Uddin and his son Sharafat Ali there from.

379. P.W.08 also stated that keeping those detainees along with them, the three detainees guarded at the place, east to Chamir Uddin's house the said invaders and army men by launching attack at the house of Mamruj Ali forcibly captured him and brought him to them.

380. P.W.08 continued to stating that the group then started moving toward north taking them the six detainees with them and eventually arrived at the place Singpur, on the bank of river, crossing the river Katakali by boat. They (detainees) were kept there stood in a line. At that time the bind in his hand got slackened and he jumped into the river. Few time later he heard 7/8 gun firing from the end of the bank of the river. It was about 08:00 P.M. He could guess that the five detainees who were made stood in a line on the bank of the river were gunned down to death. Later, he heard that those five detainees were killed there by gunshots. They could not have trace of their dead bodies.

381. P.W.08 finally stated that crossing the river he could save his life and returned back home in morning and described the event to others. After the independence achieved he came to know that the dead bodies of detainees including his father left



abandoned in front of Nazirpur Land Office and later the people dumped their bodies in nearby Kans grassland(bush of soft downy white flowers).

382. In cross-examination on behalf of absconding accused Mohammad Khalilur Rahman P.W.08 stated that he could not recall name of all the 40/50 Razakars; that he named those whom he knew beforehand; that he did not lodge any complaint over the event he testified anywhere after the independence; that during 1971 most males of their village used to take their iftar in the mosque. P.W.08 denied the defence suggestions that he did not know the accused; that the accused was not Al Badr and was not involved with the event alleged; that he did not see the event and what he testified was untrue.

**383. P.W.09 Md. Akram Hossain alias Marfat Ali [76/77]** is a resident of village Noagaon under Police Station- Durgapur of District Netrokona. He is the son of one of the victims Chamir Uddin Mondol and brother Sharafat Ali. He is a direct witness to the facts materially related to the event of attack that eventually resulted in indiscriminate killing of five pro-independence civilians including his father.

384. P.W.09 in recounting the gruesome event of systematic attack stated that on 29<sup>th</sup> October, 1971 Friday corresponding to 9<sup>th</sup> Ramadan at around 04:30/05:00 P.M. their domestic aide Abdur Rashid (now dead) coming hasty from outside informed that Pakistani army were on their way. As soon as he informed it the group formed of 10/12 Pakistani army and 40/50 armed Razakars and Al Badrs launched attack at their house. Among the invaders forming the group he could recognize the Peace Committee member Nabi Hossain (now dead), Al Badr Commander Khalilur Rahman, Razakar Azizur Rahman(died during trial) , Razakar Ashok Ali(died during trial), Razakar Ramjan Ali (now dead), Razakar Mokbul Hossain alias Mogol Hossain (now dead), Razakar Shahnewaj(died during trial) and Razakar Ali Newaz (now dead). They were their neighbours and residents of neighbouring village and thus he could recognize them.

385. P.W.09 next stated that the Razakars and Al Badrs he named forcibly captured his father Chamir Uddin and his elder brother Sharafat Ali and tied them up and started looting household. He managed to flee and remained in hiding behind the house. The invaders then brought out his detained father and brother and looted household. He also witnessed the invaders

keeping the detainees Fazil Uddin, Abdul Kadir @ Raja Mia and his son Abul Hossain of village-Noagaon guarded by some Razakars in the front courtyard of their house.

386. P.W.09 continued stating that he then coming out of the bush followed the attackers from behind when they were on move toward east of their house taking five detainees with them. Then the attackers by launching attack at the house of Mamruj Ali forcibly captured him and brought him to the other detainees tying him up. Then the invaders started heading toward Nazirpur taking six detainees with them and he (P.W.09) and Majnu Mia (P.W.10), the son of detainee Mamruj Ali started following them. The gang by crossing the river Katakhal moved toward Singpur under Chandipur Union. He and Majnu Mia crossing the river by swimming continued following the gang. Next, he saw that Razakars, Al Badrs and army men making six detainees stood in a line bringing them on the bank of river at Singpur. It was the moonlit night and thus they could witness everything. They saw one detainee jumping into the river and at about 08:00/08:30 P.M. the five detainees were killed by 7/8 gunshots.

387. P.W.09 also stated that then he and Majnu Mia being panicked returned back home and described the event to all. On

the following day he heard that Abul Hossain (survived victim), the son of Abdul Kadir @ Raja Mia(victim) managed to escape and returned back home. Then he and other residents of their village came to know from Abul Hossain (P.W.08) that he could escape strategically when the bind in his hands became slackened and then he jumped into the river and thereby could save his life, but the five detainees were gunned down to death.

388. P.W.09 finally stated that after independence achieved he moved to Nazirpur Bazar and came to know from the local residents that in the night of the event happened the Razakars Al Badrs he named and the Pakistani army men had left the dead bodies of five victims abandoned in front of Nazirpur Land Office and on the following day the locals dumped the bodies of five victims in the Kans grassland (bush of soft downy white flowers), on the east bank of the river Bakla. On knowing it he (P.W.09) identified the place where the victims' bodies were dumped. P.W.09 concluded his deposition by stating that his father, brother and all the detained victims used to assist the freedom-fighters and thus they were brutally killed.

389. In cross-examination on behalf of absconding accused Mohammad Khalilur Rahman P.W.09 stated in reply to defence question that he did not initiate any case over the event

arraigned; that he could not say whether any of their family initiated any such case; that the river Katakali is about half kilometre far from their house; that the house of accused Khalilur Rahman was about 40/50 hands far from their house. P.W.09 denied defence suggestions that he did not see the event he narrated; that the accused was not involved with the event alleged and that he testified implicating this accused out of rivalry and being tutored.

390. P.W.10 Md. Mojnu Mia [59/60] is a resident of village Noagaon under Police Station Durgapur of District Netrokona. He is the son of victim martyr Mamruj Ali. His family sided with the war of liberation. He witnessed the attack launched at their house leading to terrible killing of five detainees including his father by the gang formed of Pakistani occupation army, Razakars and Al Badrs.

391. P.W.10 stated that on 11th Kartik corresponding to 09<sup>th</sup> Ramadan in 1971, after the *Maghrib* prayer, he and his father were having *iftar*. At that time a group formed of 10/12 Pakistani army and 40/50 Razakars and Al Badrs besieging their house started looting household. The Peace Committee member Nabi Hossain (now dead), Al Badr Commander Khalilur

Rahman, Razakar Azizur Rahman (died during trial), Razakar Ashok Ali (died during trial), Razakar Ramjan Ali (now dead), Razakar Mokbul Hossain alias Mogol Hossain (now dead), Razakar Shahnewaj (died during trial), Razakar Ali Newaz (now dead) and many more invaders trespassed their room and looked for his (P.W.10) freedom fighter maternal uncle Mojahar. His father told that he did not know his whereabouts which resulted in grievous torture upon him and the invaders dragged him outside, tying him up.

392. P.W.10 also stated that in the front courtyard he found that Chamir Uddin Mondol, his son Sharafat Ali, Fazil Uddin, Abdul Kadir and Abul Hossain were also kept detained, tying them up. Afterward, the squad moved back toward Nazirpur taking five detainees and his father with them. He (P.W.10) then started following them secretly and on the way he met Marfat Ali, the son of detained Chamir Uddin who was also following the gang and at a stage they saw the gang heading toward Singpur, taking away six detainees with them, crossing the river Katakhal. Then they two crossed the river by going in swimming.

393. P.W.10 continued stating that on the same day at about 08:00/08:30 P.M. with the moonlight he could see the squad

making the six detainees including his father stood in a line on the bank of the river Singpur and at that time he saw one detainee jumping into the river and then the Razakars and Al Badrs he named and Pakistani army men gunned down five detainees to death.

394. P.W.10 next stated that after experiencing this phase of the event he returned back home and disclosed it to the locals. On the following morning he heard from people that Abul Hossain (one detainee) came back home. Then they moved to Abul Hossain and heard from him that six detainees were made stood in a line on the bank of the river and then strategically fastening the bind in his hands he (Abul Hossain) saved his life by jumping into the river and could come back home and the five detainees were killed by gunshots.

395. Finally, P.W.10 stated that after the independence achieved he knew from the locals of Nazirpur that the dead bodies of five detainees were left abandoned in front of the sub-camp of Pakistani army at Nazirpur Land Office. On the following day the locals later recovered the dead bodies and dumped those in the nearby Kans grassland (bush of soft downy white flowers). They then identified the site where the five dead bodies (of victims) were made dumped. The five detainees who were

annihilated and the survived victim Abul Hossain (P.W.08) used to assist the freedom-fighters. The Razakars and Al Badrs he named were the residents of their village and their neighbouring village and thus he knew them beforehand.

396. In cross-examination on behalf of accused Mohammad Khalilur Rahman P.W.10 stated in reply to defence questions that Adam Ali lodged a complaint in Durgapur Court in 2009 and he was a witness in the said complaint; that he could not say whether there had been any case over the event under The Collaborators Order, 1972 and that the accused Mohammad Khalilur Rahman was engaged with Jamaat E Islami politics.

397. P.W.10 denied the defence suggestions that he did not know the accused; that the event he narrated did not happen; that he did not see and hear the alleged event. That the accused was not Al Badr commander and was not involved with the event alleged.

**398. P.W.11 Md. Abdur Rashid (75/76)** is from village-Noagaon, Police station-Durgapur of District Netrokona. During 1971 he was a boatman and sometimes used to catch fish as profession. He recounted facts crucially related to the event.



399. In respect of the event of attack that resulted in horrific killing of civilians and destruction of properties P.W.11 stated that on 11<sup>th</sup> Kartick 1971 at around 04:00 P.M. he was catching fish in Katakali river. At that time, he found a gang formed of 10/12 Pakistani occupation army and 40/50 Razakars and Al Badrs arriving on the north bank of the river called him and threatened that any disobedience would result in his killing.

400. P.W.11 next stated that he then moved to them taking boat when he recognized Peace Committee Member Nabi Hossain (now dead), Al Badr Commander Khalilur Rahman, Razakar Azizur Rahman (died during trial), Razakar Ashok Ali (died during trial), Razakar Ramjan Ali (now dead), Razakar Mokbul Hossain alias Mogol Hossain (now dead), Razakar Shahnewaj (died during trial) and Razakar Ali Newaz (now dead) accompanying the squad. They were the residents of their village and neighbouring village and thus he knew them beforehand. Razakars and Al Badrs crossed the river by his boat and the rest crossed the river by 5/6 other boats which were kept anchored there. He (P.W.11) then saw Al Badr Khalilur Rahman, keeping eye on a written note, taking it out of his pocket, reading the name of followers of freedom-fighters Fazil

Uddin, Abdul Kadir, Chamir Uddin, his son Sharafat Ali, Mamruj Ali.

401. P.W.11 also stated that next the Pakistani army men, Razakars and Al Badrs moved toward the House of Fazil Uddin. He remaining in hiding inside a paddy field saw them committing looting and arson at the house of Fazil Uddin and Abdul Kadir. The gang then forcibly captured Fazil Uddin and Abdul Kadir and Abul Hossain (P.W.08) the son of Abdul Kadir when they were on the way to their home and took them away toward the house of Chamir Uddin. He (P.W.11) then returned back home.

402. P.W.11 stated too that after Maghrib prayer he came to know that in addition to those three (Fazil Uddin, Abdul Kadir and Abul Hossain) detainees the squad also forcibly captured Chamir Uddin, his son Sharafat Ali and Mamruj Mia and moved back toward Nazirpur taking the detainees with them. On the same day in night at about 08:00/08:15 P.M. he heard 7/8 gun firing from the end of Singpur.

403. P.W.11 finally stated that on the following morning Abul Hossain (one survived detainee) came back home and he described that the accused he named and Pakistani army gunned

down five detainees to death. He (Abul Hossain) could save his life by jumping into the river as the bind in his hands got fastened.

404. In cross-examination by the accused Khalilur Rahman P.W.11 denied the suggestions put to him that the accused was not involved with the event he narrated; that he did not know the accused; that what he testified was untrue and that the event he narrated did not happen.

**405. P.W.19 Md. Abdur Rahman (72)** is a resident of village Anandapur under police station Kalmakanda of District Netrokona. He being the son of martyr father chiefly testified the event arraigned in charge no.03. In addition to it he narrated what he heard in respect of the event arraigned in charge no.04.

406. P.W.19 stated that three days after the event arraigned in charge no.03 happened he heard from the people that the squad formed of Pakistani army, Al Badr Khalilur Rahman, Razakar Azizur Rahman (died during trial), Razakar Shahnawaj(died during trial), Razakar Ramjan (now dead), Razakar Ashok Ali (died during trial) and Razakar Rajab Ali(now dead) whom he could recognize in accomplishing the event of attack as arraigned in charge no.03 forcibly captured Chamir Uddin, his

son Sharafat Ali, Abdul Kadir @ Raja Mia, Mamruj Ali and Fazil Uddin by launching attack at village-Noogaon and gunned them down to death, taking them on the bank of the river Katakhalī at Singpur.

407. In cross-examination P.W.19 denied the defence suggestions that he did not know the accused and that the accused was not involved in committing the alleged event; that he did not hear the event alleged and that what he testified was untrue.

**408. P.W.22 Abdul Rashid (66/67)** is a resident of village-Noogaon under police station Durgapur of District Netrokona is a heresy witness. In addition to describing the event arraigned in charge no.03 he testified what he heard in respect of the event arraigned in this count of charge i.e. charge no.04.P.W.22 is a resident of the crime village.

409. P.W.22 stated that three days after the event arraigned in charge no. 03 happened the Razakars and Al Badrs Khalilur Rahman, Razakar Azizur Rahman (died during trial), Razakar Shahnewaj (died during trial), Razakar Ramjan (now dead), Razakar Ashok Ali (died during trial) and Razakar Rajab Ali(now dead), Razakar Newaj(now dead) whom he could

recognize in accomplishing the event of attack as arraigned in charge no.03 forcibly captured Chamir Uddin, Sharafat Ali, Raja Mia, Mamruj Ali, Fazil Uddin and Abul Hossain by launching attack at village-Noagaon and gunned down five detainees to death taking them on the north bank of the river Katakhal at Singpur. He heard the event from Abul Hossain (survived victim) and Mojnu Mia. He (P.W.22) knew the Al Badrs and Razakars he named as they were from their neighbouring village.

### **Finding with Reasoning on Evaluation of Evidence**

**410. Mr. Rana Das Gupta**, the learned prosecutor in placing argument first submitted that the event arraigned in this count of charge reflects the gruesome and indiscriminate killing of numerous civilians belonging to ideology of pro-liberation political party Awami League and they were the followers of freedom-fighters. That is to say, the victims belonged to a 'political group'--- a protected group as enumerated in section 3(2) (c) of the Act of 1973. Intent of the killing squad accompanied by the accused Al Badr commander Mohammad Khalilur Rahman and his cohorts was to keep impact in eliminating the existence of such 'political entity' to which the victims were sympathizers and partisan and thus the criminal

acts leading to killing numerous civilians and grave appropriation of civilians' objects constituted the offence of 'genocide'. The Act of 1973 includes such acts directing 'political group' as an offence of 'genocide'.

411. The learned prosecutor next submitted drawing attention to the evidence presented that P.W.06, P.W.07, P.W.09 and P.W.10 are close relatives of victims and they experienced how the gang accompanied by the accused Mohammad Khalilur Rahman and his cohorts and Pakistani army men committed horrendous criminal acts. P.W.08 Abul Hossain is the survived victim who witnessed the entire event which ended in killing five detained civilians belonging to a distinct political entity. Defence could not bring anything to taint what these ocular witnesses narrated in Tribunal, by cross-examining them. Defence simply denied the involvement of the accused with the event happened. But mere denial is not at all sufficient to question the ocular narrative the witnesses made.

412. It has been further submitted by the learned prosecutor that in all four accused have been indicted in this charge. But of them three already died during trial. However, the testimony implicating all these four including the accused Mohammad

Khalilur Rahman carries credence to prove that in exercise of dominating position in Al Badr Bahini, the ‘action section’ of Jamat e Islami the accused Mohammad Khalilur Rahman knowingly and deliberately participated in accomplishing the object of the criminal enterprise, sharing specific intent to destroy the ‘political group’, in whole or in part. Destruction of a protected group does not mean destruction of the entire group. Significant number of victims and pattern of the attack conducted is sufficient to infer whether the attack was intended to further destruction of a ‘protected group’.

**413. Mr. Gazi M.H. Tamim**, the learned state defence counsel defending the absconding accused Mohammad Khalilur Rahman submitted that the witnesses did not have reason of knowing the accused since prior to the event alleged. Thus, testimony of witnesses is incredible. It could not be proved that the accused was Al Badr commander. It was not possible of seeing the alleged act of killing that allegedly happened in night. Non initiation of any case over the alleged event after independence creates doubt as to the event arraigned.

414. Tribunal notes that three others namely, Md. Azizur Rahman, Md. Shahnewaj, Ashok Ali, cohort Razakars too were

indicted in this count of charge by rendering order on charge framing. But during trial, on different dates they died and accordingly proceeding so far as it relates to them stood abated. Trial of the case thus concluded only against one accused Mohammad Khalilur Rahman (absconding). Now, adjudication of charge shall concentrate to determination of liability of the accused Mohammad Khalilur Rahman.

415. Majority of witnesses, the relatives of victims had fair opportunity of seeing the facts occurred during the first phase of attack that resulted in forcible capture of civilians belonging to the ideology of pro-liberation political party, looting household and burning down the houses, as arraigned. P.W.08 Abul Hossain is the survived victim who is the key witness. In determining the arraignment the facts require to be proved are—

- (i) The group formed of Pakistani army, Al Badr commander accused Mohammad Khalilur Rahman and his cohort Razakars carried out systematic attack at the houses of the victims;
- (ii) The gang committed looting, burnt down houses and forcibly captured six civilians and took them away;
- (iii) On the same day in night the detainees were taken on the bank of the river Katakhalī where the



perpetrators accompanied by the accused fired gunshots directing the detainees that resulted death of five and one Abdul Hossain got survived by jumping into the river;

(iv) The accused Mohammad Khalilur Rahman knowing consequence and sharing intent accompanied the gang at the sites;

(v) The specific intent of the killing squad was to destroy a distinct political entity, a protected group, in whole or in part.

416. P.W.04, the grand-son of victim Mamruj Ali recounted when and how the attack was conducted in effecting unlawful capture of his uncle Fazil Uddin, his sister's husband Abdul Kadir @ Raja Mia, his son Abul Hossain, neighbour Chamir Uddin and his son Sharafat Ali .

417. It is evinced from testimony of P.W.04 that the gang committed looting as well, in course of attack. P.W.04 also saw the gang moving toward Nazirpur taking those detainees and Mamruj Ali with them. It stands proved too from unimpeached ocular testimony that accused Mohammad Khalilur Rahman and his cohorts were with the gang when it carried out such attack and also at the time of launching attack at the house of his (P.W.04) grand-father Mamruj Ali.

418. The above facts involving the attack and presence of the accused Mohammad Khalilur Rahman with the squad chained to the event happened gets corroboration from testimony of P.W.05 who was a neighbour of victim Mamruj Ali. It depicts too from unshaken ocular narrative of P.W.05 that at the relevant time he had been aside of the house when he could see the group formed of 10/12 Pakistani occupation army, the Al Badr accused Mohammad Khalilur Rahman and his cohorts 40/50 Razakars and Al Badars bringing Fazil Uddin, Abdul Kadir @ Raja Mia, his son Abul Hossain, Chamir Uddin and his son Sharafat Ali at the house of Mamruj Ali, tying them up. Mamruj Ali too was then unlawfully detained.

419. It reveals that the act of forcible capture of six detainees by launching attack at the house of Mamruj Ali and neighbouring houses does not seem to have been denied even in cross-examination of P.W.05.

420. Another key direct witness to the criminal acts perpetrated in course of first phase of attack is P.W.06 Adam Ali who is the son of victim martyr Chamir Uddin and brother of another victim Sharafat Ali. He experienced how the accused Mohammad Khalilur Rahman and his cohorts entering inside

their house forcibly captured his father Chamir Uddin and his brother Sharafat Ali.

421. Testimony of P.W.06 demonstrates too that the perpetrators looted their household, in conjunction with the attack and then moved back taking away his father and brother with them. Accused indicted was from the neighbouring village and that's why P.W.06 knew him beforehand. It was thus likely to recognize the accused Mohammad Khalilur Rahman accompanying the enterprise. Defence does not seem to have made any effort to negate what the P.W.06 narrated in examination-in-chief.

422. It thus stands proved from ocular evidence presented that accused Mohammad Khalilur Rahman and his cohorts being part of the criminal enterprise remained stayed with the gang in accomplishing the criminal acts, by launching systematic and orchestrated attack.

423. What happened after the victims got captured unlawfully and looting household by conducting systematic attack? It transpires that the gang then moved back toward Nazirpur taking the six detainees with them. Majnu Mia the son of

Mamruj Ali secretly started following the gang. Consistent and corroborative narrative of relatives of victims testifying in Tribunal leads to infer that the design of the criminal enterprise was to effect selective forcible capture of unarmed civilians.

424. It depicts from testimony of P.W.05 that all the detainees used to provide assistance to freedom-fighters. Presumably, this was the reason of targeting the victims on account of their affiliation in a distinct political entity and intent of the criminal design was to destroy the political group to which the victims were active part.

425. P.W.05 few hours later i.e. after the detainees were taken away heard frequent gun firing from the end of Singpur, north bank of the river Katakali. It could not be impeached. In absence of anything contrary this fact was chained to the act of killing, the ending phase of the attack. P.W.05 heard the phase of killing also from Majnu Mia (son of Mamruj Ali) who followed the gang when it was on moving back taking detainees with them.

426. P.W.05 also learnt from survived victim Abul Hossain as to how the five detainees were annihilated by gunshots and how he

could survive. Hearing this ending phase of the event as testified by P.W.05 is quite rational. Besides, defence does not seem to have been able to controvert this crucial fact. Thus, hearsay evidence of P.W.05 in this regard carries sufficient credence and probative value.

427. Facts unveiled in ocular testimony of P.W.06 prove it well that the accused Mohammad Khalilur Rahman knowingly accompanied the gang and deliberately participated in effecting forcible capture of the civilians including the father and brother of P.W.06. Defence does not seem to have made effort to refute the crucial ocular narrative made in this regard.

428. In course of attack the squad accompanied by the accused Mohammad Khalilur Rahman, being part of the enterprise also carried out looting, it depicts from the evidence of P.W.06. Such appropriation of civilians' property was the explicit indicia of extreme aggression and intent of the group of invaders accompanied by the accused. Unlawful forcible capture of victim Mamruj Ali and other victims, in conjunction with the attack stands corroborated too by the P.W.06, the neighbour of Mamruj Ali and P.W.07, the grand-son of victim Mamruj Ali.

**429. P.W.07 Md. Abdur Rashid, the** grand-son of victim Mamruj Ali. He also saw the gang accompanied by the accused Mohammad Khalilur Rahman keeping Chamir Uddin Moral, Sharafat Ali, Abdul Kadir @ Raja Mia, his son Abul Hossain and his (P.W1;07) uncle Fazil Uddin guarded, tying them up at the east of their house and his grand-father Mamruj Ali too was taken there, tying him up.

430. It could not be denied even that 4/5 days later family inmates of victim Mamruj Ali deported to India as testified by the P.W.7, the grandson of Mamruj Ali. Presumably, due to horror broadened and trauma they sustained they opted to deport. Such displacement was under coercion. It adds explicit assurance as to the event of attack leading to indiscriminate killing of numerous civilians forming part of a political entity, a protected group.

**431. P.W.08 Abul Hossain witnessed the** attack conducted at the houses of victims Abdul Kadir and Fazil Uddin and saw the gang looting household and setting those two houses on fire. Such appropriation of civilians' objects was carried out in violation of international humanitarian law which was patent

indicia of specific intent of the enterprise in conducting the attack, directing civilians of a protected group.

432. It stands proved that at a stage of attack launched the gang unlawfully detained P.W.08 as well, tied him up and started taking him away along with other detainees and on their way back they were kept tied up with the tree, east to the house of Chamir Uddin and the invaders including the accused and his cohorts he recognized carried out attack at the house of Chamir Uddin, committed looting and also unlawfully detained Chamir Uddin and his son Sharafat Ali there from.

433. Ocular version of P.W.08, the survived victim also demonstrates patently that the gang also aggressively burnt down their house and on seeing it his father and Fazil were coming to house with screaming when the accused persons he named forcibly captured them and tied them up. That is to say, the gang in materializing the object of the attack had deliberately carried out devastating activities as well, directing 'civilians' property'. Defence does not seem to have taken any effort to impeach it.

434. What has been unveiled in testimony of P.W.10 Md. Mojnu Mia, the son of victim martyr Mamruj Ali? P.W.10 too is

a key witness. It is evinced that his family sided with the war of liberation. He witnessed the attack launched at their house leading to terrible killing of five detainees including his father by the gang formed of Pakistani occupation army, Al Badr commander the accused Mohammad Khalilur Rahman and his cohort Razakars and Al Badrs.

435. It depicts from testimony of P.W.10 that the gang formed of Pakistani army, the accused Mohammad Khalilur Rahman and his cohort Razakars, on the day of the event happened, after the *Maghrib* prayer, besieging their house started looting household. The invaders, by encroaching their room started looking for his (P.W.10) freedom fighter maternal uncle Mojahar when his father told that he did not know his whereabouts. Then with this the invaders inflicted grievous torture upon him and dragged him outside, tying him up. In no way defence could controvert it.

436. The above piece of ocular version proves the attack conducted and participation of accused therewith, in agreement with the object and specific intent of the enterprise. P.W.10 knew the accused and his cohorts beforehand as they were the residents of their village and their neighbouring village. Thus,



naturally, P.W.10 had opportunity of recognizing the accused and his cohorts (indicted but died during trial) accompanying the gang at the crime site. Mere denial of it on part of defence does not taint its credibility.

437. In the front of the yard P.W.10 found victims Chamir Uddin Mondol, his son Sharafat Ali, Fazil Uddin, Abdul Kadir and Abul Hossain detained. Afterward, when the gang was on moving back toward Singpur, crossing the river Katakhal taking the six detainees with them, P.W.10 Majnu Mia and Marfat Ali, son of detainee Chamir Uddin started following them secretly. It appears to have been corroborated from other witnesses. Taking away the detainees toward Singpur, crossing the river Katakhal gets corroboration from P.W.08, the survived victim.

438. Gruesome killing, the ending phase of the attack happened in night. It is claimed that two i.e. Marfat Ali(P.W.09) and Majnu Mia(P.W.10) followed the gang when it was moving back from the site taking the detainees with them and they could see the act of killing by moonlight.

439. Unimpeached and corroborative testimony of P.W.06 and P.W.07 reveals too that Marfat Ali (P.W.09), brother of P.W.06

and Majnu (P.W.10) the son of detainee Mamruj Ali continued following the gang. It was natural. Horrific situation arising out of horrendous attack did not permit any of relatives of detained victims to resist or counter the criminal activities of the squad, true. But said Majnu Mia the son of detainee Mamruj Ali and Marfat Ali, despite being panicked intended to watch the fate of their dear ones, the detainees who were taking away by the gang. We find no reason to disbelieve it.

440. The effort of Marfat Ali (P.W.09) and Majnu Mia(P.W.10) could not save the detainees. They coming back home disclosed the killing of five detainees taking them on the bank of the river Singpur Katakhalı when one detainee Abul Hossain (P.W.08) got survived by jumping into the river. The phase of mass killing happened in night and in open place when Marfat and Majnu Mia could see it with the moonlight. It was likely of experience this horrendous act. P.W.06 knew it from his brother Marfat Ali (P.W.09).

441. The witnesses came to know how the phase of killing happened from Marfat Ali (P.W.09), Majnu Mia (P.W.10) and also from Abul Hossain (P.W.08), the survived victim. It remains undisputed that dead bodies of five detainees were later

dumped at a place near the bank of the river. Defence does not dispute it.

442. Knowing the act of killing and how, where and when it happened as testified by the witnesses could not be impeached in any manner. Besides, hearing the fact chained to perpetration of the act of killing was quite natural. Such hearsay evidence is admissible and it carries probative value as it gets corroboration from the ocular version of the survived victim P.W.08.

443. The core essence of the event as found proved portrays the act of forcible capture of six detainees who were potential followers of Awami League, a pro-liberation political party; taking them away toward Nazirpur; and few hours later five detainees were gunned down to death on the bank of the river Katakhal and one detainee managed to escape by jumping into the river.

444. The act of killing five detainees remained undisputed. The gang being accompanied and substantially assisted by the accused Mohammad Khalilur Rahman and his cohorts by launching systematic attack got the victims forcibly captured and took them away to the killing site. Thus, the accused

Mohammad Khalilur Rahman had explicit 'concern' and 'participation' even in actuating the killing of five detainees.

445. P.W.07 is the grand-son of victim Mamruj Ali. On the day following the event of killing happened he heard the phase of killing also from survived victim Abul Hossain (P.W.08) who described that they the six detainees were made stood on the bank of the river Katakhal and at that time he by making bind in hands unfastened jumped into the river and then Razakars and Pakistani army gunned down the five detainees to death.

446. It has been unveiled in cross-examination of P.W.07 that his father initiated a case over the event arraigned after independence and the accused persons (indicted) had been in prison in connection with that case and later they got release pursuant to general amnesty. This version rather affirms the barbaric event of attack that resulted in devastating acts, abduction and brutal killing of numerous unarmed civilians carrying ideology of pro-liberation political party, Awami League.

447. What the P.W.08 Abul Hossain, the survived victim experienced when he along with five other detainees were taken

on the bank of the river Katakhalī by crossing it by boat? It stands proved from unshaken crucial ocular narrative of P.W.08 that they the detainees were kept there stood in a line. At that time the bind in his (P.W.08) hands got slackened and instantly he jumped into the river. Few times later he (P.W.08) heard 7/8 gun firing from the end of the bank of the river. It was about 08:00 P.M. He (P.W.08) could guess that the five detainees who were made stood in a line on the bank of the river were gunned down to death. This crucial part of ocular narrative related to the ending phase of the criminal mission remained unimpeached.

448. The witnesses came to know how the phase of killing happened from them and also from P.W.08 Abul Hossain, one survived victim. Hearing the facts chained to perpetration of the act of killing, the principal crime was quite natural. It remains undisputed that the five detainees were later dumped at a place near the bank of the river. Defence does not dispute it.

449. It depicts too that finally, P.W.10, with the moonlit, could see the squad making the six detainees including his father stood in a line on the bank of the river Singpur and at that time he saw one detainee jumping into the river and then the Razakars and Al Badrs he named and Pakistani army men gunned down five detainees to death. In this way the horrific event ended. Defence

does not seem to have made any effort to taint this piece of version.

450. On the following morning P.W.10 heard also from Abul Hossain (P.W.08), the survived detainee as to how the phase of killing five detainees was perpetrated and how he got survived. Hearsay evidence of P.W.10 on this part seems to have been consistently corroborated by P.W.08 who as the survived victim testified what he experienced in course of the ending phase of the attack that resulted in mass killing of civilians perceived them to be the sympathisers and followers of a 'political group'.

451. Based on facts and circumstances linked to the event as discussed above we got it proved that the accused Mohammad Khalilur Rahman was with the criminal gang at the sites. Obviously he did it in exercise of his dominating position in Al Badr Bahini and sharing specific intent of the criminal squad. Thus, it may be unerringly presumed that the accused Mohammad Khalilur Rahman being an active part of the criminal enterprise substantially assisted, aided and contributed in accomplishing such devastating activities. Intent was to terrorize the targeted civilians who were perceived to be the significant sympathizers and followers of a 'political group'.

452. It appears that after the independence achieved P.W.08 and P.W.10 came to know that the dead bodies of detainees including his father were left abandoned in front of Nazirpur Land Office and later the people dumped their bodies in nearby Kans grassland (bush of soft downy white flowers).

453. It gets corroboration from P.W.7 whose uncontroverted testimony too depicts that after the independence achieved they came to know from one Mokbul Moulana (now dead), the Imam of Nazirpur mosque that the dead bodies of five detainees were left abandoned in front of Nazirpur Land Office and then those were dumped in the Kans grassland (bush of soft downy white flowers, adjacent to the bank of river Bakla).

454. Leaving dead bodies abandoned without funeral as found proved was indeed grave violation of human rights that caused untold trauma to the relatives of victims. It was a severe degrading treatment to the dead bodies as well. The horror spread through the extreme atrocious activities did not leave space to the relatives of victims to bury the dead bodies of their dear ones. Indisputably such grave deprivation caused immense trauma and pain not only to the relatives of victims but also to the community and the nation as well.

455. P.W.19 Md. Abdur Rahman and P.W.22 Abdul Rashid are the residents of neighbouring locality. They chiefly recounted the event arraigned in charge no.03, as direct witnesses. In addition to the event arraigned in charge no.03 they also testified what they heard in respect of the event arraigned in this charge, i.e. charge no.04. This charge does not rest only upon their hearsay testimony.

456. However, it appears that their hearsay testimony gets corroboration from direct witnesses. They heard that the accused Mohammad Khalilur Rahman, his cohort Razakars and Pakistani occupation army men forming group committed the crimes including abduction, destruction and killing the victims. Thus, such hearsay evidence is admissible and deserves to be taken into consideration. It is now well settled.

457. In 1971, during the war of liberation atrocities loaded with horror committed even around neighbouring locality could not be kept distanced from people's acquaintance. In addition to the victims and relatives of victims the people even of surrounding localities thus naturally came to know the notoriety of Razakars and Al Badrs. From this point of view we also take the hearsay testimony of P.W.19 and P.W.22 into consideration, particularly when the defence does not seem to have been able to refute it.



458. It appears that in addition to evidence of witnesses examined in Tribunal in support of this count of charge, statement made to IO by one witness, namely Abdur Rashid whose name finds place in serial nos. 39 of the volume of statement of witnesses has been received in evidence under section 19(2) of the Act of 1973 in support of this charge, as prayed by prosecution on ground that he died during trial, after making statement to the IO.

459. It appears that the witness Abdur Rashid used to work as a domestic aide at the house of one victim Chhamir Uddin who was wiped out along with other detainees, as arraigned in this count of charge. Already it stands proved. Besides, the statement of this witness in this regard made to IO gets steady corroboration from evidence of direct witnesses examined in Tribunal, in relation to the event arraigned. This witness Abdur Rashid could not be produced before Tribunal as after making statement to the IO he died.

460. We have gone through the statement that this witness Abdur Rashid made to IO. It demonstrates patently that he experienced the criminal acts conducted in course of attack arraigned in this count of charge. For the reason of his

attachment with the family of one victim Chhamir Uddin naturally he had occasion of seeing the first phase of attack. It appears too that he also heard the phase of killing the detainees from the survived victim Abul Hossain (P.W.08) and other competent witnesses. We do not find any inconsistency between the statement of this witness made to IO and the testimony of witnesses including then survived victim Abul Hossain examined in Tribunal, in relation to the event arraigned.

461. It has been argued by the learned state defence counsel that it is not practicable of memorizing what happened about five decades back and thus narrative made by the witnesses does not carry any evidentiary value and credence.

462. We are not agreed with the above defence submission. Tribunal notes it emphatically that in dealing with the arraignments relating to atrocious events occurred in 1971 during the war of liberation we are to keep it in mind that the horrific event happened in startling context and narrative recounted by the witnesses chiefly on core aspect of the event they experienced may remain still alive in their reminiscence. Research on human cognition suggests that a piece of information or act causing immense mental trauma, once it is

stored in long-term memory, stays alive. Trauma stored in the episodic memory of witnesses has thus reliably portrayed the event happened.

463. It stands proved from unimpeachable ocular and corroborative narrative of P.W.06, P.W.07, P.W.08 and P.W.10 the relatives of victims that the group of invaders being accompanied by accused Mohammad Khalilur Rahman and his cohorts committed indiscriminate looting household at the houses of victims in conjunction with the attack which was intended to cause destruction of the group attacked.

464. Such criminal act was rather a grave attack on normal livelihood of protected civilians. Such devastating activities were carried out in addition to unlawfully detaining numerous civilians, the followers of ideology of the pro-liberation 'political group' and actuating annihilation of five detainees. It stands proved.

465. It is now jurisprudentially settled that in a criminal trial 'mere denial' is not sufficient to exclude one's testimony if it inspires credence. In the case in hand, it appears that even trustworthiness of witnesses particularly the direct witnesses to material facts could not be diminished by cross-examining them.

Mere putting suggestion denying what has been testified by the P.W.s implicating accused does not go with the object of cross-examination.

466. In light of facts divulged combined with legal propositions we are persuaded to deduce that the accused Mohammad Khalilur Rhaman in agreement of the common object and intent of the criminal squad facilitated the commission of the crimes, being part of the criminal enterprise. Tribunal notes that agreement or understanding to materialize the criminal mission may be inferred from facts and circumstances. This view finds support from the observation made by the **ICTY** which is as below:

“The existence of an agreement or understanding for the common plan, design or purpose need not be express, but may be inferred from all the circumstances.”

**[Tadic Appeal Judgement, para. 227; see also Krnojelac Trial Judgement, para. 80]**

467. Crimes perpetrated in course of the designed attack arraigned and the killing of numerous civilians carrying ideology of a distinct political entity did not result from the

criminal propensity of single individual[s] forming part of the group but constituted manifestations of ‘collective criminality’. We deduce it unerringly.

468. The settled proposition states that it is immaterial to show as to which member or members of the gang or the accused himself had acted, to further the agreed object and intent of the criminal mission. The doctrine of JCE [Basic Form] need not involve the physical commission of crimes by all the members of the JCE. Legal proposition evolved in this regard in the ICTY may be cited here as relevant which is as below:

“If the agreed crime is committed by one or other of the participants in a joint criminal enterprise such as has already been discussed, all the participants in that enterprise are equally guilty of the crime regardless of the part played by each in its commission.”

**[Vasiljevic, ICTY Trial Chamber, Judgment: November 29, 2002, para 67]**

469. Accused person’s act of culpable presence while launching attack to abduct the victims by accompanying the group of attackers was rather an act of ‘participation’, ‘abetment’ and ‘facilitation’ to the accomplishment of the victim’s confinement, torture caused to them and there had been a ‘causal connection’

between such acts and the act of killing numerous civilians, the principal crime. From this point of view the accused Mohammad Khalilur Rahman was consciously concerned event in actuating the killings, it may be justifiably deduced.

470. Why the victims were so targeted of the systematic and designed attack? What was its purpose and intent? It has been depicted that the father, brother of P.W.09 and all the detained victims used to assist the freedom-fighters. It reveals too that the P.W.11, in course of attack, saw Al Badr Mohammad Khalilur Rahman keeping eye on a written note taking it out of his pocket and he uttered the name of followers of freedom-fighters Fajil Uddin, Abdul Kadir, Chamir Uddin, his son Sharafat Ali, Mamruj Ali. It may be inferred that being imbued by such instigation and inciting act those targeted civilians were forcibly captured.

471. The undisputed facts unveiled lead to the inference that the gang got the victims unlawfully detained perceiving them to be the followers of a distinct 'political group' which is protected in the Act of 1973.

472. It may be thus unerringly inferred that the intent of the group of attackers was to bring about the outcome which was

‘purpose-bound design’. Purpose was to commit physical and biological destruction of a protected group, in part. In agreement of the common object and special intent the accused Mohammad Khalilur Rahman had acted, being active part of the criminal enterprise.

473. It is now well settled that the special intent to commit genocide lies in the intent to destroy the protected group, in whole or in part. It is to be seen whether the deliberate infliction on the group adversely impacted conditions of life of the members of the community or group attacked.

474. The offence of genocide embraces only acts committed with the goal and intent of destroying all or part of a protected group. That is to say, the ‘goal’ of the attack is to be considered and not the actual destruction of the group targeted.

475. It is now well settled that to prove the ‘specific intent’ required constituting the offence of genocide, it is not necessary to establish the *de facto* destruction of the group targeted, in whole or in part. Besides, mere number of victims killed brutally does not negate the existence of specific intent of the perpetrators.

476. Question may arise as to whether wiping out five civilians belonging to a political group and causing mental harms to their relatives by various prohibited acts including deportation under coercion constituted the offence of genocide. But it is not required to show that the gang annihilated a large number of members of the protected group. Intent of the attackers is to be considered. Mere lesser number of individuals annihilated does not negate the intent of the perpetrators. Specific intent of the perpetrators is the key element to constitute the offence of genocide. It cannot be proved by any tangible evidence. It may be inferred from pattern and gravity of offences.

477. In the case in hand, facts and circumstances emerged indubitably suggest to conclude that the victims formed part of a 'protected group' and intent of perpetrators was to leave destructive impact upon the said protected group of a certain vicinity, by inflicting grave mental and bodily harm. It was fragmented part of 'genocide' committed in the territory of Bangladesh in 1971, during the war of liberation. The Appellate Division of Supreme Court of Bangladesh in the appeal preferred by Ali Ahsan Muhammad Mujahid resolved this issue relying upon the observation made by the ICTR as below:



“ Similarly in the case of **Prosecutor v. Ndindabahizi, Case No. ICTR-2001-71** (Trial Chamber), the Chamber held, “The fact that only a single person was killed on this occasion does not negate the perpetrators’ clear intent, which was to destroy the Tutsi population of Kibuye and of Rwanda, in whole or in part. Accordingly, the killers of Nors committed genocide.”

**[Criminal Appeal No. 103 of 2013: Ali Ahsan Muhammad Mujahid Judgment: Appellate Division, Judgment dated 16.06.2015: page -153]**

478. We reiterate that it is impossible to adduce direct evidence of the perpetrator’s intent to commit genocide. The intent may be thus well inferred from the factual circumstances of the crimes perpetrated. Complete annihilation of the group targeted is not necessary to prove that the perpetrators intended to achieve the goal of complete annihilation of the political group the victims belonged, being followers of it. Genocide is a crime which requires specific intent, and the intent may be proven through inference from the facts and circumstances of a case. The ICTR Trial Chamber in the case of **Nahimana, Barayagwiza and Ngeze** observed that—

“The jurisprudence accepts that in most cases genocidal intent will be proved by circumstantial evidence. In such cases, it is

necessary that the finding that the accused had genocidal intent be the only reasonable inference from the totality of the evidence.”

**[Nahimana, Barayagwiza and Ngeze, Appeals Chamber, November 28, 2007, para. 524]**

479. In the case in hand, the victims were singled out not for the reason of their individual identity, but rather on account of their being affiliation with a political group, totality of facts impels to deduce it. Thus, the criminal acts of the squad accompanied by the accused and his cohorts constituted the offence of ‘genocide’. In the case of **Alfred Musema the ICTR Trial Chamber** observed that –

“For any of the acts charged to constitute genocide, the said acts must have been committed against one or more persons because such person or persons were members of a specific group, and specifically, because of their membership in this group. Thus, the victim is singled out not by reason of his individual identity, but rather on account of his being a member of a national, ethnical, racial or religious group.”**[Alfred Musema the ICTR Trial Chamber: 27 January 2000, para-165]**

480. The *dolus specialis* i.e. specific intent is an element of the offence of genocide. The victims were targeted on account of their being followers of the pro-liberation ‘political group, it sands proved. Pattern and magnitude of the event of attack and it’s upshot together suggest that the individuals of the group targeted were chosen by the perpetrators in carrying out massive destructive and indiscriminate atrocities that eventually resulted in indiscriminate killing of civilians belonging to a distinct political ideology. We are of an unerring view that the appalling atrocities were committed targeting a particular protected group, with genocidal intent.

481. Besides, “There is no numeric threshold of victims necessary to establish genocide.” [Seromba, ICTR Trial Chamber, December 13, 2006, para- 319]. We also recall the observation of ICTY Trial Chamber made in the case of **Radislav Kristic** which is as below:

“.....the killing of all members of the part of a group located within a small geographical area, although resulting in a lesser number of victims, would qualify as genocide if carried out with the intent to destroy the part of the group as such located in this small geographical area.....

**[Radislav Krstic ICTY Trial Chamber,  
judgment 02 August 2001, para 590]**

482. In the case in hand, the facts and circumstances together lead to the inference that the accused Al Badr commander Mohammad Khalilur Rahman was aware of the intent of the criminal design and it's 'deadly impact' that the killings and destructive activities would have on the group the victims belonged. The attack was gravely discriminatory as it targeted the victims because of their membership in a group perceived by the perpetrators

483. The pattern and magnitude of the attack carried out and the facts and circumstances divulged lead to deduce that in view of the prevailing context obviously the squad did not move to the rural vicinity on pleasure trip or to materialize any task for effecting well being of civilians. Thus, arrival of the group being accompanied by the accused and his cohorts at the site was intended to conduct attack directing civilians on account of their belonging to a distinct political group. Prosecution has been able to establish the 'genocidal requirement' and 'group requirement' for bringing the event within the ambit of the offence of 'genocide'.

484. Next, such selective attack would not have been possible to carry out without the substantial contribution of the accused Mohammad Khalilur Rhaman and his cohort Razakars and Al Badars who were familiar with the sites and individuals to be targeted for the orchestrated attack.

485. Presence of the accused Mohammad Khalilur Rahman at the site attacked stands proved. Thus, it may be justifiably inferred that in exercise of his significant position in Al Badar Bahini substantially assisted, facilitated and contributed to further the specific intent of committing destructive criminal activities leading to killing numerous civilians, the followers of a political group. It is not required to show that the accused himself physically participated in committing the killing of de3tianeese. Facts unveiled in trial lead to the inference that he had culpable concern also with this ending phase of the event and being active part of JCE he incurred liability. In this regard we recall the observation made by the **ICT Appeal Chamber** in the case of **Tadic** that—

“...the crimes are often carried out by groups of individuals acting in pursuance of a common criminal design. 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.”

**[Tadić ICTY Appeal Judgement, para. 191]**

486. On integrated evaluation of evidence presented it stands proved that the accused Mohammad Khalilur Rahman and his cohort Razakars consciously participated in committing the collective killing. His culpable act and conduct of common ‘understanding’ and with specific intent substantially assisted, contributed, facilitated and impacted to the perpetration of the collective killing constituting the offence of ‘genocide’.

487. Taking the collectivity of horrific facts, circumstances as unveiled we thus deduce that the extreme form of wilful deliberate acts was designed with intent to destroy the distinct ‘political group’ of which the victims were the followers. The accused was aware of such ‘design’ and ‘specific intent’ and thus incurred liability as a co-perpetrator in committing the offence of ‘genocide’.

488. Finally, we conclude that prosecution has been able to prove beyond reasonable doubt that the accused Mohammad Khalilur Rahman being a potential associate of Pakistani army and in exercise of affiliation in Al Badr Bahini, an auxiliary force participated by providing active, substantial and practical assistance and aid in perpetration of killing of numerous individuals belonging to a political group' and mass destruction, with specific intent constituting the offence of '**genocide**' as enumerated in section 3(2)(c)(g)(h) of the Act of 1973 which is punishable under section 20(2) read with section 3(1) of the Act for which the accused person has incurred liability under section 4(1) of the Act.

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

### **[4 accused indicted of whom 3 died during trial]**

**[Event no.05 as narrated at page 37-43 of the formal charge]**

**[Offences of 'abduction', 'confinement', 'torture', 'looting', 'rape', 'murder' and 'genocide']**

489. Charge: That on 17 November, 1971 at about 9/10 A.M. a gang formed of 70/75 Razakars and Al-Badrs, 15/20 Pakistani Occupation Army and the accused (1) Mohammad Khalilur Rahman, (2) Md. Azizur Rahman (died during trial) , (3) Ashok Ali(died during trial) and (4) Md. Shahnewaj(died during trial) by launching attack the house of Amud Ali Sarkar (now dead) at Telipara of village-Baniapara unlawfully detained **Jamal Uddin**

**Rabbani** and looted household. Thereafter, the gang attacked the house of Arfan Ali and raped his wife Hazera Khatun. The gang then shot Pukurjan, the wife of Sukur Mahmud to death when she resisted the attempt to commit rape upon her.

In conjunction with the attack the gang then taking the detained Jamaluddin Rabbani with them arrived near Chandigar Union Council at about 11.30 A.M. where the gang met with another group of Al-Badrs and Razakars keeping an unknown teen aged girl detained with them.

The gang then started heading towards Durgapur and on arrival at Madhya Bazar about 12.30 A.M. it got Newaz Ali Fakir alias Kalimuddin of village-Telachi and Imam Hussain alias Hossain of village-Meladahar detained, on forcible capture.

The above 4(four) detained civilians along with the six [06] detained civilians Abdul Latif alias Lati Mia and Sirajul Islam alias Renu Mia of village-Kakrakanda and Akbar Hossain Talukder, Mokbul Hossain, Abdul Jabbar and Shahjahan Mia of village-Sreeramkhila, forcibly captured from their houses in conjunction with the attack were then taken to Durgapur Birishiri Pakistani Army Camp at about 06:00 P.M where they



were subjected to torture in captivity by the accused persons and their accomplices.

The detained unknown teen aged girl was tortured to death in captivity at the army camp. On the following day, 09 (nine) detainees were taken to the bank of the river Someswari, 50 yards west to the Pakistani Army Camp, where eight [08] were gunned down to death and their dead bodies were thrown into the river. One detainee Jamaluddin Rabbani managed to escape by crossing the river, prior to gun shot.

The civilians so killed on forcible capture were the followers of Awami League, a political party. The gang being accompanied by the accused persons targeted them, with intent to destroy a 'political group', either whole or in part and the attack eventually resulted in brutal killing.

Therefore, the accused (1) Mohammad Khalilur Rahman, (2) Md. Azizur Rahman (died during trial) ,(3) Ashok Ali (died during trial) and (4) Md. Shahnewaj(died during trial) have been charged for actively participating, facilitating, abetting and substantially contributing to the commission of the offences of '**genocide**' as the attack was directed against a 'political group' with intent to destroy it, either whole or in part, as enumerated

in section 3(2)(c)(g)(h) read with section 4(1) of the International Crimes (Tribunals) Act, 1973 or in the alternative to the commission of offences of '**abduction**', '**confinement**', '**torture**', '**rape**', '**looting and murder**' as crimes against **humanity** as specified in section 3(2)(a)(g)(h) read with section 4(1) of the International Crimes (Tribunals) Act, 1973 which are punishable under Section 20(2) of the Act.

## **Evidence of witnesses presented**

490. This charge involves abduction, confinement, torture, looting, rape and murder of numerous unarmed civilians constituting the offences of crimes against humanity or in the alternative genocide. Prosecution intending to substantiate this count of charge adduced six witnesses of whom five have been examined as P.W.15, P.W.16, P.W.17, P.W.18, P.W.26 and P.W.27 has been tendered with P.W.26. Before we weigh the evidence presented first let us see what the witnesses testified.

**491. P.W.15 Md. Jamal Uddin Rabbani (69/70)** is a resident of village- Baniapara under police station- Durgapur of District Netrokona. In 1971 he was a student of class X. He is a direct witness to facts forming part of the event of attack. Besides, he is a survived victim.

492. P.W.15 stated that on 30<sup>th</sup> April 1971 Pakistani occupation army established their camp at Birishiri PC Nol Memorial High School. The local Islamic political parties then formed peace committee, Al Badr and Razakar Bahini and their training was arranged in the said army camp.

493. In recounting the event arraigned P.W.15 stated that on 17<sup>th</sup> November, 1971 at around 09:00/10:00 A.M. he had been at home when a gang formed of 70/75 Razakars and Al-Badrs and 15/20 Pakistani occupation army launched attack at different houses of their village. With this he went into hiding inside a bush nearer to their house when the gang attacked their house. The invaders entering inside their house forcibly captured his father and with this he came to the courtyard of their house when they forcibly captured him too. At that time, he recognized Al Badr Commander Khalilur Rahman, Razakar Md. Azizur Rahman (died during trial) , Razakar Ashok Ali(died during trial), Razakar Md. Shahnewaj(died during trial) and Razakar Ramjan Ali (now dead) accompanying the gang.

494. P.W.15 next stated that the said Razakars looted their house and took him in front of Arfan Ali's house, west to their

house, tying him up and keeping him guarded there some invaders entered inside that house. Few times later he could hear piercing cry of Arfan Ali's wife Hajera Khatun. He could guess that she was being sexually violated. The invaders forcibly captured Arfan Ali and then took him (P.W.15) and Arfan Ali away toward west, on the bank of river Tangai. During crossing the river, when army men fell down from Arfan Ali's shoulder, he was subjected to torture mercilessly and was thrown in the river. Afterward, the said Razakars, Al Badrs and some army men moved toward south and by launching attack at the house of Shukur Mahmud attempted to commit sexual violence upon his widow wife Pukurjan. But when she resisted, she was gunned down to death there.

495. P.W.15 continued describing that said Razakars, Al Badrs and Pakistani army on their way toward Durgapur taking him with them arrived in front of Chandigar Union Parishad where he found another group of Razakars bringing a 15/16 year old girl on capture and then she and he were made stood in front of the house of Abdus Samad Moulavi of Durgapur Modhya Bazar. They the two detainees were kept guarded there and the invaders then carried out reckless and massive destruction in the locality of Modhya Bazar. At that time Newaz Ali Fakir from

Telachi village and Imam Hossain from village Meladohor were brought there on forcible capture, tying them up.

496. P.W. 15 kept stating that they the four detainees were kept guarded there and then the Razakars, Al Badrs and army men moved back and few time later returned back and from their conversation he (P.W.15) came to know that two other were unlawfully detained from Teribazar Ghat who were kept confined at Birishiri army camp. The Razakars, Al Badrs and Pakistani army men moved back leaving them there guarded and they returned back at about 05:00/05:30 P.M. when he (P.W.15) came to know from their conversation that they detained four other civilians from Sreeramkhila by launching attack who were kept confined at the army camp.

497. P.W.15 also stated that they the four detainees were then also taken to the Birishiri camp where they the three were kept confined in a room of the torture cell along with six other detainees namely, Abdul Latif @ Lati Miah, Sirajul Islam @ Renu Miah, Akbar Hossain Talukder, Mokbul Hossain, Abdul Jabbar, Shahjahan Ali. The detained girl was kept confined in an adjacent room. They were subjected to serious merciless torture in captivity which resulted in hemorrhage (**at this point the**

**witness burst into tears and informed that he still bears the scar of such ruthless torture).**

498. P.W.15 then testified that the detained girl was subjected to appalling torture keeping her confined in an adjacent room of the camp. Due to such violence, she continued screaming and at a stage she stopped screaming. On the next day i.e. on 18<sup>th</sup> November, in early morning he (P.W.15) saw through the door and window that the naked blood stained dead body of the girl was taking away. At around 01:00/01:30 P.M. he, through the window, saw 160/170 Pakistani Army dressed dead bodies bringing in front of the open space of the torture cell. Then the injured Major of that camp, Major Sultan was taken there from by Helicopter. Before his departure, Major Sultan ordered with shouting to gun down all detainees kept confined to death.

499. P.W.15 continued stating that in that night at around 08:00 P.M. Pakistani Army, Razakars and Al Badrs entered into their room unlocking it and made them the nine detainees naked , tied them up and took them away toward the Shibganj brink of the river Someswari . Then bind in their hands was made fastened and fired gunshots to them one by one and threw the each dead body into the river. Just before his (P.W.15) turn to face gun firing, he (P.W.15) sat down and jumped into the river and

managed to flee. Afterward, he took refuge in Nurul Huq's place of Khujiura village. They provided him clothes and arranged his medical treatment and on the following day they took him to the border of India. Later, he received training in India and joined the Liberation War. After independence when he came back home he knew that four detainees captured along with him never came back.

500. In cross-examination P.W.15 stated in reply to defence question that he could not say where the accused used to stay after independence; that he could not say the date of death of his parents and that he did not lodge any case over the event. P.W.15 denied defence suggestions that the accused was not Al Badr and was not involved with the commission of the alleged offences and that what he testified implicating the accused was untrue and tutored.

**501. P.W.16 Md. Nurul Haque (73)** is a resident of village-Khujiura, ward no.8, Durgapur Municipality of District Netrokona. He testified some post event crucial facts which he heard from the survived victim P.W.15.

502. P.W.16 stated that on 18<sup>th</sup> November, 1971 at around 10:00 P.M. he was coming back home from mosque after performing

*Tarabi prayer.* On his way, with the torchlight in his hand he found a naked person. At that time, the stranger hugged him tightly. In the flashlight, he recognized him as Jamal Uddin Rabbani (P.W.15), one class junior to him in Durgapur Maharaja Kumud Chandra High School. In such situation, he took him to their house and made him clothed with a lungi.

503. P.W.16 next testified that Jamal Uddin Rabbani (P.W.15) disclosed that on 17<sup>th</sup> November 1971 at around 10:00 A.M. Pakistani Army, Razakars and Al Badrs launched attack at their house and dragged out his father from home. At that time, he came out of his hiding place when he (P.W.15) recognized Al Badr Commander Khalilur Rahman, Razakar Azizur Rahman (died during trial) Razakar Shahnewaj (died during trial) , Razakar Ashok Ali (dead during trial), Razakar Ramjan Ali (now dead) present there who then captured him too, tied him up and took him and three other detainees away toward Birishiri army camp where six other civilians too were kept confined.

504. P.W.16 also stated that Jamal Uddin (P.W.15) also told them that during his staying in captivity at the camp, he heard screaming of a girl detained at the camp. Then in next morning dead body of the girl was removed. Afterward, on that day in



night when they the detainees were taken to the brink of Shibganj and started indiscriminate gun firing directing them when he (P.W.15) saved his life by jumping into the river.

505. In cross-examination P.W.16 stated in reply to defence question put to him that he never had seen and knew the accused. P.W.16 denied defence suggestions that he did not hear the event from Jamal Uddin Rabbani; that he testified being influenced by the rivals of the accused and that the accused was not involved with the event he narrated.

**506. P.W.17 Md. Raham Ali (64)** is a resident of village-Baniapara under Durgapur Police station of District Netrokona. He is the son of a women victim who resisted the attempt of sexual ravishment done to her, in course of the attack happened, that resulted her instant brutal killing.

507. P.W.17 stated that on 30<sup>th</sup> Kartik in 1971 at the end of Ramadan at around 10:00/10:30 A.M. he was engaged in cutting grass at his employer Munshi Abdur Rahman Mondol's house. At that time, he came to know from people that group of Pakistani Army, Razakars and Al Badrs entered in Baniapara village and took away Jamal Uddin Rabbani (P.W.15), on forcible capture. He also heard from people that Razakar

Shahnewaj (died during trial), Razakar Khalilur Rahman, Razakar Ashok Ali (died during trial), Razakar Ramjan Ali (now dead), Razakar Azizur Rahman (died during trial) being part of the gang had captured innocent Jamal Uddin Rabbani and at a stage they had carried out attack at their (P.W.17) house and gunned down his mother Pukurjan to death.

508. P.W.17 also stated that after the gang had left the site he came back home and found his mother's dead body lying inside their house. He learnt from others that the said Razakars, Al Badrs and Pakistani army men attempted to commit sexual ravishment upon his mother when she resisted and then the invaders gunned her down to death there.

509. In cross-examination P.W.17 denied defence suggestions that he did not hear the name of accused accompanying the gang; that the accused was not involved with the event he narrated and that being influenced by the rivals of the accused he testified falsely implicating him.

**510. P.W.18 Hazera Khatun (65)** is a resident of village-Baniapara under Durgapur Police station of District Netrokona. She is the victim of sexual ravishment committed in course of the event of attack arraigned.

511. P.W.18, the traumatized victim recounted the devilish event by stating that on 30<sup>th</sup> Kartik, 1971 at around 09:00/10:00 A.M. she had been at home when a group of seven invaders Razakars, Al Badrs and the Pakistani Army had launched attack at their House . Among them, two invaders kept her husband (Arfan Ali) detained and the other invaders entering into the room committed sexual violation upon her. Among the violators, there were Razakar Khalilur Rahman, Razakar Azizur Rahman (died during trial), Razakar Ramjan Ali (now dead), Razakar Ashok Ali (died during trial) and Razakar Shahnewaj (died during trial). Then they shot gun fire at her right leg and looted her precious jewellery. She has been carrying the scar of such bullet hit still today. P.W.18 continued stating that during the sexual assault committed upon her, she was pregnant. Two days after the event, her child in the womb became dead.

512. P.W.18 also testified that then the group of invaders moved back toward Tangai River taking away her husband Arfan Ali on forcible capture. One hour later, her husband came back and took her to doctor. Her husband disclosed the name of said Razakars and also disclosed that the invaders took away Jamal Uddin Rabbani toward Birishiri.

513. In cross-examination P.W.18 stated in reply to questions put to her by the Tribunal affirmed that two days after the event happened she gave birth of a dead child; that at the relevant time she was nine months pregnant. P.W.18 denied defence suggestions that she did not know the accused; that the accused was not with the gang at the site at the time of the event she testified happened; that what she testified was untrue and tutored.

**514. P.W.26 Abdul Hamid Talukder (65/66)** is a resident of village Sree Ramkhila under police station Durgapur of District Netrokona. He is a direct witness to pertinent facts related to the event of attack arraigned. He also testified what he heard about the event happened.

515. P.W.26 stated that on 17 November in 1971 at about 02:00/02:30 P.M. he along with his uncle Akbar Hossain Talukder, Mahtab Uddin (now dead), Anil Doctor (now dead) remained seated near the house and his elder uncle Aktar Hossain Talukder had been inside home. At that time he saw a group formed of 30/40 Razakar, Al Badrs and 15/20 Pakistani army heading toward their house. With this they started running away toward south to their house and at a stage he saw the Razakars and Al Badrs and army men moving toward their

home taking away his uncle Akbar Hossain Talukder on forcible capture. They on that day did not return back home and he and his uncle Aktar Hossain Talukder took refuge at the house of Abdul Hamid Talukder (now dead) of village Joynagar.

516. P.W.26 next stated that on the following day he learnt that his Uncle Akbar Hossain Talukder, Mokbul Hossain, Abdul Jabbar and Shahjahan were taken away toward Birishiri army camp, detaining them forcibly. Three- four days later he heard from people that the detainees were subjected to inhumane torture in captivity at the army camp and then were gunned down to death taking them on the bank of the river Someswari and were thrown into river.

517. P.W.26 continued stating that after independence achieved, in 1972 Jamal Uddin Rabbani (P.W.15) of village-Telipara came to their village and disclosed that on 17 November in 1971 he too was taken away to Birishiri army camp, detaining him unlawfully and he saw the civilians he (P.W.26) named detained there. In an adjacent room of the camp an unknown girl was kept detained and was subjected to unspoken torture and at a stage the girl died.

518. P.W.26 also stated that he learnt it too that on the following day, after the detained girl died, nine detainees including him (P.W.15 Jamal Uddin Rabbani) were taken to the brink of Shibganj of the river Someswari where due to gun firings eight detainees died and he (P.W.15) could save his life by jumping into the river. Jamal Uddin Rabbani (P.W.15) also told that he could recognise the Al Badr Khalilur Rahman, Razakar Azizur Rahman (died during trial), Razakar Ramjan Ali (now dead), Razakar Ashok Ali (died during trial) and Razakar Shahnewaj (died during trial) who were with the gang at the time of committing the criminal acts.

519. P.W.26 finally stated that in reminiscence of eight martyrs a memorial has been built up on the Shibganj brink of the river Someswari which depicts name of eight martyrs including his (P.W.26) uncle.

520. In cross-examination of P.W.26 defence does not seem to have made any rate of effort to impeach the facts testified by the P.W.26. Defence simply suggested that on the date of the event of the attack launched he had not been staying nearby their house; that he did not see the event he narrated; that Jamal Uddin Rabbani (P.W.15) did not disclose the name of the accused; that the accused was not Al Badr and was not involved

with the event he narrated and that what he testified was untrue.

P.W.26 blatantly denied all these defence suggestions.

521. P.W.27 Md. Habibur Rahman has been tendered with P.W.26. Defence did not cross-examine him.

## **Finding on Evaluation of Evidence**

**522. Mr. Rana Das Gupta**, the learned prosecutor drawing attention to the evidence presented in support of this count of charge argued that the accused Al Badr commander Mohammad Khalilur Rahman and his cohorts including three accused indicted but already died during trial participated in accomplishing the horrendous consecutive attacks directing civilian population. Thus, now criminal liability of accused Mohammad Khalilur Rahman is to be determined.

523. The learned prosecutor next submitted that it has been proved that the gang accompanied by the accused Mohammad Khalilur Rahman and his cohorts committed criminal acts, one by one. In addition to forcible capture of P.W.15 Jamal Uddin Rabbani and others the gang accompanied and substantially assisted by the accused and his cohorts committed rape upon a pregnant woman (P.W.18). The invaders attempted to commit

rape upon one woman Pukurjan and on failure had killed her. The accused was concerned being part of the criminal enterprise also with the act of rape committed upon a teen aged girl in captivity at the army camp and killing her brutally. All these proved criminal acts constituted the offences of crimes against humanity.

524. The learned prosecutor further argued that the accused Mohammad Khalilur Rahman and his cohorts had close nexus with the army camp at Birishiri and thus they had concern and contribution even in perpetrating killing of eight civilians detained there. The whole event has been recounted by P.W.15, the survived victim Jamal Uddin Rabbani. Defence could not controvert the traumatic ocular narrative of P.W.15 and rape victim P.W.18. At the same time hearsay evidence of other witnesses is not inadmissible *per se* as it gets consistent corroboration from direct witnesses. Defence simply denied the narrative they recounted. But mere denial is not sufficient to stain credibility of evidence of witnesses.

525. On contrary, **Mr. Gazi M.H. Tamim**, the learned state defence counsel defending the absconding accused Mohammad Khalilur Rahman submitted that this accused did not have any



affiliation with the local Al Badr Bahini; that none of witnesses had reason of recognizing the accused at the alleged crime site. Long about five decades after the alleged event happened it is not feasible of recollecting the event. Testimony of witnesses shall indicate that it was tutored. None of witnesses claim that the accused was with the gang of killers when it had carried out killing the detainees by gunshots, taking them on the bank of the river Someswari. Thus, the accused cannot be held liable.

526. Tribunal notes that this count of charge arraigns that the event of attack ended in designed gruesome killing eight detained civilians. Till the ending phase of the attack happened the gang carried out horrendous criminal acts including sexual violence, looting by launching attacks at the houses of civilians of the localities attacked. First, let us eye on those phases of the event for the purpose of determining the arraignments brought and accused person's participation and concern therewith.

527. It stands proved that first, by launching attack Jamal Uddin Rabbani (P.W.15) was forcibly captured, he was taken away to army camp where he was kept confined in protracted captivity and eventually he along with eight other detainees were taken to the killing site and eight detainees were gunned down to death.

But Jamal Uddin Rabbani got survived despite receiving bullet hit injury. Jamal Uddin Rabbani (P.W.15), the survived victim recounted the entire event he experienced. He coming back home disclosed the facts related to all phases of the event he experienced. P.W.15 is thus the star witness in respect of the criminal acts committed in conjunction with the attack conducted.

528. It depicts too from the narrative recounted by P.W.15 that next to his (Jamal Uddin Rabbani) forcible capture the gang of invaders unlawfully detained Arfan Ali, by launching attack at his house and committed sexual ravishment upon Hazera Khatun (P.W.16), the wife of Arfan Ali.

529. It is evinced that act of sexual violence was committed upon a pregnant woman Hazera Khatun, in course of the attack conducted by the same gang accompanied by the accused Mohammad Khalilur Rahman. It stands well proved from ocular narrative of **P.W.18 Hazera Khatun**, the victim that two invaders of a group of seven invaders Razakars, namely accused Mohammad Khalilur Rahman, Razakar Md. Azizur Rahman (died during trial), Razakar Ramjan Ali, Razakar Ashok Ali (died during trial) and Razakar Md. Shahnewaj (died during

trial) kept her husband detained and the other invaders then entering inside the room committed sexual violation upon her.

530. P.W.18 Hazera Khatun, the rape victim described the traumatic experience of grave sexual violation committed upon her. It has been affirmed in cross-examination that two days after the event happened she gave birth of a dead child; that at the relevant time she was nine months pregnant. The heartless violence also caused dropping the child from the womb of the victim Hazera Khatun. What a catastrophe!

531. The event of terrific sexual violence testified by P.W.18 has not been denied even. Rather, it has been affirmed in cross-examination. P.W.18 heard the presence of accused with the gang from her husband. It was quite natural. It thus stands proved that in conjunction with the attack the gang accompanied by the accused Mohammad Khalilur Rahman and his cohorts substantially contributed and assisted in committing barbaric mass sexual violation upon the P.W.18 Hazera Khatun, keeping her husband Arfan Ali unlawfully detained. Defence could not refute it.

532. P.W.18 is the rape victim. It is not at all acceptable that a woman shall opt to stain her supreme honour by bringing an untrue story of grave sexual ravishment upon her. The barbaric event unveiled in the ocular narrative of P.W.18 is indeed a split portrayal of committing grave violence upon hundreds of thousand mothers and sisters in 1971. The trauma the victim sustained shall never erase. The perpetrators used the act of rape and sexual violence as a strategic tool of war, in the name of combating counterpart.

533. The charge also arraigns that next the gang of attackers attacked the house of Sukur Mahmud. What happened in course of this phase of attack carried out at the house of Sukur Mahmud, the husband of Pukurjan? The charge arraigns that next the gang of attackers attacked the house of Sukur Mahmud and attempted to commit rape upon his wife Pukurjan. But Pukurjan resisted the invaders who then shot her to death.

534. Testimony of P.W.17 Md. Raham Ali, the son of victim Pukurjan depicts that the accused Mohammad Khalilur Rahman and his cohorts after causing unlawful detention of Jamal Uddin Rabbani had carried out attack at their house and gunned down his mother Pukurjan to death when she resisted the perpetrators

to save her supreme honour. This horrific part of the event as testified by victim's son P.W.17 remained unshaken.

535. P.W.17 saw the event of attack that resulted in forcible capture of Jamal Uddin Rabbani (P.W.15) by the gang formed of army men, accused Mohammad Khalilur Rahman, his cohorts Razakars and Al Badrs by launching attack at the house of Jamal Uddin Rabbani. It happened just prior to the attack at their (P.W.17) house. Thus, it stands proved that the same group formed of accused and his cohorts and army men had attacked their (P.W.17) house when the perpetrators attempted to ravish supreme honour of his mother Pukurjan, but on failure she was brutally killed there.

536. It emerges from testimony of P.W.17 that after the attack conducted at their house the gang accompanied by the accused and his cohorts had left the site and then P.W.17 coming back home found his mother's (Pukurjan) dead body lying inside their house. It could not be impeached in any manner.

537. P.W.17 then learnt from others that the said Razakars, Al Badrs and Pakistani army men attempted to commit sexual ravishment upon his mother Pukurjan when she resisted and then the invaders gunned her down to death there. Defence

could not controvert it by cross-examining the P.W.17. Besides, we do not find any reason of disbelieving it. Son of the victim of grave sexual assault shall never opt to portray an untrue story of attempted sexual assault upon his mother.

538. It thus stands proved that the gang accompanied by the accused Mohammad Khalilur Rahman and his cohorts after causing unlawful detention of Jamal Uddin Rabbani (P.W.15) had carried out attack at their(P.W.17) house and gunned down his mother Pukurjan to death when she resisted the perpetrators to save her supreme honour.

539. Ocular testimony of P.W.15 also demonstrates that the gang then came to the place near Chandigar Union Council taking him (P.W.15) and Arfan Ali with them and there he found another group keeping an unknown teen aged girl detained with them. The gang then started heading toward Durgapur and on arrival at Madhya Bazar at about 12.30 A.M. it got two more civilians, namely, Newaz Ali Fakir alias Kalim Uddin of village-Telachi and Imam Hussain alias Hossain of village-Meladahar detained, on forcible capture. Defence could not controvert all these facts chained to the event.

540. P.W.15, one detained survived victim witnessed too how the unknown teen aged girl detained at the army camp was tortured to death in captivity at the army camp.

541. Ocular testimony of P.W.15 demonstrates that the injured Major of that camp Major Sultan was taken away there from by Helicopter and before his departure; Major Sultan ordered to gun down all detainees kept confined at the camp to death. Defence could not impeach it. This fact reflects the extreme arrogance of Pakistani army which indisputably imbued the accused and his cohorts to actuate the killing of detainees.

542. It stands proved from uncontroverted ocular testimony of P.W.15, the survived victim that pursuant to inciting order of Major Sultan the nine 9 (nine) detainees including him were then taken to the bank of the river Someswari, 50 yards west to the Pakistani Army Camp, where eight [08] were gunned down to death and their dead bodies were thrown into the river. Detainee Jamal Uddin Rabbani (P.W.15) managed to escape by crossing the river, prior to gun shot.

543. What happened after the victim Jamal Uddin Rabbani (P.W.15) got survived? Some post event crucial facts have been

unveiled in testimony of **P.W.16 Md. Nurul Haque**. It depicts that on the way back to home at around 10:00 P.M. after performing *Tarabi prayer* in the mosque, P.W.16 Md. Nurul Haque with the torchlight in his hand found a naked person. At that time, the stranger hugged him tightly. In the flashlight, he recognized him as Jamal Uddin Rabbani (P.W.15), one class junior to him (P.W.16) in Durgapur Maharaja Kumud Chandra High School. In such situation, P.W.16 then took him to their house and made him dressed with a Lungi. It does not seem to have been disputed. This fact was chained to the fact that Jamal Uddin Rabbani could save his life by jumping into the river when eight other detainees were gunned down to death.

544. Hearsay testimony of P.W.16 also demonstrates that accused Al Badr Commander Khalilur Rahman, Razakar Azizur Rahman (died during trial) Razakar Shahnewaj (died during trial) , Razakar Ashok Ali (dead during trial), Razakar Ramjan Ali (now dead) were with the gang of invaders when Jamal Uddin Rabbani was forcibly captured and was taken away toward Birishiri army camp.

545. P.W.16 thus had natural occasion of hearing the event from Jamal Uddin Rabbani as to how he and other detainees were



taken away to the army camp on forcible capture, killing one teen aged girl after keeping in captivity and finally how the detainees along with him were taken to the killing site and how he got survived and the eight detainees were shot to death. This sourced hearsay evidence of P.W.16 carries probative value and due credence. Besides it gets consistent corroboration from P.W.15, the survived victim.

546. P.W. 15, the survived detainee recounted all the phases of the event which ended in killing eight unarmed civilians who were kept in captivity at the army camp. P.W.15 and other detainees were taken to this camp by the accused and his cohorts forming part of the group.

547. The above suggests deducing that the accused Mohammad Khalilur Rahman had explicit nexus with the army camp. Therefore, it may be justifiably deduced that the criminal acts including the killing of detainees were perpetrated on substantial contribution and assistance of the accused and his cohorts including the three accused indicted but died during trial.

548. P.W.15 could recognize the accused Mohammad Khalilur Rahman and his cohorts of whom three indicted in this charge already died during trial. They too accompanied the gang when

it had carried out attack directing civilian population-- the testimony of direct witnesses demonstrates it unerringly. The accused was from their neighbouring locality. This was the reason of knowing the accused. Defence could not controvert it. Thus, it may be inferred too that the accused Mohammad Khalilur Rahman, in exercise of his position in Al Badr Bahini knowingly accompanied the gang at the site in accomplishing the crimes.

549. P.W.16 heard too from Jamal Uddin Rabbani (P.W.15) that dead body of a girl detained in captivity at the army camp was removed after committing ravishment upon her. It gets corroboration from ocular testimony of P.W.15. Presumably, recurrent sexual violence committed upon a teen aged girl in captivity eventually resulted in her death. What a brutality!

550. It transpires that on the day of the event happened P.W.26 Abdul Hamid Talukder also witnessed the gang formed of 30/40 Razakar, Al Badrs and 15/20 Pakistani army moving toward their house taking his uncle Akbar Hossain Talukder with them on forcible capture. On the following day he learnt that his Uncle Akbar Hossain Talukder, Mokbul Hossain, Abdul Jabbar

and Shahjahan were taken away toward Birishiri army camp. It stands undisputed.

551. The learned defence counsel submitted that description of the event alleged and involvement of the accused therewith is not credible as no case was initiated over the event after independence.

552. We are not agreed with such submission devoid of jurisprudential sanction. It is to be noteworthy that already the Tribunal has resolved this issue in earlier cases, stating reasons and settled jurisprudence. We reiterate that delay does not create any clog in initiation of criminal case and merely for the reason of non initiation of prosecution instantly after the event arraigned does not generate any degree of doubt as to the commission of crimes of which the accused is charged.

553. Already it has been proved that numerous detainees were taken away by the gang accompanied by the accused Mohammad Khalilur Rahman and his cohorts, after carrying out the first phase of the event of attack. Killing eight detainees was the upshot of the attack, it stands proved.

554. None of witnesses claims to have seen the perpetration of killing, the ending phase of the attack. But it stands proved that one detainee P.W.15 Jamal Uddin Rabbani got survived. Therefore, naturally, the survived victim P.W.15 alone had experienced this ending phase of the event as he too was taken to the killing site along with eight other detainees and he got strategically survived.

555. In respect of the other phases of the event P.W.26 is hearsay witness. He too heard the event from survived victim Jamal Uddin Rabbani (P.W.15) that the accused Al Badr Mohammad Khalilur Rahman and his cohorts were with the gang at the time of committing the criminal acts.

556. Besides, three-four days later P.W.26 heard from people that the detainees were subjected to inhumane torture in captivity at the army camp and then were gunned down to death taking them on the bank of the river Someswari and were thrown into river.

557. P.W.26 also heard the event of killing the detainees and killing a teen aged girl after committing sexual violence keeping her in captivity, after independence achieved from Jamal Uddin Rabbani (P.W.15), the survived victim. This piece of hearsay

evidence in relation to pertinent facts carries probative value and credence. Hearing the event from survived victim was quite likely.

558. It appears that in addition to evidence of witnesses examined in Tribunal in support of this count of charge, statement made to IO by one witness, namely Abdus Soban whose name finds place in serial nos. 63 of the volume of statement of witnesses has been received in evidence under section 19(2) of the Act of 1973 in support of this charge, as prayed by prosecution on ground of his death during trial, after he made statement to the IO.

559. It appears that the witness Abdus Soban saw the criminal acts carried out by the gang as arraigned in this count of charge. He also heard the phase of killing from one survived victim Md. Jamal Uddin Rabbani (P.W.15). It gets steady corroboration from evidence of direct witnesses examined in Tribunal, in relation to the event arraigned. This witness Abdus Soban could not be produced before Tribunal as he died after he made statement to the IO.

560. We have gone through the statement that this witness Abdus Soban made to IO. It demonstrates patently that he experienced the criminal acts conducted in course of attack arraigned in this count of charge in effecting forcible capture of victims. We do not find any variation between the statement of this witness made to IO and the testimony of witnesses including the survived victim Md. Jamal Uddin Rabbani (P.W.15) examined in Tribunal, in relation to the event arraigned.

561. It appears too that in addition to evidence of witnesses examined in Tribunal in support of this count of charge, statement made to IO by another one witness, namely Most. Amena Khatun whose name finds place in serial no. 70 of the volume of statement of witnesses has been received in evidence under section 19(2) of the Act of 1973 in support of this charge, as prayed by prosecution on ground of her death during trial, after she made statement to the IO.

562. It appears from the statement of this witness made to the IO that Most. Amena Khatun is the wife of one victim Akbar Hossain. She heard how the event of attacked happened leading to forcible capture of her husband and other civilians. She heard the phase of killing of detainees from survived victim Md. Jamal

Uddin Rabbani (P.W.15). The statement of this witness made to the IO gets steady substantiation from evidence of direct witnesses including the survived victim Md. Jamal Uddin Rabbani (P.W.15) examined in Tribunal, in relation to the event arraigned. This witness Most. Amena Khatun could not be produced and examined before Tribunal as she died after making statement to the IO.

563. We have gone through the statement that this witness Most. Amena Khatun made to the IO. It demonstrates patently that she heard the happening of the event from the persons who experienced it. We do not find any discrepancy between the statement of this witness made to IO and the testimony of direct witnesses including the survived victim Md. Jamal Uddin Rabbani (P.W.15) examined in Tribunal, in relation to the event arraigned in this count of charge.

564. In light of settled jurisprudence the prosecution is not required to prove recovery of the dead bodies of victims in order to establish the killing of victims. It may be rather well established by facts and circumstantial evidence chained to the event, provided that the only reasonable inference that can be

drawn from such evidence is that the victims were annihilated as the outcome of the attack.

565. Unimpeached ocular testimony of P.W.15 demonstrates patently that the accused Mohammad Khalilur Rahman was with the gang till P.W.15 and other detainees were taken to the army camp. Thus, and since it reveals that Al Badrs, Razakars were also with the group when the detainees were taken to the killing site it may be irresistibly deduced that the accused had substantial contribution, assistance and aid in actuating the killing mission as well.

566. It depicts from testimony of P.W.26 that in reminiscence of eight martyrs a memorial has been built up on the brink of river Someswari where the names of eight martyrs including his uncle have been embedded. It remained totally unshaken. Building up a memorial in reminiscence of eight martyrs is rather indication of showing humble reverence and salute to the martyr victims who scarified their lives for the cause of independence of motherland. At the same time this fact adds assurance to the dreadful act of killing eight detainees on the bank of the river Someswari.



567. It already stands proved that the act of rape committed upon a pregnant woman Hazera Khatun(P.W.18), keeping her husband detained, attempt to commit rape upon widow Pukurjan who eventually gunned down to death as she resisted the perpetrators. It also depicts from ocular version of P.W.15, the survived victim that recurrent sexual violence committed upon an unknown teen aged girl in captivity resulted in her death and her naked dead body was left abandoned outside the army camp. Obviously such barbaric sexual violence resulted in severe mental and physical pain and extreme harm not only to the victim but to the humanity and civilized community as well which constituted the offences of crimes against humanity.

568. The words remain halted in assessing the extent of appalling barbarity and beastly acts inflicted upon the women and teen aged girl, as found proved. The perpetrators attacked upon their supreme honour which is serious violation of Geneva Conventions. Sexual violence is the worst mode to inflict harm on the victim by attacking her supreme honour, under coercive circumstances. Such beastly act gives rise to severe endless trauma which is characterized as an act of myriad ‘**torture**’ constituting the offence of crime against humanity

569. The accused Mohammad Khalilur Rahman is found to have had culpable nexus with the army camp and presence with the gang at the site when such violence upon women was committed and numerous civilians were unlawfully detained. It indisputably demonstrates his conscious concern, encouragement, assistance and substantial contribution even with the criminal acts committed upon the detainees at the camp. The accused in exercise of his nexus with the Al Badr Bahini assisted and aided, by his conduct and act in accomplishing such crimes, we deduce.

570. In conjunction with the horrendous event, shameful act of sexual violence upon the women and one teen aged girl keeping in captivity at the camp was also committed, in addition to wiping out eight detained civilians and it obviously has diagnosed the event more shocking and graver. Not only the physical perpetrators but also the persons concerned with such shocking and horrendous crimes against humanity incurred equal liability.

571. It has been argued by the learned state defence counsel that it is not practicable of memorizing what happened about five decades back and thus narrative made by the witnesses does not carry any evidentiary value and credence.

572. We are not agreed with the above defence submission. Tribunal retells that the evidence presented is to be weighed on the basis of the totality of the evidence presented in the case before us together with the context prevailing in 1971 in the territory of Bangladesh.

573. Tribunal notes it emphatically that in dealing with the arraignments relating to appalling atrocities occurred in 1971 during the war of liberation we are to keep it in mind that the prohibited acts forming systematic attack happened in shocking context and the narrative recounted by the witnesses chiefly on core aspect of the event they experienced may remain still alive in their reminiscence.

574. Trauma stored in the episodic memory of witnesses has thus reliably portrayed the event. Therefore there can be no room to deduce that it is not possible of recounting the appalling facts happened long about five decades back.

575. Unimpeached ocular testimony of P.W.15, one survived victim and P.W.18, one rape victim leads to the irresistible conclusion that accused person's act of presence while launching attack to abduct the victims, committing sexual violence upon Hazera Khatun , sexual assault caused to

Pukurjan constituting the offence of torture and gunning her down to death by accompanying the group of attackers was rather an act of 'participation', 'abetment' and 'facilitation' to the accomplishment of the victims' confinement, causing torture to them, committing rape upon women and teen aged girl and killing her and the eight detainees.

576. Ocular version of witnesses implicating the accused Mohammad Khalilur Rahman with the acts of designed 'criminal mission' could not be dislodged in any manner. Accused's presence within the gang till the detainees were taken at the army camp, as found proved itself is sufficient to deduce indisputably that the accused's act had overt 'causal connection' and concern between such criminal acts and the act of killing.

577. Accused's act of assisting and contributing the gang in bringing the teen aged girl to the army camp where she was subjected to grave sexual violence constituted aiding and abetting the commission of rape and killing the unknown teen aged girl. Such act of accused was with conscious knowledge of the consequence and also to further the goals of the criminal enterprise.

578. Of course the accused Mohammad Khalilur Rahman having affiliation in Al Badr Bahini had no pious intention in accompanying the squad. Rather, it may be inferred from facts and circumstances emerged that knowing consequence he deliberately assisted, facilitated and aided the gang to go on with infliction of criminal acts leading to killing the detainees. Accused's presence and position in Al Badr Bahini prompted the gang to commit the offences charged, we may safely deduce based on facts and circumstances unveiled. His presence with the gang and conduct had causal connection to the criminal actions of the gang.

579. It is now well settled that a person who aided, abetted and substantially contributed in the preparation or execution of a crime referred to in the Act of 1973 shall be individually responsible for the crime.

580. In the instant case it is evident that the accused Mohammad Khalilur Rahman had knowingly "acted in concert " with the gang formed of Pakistani occupation army and cohort Razakars in perpetrating the acts of abduction, confinement, inhumane acts, murder and grave sexual violence to supreme honour of women and teen aged girl.

581. The accused Mohammad Khalilur Rahman was quite aware that the crimes were likely consequence of the execution of the enterprise to which he was active part, and, with such awareness, he participated in that enterprise. It indicates patently that in agreement with the object of the gang he participated in committing the crimes and is equally liable for the crimes perpetrated. In this regard we may recall the observation made by the ICTY Trial Chamber in the case of Krnojelac which is as below:

“If the agreed crime is committed by one or other of the participants in a joint criminal enterprise such as has already been discussed, all of the participants in that enterprise are equally guilty of the crime regardless of the part played by each in its commission.”

**[ICTY Trial Chamber, Krnojelac, Judgment, para 82]**

582. In the case in hand, the act of significantly accompanying the armed gang, in exercise of potential position in Al Badr Bahini created was intended to provide assistance and collaboration with the Pakistani army. He had acted as a potential member of this ‘action section’ of a potential pro-Pakistan political organisation [JEI] which is sufficient *indicia* to conclude that the accused Mohammad Khalilur Rahman in

such capacity had participated in accomplishing horrific criminal activities being aware of the context.

583. On totality of evidence produced we arrive at unanimous decision that prosecution has been able to prove beyond reasonable doubt that accused Mohammad Khalilur Rahman and his cohort Razakars and Pakistani army by initiating systematic attack forcibly took away numerous civilians, committed sexual violence upon women and killing of one woman who was attempted to be violated, causing death of a teen aged girl after committing rape upon her in captivity and finally gunning down eight detained civilians to death. By such act and activities accused Mohammad Khalilur Rahman participated by aiding, facilitating and substantially contributing to the commission of the offences of **'abduction', 'confinement' 'torture', 'rape' 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 he incurred liability under section 4(1) of the Act, for the above offences.

## **XII. Conclusion**

584. Based on evidence, facts and circumstances divulged it has been resolved that accused Mohammad Khalilur Rahman was a potential Al Badr and had vigorous nexus with the Pakistani occupation army stationed at Birishiri army camp, nearer to the crime sites.

585. It has also been revealed from the narrative made by witnesses that the three other persons indicted in all the five counts of charges also had participation in committing the crimes proved. But they died during trial and thus no decision as to their liability could be rendered.

586. The offences for which the accused Mohammad Khalilur Rahman has been found criminally responsible formed the fragment portrayal of horrendous atrocities directing non-combatant civilian population committed in 1971 during the war of liberation, in the territory of Bangladesh, It has been proved.

587. By virtue of his dominant affiliation with Razakar Bahini and next with Al Badr Bahini, auxiliary forces the accused Mohammad Khalilur Rahman knowingly made him engaged in perpetrating the crimes proved, to further policy and plan of



annihilating the pro-liberation Bangalee civilians. It happened in context of the war of liberation.

588. In view of reasoned finding rendered in adjudicating all the five counts of charges it has been found proved that target of the gang of attackers accompanied by the accused Mohammad Khalilur Rahman and his cohort Razakars was the pro-liberation civilians and civilians belonging to pro-liberation political group. The accused is found to have had culpable and conscious participation to the commission of barbaric crimes which indisputably shock the humanity.

589. Tribunal finds it proved that in accomplishing the appalling atrocities the accused knowingly and being active part of the criminal enterprise collaborated with the Pakistani occupation army, sharing common intent and purpose.

590. Majority of witnesses happens to be the close relatives of victims and indisputably they still have been carrying the trauma they sustained. Their ocular testimony does not seem to have been tainted by any material infirmity that may smash their credibility.

591. Conscious and culpable act and conduct loaded with extreme antagonistic mindset against the war of liberation and

the people associated and sided with it, as have been found proved point to the unerring guilt of the accused Mohammad Khalilur Rahman which is well consistent with his 'participation' to the commission of the crimes proved. The settled jurisprudence makes it apparent that the term 'committing' is not limited only to direct and physical perpetration and that other acts even can constitute direct participation in the *actus reus* of the crime.

592. It has been proved that the accused Mohammad Khalilur Rahman, in exercise of his affiliation in Al Badr Bahini participated and also aided, abetted, facilitated and substantially contributed to the commission of the dreadful offences arraigned in all the 05 counts of charges for which he has been indicted.

593. Once again we restate that the truth of appalling atrocities directing Bangalee civilians in 1971 has been unveiled in trial of this case. The trial depicts the untold sacrifice in exchange of which the nation eventually achieved its independence. In the days to come this truth must enthuse to raise the loud voice in saying—**NEVER AGAIN.**

### **XIII. Verdict on Conviction**

594. The standard of the settled norm that burden of establishing the guilt or responsibility of the person accused of crimes arraigned squarely lies upon the prosecution has been found to be reasonably met as the accused Mohammad Khalilur Rahman is found to have incurred liability for the atrocious crimes which have been proved beyond reasonable doubt.

595. In light of finding on determination of each count of charge rendered on the basis of cautious and due judicial appraisal of all the evidences presented before us and argument advanced by both parties and based upon jurisprudence evolved, the Tribunal [ICT-1] **UNANIMOUSLY** finds the accused-

#### **Accused Mohammad Khalilur Rahman (absconding)**

**Charge No.01: GUILTY** of aiding, abetting, assisting and participating in committing ‘other **inhumane act**’, ‘**abduction**’, ‘**confinement**’, ‘**torture**’, ‘**deportation**’ and ‘**murder**’ constituting the offence of **crimes against humanity** as enumerated in section 3(2)(a)(g)(h) read with section 4(1) of the International crimes (Tribunals) Act, 1973 and he be convicted and sentenced under section 20(2) of the said Act.

**Charge No.02: GUILTY** of participating, aiding, abetting and substantially contributing to the accomplishment of **‘looting’** and **‘arson’** of civilians’ properties, **the** outcome of systematic attack constituting the offence of **‘other inhumane act’** 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 and he be convicted and sentenced under section 20(2) of the said Act.

**Charge No.03: GUILTY** of participating, substantially abetting, facilitating and contributing in committing the criminal acts constituting the offences of **‘abduction’**, **‘confinement’**, **‘other inhumane act’** and **‘murder’ as crime against humanity’** as enumerated in section 3(2) (a) (g)(h) read with section 4(1) of the International crimes (Tribunals) Act, 1973 and he be convicted and sentenced under section 20(2) of the said Act.

**Charge No.04: GUILTY** of participating by providing active, substantial and practical assistance in perpetration of killing of numerous individuals belonging to a **‘political group’** and mass destruction, with specific intent constituting the offence of **‘genocide’**

as enumerated in section 3(2)(c)(g)(h) read with section 4(1) of the International crimes (Tribunals) Act, 1973 and he be convicted and sentenced under section 20(2) of the said Act.

**Charge No.05: GUILTY** of participating, aiding, facilitating and substantially contributing to the commission of the offences of ‘**abduction**’, ‘**confinement**’ and ‘**torture**’, ‘**rape**’ and ‘**murder**’ as crimes against humanity as specified in section 3(2) (a) (g) (h) read with section 4(1) of the International crimes (Tribunals) Act, 1973 and he be convicted and sentenced under section 20(2) of the said Act.

## **XIV. Verdict on Sentencing**

596. **Mr. Rana Das Gupta**, the learned prosecutor concluded the summing up by placing jurisprudential justification on awarding highest punishment. It has been submitted that the punishment to be awarded should be commensurate to the gravity and magnitude of offences proved and mode of participation of convicted accused therewith. The accused Mohammad Khalilur Rahman has been found guilty for the extremely barbaric acts he had carried out knowingly, being part

of the criminal enterprise, in exercise of his dominant position in local Al Badr Bahini.

597. The learned prosecutor drew attention to the barbarity the accused had shown by participating to the commission of all the crimes proved. Number of victims, pattern and magnitude of the crimes proved together deserve to be taken into account as aggravating factor in awarding just and highest punishment although it will not be enough to lessen the pain and trauma of victims and relatives of victims, the learned prosecutor added.

598. On contrary, **Mr. Gazi M.H. Tamim**, the learned state defence counsel simply submitted that since the prosecution could not prove the arraignments brought by credible evidence and the accused has been prosecuted simply out of rivalry he deserves acquittal. It has not been opted to focus on any mitigating factor, if any.

599. At the outset we reiterate that the key object of awarding punishment is to protect the society and to extend a message that the letters of law cannot remain mum in awarding appropriate sentence, considering the gravity of offences proved. This judicial thought is now well settled. Awarding lesser

punishment, keeping aside the gravity of offences from consideration, shall have impact on society and civilization.

600. Tribunal notes that the gravity of the offence proved is considered as ‘the litmus test’ in awarding an appropriate sentence. In the case of **Jelusic**, it has been observed by the **ICTY Appeal Chamber** that--

“Consideration of the gravity of the conduct of the accused is normally the starting point for consideration of an appropriate sentence.”

**[ICTY Appeals Chamber in the case of Jelusic, July 5, 2001, para. 94]**

601. The gravity of the offences proved, one of the key sentencing factors is to be considered as the preliminary point in awarding an appropriate sentence. At the same time it is to be kept in mind that the sentence to be awarded should reflect the totality of criminal conduct of the convicted accused.

602. The harm and trauma the victims and their relatives sustained are not subject to any kind of compensation. But it also significantly deserves to be considered in weighing the gravity of offences.

603. In the case in hand, the accused Mohammad Khalilur Rahman has been indicted in five (05) counts of charges. All the charges arraigned reflect intense brutality. Act and conduct that the convicted accused had in launching attacks prove that he remained consciously and culpably engaged in conducting criminal mission directing civilian population which was indeed encumbered with extreme antagonistic mindset.

604. The accused Mohammad Khalilur Rahman has been found guilty for the offences as '**crimes against humanity**' as listed in **charge nos. 01, 02, 03 and 05** and also for the offence of '**genocide**' as listed in **charge no.04**. It stands proved that by conducting systematic attack aggravated destruction of civilians' property, committing rape and sexual violence upon women and killing numerous pro-liberation civilians and civilians belonging to political group were accomplished. The convicted accused Mohammad Khalilur Rahman being an active part of the criminal gang participated in committing such horrendous crimes.

605. Genocide is a denial of the right of existence of human group and such denial shocks the conscience of humankind.



Awarding just punishment for the crime of genocide is thus now indispensably the matter of the nations' concern.

606. The offence of genocide committed on account of membership in a 'political group' as enumerated in the Act of 1973 is punishable. The offence of 'genocide' **as listed in charge no.04** was perpetrated with the active and culpable assistance and participation of the accused Mohammad Khalilur Rahman who was the active part of the criminal enterprise.

607. The convicted accused got engaged in committing genocide and barbaric killings, in exercise of his nexus with the auxiliary force[s]. Tribunal rendered its finding based on evidence about the mode of his participation which aggravates his liability.

608. The civilians annihilated by launching attacks as arraigned in charge nos.01, 03 and 05 were the organizers of the war of liberation and used to provide patronage to the freedom-fighters, we have found it proved. Relatives and residents of the crime sites had occasion of experiencing the indiscriminate criminal activities carried out by the convicted accused being part of the criminal enterprise.

609. Accused Mohammad Khalilur Rahman is found guilty for participating to the commission of the offences of rape, violent sexual assault and annihilation of eight civilians (**as listed in charge no.05**) and killing six civilians (**as listed in charge no.03**). Pattern of attacks launched leading to such barbaric atrocities obviously increase gravity of crimes proved.

610. Besides, the tragic reminiscence shall never erase the trauma the relatives of victims sustained. The wounds of rape never heal, and they leave enduring scar on victim, her family, communities, nation and even the humanity too. Victim of devilish act of sexual violence suffers unspeakable mental blight till the rest of her life, thus, in awarding sentence we must also eye on the untold trauma and harm sustained by the victims and their relatives.

611. The nation pays tribute to the myriad sacrifice of three millions martyrs and hundreds of thousands of our mothers and sisters who laid their supreme worth for the cause of our independence and Independent motherland—Bangladesh.

612. Awarding sentence to convicted accused chiefly depends upon the magnitude of the crimes proved and the role the

convicted had played in perpetrating the same. The intrinsic gravity of the dreadful offences proved in the case in hand must be punished appropriately.

613. Pattern of the violence and aggression conducted as found proved [as narrated in charge nos. 01, 03, 04 and 05] indisputably makes the issue of awarding just punishment extremely imperative. Thus, we reiterate that, letters of law cannot remain non responsive to the victims and relatives of martyrs and the nation too who have been still carrying colossal and unspeakable trauma.

614. We also keep the view of the **Appellate Division of Supreme Court of Bangladesh** in mind which has been rendered in the case of **Matiur Rahman Nijami** observed that –

“It is the solemn duty of the courts to award proper sentence commensurate with the gravity of the crimes. Inappropriate lesser sentence causes injustice not only to the victims of crimes but sometimes to the whole society.”

[**Criminal Appeal No. 143 of 2014, Judgment: 06 January 2016, page-152**]

615. In view of deliberation as made above and considering the intrinsic gravity of the appalling 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 Mohammad Khalilur Rahman (absconding) who has 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**

Accused Mohammad Khalilur Rahman(absconding) , the son of late Nabi Hossain and late Kadbanu of Village-Noagaon under Police Station Durgapur of District [now]-Netrokona is found **UNANIMOUSLY guilty** of the offences of ‘abduction’, ‘confinement’, ‘torture’, ‘other inhumane acts’, ‘murder’, as ‘**crimes against humanity**’ and ‘**genocide** enumerated in section 3(2) of the International Crimes (Tribunals) Act, 1973 in respect of all the five (05) counts of charges.

Accordingly, he be **UNANIMOUSLY** convicted and condemned to the **sentence as below for these five [05] charges**, under section 20(2) of the Act of 1973:

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

**‘Sentence of imprisonment for 10 (ten) years’** for the crimes as listed in **charge no.02**, under section 20(2) of the International Crimes (Tribunals) Act, 1973;

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

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

**AND**

**‘Sentence of death’** for the crimes as listed in **charge no.05** and he be hanged by the neck till he is dead, under section 20(2) of the International Crimes (Tribunals) Act, 1973;

The **'sentences of death'** as awarded above to convict Mohammad Khalilur Rahman (absconding), in respect of **charge nos. 01, 03, 04 and 05** shall get merged.

Since the convicted accused Mohammad Khalilur Rahman (absconding) has been absconding the **'sentence of death'** as awarded above to him shall be executed after causing his arrest or when he surrenders before the Tribunal, whichever is earlier.

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

The sentence of imprisonment as awarded (**in respect of charge no.02**) against the accused Mohammad Khalilur Rahman shall commence from the date of his arrest or surrender as required under Rule 46(2) of the Rules of Procedure, 2010(ROP) of the Tribunal-1.

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) District Magistrate, 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 Mohammad Khalilur Rahman (absconding).

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

If the convict accused Mohammad Khalilur Rahman (absconding) 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**