

International Crimes Tribunal-1 [ICT-1]

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

Old High Court Building, Dhaka, Bangladesh

ICT-BD [ICT-1] Case No. 08 of 2017

[Arising out of ICT-BD Miscellaneous Case No. 11 of 2016 and Compliant
Registrar Serial No. 60 dated 19.11.2015]

[Charges: Participating, committing, aiding and contributing to the
commission of offences constituting crimes against humanity as specified
in section 3(2)(a)(g)(h) of the Act No. XIX of 1973]

Present

Justice Md. Shahinur Islam, Chairman

Justice Md. Abu Ahmed Jamadar, Member

Justice K.M. Hafizul Alam, Member

The Chief Prosecutor

Vs

(1) S.M Aminuzzaman Faruk (2) A.K.M Akram Hossain and (3)
Md. Maklesur Rahman @ Tara (**remained absconded and arrested
on 21.06.2023**)

For the Prosecution:

Mr. Golam Arief Tipoo, Chief Prosecutor

Mr. Mokhlesur Rahman, Prosecutor

Mr. Sultan Mahmud, Prosecutor

Rezia Sultana Begum, Prosecutor

Ms. Sabina Yesmin Khan, Prosecutor

Mr. Tapas Kanti Baul, Prosecutor

For the Accused:

Mr. Abdus Sobhan Tarafder, Advocate, Supreme Court of
Bangladesh for two accused S.M Aminuzzaman Faruk and
Md. Maklesur Rahman @ Tara

Mr. Abdus Sattar Palwan, Advocate, Supreme Court of
Bangladesh for accused A.K.M Akram Hossain

Date of delivery of Judgment: 12 February, 2024

JUDGMENT

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

I. Introductory Words

1. On wrapping up of trial today we are going to deliver the judgment in this case. This will be the 55th judgment. The case involves as many as 04 counts of charges arraigning foraiding, abetting, facilitating, participating and substantially contributing the commission of offences of ‘crimes against humanity’ as enumerated in the International Crimes (Tribunals) Act, 1973. The offences arraigned happened in context of the war of liberation in 1971, in violation of international humanitarian law.

2.In the instant case four (04) accused (1) S.M Aminuzzaman Faruk (2) A.K.M Akram Hossain (3) Md. Emdadul Haque @ Khaja Doctor (**died during trial**) and (4) Md. Maklesur Rahman @ Tara (remained in absconsion till summing up phase and arrested on 21.06.2023) were indicted for the horrific atrocious crimes arraigned, by framing charges. But of them one accused Md. Emdadul Haque @ Khaja Doctor died on 02.01.2019, during trial and thus proceeding so far as it related

to him stood terminated vide Tribunal's order dated 30.01.2019. Therefore, the trial eventually concluded against three accused and of them one accused Md. Maklesur Rahman @ Tara had been in absconsion till summing up stage and eventually he has been arrested on 21.06.2023. Since the accused Md. Maklesur Rahman @ Tara was on the run he has been duly defended by appointing state defence counsel, at the cost of government.

3. Two accused (1) S.M. Aminuzzaman Faruk and (2) Md. Makleshur Rahman @ Tara have been indicted in all the four counts of charges while accused (3) A.K.M Akram has been indicted only for the crimes arraigned in charge nos. 01 and 04.

4. Onclosure of placing summing up on part of both sides, the Tribunal kept the case in CAV i.e. for pronouncement and delivery of judgment and three (03) accused (1) S.M. Aminuzzaman Faruk (2) A.K.M AkramHossain and (3) Md. Makleshur Rahman @ Tara (arrested on 21.06.2023) were sent to prison with direction to produce them on call.

5. Pursuant to issuance of production warranttheprison authority has produced the three accused (1) S.M Aminuzzaman Faruk (2) A.K.M Akram Hossain and (3) Md. Makleshur Rahman @ Tara today beforethe Tribunal [ICT-1].

6. The charges framed against the accused persons involve the diabolical atrocious events allegedly conducted in systematic manner around the localities under Nokla police station of District (now) Sherpur in 1971 in context of war of liberation. The events arraigned leading to perpetration of crimes against humanity as enumerated in the Act of 1973 were allegedly committed in context of war of liberation in 1971 directing the civilian population, aiming to terrorize and wipe out the pro-liberation Bangalee civilians, in furtherance of policy and plan of the Pakistani occupation army.

7. In course of trial, both the prosecution and the defence provided utmost assistance to go on with the proceeding in accordance with law. The Tribunal endorses the stamp of appreciation to their commendable performance and assistance.

8. Now, this Judgement is being rendered by this Tribunal [ICT-BD-1] for the prosecution of persons allegedly responsible for the serious 'system crimes' as enumerated in the International Crimes (Tribunals) Act, 1973, committed in vulgar violation of International Humanitarian Law in the territory of Bangladesh in 1971. Having jurisdiction under section 10(1) (j), section 20(1) and section 20(2) of the International Crimes (Tribunals)

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

II. Formation and Jurisdiction of the Tribunal [ICT-1]

9. The Tribunal-1 [ICT-1] has been set up on 25 March 2010, to come out from the culture of impunity, in response to nation’s demand. The notion of fairness and due process has been explicitly contemplated in the Act of 1973 and the Rules of Procedure, 2010 (ROP) formulated by the Tribunal [ICT-1] under the powers conferred in section 22 of the principal legislation.

10. The Act No. XIX enacted in 1973 by our sovereign parliament is meant to prosecute, try and punish the crimes against humanity, genocide, war crimes and system crimes committed in violation of international humanitarian law is *ex-post facto* legislation. It is fairly permitted. The 1973 Act of Bangladesh contemplates the merit and means of ensuring the universally recognized standard of safeguards to be provided to the person accused of the offences as crimes against humanity, genocide and war crimes as enumerated in the Act of 1973.

11. It is axiomatic 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 aforesaid offences as an ‘individual’ or by forming a ‘group of individuals’ or ‘organisation’.

12. It is manifested from section 3(1) of the Act of 1973 that even any person (individual), if he is *prima facie* found accountable either under section 4(1) or 4(2) of the Act of 1973 for the perpetration of offence(s), can be brought to justice under the Act of 1973. That is to say, in determining the charges framed it is to be resolved whether the accused indicted participated in committing crimes arraigned as enumerated in the Act of 1973 in exercise of his affiliation in any ‘auxiliary force’ or as an ‘individual’.

13. This Tribunal-1[ICT-1] set up under the Act of 1973 is utterly a domestic judicial forum the object of which is to try ‘internationally recognized crimes’ or ‘system crimes’ committed in violation of international humanitarian law in the territory of Bangladesh in the name of resisting the war of liberation in 1971. Merely for the reason that the Tribunal is preceded by the word “international” and possessed jurisdiction

over crimes such as crimes against humanity, crimes against peace, genocide, and war crimes, it will be mistaken to assume that the Tribunal[ICT-1] must be treated as an ‘‘International Tribunal’’. The Tribunal [ICT-BD] is authorised to exercise jurisdiction to prosecute and try the internationally recognized crimes, pursuant to the complementary principle contemplated in Article 17 of the Rome Statue of ICC.

III. Brief Historical Background

14. The Tribunal in its all earlier judgments precisely portrayed the historical background leading the Bangalee nation to begin its ultimate war of liberation after the monstrous ‘mayhem’ started on 25 March 1971 intending to stamp out the Pro-liberation Bangalee civilians. Despite it we consider it impediment to reiterate the brief sketch of the historical background, being part of the instant judgment.

15. Let us look at the history. 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 of the Islamic Republic of Pakistan was named West Pakistan and the eastern zone of it was named East Pakistan, which is now Bangladesh.

16. The Bangalee nation started experiencing patent disparity and deprivation since partition of British India occurred. The socio-economic, cultural, ideological, linguistic and educational inequality between East and West Pakistan became glaringly evident. In 1952 the Pakistani rulers attempted to impose 'Urdu' as the only State Language of Pakistan ignoring Bangla, the language of the majority population of Pakistan. The Bangalee people of the then East Pakistan then started valiant movement to get their mother language Bangla recognized as a state language and laid down highest sacrifices in 1952. Bangalee nation eventually turned to the movement for greater autonomy and self determination and finally independence in achieving independent motherland.

17. The history goes on to portray that in the general election held in 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 autocratic Government did not heed to value 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 go on with struggle for independence.

18. In the early hour of 26th March, 1971 following the onslaught of **“Operation SearchLight”** by the Pakistani Military on 25th March, Bangabandhu declared Bangladesh ‘independent’ immediately before he was arrested by the Pakistani authorities.

The barbaric mayhem continued till the nation achieved its long cherished independence through nine months’ blood bathed war of liberation and in exchange of untold sacrifice.

19. In the resolution recently adopted by the **IAGS (International Association of Genocide Scholars)** in recognition of genocide, crimes against humanity and war crimes committed in 1971 in Bangladesh it has been acknowledged that – “.....instead of handing over power to the civilian political leaders, the Pakistani Military Forces and local collaborators launched **‘Operation Searchlight’** against the Bengali population on the night of 25 March 1971 and pursued a brutal annihilation campaign throughout Bangladesh until 16 December 1971.”[Source: **IAGS Resolution to declare the crimes Committed during the 1971Bangladesh Liberation**

War as Genocide, Crimes Against Humanity and War Crime]

20. The Tribunal takes judicial notice of the settled history as permitted by the Act of 1973 and the ROP that in this way after the War of Liberation ensued, all people of the then EastPakistan enthusiastically responded and participated in the call to free Bangladesh but a small number of Bangalees, Biharis, other pro-Pakistanis, as well as members of a number of different religion-based political parties, particularly Jamat E Islami (JEI) and its student wing Islami Chatra Sangha (ICS), Muslim League, Convention Muslim League actively joined and/or collaborated with the Pakistani occupation army to aggressively resist the conception of independent Bangladesh and most of them continued committing and facilitating as well to the commission of appalling atrocities directing civilian population in the territory of Bangladesh, in 1971 till the Bangalee nation achieved its victory and independent motherland.

21. The Pakistani occupation army on having explicit assistance of their local collaborators carried out terrible brutality directing Bangalee civilian population of Bangladesh in 1971 in

furtherance of policy—the policy to wipe out the pro-liberation Bengali civilians.

22. History says that the Pakistani occupation army had no friend in Bangladesh—except a few traitors who took culpable stance against the war of liberation and they belonged to the ideology of pro-Pakistan political parties, e.g. Muslim League, the Convention Muslim League, the Jamaat-e-Islami[JEI] and the Nizami-E-Islami.

23. It is now an undeniable history that the local collaborators acted culpably by actively assisting the Pakistani occupation army in accomplishing their policy and plan to annihilate the pro-liberation Bangalee civilians. The local collaborators truly had acted as infamous traitors, taking stance against the war of liberation. It is now a settled history which needs no further document to prove.

24. Untold butchery committed in 1971 in the territory of Bangladesh was in fact directed against the entire mankind and had shocked the global conscious. In his book titled **‘Pakistan between mosque and military’** Hussain Haqqani narrates that *‘the commander of Pakistan’s forces in East Pakistan, General Tikka Khan, was soon nicknamed **“Butcher of Bengal”** in the*

international media.....’ **Hussain Haqqani** quoting Lt.

Gen. Niazi further narrates that--

“Lieutenant General A.A.K Niazi, who took over command from Tikka Khan in April 1971, described the initial operation:

‘On the night between 25/26 March 1971, general Tikka Khan struck. Peaceful night was turned into a time of wailing, crying, and burning. General Tikka let loose everything at his disposal as if raiding an enemy, not dealing with his own misguided and misled people. The military action was a display of stark cruelty more merciless than the massacres at Bukhara and Baghdad by Chengiz Khan and Halaku Khan.....General Tikka.....resorted to the killing of civilians and a scorched earth policy. His orders to his troops were: *“I want the land and not the people.....”* Major General Rao Farman had written in his table diary, *“Green land of East Pakistan will be painted red.”* It was painted red by Bengaliblood.”

[Source: Pakistan Between Mosque And Military: Hussain Haqqani: published by Carnegie Endowment For InternationalPeace, Washington D.C, USA first published in 2005, page 79]

25. The above narrative unmistakably reflects that Jamat E Islami’s workers and Razakars and Al Badrs were

deliberately affianced in committing atrocities on innocent defenceless Bangalee civilians and thereby committed grave human rights violation leading to genocide and crimes against humanity.

26. The atrocities for which the accused persons indicted stood trial were not isolated from the policy and plan of the Pakistani occupation army who started its horrific 'mayhem' since 25 March 1971 intending to stamp out the pro-liberation Bangalee civilians. During the nine-month war of liberation millions of brave sons and daughters laid their lives and supreme honour, for the cause of independence and long cherished self determination.

27. The horrendous atrocities could not thrive to foil the highest sacrifice of the Bangalee nation. The nation always pays tribute and homage to the blood of millions of patriotic martyrs and innocent defenceless people. Countless atrocious resistance on part of thousands of local collaborators could not impede the nation's valiant journey to freedom.

28. Undeniably the ways to self-determination for the Bangalee nation was strenuous, swabbed with enormous blood, struggle

and immense sacrifices. In the present-day world history, conceivably no nation paid as extremely as the Bangalee nation did for its self-determination and independence. This truth must be known to the international community by achieving global recognition of diabolical genocide, crimes against humanity committed in 1971 during the war of liberation. The nation shall remain ever indebted to those best sons and daughters of the soil who paid supreme sacrifices for an indelible motherland – **Bangladesh.**

29. The truth unveiled in each verdict of Tribunal demonstrates split portrayal of what extent and horrific pattern of genocide and crimes against humanity were committed in 1971 during the war of liberation. Nation now demands global recognition of such horrendous atrocities. Researchers, scholars now need to go ahead to work on it raising effective voice in achieving global recognition, recalling untold sacrifice of millions of martyrs.

30. In this regard Tribunal considers it indispensable to note that The IAGS [International Association of Genocide Scholars] has recently adopted a ‘resolution’ acknowledging the offences of genocide, crimes against humanity and war crimes committed by the Pakistani occupation army and their local collaborators

during the war of liberation in 1971 in the territory of Bangladesh.

IV. Brief account of the Accused

31. Before we move to the task of determination of the charges framed it is essentially needed to focus on brief account of the status and alleged affiliation with auxiliary force the accused persons had in 1971 which is indispensably chained to the arraignments brought. It is to be noted that one accused Md. Emdadul Haque died on 02.01.2019, during trial due to which the proceeding so far as it related to him stood abated. Thus, now excepting this accused let us have a look to the brief account of the three accused persons as has been depicted in the formal charge which is as below:

(i) S.M Aminuzzaman Faruk:

Accused S.M Aminuzzaman Faruk, son of late Shamsuzzaman and late Amena Khatun of village-Eshibpur, Ward no.05, Nokla Pourashava under police station-Nokla of District [now]-Sherpur was born on 01.07.1957. He obtained M.A degree and served as a lecturer in Haji Jalal Mamud College, Nokla, District Sherpur. In 1971 his father was the leader of Nokla Peace Committee. He got enrolled in Al Badr Bahini and had

acted as the leader of Nokla Thana Al Badr Bahini and Razakar Bahini. He in exercise of his affiliation with Al Badar Bahini collaborated with the Pakistani occupation army in accomplishing atrocious activities around the localities, prosecution alleges.

(ii) A.K.M Akram Hossain

Accused A.K.M Akram Hossain, son of late Azizur Rahman and late Amena Khatun of village-Bibirchar under police station-Nokla of District [now]-Sherpur, at present- 80/6 Etakhula Road under police station-Kotowali of District-Mymensingh was born on 30.10.1955. He obtained M.A and LL.B degree in 1979. In 1971 he was a Muslim League activist and joined in Nokla Al Badr Bahini and actively participated in committing atrocious activities around the localities, in collaboration with the Pakistani occupation army, prosecution alleges.

(iv) Md. Maklesur Rahman @ Tara (remained in absconsion till summing up phase and arrested on 21.06.2023)

Accused Md. Maklesur Rahman @ Tara is the son of late Moyej Uddin Ahmed and late Maleka Khatun of village-Kursha Badagair, Ward no.06, Nokla Pourashava under police station-Nokla of District[now]- Sherpur. He studied up to SSC. In 1971 he got enrolled in locally formed Al Badr Bahini and in exercise

of his affiliation therewith he used to collaborate with the Pakistani occupation army in carrying out barbaric atrocious activities around the localities, prosecution alleges.

V. Procedural History

Pre-trial stage

(i) Commencement of Investigation

32. The investigation Agency of the Tribunal started investigation pursuant to compliant register serial no.60 dated 19.11.2015, in respect of offences enumerated in section 3(2) of the Act of 1973 allegedly perpetrated in 1971 around the localities under police station-Nokla of District[now]-Sherpur.

(ii) Arrest of Accused

33. During investigation, on prayer of the IO initiated through the Chief Prosecutor seeking arrest of the accused S.M Aminuzzaman Faruk for the purpose of proper and effective investigation Tribunal ordered issuance of warrant of arrest on 22.08.2016 in execution of which this accused after having arrested was produced before the Tribunal-1 when on hearing the learned prosecutor it directed to send him to prison, for the purpose of effective investigation.

(iii) Interrogation of Accused

34. The arrested accused S.M Aminuzzaman Faruk was interrogated on 02.10.2016 at the safe home of the Investigation Agency as permitted by the Tribunal-1, on allowing prayer initiated on part of investigation agency.

(iv) Issuance of Warrant of Arrest against 03 accused

35. On an application moved by the Chief Prosecutor Tribunal issued warrant of arrest against the three other accused (2) A.K.M Akram Hossain (3) Md. Emdadul Haque @ Khaja Doctor and (4) Md.Maklesur Rahman @ Tara.**(Remained in absconsion till summing up phase and arrested on 21.06.2023)**

36. In execution of the W/A issued the accused A.K.M Akram Hossain and Md. Emdadul Haque @ Khaja Doctor were arrested and were produced before the Tribunal-1 when they were sent to prison. The other accused Md.Maklesur Rahman @ Tara could not be arrested till summing up phase.

(v) Interrogation of another 02 Accused

37. On allowing an application Tribunal-1 permitted the Investigation Officer to interrogate the accused A.K.M Akram

Hossain and Md. Emdadul Haque @ Khaja Doctor in the Dhaka Central Jail and they were accordingly interrogated on 11.06.2017 and 12.06.2017 respectively, by assuring defence rights.

(vi) Submission of Investigation Report

38. On conclusion of investigation, the IO submitted its report together with documents and materials collected and statement of witnesses reduced in writing, before the Chief Prosecutor on 26.07.2017 in relation to ICT-BD Miscellaneous Case no.11 of 2016 arising out of the compliant register serial no. 60 dated 19.11.2015.

(vii) Submission of Formal Charge

39. 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 30.10.2017 under section 9(1) of the Act of 1973 before this Tribunal recommending joint prosecution of four (04) accused persons alleging that they had committed the offences of crimes against humanity, including abetting, aiding and also for complicity to commit such crimes narrated in the formal charge during the period of War of Liberation in 1971

around the localities under police station-Nokla of District[now]-Sherpur.

(viii) Taking Cognizance of Offences

40. On 14.11.2017 the Tribunal-1, under Rule 29(1) of the Rules of Procedure, took cognizance of offences as mentioned in section 3(2) of the Act of 1973, by applying its judicial mind to the Formal Charge and materials and documents submitted therewith.

(ix) Notification published in respect of absconding Accused

41. Out of four accused one accused Md.Maklesur Rahman @ Tara could not be arrested. After having the report in execution of warrant of arrest issued against him the Tribunal-1, for the purpose of holding proceeding in absentia against him and jointly with three other accused ordered publication of notice in two daily news papers.

42. But despite publication of such notices this accused did not turn up within the time stipulated in the notification and as such treating him absconding the Tribunal-1 ordered for hearing on charge framing matter by appointing Mr. Abdus Sobhan Tarafdar, Advocate, Supreme Court of Bangladesh as state defence counsel to defend the absconding accused Md.Maklesur

Rahman @ Tara(**remained in absconsion till summing up phase and arrested on 21.06.2023**),at the cost of government.

Trial Stage

(x) Trial commenced on framing charges

43. The hearing on charge framing matter took place on 16.05.2018 when both sides submitted their respective submission. Tribunal also heard an application seeking discharge of accused A.K.M Akram Hossain. However, Tribunal rendered order on charge framing on 30.08.2018 and with this trial commenced.

44. In course of trial prosecution adduced and examined 13 witnesses including the IOhave , in support of all the four counts of charges framed and the defence in turn examined none.

(xi) Application under section 19(2) of the Act of 1973

45. In course of trial,prosecution by filing an application on 10.03.2021 under section 19(2) of the Act of 1973 together with necessary papers and death certificate prayed for receiving statement of two vital witnesses namely Kitab Ali and Rafiqul Alam @ Badal made to the IO (witnesses' statement made to IO volume page nos. 31-35 and 14-17 respectively) as they already

died during trial i.e. on 18.09.2018 and on 22.09.2020 respectively. They are vital witnesses and their statement made to the IO relates to the arraignment brought. Prosecution urges it by filing necessary papers as well. Tribunal on hearing the matter allowed the application.

(xii) Summing Up

46. After closure of the phase of examination of prosecution witnesses on 03.07.2022 the case was fixed for placing summing up. Accordingly prosecution started placing summing up on 03.07.2022 and concluded on 24.01.2024.

(xiii) Correction of error occurred in charge no.01

47. Next, defence started placing summing up on 30.10.2022 when it came to notice on perusal of the record that an application filed by prosecution under Rule 46(4) read with Rule 46A of the ROP of the Tribunal seeking addition by correcting the omission occurred in the event no.01 arraigned in the formal charge and the charge no.01 framed and the application was yet to be disposed of. It appears that vide order dated 10.03.2021 the matter was fixed for hearing and disposal. But presumably, due to covid-19 pandemic the Tribunal could not take its seat for months together and thus the matter inadvertently remained unattended and unresolved.

48. Accordingly, Tribunal by its order dated 30.10.2022 fixed 10.11.2022 for hearing and disposal of the above application initiated under Rule 46(4) read with Rule 46A of the ROP. It is to be noted that the Tribunal may permit correction of any error or addition occurred to any charge framed at any time before judgment is pronounced.

49. However, on such date fixed i.e. on 10.11.2022 on hearing both sides and upon due consideration to contentions of the parties, the material on record and also the evidence of the prosecution witnesses, forming part of the record Tribunal, in exercise of its inherent power, allowed the application by correcting the alleged omission as such correction shall not cause prejudice to the defence. Accordingly, 'addition' as prayed for has been inserted in the charge no.01 and the prosecution has been allowed to get its formal charge corrected as well, by adding the **'fact of killing Abdul Mannan'** along with three other victims.

50. Correction of charge no.01 framed by such 'addition' has been duly read over and explained to the accused persons present in Tribunal when they maintained innocence and

claimed to be tried according to law. At the same time defence was allowed to cross examine one witness who testified in support of charge no.01 and the IO, on re-call.

(xiv) Arrest of one absconding accused at the stage of summing up

51. Trial concluded against the accused Md. Maklesur Rahman @ Tara in absence as he was on the run. But on 21.06.2023, just prior to conclusion of summing up [argument] this accused was arrested and produced before Tribunal and then he was sent to prison together with custody warrant.

(xv) Closing of summing up on part of defence

52. After cross-examining two witnesses including the IO on re-call, defence concluded placing its summing up on 24.01.2024. On closure of summing up on 24.01.2024 the case was then kept in CAV.

VI. Applicable laws

53. Since the crimes tried in Tribunal are not isolated crimes we deem it necessary to eye on applicability of laws in determining the crimes arraigned which are known as ‘system crimes’ committed in context of war of liberation in 1971, in violation of international humanitarian law. The proceedings dealt with in the Tribunal are guided by the International Crimes (Tribunals)

Act, 1973, the Rules of Procedure 2010 [ROP] formulated by the Tribunal-1 under the powers conferred in section 22 of the Act.

54. Section 23 of the Act of 1973 prohibits the applicability of the Code of Criminal Procedure, 1898 and the Evidence Act 1872. Tribunal is authorized to take judicial notice of any fact of common knowledge which is not needed to be proved by adducing evidence [Section 19(4) of the Act].

55. Even the Tribunal shall not be bound by technical rules of evidence and may admit any evidence which it deems to have probative value [section 19(1) of the Act of 1973]. Tribunal notes that evidence, which appears to be “secondhand”, is not, in and of itself, inadmissible; rather it is to be assessed, like all other evidence, on the basis of its credibility and its relevance. Thus, the Tribunal shall have discretion to consider hearsay evidence by weighing its probative value [Rule 56(2)].

56. The defence shall have liberty to cross-examine prosecution witness on his credibility and to take contradiction of the evidence given by him [Rule 53(ii)]. Defence shall have right to examine witnesses [Section 10(1) (f) of the Act of 1973]. Cross-examination is significant means of confronting evidence. The

Act of 1973 provides right of accused to cross-examine the prosecution witnesses.

57. The Tribunal may receive in evidence statement of witness recorded by Magistrate or Investigation Officer only when the witness who has subsequently during trial 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]. In the case in hand prosecution has prayed by filing such application together with necessary papers to receive statement of (two) (02) witnesses namely, Kitab Ali and Rafiqul Alam @ Badal (volume of statement of witnesses page nos. 31-35 and 14-17 respectively) made to IO who died during trial . The prayer has been allowed.

58. Atrocities as listed in all the four counts of charges were committed in wartime situation, in violation of international humanitarian law. The Tribunal notes that in adjudicating culpability of the persons accused of alleged criminal acts, context and situations prevailing at the relevant time i.e. the period of war of liberation in 1971 [March 25 to December 16 1971] is to be considered.

VII. Summing Up

Summing up: By the prosecution

59. Rezia Sultana Begum, the learned prosecutor in placing summing up drew attention to oral testimony of witnesses examined and other materials. It has been submitted that the events arraigned constituting the offences of crimes against humanity have been proved from ocular testimony of direct witnesses. Uncontroverted ocular narrative also proves participation, complicity and culpability of the accused persons indicted in accomplishing the crimes arraigned in all the four counts of charges beyond reasonable doubt.

60. The learned prosecutor further submitted that the crimes were committed directing pro-liberation Bangalee civilians in 1971, to further policy of Pakistani occupation army; that the accused persons had acted culpably in exercise of their association with the locally formed auxiliary force Al Badr Bahini; that they had nexus with the camp at Nokla Thana; that they being part of collective criminality knowingly contributed and substantially facilitated in perpetrating the horrific crimes, sharing common purpose. Argument has been placed categorically in respect of each count of charges which may be well addressed when we will move to adjudicate each charge independently.

Summing up by the defence

61. Per contra , Mr. Abdus Sobhan Tarafder, the learned defence counsel defending the accused S.M Aminuzzaman Faruk and Md. Maklesur Rahman @ Tara argued that testimony of prosecution witnesses suffers from inconsistency; that some of witnesses who claim to have seen the alleged events were kids and 5/6 years old minor in 1971 and thus they are not competent and credible witnesses; that the witnesses have implicated the accused persons out of rivalry; that it could not be proved beyond reasonable doubt that the accused persons being part of the criminal gang were engaged in perpetrating the crimes alleged. The accused persons did not allegedly belong to any auxiliary force.

62. It has been contended too on part of defence that failure to establish accused persons' involvement in committing the alleged crimes should entail their acquittal. The learned defence counsel questioning truthfulness of testimony of witnesses placed argument in respect of each charge which may be well addressed in adjudicating respective charge.

63. Mr. Abdus Sattar Palwan, the learned counsel defending the accused A.K.M Akram Hossain argued that affiliation of this

accused with auxiliary force could not be proved by any credible document; that the alleged list of Al-Badr and Razakars has been created for the purpose of this case; that the witnesses had no reason of knowing this accused and thus their testimony implicating this accused carries no credibility. It has been also submitted that the witnesses relied upon in support of the event arraigned in charge no.04 were 1-5 years old and thus forcing them in digging bunker is quite unbelievable. Argument in respect of arraignment brought against this accused in charge nos. 1 and 4 may be well addressed in adjudicating respective charge.

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

64. In the case in hand, prosecution depends chiefly on sworn ocular testimony made before the Tribunal by the witnesses of whom some are allegedly direct witnesses. It is to be noted that the testimony even of a single witness on a material fact does not, as a matter of law, require corroboration. The settled jurisprudence makes it clear that corroboration is not a legal requirement for a finding to be rendered.

65. We reiterate that inconsistency in testimony of witnesses, if occurs, itself should not be the sole consideration to exclude the

entire evidence and thus evidence on material fact cannot be excluded. The ICTR Appeal Chamber laid its view that “the presence of inconsistencies within or amongst witnesses’ testimonies does not *per se* require a reasonable Trial Chamber to reject the evidence as being unreasonable” **[Muhimana, (Appeals Chamber), May 21, 2007, para. 58].**

66. The case in hand involving the criminal acts constituting the alleged offences, known as international crimes is chiefly founded on oral evidence presented on part of prosecution. The locals, relatives of victims and sufferers of atrocious activities came on dock of Tribunal and recounted what they experienced and saw during the atrocious attacks conducted in 1971 around their localities. Apart from them some witnesses appear to have testified what they heard in respect of the events arraigned.

67. It has already been well settled that in a case under the Act of 1973 ‘hearsay evidence’ is admissible and it may be taken into consideration if it is found to have been supported by ‘other evidence’. The phrase ‘other evidence’ includes relevant facts, circumstances divulged and testimony of ocular witnesses.

68. We reiterate that naturally, due to lapse of long passage of time the witnesses may not be capable to memorize the detail and

exact precision as to the events arraigned. However, the core essence of the horrific principal event always remains imprinted in the human memory if a person really had opportunity of seeing and experiencing the event of hideous nature. All these reality need to be viewed in assessing credibility of their testimony made on material facts.

69. In a criminal trial involving ‘system crimes’, two matters need to be determined. One is conducting ‘systematic attack’ that resulted in commission of the offence arraigned and another one is culpability of the person accused of such offence. The case in hand deals with the offences of crimes against humanity. This nature of crime is known as ‘group crime’ or ‘system crime’ and not an isolated offence punishable under the normal Penal law.

70. It is now well settled jurisprudence that in committing the offences of ‘crimes against humanity’ the person accused of such crime may not have physical participation. His act or conduct---amid, prior or subsequent to the event, lawfully makes him criminally liable for the offence committed by others, if his act or conduct is found to have had substantial effect and contribution to the commission of such crime.

71. In seeking to establish the truth in its judgment, the Tribunal is not precluded to rely as well on indisputable historical facts and on other authoritative elements relevant to the case even if these were not specifically tendered in evidence by either party during trial.

72. It has already been settled by the Appellate Division, Supreme Court of Bangladesh in the case of **Abdul Quader Molla** that the contradiction can be drawn from the statements made by a witness in his ‘examination-in-chief’ only, notwithstanding respect to a statement made to the investigating officer of the case in course of investigation” [Page 196 of the Judgment in **Abdul Quader Molla Case: Appellate Division**].

73. Hearsay testimony is not inadmissible *per se* in a trial under the Act of 1973. The task of weighing hearsay evidence depends as to what extent the question of hearsay evidence is clarified by other evidence and it is proved to be reliable. In this regard, the decision in the case of **Limaj** it has been observed that “whether any weight, and if so, what weight will attach to [hearsay opinion] will depend to what extent the question of hearsay is clarified by other evidence and it is shown to

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

74. In the process of appraisal of evidence, we require to separate the grains of acceptable truth from the chaff of exaggerations and improbabilities which cannot be safely or prudently accepted and acted upon.

75. In view of above and keeping the settled legalpropositions in mind the Tribunal-1 will take advantage to weigh the probativevalue of sworn testimony of witnesses made before the Tribunal, inrelation to charges framed against the accused.

IX. Formation of AlBadr Bahini and the role and status the accused persons had in 1971

76. **Rezia Sultana Begum**, the learned prosecutor submits that the accused persons belonged to *para militia* auxiliary force i.e. Al Badr Bahini formed in Nokla Thana of District [now]Sherpur in 1971. Just after the Pakistani occupation army got stationed in Nokla Thana the Al Badr force was formed of accused persons and other pro-Pakistan people. It has been proved from oral and documentary evidence [Exhibit-1 series and Exhibit-2 Series] relied upon. Defence could not refute such culpable nexus of

accused persons with the locally formed Al Badr Bahini, the learned prosecutor added.

77. On contrary, **Mr. Abdus Sobhan Tarafder**, the learned counsel defending the accused S.M Aminuzzaman Faruk and Md. Maklesur Rahman @ Tarasubmitted that alleged affiliation of accused persons with any of auxiliary forces could not be proved by any document of 1971; that the accused persons were minor boys in 1971 and thus it is not believable that they were involved in Al Badr. Mere oral testimony of witnesses does not make accused persons' alleged affiliation with such auxiliary force credible. The document relied upon in this respect has been created and collected for the purpose of this case.

78. Mr. Abdus Sattar Palwan, learned counsel defending the accused A.K.M Akram Hossain questioning authoritativeness of the alleged documents relied upon by prosecution submitted that those have been created and collected for the purpose of this case. The prosecution witnesses were not at all aware of identity of this accused and they had no reason of knowing him. Thus testimony alleging that this accused in exercise of his affiliation in Al Badr remained stayed with the group of attackers.

79. Tribunal notes that the history portrays that auxiliary forces namely RazakarBahini and Al Badr Bahini were formed to collaborate with the Pakistani occupation army in annihilating the pro-liberation Bangalee civilians. Pro-Pakistan political parties including Jamat E Islami, Muslim League etc. had played key role in forming those auxiliary forces and they symbolized the pro-liberation Bangalee people as their 'enemies' and 'miscreants'.

80. The accused persons have been indicted for committing the crimes enumerated in the Act of 1973, in collaboration with the Pakistani occupation army stationed in Nokla Thana of Sherpur District [now]. Obviously the accused persons in exercise of their culpable affiliation with auxiliary force participated and provided substantial contribution and assistance in accomplishing the designed attacks arraigned, to further policy and plan of Pakistani occupation army.

81. P.W.06 Md. Mahbubul Alam @ Jannat, a resident of village-Bazardi under police station Nokla of District Sherpur stated that at the ending part of Aprilin 1971 Pakistani army got stationed in Nokla Thana and then peace committee was formed and then Razakars, Al Badrs formed their camps in Nokla Thana and Nokla High School. Defence simply denied it in cross-

examination, but could not controvert it. Thus, formation of Razakar Bahini and Al Badr Bahini in Nokla Thana of District Sherpur and also setting up their camps stands proved.

82. It comes to judicial notice of the Tribunal from the narrative made in the book titled '*Muktijudhdhe Dhaka 1971*' that in 1971, Jamat E Islami with intent to provide support and assistance to the Pakistani occupation army by forming armed Razakar and Al-Badr force obtained government's recognition for those *para militia* forces. The relevant narration is as below:

"জামায়াতে ইসলামী মুক্তিযুদ্ধের শুরু থেকে শেষ পর্যন্ত সামরিক জাল্লাকে সমর্থন করে। তাদের সহায়তার জন্য অন্যান্য ধর্মাত্মক দল নিয়ে প্রথমত গঠন করে শান্তি কমিটি। পরবর্তী সময়ে সশস্ত্র বাহিনী রাজাকার ও আলবদর গঠন করে এবং সরকারী স্বীকৃতি আদায় করে....."।

83. What we see in the case in hand? It has been divulged too from uncontroverted testimony of P.W.10 Dr. Md. Billal Alam that at the end of April in 1971 Razakar Bahini and Al Badr Bahini in Nokla Thana locality were formed led by accused S.M. Aminuzzaman Faruk (son of Nokla Thana peace committee chairman Shamsuzzaman) and his associates were Maklesur Rahman @ Tara (remained in absconsion till

summing up phase and has been arrested on 21.06.2023),
Akram Hossain, Mujibur Rahman (now dead), Emdadul Haque
@ Khaja doctor (dead during trial) and they received training in
different educational institutions.

84. We reiterate that not only a person belonging to any *paramilitia* auxiliary force but even an ‘individual’ may be brought to justice for prosecution of the crimes enumerated in the Act of 1973. Thus, the accused persons cannot be relieved from being prosecuted merely for the reason that none of them belonged to auxiliary force, even if for the sake of argument it is accepted to be true.

85. But, in view of above testimony of competent witnesses we may safely conclude that the accused persons enthusiastically opted to get affiliated with the local Al Badr Bahini, intending to further policy of Pakistani occupation army who got stationed in Nokla Thana.

86. It has been emerged from testimony of prosecution witnesses that they knew the accused persons beforehand as they were from their neighbouring locality. Therefore, naturally it was plausible of knowing the status and affiliation of accused persons with the locally formed auxiliary force.

87. Association of accused persons with the Pakistani army who got stationed in Nokla Thana and notoriety of auxiliary forces formed intending to collaborate with the Pakistani occupation army indisputably suggest that the accused persons consciously made them concerned and associated with locally formed Al Badr Bahini.

88. It is now settled history that predominantly the Al-Badr force had acted as an **‘action section’** of Jamat E Islami [JEI]. This was the core makeup of Al- Badr. **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].

89. Now, let us eye on the documentary evidence in respect of the matter under adjudication. It is indeed a challenging task of collecting old document in respect of affiliation of accused persons with auxiliary force, as arraigned. Old document could have been destroyed taking advantage of regime changed after August, 1975.

90. But mere failure to collect sufficient and old documentary evidence does not readily negate the affiliation of the accused with the locally formed auxiliary force. Tribunal reiterates that due to lapse of long passage of time and some predictable rationale it may not be possible to collect any document. In this regard we recall the observation made by the **Appellate Division of Supreme Court of Bangladesh** in the case of Delwar Hossain Sayedee which is as below:-

" In most cases, the perpetrators destroy and/or disappear the legal evidence of their atrocious acts. Normally the investigation, the prosecution and the adjudication of those crimes often take place years or even decades after their actual commission. In Bangladesh this has caused because of fragile political environment and the apathy of the succeeding government. In case of Bangladesh the process has started after 40 years."

[Appellate Division, Criminal Appeal Nos. 39-40 of 2013, Judgment page 43]

91. Naturally, the prosecution witnesses, the locals of the crime vicinities were fairly capable of being aware of the identity and activities of the accused persons in 1971. Holding membership of locally formed para militia force by the accused persons thus indubitably became an 'anecdote' to the prosecution witnesses,

the locals of the crime vicinities. On this score too testimony of witnesses in this regard carries value and credence in arriving at decision that the accused persons belonged to local Al Badr Bahini in 1971.

92. Besides, failure on part of the defence to impeach this fact based on oral testimony thus lawfully prompts to the unmistakable conclusion that the accused persons were actively associated with the locally formed Al Badr Bahini, an 'auxiliary force' to collaborate with the Pakistani occupation army to further its policy and materialize their operational and other unlawful purposes during the War of Liberation in 1971.

93. However, it appears that prosecution relies upon the list and other documents prepared by Muktiyodhdha Sangsad, Nokla Upazila command which has been proved by the IO (P.W.13) and marked as Exhibit-1 Series (Prosecution documents volume page nos.01-15). Submission advanced on part of defence that this document has been purposefully created seems to be devoid of acceptable reason.

94. In addition to the list Exhibit-1 Series prosecution submitted some papers in relation to Nokla Thana case no. 06 of 1971 (Exhibit-2 Series) which goes to show that two accused S.M

Aminuzzaman Faruk and Md. Maklesur Rahman @ Tarawere prosecuted under the Collaborators Order, 1972 for the offences scheduled committed in 1971, during the war of liberation. This old document rather adds explicit and justifiable assurance as to affiliation of these accused with auxiliary force. This document (police report) also depicts that two accused S.M Aminuzzaman Faruk and Md. Maklesur Rahman @ Tara remained absconded till submission of the police report. It is also indication of their incriminating status.

95. On cumulative evaluation of oral evidence and documentary evidence we therefore arrive at decision that the accused persons being followers of pro-Pakistan political parties got consciously affiliated with the Al Badr Bahini and Razakar Bahini which were formed locally after the Pakistani occupation army got stationed at Nokla Thana, Sherpur.

X. Adjudication of Charges

Adjudication of Charge 01: [04 accused indicted of whom 01 died during trial]

[Event no.01 as narrated in page nos. 29- 33 of the formal charge]

[Offences of ‘abduction’, ‘confinement’, ‘torture’, ‘arson’ and ‘murder’ by launching attack at villages Ramer Kandi, Bibirchar, Majid Bari under police station Nokla of District [now]- Sherpur constituting the offences of crimes against humanity]

96. Charge: That on 21 July 1971 at about 03:30 A.M. a group formed of the accused (1) S.M Aminuzzaman Faruk (2) A.K.M Akram Hossain (3) Md. Emdadul Haque @ Khaja Doctor (**died during trial**) and (4) Md. Maklesur Rahman @ Tara(**remained in absconsion till summing up phase and arrested on 21.06.2023**), self-declared OC Mojibur Rahman[now dead], Abdul Qadir[now dead] and 8/10 Razakars by launching attack at village- Bibirchar under Nokla police station of District Sherpur forcibly captured Sohrab Uddin and caused inhuman torture to him and burnt down his house by setting fire.

In conjunction with the attack, at about 05:00/05:30 A.M. the gang being accompanied by the accused persons then moved to the house of Abdul Mannan taking the detainee Sohrab Uddin with them. Then the accused persons and 4/5 army men forcibly captured **Abdul Mannan**, Abdul Mannan's brother-in-law **Abdul Quddus** and his cousin **Mobarak @ Mogar Ali** and on instigation provided by the accused persons they were then shot to death by Razakars and Al Badrs and then their house was set on fire.

Detainee **Sohrab Uddin** somehow managed to flee there from but later on he was apprehended by Razakars and Al Badrs at

the place east to the culvert located at South Ramer Kandi and Bibirchar where he was tortured and gunned down to death.

Then the gang is accompanied by the accused persons moved toward Majid Bari under Talki union and attacked at about 07:00 A.M. at the house of Md. Abdul Kadir and then at about 08:00 A.M. at the house of Afaz Uddin a freedom-fighter. But on failure in finding them there the gang burnt down the houses of those civilians and their relatives.

Therefore, accused(1) S.M Aminuzzaman Faruk (2) A.K.M Akram Hossain (3) Md. Emdadul Haque @ Khaja Doctor(**died during trial**) and (4) Md. Maklesur Rahman @ Tara(**remained in absconsion till summing up phase and arrested on 21.06.2023**) have been charged for participation, abetment, facilitating and substantial contribution, by their act and conduct forming part of systematic attack to the commission of criminal acts constituting the offences of '**abduction**', '**confinement**', '**torture**', '**arson**' and '**murder**' as crimes against humanity as enumerated in section 3(2)(a)(g)(h) of the International Crimes(Tribunals) Act of 1973 read with section 4(1) of the Act of 1973 which are punishable under section 20(2) of the said Act of 1973.

Evidence of witnesses examined

97. In order to substantiate the event arraigned in this count of charge and participation of the accused persons indicted prosecution relies upon testimony of **seven (07)** witnesses who have been examined as P.W.01, P.W.2, P.W.03, P.W.04, P.W.05, P.W.11 and P.W.12. Of them first five (05) witnesses, the relatives of victims are direct witness. The rest two (02) are hearsay witnesses.

98. In addition to the above witnesses prosecution by filing an application under section 19(2) of the Act of 1972 has prayed to receive statement of one (01) witness Kitab Ali (Razakar) made to the IO in evidence as he already died during trial. However, now, let us first eye on what has been testified by the witnesses in Tribunal, before we weigh it in determining the arraignment.

99. P.W.01 Most. Fatema Khatun (67) is a resident of village South Ramerkandi under police station Nokla of District Sherpur. She is the wife of martyr victim Abdul Kuddus. She is a direct witness to facts linked to the event of attack arraigned. P.W.01 stated that in 1971 she used to stray at her husband Abdul Kuddus's home at village Pyarpur. After the war of liberation ensued she along with her husband Abdul Kuddus

and one daughter came to her paternal home at village Ramerkandi, for security reason.

100. P.W.01 stated that her elder brother Abdul Mannan (victim) was a leader of Awami League and organized of war of liberation. One day in the month of Sraban in 1971 at about 11:00 A.M. Razakar Habibur Rahman chairman, Al Badr Akram, Al Badr Faruk, Razakar Tara, Razakar Khaja (now dead) came to their home and threatened her elder brother Abdul Mannan to kill him.

101. P.W.01 nest stated that on 04th day of Bangla month Sraban at about 04:00 A.M. the said Razakars and accomplices besieged their house and entered inside the dwelling room of her elder brother Abdul Mannan. Then her brother Mannan through the broken window came out at the courtyard when the Razakars gunned down her brother to death there. She witnessed it through the gap of window (at this stage the P.W.01 burst into tears).

102. P.W.01 continued stating that next the said Razakars and Al Badrs entering inside the dwelling room forcibly captured her husband Abdul Kuddus and her sister's husband Azizur Rahman and dragged them out. Azizur Rahman managed to

escape by jumping into the pond. Her husband was then tied down with a pillar. Those Razakars also got her cousin brother Mobarak captured and tied him up with the pillar. At a stage the Razakars gunned down her husband Abdul Kuddus and her cousin brother Mobarak to death there. At that time she had been staying inside the dwelling room and the killing happened with her sight (P.W.01 again burst into tears). Those Razakars then looted and stashed away ornament and household and moved back. She (P.W.01) then coming out from room remained stood in the courtyard and saw those Razakars gunning down Sohrab to death at the culvert nearer to their home. After the Razakars had left the site villagers buried her husband, elder brother and cousin brother. Relatives of Sohrab took away the dead body of Sohrab for burial.

103. Finally, P.W.01 stated that the Razakar Akram was their neighbour and thus she knew him beforehand and Razakar Faruque present when her brother faced the threat of killing.

104. In cross-examination P.W.01 stated in reply to defence question that Ramerkandi village was about 5 miles far from village Pyarpur; that in 1971 Pakistani army did not come to her husband Abdul Kuddus's house; that her brother's wife was

Khodeja and Lata the another wife of her brother was of Garo community; that one Daroga known as Mujibur Daroga of Nokla Thana was also present at their home on the day the event happened.

105. P.W.01 denied defence suggestions that Mujibur Rhaman Daroga along with Pakistani army men came to their home ; that her brother Mannan inflicted knife blow to Mujibur Daroga and the Pakistani army had killed Mannan by gunshot. P.W.01 also denied defence suggestions that she did not know the accused persons; that the accused persons were not involved with the event alleged that what she testified implicating the accused persons was untrue and tutored.

106. P.W.02 Rashida Akter (58) is a resident of village-Chankanda under police station-Jamalpur of District Jamalpur. In 1971 she was a student of class V and had been staying at village- south Ramerkandi under police station Nokla of District (now) Sherpur. She is the daughter of victim martyr Abdul Mannan. She recounted what she experienced in course of the attack launched at their house in 1971.

107. Before narrating the event arraigned P.W.02 stated that her father Abdul Mannan was a local leader of Awami League and

organizer of the war of liberation. He (father of P.W.02) used to assist the freedom-fighters by providing them meal and shelter. In the mid of July in 1971 at about 11:00 A.M. Razakar Akram, Razakar Tara, Al Badr Faruk, Razakar Khaja(died during trial) and some other Razakars coming to their house threatened to kill her father. At that time she had been with her father.

108. P.W.02 next stated that on 21 July in 1971 at the end of night Razakar Akram, Razakar Tara, Al Badr Faruk and Razakar Khaja(died during trial) being accompanied by accomplice Razakars besieging their house broke down the door of the room. With this her father attempted to flee by going out through the broken window when the said Razakars apprehended her father and gunned down him to death there. She (P.W.02) saw it standing at the broken door of the room **(P.W.02 at this stage of her deposition burst into tears).**

109. P.W.02 also recounted that next the Razakars entering inside the room apprehended her *Fufa* (father's sister's husband) **Abdul Quddus and Azizur Rahman** and took them away on the bank of the pond when Azizur Rahman managed to escape by jumping into the pond. The said Razakars brought back apprehended **Abdul Quddus** inside the house and made him tied up with a pillar of room and then they forcibly captured her

uncle **Mobarak** from the adjacent room and tied him up too. Then said Razakars gunned down those two detainees to death. She (P.W.02) witnessed this event.

110. P.W.02 also testified that then the Razakars looted ornaments snatching from her Fufu Fatema, auntie Hiramom and also looted household. Then after the gang had left the site the villagers and relatives buried the martyrs. She later heard too from her *Fufu* Fatema and villagers that the said Razakars had killed **Sohrab by gunshot** at the place nearer to the culvert of their village. Finally P.W.02 stated that the Razakars she named were from their neighbouring village and thus she knew them beforehand.

111. In cross-examination, P.W.02 stated in reply to defence question put to her that according to her NID the year of **her birth is 1959**; that after independence no case was initiated over the event of her father's killing and that she could not say of which village the accused Tara was a resident.

112. P.W.02 denied defence suggestions that on the date of the alleged event Mujibur Daroga of Nokla police station being accompanied by some Pakistani army men came to their house when her father Abdul Mannan stabbed knife blow to Mujibur

Daroga and on hearing his screaming the Pakistani army men gunned down her father (Abdul Mannan) to death.

113. P.W.02 also denied defence suggestion that her father got married to one Lata, an indigenous girl forcibly and thus she, her mother, brothers and sisters used to stay at her maternal grand-father's home in Jamalpur; that on the day of the event alleged she had not been with her father and did not see the event alleged and that the accused persons were not involved with the event she testified.

114. P.W.03 Most Hiramona Nesa (72) is a resident of crime village-Ramerkandi under police station Nokla of District (now) Sherpur. She is the wife of one victim martyr Mobarak Ali @ Mohor Ali. She is a direct witness to facts leading to killing her husband by launching attack arraigned.

115. Before recounting the event arraigned P.W.03 stated that her husband's elder brother Abdul Mannan (father of P.W.02) was involved with Awami League politics and used to assist the freedom-fighters by providing them shelter, during the war of liberation. On the first day of Bangla month Sraban in 1971 at about 10:00/11:00 A.M. Al Badr Akram, Khaja (died during trial), Tara, coming to their house threatened to kill her

husband's elder brother Abdul Mannan (father of P.W.02). At that time she had been in the courtyard of home. After the said Al Badrs had left she came to know the matter of threat held out and name of Al Badrs from Abdul Mannan.

116. In respect of the event arraigned P.W.03 testified that at the time of dawn on 04th day of Bangla month Sraban in 1971 Al Badrs Akram, Khaja (died during trial), Tara, Faruk besieging their house started breaking the door of dwelling room when Abdul Mannan came out through the window and they could see the event through the gap of door. The said Al Badrs forcibly captured Abdul Mannan and shot him down to death there.

117. P.W.03 also stated that then said Al Badrs entered inside Abdul Mannan's dwelling room and apprehended Abdul Quddus and Aziz and took them away to the bank of the pond when Aziz managed to escape by jumping into the pond. Detained Abdul Quddus was then brought back inside the house and the invaders tied him up with a pillar.

118. It has also been depicted in testimony of P.W.03 that the said Al Badrs then entered inside their room and apprehended her (P.W.03) husband Mobarak Ali and kept him tied up with detained Abdul Quddus and then said Al Badrs gunned down

Abdul Quddus and her (P.W.03) husband Mobarak Ali to death **(at this stage of her deposition P.W.03 burst into tears)**. She witnessed this event standing near the door of the room. The said Al Badrs then snatched away their ornaments and looted household. Later, she heard too from Fatema and neighboursthatthe said Razakars had killed one **Sohrab by gunshot** at the place nearer to the culvert of their village.

119. In cross-examination in reply to defence question put to her P.W.03 stated that she could not say of which villages the accused persons were the residents; that freedom-fighters Mozammel Haque, Nazim Uddin, Afaj Uddin and Abdul Aziz were from the locality, about quarter mile far from their home; that she did not hear screaming of her husband's elder bother Abdul Mannan when he attempted to escape through the window.

120. P.W.03 blatantly denied defence suggestions that when Abdul Mannan attempted to flee through the window someone was heard shouting by saying 'Mannan stabbed me' and just after such screaming, she heard gun firing. P.W.03 also denied defence suggestions that Mujibur Daroga along with Pakistani army came to their house to rescue Lata, the wife of Abdul Mannan; that what she testified in respect of keeping her

husband and Quddus tied up and looting ornaments was untrue and tutored.

121. P.W.04 Most Khudeja Khatun (78) is the wife of victim martyr Abdul Mannan. She stated that in 1971 she used to stay at village-Ramerkandi under police station Nokla of District (now) Sherpur. She is a direct witness to the event of the attack conducted at her conjugal home.

122. Before recounting the event happened P.W.04 stated that her husband Abdul Mannan was a local leader of Awami League and an organizer of the war of liberation. In the first part of July in 1971 Razakars Tara, Akram, Faruk, Khaja(died during trial) and Habibur Rahman chairman threatened to kill her husband. But despite such threat her husband continued working in support of war of liberation, without being panicked.

123. Next, in memorizing the event arraigned P.W.04 stated that on 21 July in 1971 at about 05:00 A.M the Razakars she named besieging their house entered inside their room by breaking the door. At that time she had been with her husband inside the room. With this her husband came out of the room through the broken window. Razakars Akram, Al Badr Faruk, Razakar Khaja (died during trial) then gunned down her husband (Abdul

Mannan) to death there. Then the Razakars entering inside the room forcibly captured Quddus and Aziz, the husbands of her husband's sisters who had been staying at the room and dragged them out. At a stage, Aziz managed to flee by jumping into the pond. The said Razakars also unlawfully captured Mobarak, the brother of her (P.W.04) husband and then tying up Quddus and Mobarak with a pillar they gunned them down to death. Then the invaders looted household and had left the site.

124. P.W.04 also stated that later she heard that said Razakars also killed one Sohrab by gunshot, on the same day taking him near the culvert of their village. She saw the Razakars and Al Badrs when they threatened her husband to kill and her husband disclosed name of those Razakars and AL Badrs.

125. In cross-examination P.W.04 stated in reply to defence question put to her that her husband went out through the broken window but he had no knife with him; that she got married to one Rafiqul Islam, after the death of her husband; that accused Akram Hossain is the son of Habibur Rahman chairman's brother.

126. P.W.04 blatantly denied defence suggestions that her husband inflicted knife blow to Mujibur Daroga when he

attempted to flee and with this Mujibur Daroga screamed by saying-- ‘Mannan stabbed me’; that her husband got married to an indigenous girl Lata; that the accused did not extend life threat to her husband; that the accused persons were not involved with the event she testified; that she did not know the accused and that what she testified implicating the accused persons was untrue and tutored.

127. P.W.05 Md. Jahid Iman (62), presently a resident of village-Purbo Talki under police station Nokla of District (now) Sherpur. Sohrab Hossain, one victim of the event arraigned in this count of charge was uncle of P.W.05. The act of forcible capture and killing Sohrab Hossain that happened in conjunction with the attack carried out by the same group of attackers formed of accused persons, the charge framed arraigns.

128. Before narrating the event arraigned P.W.05 stated that his uncle Md. Sohrab Hossain was an organizer of the war of liberation and a member of Nokla Thana Awami League and he used to make arrangement of providing shelter and meal for freedom-fighters. In the mid of July in 1971 the local collaborators of Pakistani army chairman Habibur Rahman and his brother’s son Al Badr Akram Hossain coming to their home threatened his uncle in diverse manner.

129. P.W.05 next stated that on 21 July in 1971 at about 03:00 A.M. some Pakistani army men being accompanied by Al Badrs Akram, Khaja(died during trial), Tara, Faruk and 10/12 Al Badrs besieging their house started searching his uncle Sohrab Hossain. With this his uncle attempted to escape coming out from the northern room when Pakistani army and Al Badrs forcibly captured him and started beating, looted household and then the gang moved back toward Bibirchar Bazaar, east to their house taking away his detained uncle (Md. Sohrab Hossain) with them.

130. P.W.05 also stated that few times later he and his father moved to Bibirchar Bazar to have trace of his detained uncle but having no trace they moved toward Ramerkandi. Then on the same day at about 05:00/05:30 A.M. they heard indiscriminate gun firing from the end of Ramerkandi and with this they went into hiding beside the road. After a while they saw some Pakistani army men and Al Badrs Tara, Khaja (died during trial), Faruk and their cohorts moving toward Ramerkandi from the end of Bibirchar bazaar taking his detained uncle Sohrab Hossain with them and on arriving near the Ramerkandi culvert they gunned down his uncle (Md. Sohrab Hossain) to death. He and his father remaining in hiding inside a bush, about 100

hands far could see the act of killing his uncle. Finally, P.W.05 stated that he knew the accused persons beforehand as they were from their neighbouring localities.

131. Defence does not seem to have made any effort to impeach what the P.W.05 testified in relation to the event that ended in killing his uncle Md. Sohrab Hossain, by cross-examining him.

132. P.W.05 denied the defence suggestion that what he testified implicating the accused persons was untrue and tutored. P.W.05 however admits, in reply to defence question that he stated his date of birth as 01.03.1971 when he got the job of office assistant in a local Madrasa.

133. P.W.11 Most. Majida Khatun (60) is now a resident of village-Majidbari under police station Nokla of District Sherpur. In 1971 she was a student of class V. She narrated the event of attack launched at their house, as arraigned in this count of charge. She is a hearsay witness to the event arraigned.

134. P.W.11 stated that her father (Kader Master) was the Secretary of Nokla Awami League and an organizer of the war of liberation and used to assist the freedom-fighters by providing them food. On the 04th day of Bangla month Sraban in 1971 at about 03:00/03:30 in night a group formed of Razakars

Akram, Al Badr Faruk, Al Badr Khaja(dead during trial), Al Badr Tara, their cohorts and Pakistani army men had attacked their house after effecting killing of Mannan, Mobarak and Sohrab(victims of the event arraigned in charge no.01) but on failure finding her father the gang burnt down their house.

135. P.W.11 denied defence suggestions that what she testified in relation to the event arraigned was untrue and she did not hear it; that the accused persons she named were not Razakars and Al Badrs and that they were not involved with the event she narrated.

136. P.W.12 Md. Hafiz Uddin (72) is now a resident of village-Paschim Poabhag under police station Nokla of District Sherpur. He narrated some crucial post event facts.

137. P.W.12 before narrating what he experienced in relation of the event arraigned stated that his family members were involved with Awami League politics. His elder brother Afaj Uddin used to provide assistance to organize the youths ingetting freedom-fighters training in India. He (P.W.12) used to assist them by keeping contact with them. Few days later, peace committee leader Habibur Rhaman and his brother's son

Razakar Akram and their cohorts came to their house and threatened them.

138. P.W. 12 next stated that few days later on the 5th day of Bangla month Sraban in 1971 at about 07:00 A.M. he had been staying on the road, north to their house when he saw the house of his cousin brother Kadir Master of village-Majidbarai ablaze perpetrated by Razakars and Al Badrs. Few times later, **he saw** 15/20 Razakars moving toward their house. With this he coming back home informed it to all and went into hiding inside a nearer bush wherefrom he saw Razakars Akram, Khaja(died during trial), Tara, Al Badr Faruk and their cohort Razakars committing looting at their house when the invaders set the house on fire too. Then the invaders moved back toward west and then he (P.W.12) moved to the house of Mannan of village Ramerkandi along with his cousin brother Kadir Master and others where they found bullet hit dead bodies of Mannan, Quddus and Mobarak lying there.

139. P.W.12 also stated that they heard from the people present there that Razakars Akram Hossain, Tara, Khaja(died during trial), Al Badr Faruk and their cohorts by launching attack had killed those three civilians. Then they moved toward the last part of Bibirchar where they found bullet hit dead body of

Sohrab lying under a culvert. He knew the Razakars and Al Badrs he named beforehand as they were from their neighbouring villages.

140. P.W.12 denied defence suggestions put to him that he did not hear and see what he testified; that he did not know the accused persons; that the accused persons were not involved with the event arraigned; and that what he testified implicating the accused persons was out of political rivalry and untrue.

141. It is to be noted that in the case in hand statement of one cited witness Kitab Ali [whose name finds place in serial no.11 of the volume of statement of witnesses] recorded by Investigation Officer (IO) has been received in evidence under section 19(2) of the Act of 1973 as he died during trial as prayed by prosecution, in exercise of judicial discretion.

Finding with reasoning on evaluation of evidence adduced

142. In course of placing summing up the learned prosecutor **Rezia Sultana Begum** drawing attention to the evidence presented argued that the event arraigned and participation of the accused persons therewith have been proved beyond reasonable doubt; that defence could not impeach the ocular testimony of direct witnesses, by cross-examining them; that the

killing of numerous pro-liberation civilians by launching systematic attack at the house of Abdul Mannan rather stands affirmed in cross-examination. Evidence presented speaks too that the accused persons indicted had explicit and culpable 'concern' with the killings arraigned.

143. It has been further submitted on part of prosecution that to further policy and plan of the Pakistani occupation army the accused persons being active part of the criminal enterprise aggressively and knowingly participated in accomplishing the killing four pro-liberation civilians who used to assist freedom-fighters. Intention was to resist the pro-liberation civilians by deliberately conducting prohibited acts.

144. The learned prosecutor continued submitting that the accused persons had consciously and sharing object of the criminal gang acted in accomplishing the crimes arraigned, in exercise of their culpable affiliation and nexus with the locally formed auxiliary forces. Finally, it has been submitted that according to settled jurisprudence of International Law 'hearsay evidence' is not inadmissible *per se*, even when it is not corroborated by direct evidence. The Tribunal can safely act even on anonymous hearsay evidence without any corroboration if it inspires credence.

145. On contrary **Mr. Abdus Sattar Palwan**, the learned counsel defending the accused A.K.M Akram Hossain submitted terming the testimony of witnesses false and untruthful and urged not to act upon the same. It has been submitted too that inconsistent and untruthful version of witnesses does not prove the involvement of this accused with the commission of alleged crimes; that some of prosecution witnesses were tender aged in 1971 and thus they are not capable of recounting what they allegedly experienced; that there is no evidence to show that this accused physically participated in effecting the alleged killing of victims by gun shots and thus he deserves acquittal.

146. Mr. Abdus Sattar Palwan, the learned defence counsel for accused AKM Akram Hossain submitted that the prosecution witnesses were not acquainted with the identity of the accused AKM Akram Hossain. In fact victim Mannan died by Mojibur Daroga and others who carried out the mission of rescuing Lata, an indigenous women who was forcibly married to Abdul Mannan and thus the event happened over social rivalry and not in context of the war of liberation. The alleged event happened constituted isolated crime and not any offence as crime against humanity.

147. **Mr. Abdus Sobhan Tarafder**, the learned counsel defending the accused S.M Aminuzzaman Faruk and Md. Maklesur Rahman @ Tara (remained absconded till summing up) in placing summing up contended that inconsistent testimony of prosecution witnesses create reasonable doubt as to truthfulness of the narrative they made in Tribunal; that it could not be proved that these accused physically participated in perpetrating the alleged attack leading to alleged killings and looting. The witnesses have testified out of rivalry. The telling evidence adduced does not suggest that any act on part of accused persons assisted or provided encouragement or moral support and the same had substantial effect to the actual commission of crimes arraigned.

148. The learned defence counsel continued submitting that P.W.04, the wife of victim Mannan does not implicate accused Md. Maklesur Rahman Tara with the alleged event. P.W.05 and P.W.11 were tendered aged in 1971 and thus they are incompetent witnesses. Finally, it has been submitted by the learned defence counsel that in 1971 accused Md. Maklesur Rahman Tara was simply 11 years old, according to his NID and thus his involvement with the alleged event is not believable.

149. Tribunal notes that the arraignment brought in this count of charge speaks that on 21 July 1971 at about 03:30 A.M. the attack was first launched at village-Bibirchar under Nokla police station of District Sherpur that resulted in forcible capture of one civilian Md. Sohrab Uddin and causing inhumane torture to him and burning down his house by setting fire. Next, on the same day, the same gang being accompanied by the accused persons conducted attack at the house of Abdul Mannan when the gang annihilated three unarmed pro-liberation civilians including Abdul Mannan there by gun shots.

150. The charge framed also arraigns that finally the same gang being accompanied by the accused persons annihilated detained Md. Sohrab Hossain taking him at the place, east to the culvert located at South Ramer Kandi and Bibirchar.

151. Prosecution, as it appears chiefly relies upon relatives of victims to prove the arraignment. The witnesses claim to have seen the horrific criminal acts leading to killing their dear ones. Coming on dock of Tribunal they recounted the traumatic event they experienced. Now, the matters need to be proved are—

- (i) The accused persons were with the gang of attackers when systematic attack was conducted;
- (ii) that the accused persons indicted substantially facilitated and contributed to the commission of

criminal acts leading to killing of four pro-liberation civilians;

- (iii) that the accused persons knowing consequence had kept them consciously engaged in accomplishing the attack;
- (iv) that the accused persons being conscious part of the criminal enterprise incurred criminal liability for the crimes including barbaric killing of four civilians.

152. At the outset it is to be noted that it is well settled phenomenon that in the criminal justice system, the accused does not need to prove his innocence – the prosecution needs to prove guilt beyond reasonable doubt by adducing evidence having credibility and probative value.

153. At the same time Tribunal also notes that in a case involving the internationally recognized crimes the testimony even of a single witness on a material fact does not, as a matter of law, require corroboration and the Tribunal requires to carefully scrutinize the evidence before relying upon it to a decisive extent.

154. It has been unveiled in testimony of P.W.01 that prior to the event the accused persons threatened Abdul Mannan, the elder brother of P.W.01 to kill him. It depicts from ocular narrative of P.W.01. Defence could not controvert it.

Presumably since the victim Abdul Mannan had in support of the war of liberation was the object of such threat. It gets corroboration even from other witnesses.

155. Unimpeached ocular testimony of P.W.01, the wife of victim Abdul Kuddus demonstrates that the killing of her husband and her cousin brother Mobarak happened within her sight. Uncontroverted narrative of P.W.01 depicts too that the accused persons being part of the criminal gang remained present at the crime scene. Obviously such presence was not for any pious purpose. Such act of the accused persons leads to conclude that they substantially assisted, aided and contributed to the accomplishment of brutal killings.

156. The reason of identifying the accused persons as has been stated by P.W.01 seems to be natural and credible. There is no reason to believe that the P.W.01 orchestrated an untrue story of identifying the accused persons accompanying the gang of attackers.

157. It is evinced from ocular testimony of P.W.02 that the gang being accompanied by the accused persons indicted and their cohorts apprehended her (P.W.2) father Abdul Mannan and gunned him down to death, by launching attack at their house. She (P.W.02) saw it standing at the wrecked door of the room.

Being a family inmate P.W.02 being present at the site naturally experienced this traumatic and tragic event. In narrating the event P.W.02 at a stage burst into tears. Such demeanor of P.W.02 filled with trauma makes her testimony more credible. Besides, it could not be controverted by defence in any manner.

158. P.W.02 Rashida Akter is the daughter of victim martyr Abdul Mannan. In 1971 she was 12 years old. Indubitably she sustained untold trauma and horror which retained in her memory, despite the fact that she was 12 years old at the time of the horrific events she experienced. The horror she sustained shall never erase from her memory. The narrative she made in Tribunal is the outcome of her horrendous episodic memory. Narrative based on episodic memory is thus reliable and credible. Ocular evidence of P.W.02 carries much credence. Defence could not impeach her ocular testimony on material facts and circumstances chained to the event arraigned.

159. The charge framed arraigns that the gang had launched attack at the house of Abdul Mannan when he along with two other civilians Mobarak and Quddus too were shot to death there. It stands proved from corroborative ocular testimony of P.W.01 and P.W.02 that accused A.K.M Akram Hossain, Md.

Maklesur Rahman @ Tara, Al Badr S.M. Aminuzzaman Faruk and Razakar Khaja (died during trial) being part of the group of attackers conducted the designed attack leading to killing three civilians. The invaders apprehended her (P.W.02) father Abdul Mannan and gunned him down to death instantly after he got captured at his home.

160. In cross-examination, P.W.02 stated in reply to defence question put to her that after independence no case was initiated over the event of her father's (Abdul Mannan) killing. P.W.02, the daughter of victim Abdul Mannan denied defence suggestion that at the relevant time her father Mannan stabbed knife blow to alleged Mujibur Daroga when on hearing his screaming the Pakistani army men gunned down her father (Abdul Mannan) to death.

161. In view of above we see that it has been rather affirmed that at the relevant time Abdul Mannan was shot to death at his home. But defence could not establish the above defence plea and as such mere putting such suggestion to P.W.01 and P.W.02 does not negate the prosecution case that by launching attack at Abdul Mannan's house the gang accompanied by the accused persons had gunned him down to death.

162. According to defence argument the event happened out of social rivalry resulting from the matter of marrying an indigenous girl Lata by Abdul Mannan. This defence case is devoid of any merit. Defence does not seem to have taken any initiative to make such defence plea believable. Thus, mere suggesting such defence case to witness cannot be treated as shield for the accused. It transpires too that in cross-examination, P.W.02 stated in reply to defence question put to her that after independence no case was initiated over the event of her father's killing. Therefore, killing Abdul Mannan at his home is rather not disputed, we deduce it justifiably.

163. P.W.02 recounted too how her uncle Mobarak and Fufa Abdul Quddus too were forcibly captured from the adjacent room, in conjunction with the attack at their house. It is evident from uncontroverted ocular version of P.W.01 and P.W.02 that the gang formed of accused A.K.M Akram Hossain, Razakar Md. Maklesur Rahman @ Tara, Al Badr S.M. Aminuzzaman Faruk, Razakar Khaja(died during trial) and their accomplice Razakars besieging their house had killed Mobarak and Abdul Quddus there by gunshot. Defence does not seem to have been able in any manner to refute this act of annihilation of Mobarak and Fufa Abdul Quddus as testified by P.W.02.

164. Testimony of P.W.02 relating to killing Mobarak gets corroboration from the ocular narrative of P.W.03 Most. Hiramón Nesa, the wife of victim martyr Mobarak. P.W.03 also recounted how her husband Mobarak Ali was unlawfully detained by launching attack by the gang accompanied by accused persons indicted.

165. It stands proved too that detained Mobarak Ali was kept tied up with Abdul Quddus, another detained victim by launching attack at the house of victim Abdul Mannan and then the Al Badrs gunned down Abdul Quddus and her (P.W.03) husband Mobarak Ali along with Abdul Mannan to death there. Thus, the event of killing of three unarmed civilians by launching attack at the house of Abdul Mannan stands proved.

166. We are not agreed with defence argument that such proved event happened in context of social rivalry. Rather, it happened in context of the war of liberation and the accused persons being part of collective criminality got culpably engaged in accomplishing the killing of pro-liberation civilians, to further policy of Pakistani occupation army, we deduce.

167. Tribunal notes that at a stage of making deposition in Tribunal P.W.03 Most. Hiramón Nesa, the wife of victim martyr

Mobarak burst into tears which irresistibly leads to the unerring conclusion that the narrative made by P.W.03 who experienced the extremely traumatic event is quite believable. P.W.03 by experiencing such horrific event obviously sustained extreme trauma and shock which shall never erase. Such reflection of trauma indeposition made in Tribunal rather makes her sworn testimony credible.

168. Tribunal notes that the killing of two detained civilians Kuddus and Mobarak the husband of P.W.03 has not been denied even by the defence. At the same time killing of Abdul Mannan at his home by gunshot on the date and time arraigned stands affirmed too. The reason of killing Abdul Mannan as suggested by the defence is a specific defence case which does not seem to have been proved by necessary evidence.

169. It has been found proved that the systematic attack launched at the house of Abdul Mannan resulted in brutal killing of three pro-liberation civilians namely, Abdul Mannan, Kuddus and Mobarak. The killing phase happened instantly after the gang formed of accused persons besieged the house of victim Abdul Mannan. In no way it could be controverted by cross-examining the P.W.s, the near relatives of victims.

170. The key phase of the attack leading to killing three unarmed civilians perpetrated at the house of victim Abdul Mannan seems to have been corroborated also by unimpeached testimony of P.W.12. Ocular testimony of P.W.12 Md. Hafij Uddin also demonstrates that he saw the gang besieging the house of victim Abdul Mannan. This fact was chained to the principal crimes, the brutal killings happened by launching deliberate and designed attack.

171. It also depicts that after the gang had left the site he (P.W.12) and others moved to the site attacked i.e. the house of victim Abdul Mannan and they found bullet hit dead bodies of Abdul Mannan, Kuddus and Mobarak lying there. This uncontroverted version indisputably adds assurance to the act of barbaric killing of three civilians. It together with ocular narrative of near relatives of victims proves that the accused A.K.M Akram Hossain, Md. Makleshur Rahman @ Tara, Al Badr S.M. Aminuzzaman Faruk being part of the gang were explicitly concerned with the act of killing Abdul Mannan and two other unarmed pro-liberation civilians which was materialized by conducting the attack at the house of Abdul Mannan, we deduce it irresistibly.

172. Why the gang formed of accused persons and their cohorts attacked the house of Abdul Mannan? Why did they target the victims? It stands proved that first, few days prior to the event of attack conducted the accused persons and Habibur Rahman Chairman threatened the victim Abdul Mannan to kill him as he was a local organizer of the war of liberation.

173. Presumably, the stance the victim Abdul Mannan took in support of liberation of war could not be acknowledged by the accused persons and their cohorts and thus they first threatened him to remain abstained from providing support to the war of liberation. This pre-event pertinent fact chained to the attack conducted stands proved too from ocular testimony of P.W.01, the first wife of victim Abdul Mannan, P.W.04 Most. Khudeja Khatun, the wife of victim martyr Md. Abdul Mannan. It has been divulged too that despite such threat Md. Abdul Mannan continued working in support of war of liberation, without being frightened.

174. The above proved pre event fact involving culpable and prohibited act of accused persons was indubitably linked to the event of attack arraigned that happened few days later. It stands proved from ocular narrative recounted by P.W.04 that by launching attack at the house of Abdul Mannan the accused

persons and their cohorts had killed Abdul Mannan by gunshot when he failed to escape and then the invaders also forcibly captured Kuddus and Aziz, the husband of P.W.04 staying at the same house.

175. It is evinced too that at a stage of attack conducted, Aziz managed to flee by jumping into the pond. In no manner this piece of ocular version of P.W.04 could be controverted. We do not find any reason to keep this piece of crucial version chained to the attack carried out aside from consideration. It gets corroboration from testimony of other direct witnesses.

176. In addition to killing four unarmed pro-liberation civilians the gang accompanied by the accused (1) S.M Aminuzzaman Faruk (2) A.K.M Akram Hossain (3) Md. Emdadul Haque @ Khaja Doctor (died during trial) and (4) Md. Maklesur Rahman @ Tara(**absconded but arrested at the summing up phase**)and their cohort Razakars in conjunction with the attack also committed devastating activities by looting and arson at the house of P.W.12. The charge framed arraigns it.

177. Uncontroverted ocular version of P.W.12 demonstrates that accused Razakars A.K.M Akram Hossain, Md. Maklesur Rahman @ Tara, Al Badr S.M. Aminuzzaman Faruk, Khaja doctor (died during trial) and their cohort Razakars

committed looting at their house when the invaders set the house on fire too. It also depicts that after committing such wanton destructive activities the invaders moved back toward west and then he (P.W.12) moved to the house of victim Abdul Mannan of village Ramerkandi along with his cousin brother Kadir Master and others where they found bullet hit dead bodies of Abdul Mannan, Kuddus and Mobarak lying there. All these facts and circumstances cumulatively suggest concluding that the accused persons actively and knowingly participated in all the phases of the designed attack.

178. What was the reason of conducting such prohibited acts forming part of systematic attack at the house of Afaj Uddin? It stands proved from uncontroverted ocular testimony of P.W.12 that his elder brother Afaj Uddin was a freedom-fighter and used to provide patronage to organize the youths to get freedom-fighters training in India and prior to the event arraigned accused Razakar A.K.M Akram Hossain and his cohorts came to their house and threatened them. This piece of fact adds assurance as to active and culpable participation of accused persons in perpetrating the criminal acts including the brutal killing of four unarmed civilians and conducting destructive activities detrimental to civilians' right.

179. Thus, it stands proved from unshaken testimony of P.W.12 that the gang accompanied by accused Razakar A.K.M Akram Hossain and his cohorts had carried out looting and arson at their house, in conjunction with the attack arraigned. Such attack conducted at the house of P.W.12, the brother of freedom-fighter Afaj Uddin was explicit indication of grave aggression to the pro-liberation civilians and presumably finding Afaj Uddin not available at home the gang unlawfully committed destructive activities by looting and arson, we deduce it unerringly.

180. Killing four pro-liberation civilians on getting them forcibly captured by launching systematic attack and also carrying out devastating activities by committing looting and arson at the house of freedom-fighter Afaj Uddin, the brother of P.W.12 cumulatively suggest to conclude that the gang formed of accused (1) S.M Aminuzzaman Faruk (2) A.K.M Akram Hossain (3) Md. Emdadul Haque @ Khaja Doctor (died during trial) and (4) Md. Maklesur Rahman @ Tara and their cohorts deliberately collaborated with the Pakistani occupation army by acting knowingly, sharing intent to materialize the criminal design orchestrated to further policy of Pakistani occupation army. The attack conducted was thus 'systematic'.

181. One victim Sohrab Hossain was the uncle of P.W.05 Md. Jahid Iman. He by testifying in Tribunal claims to have seen the event arraigned. Let us now see whether what the P.W.05 testified carries credibility. It appears that by making sworn testimony before Tribunal P.W.05 claims to have seen the event of attack leading to forcible capture of his uncle Sohrab Hossain and how and taking him where he was shot to death. But before we take his testimony into account first we consider it imperative to eye on a significant matter which has been admitted in his cross-examination.

182. It appears that P.W.05, in his cross-examination, explicitly admits, in reply to defence question, that he stated his date of birth as 01.03.1971 when he got the job of office assistant in a local Madrasa. That is to say, in absence of anything contrary, at the time of the alleged event happened P.W.05 was just a kid of few months old. It is not claimed by him that the said date of his birth was untrue. Be that as it may, what this P.W.05 stated in respect of the event arraigned implicating the accused persons does not carry any degree of credibility. He is not a competent and trustworthy witness. However, incompetency of P.W.05 does not affect the prosecution case as it rests upon ocular testimony of other competent and direct witnesses.

183. In view of above, the entire testimony the P.W.05, made in Tribunal deserves to be kept aside from consideration for the purpose of determination of the arraignments brought in the case in hand. We fail to understand why he has been cited as a direct witness to facts related to the crimes committed in 1971. At the same time, why the prosecution did not care to this matter? Prosecution too was supposed to be careful in dealing with this witness who had no reason of seeing the event alleged as at the relevant time admittedly he was just few months' old kid. The investigation officer as well should have paid due care and attention to it.

184. However, killing of another civilian Sohrab, in conjunction with the attack could not be shaken by defence. It happened at the ending phase of the attack conducted on the same day and by the same group, totality of evidence demonstrates it. Besides, it depicts that P.W.02 later heard from her *Fufu* Fatema and neighbours that the said Razakars had killed Sohrab Uddinby gunshot at the place nearer to the culvert of their village. Defence does not seem to have been able to taint this part of the attack leading to killing Sohrab in any manner.

185. P.W.01 stated that she coming out from room remained stood in the courtyard and saw those Razakars gunning down

Sohrab to death at the culvert nearer to their home. P.W.02, P.W.03 and P.W.04 also consistently testified that later they heard from villagers that the accused persons had killed SohrabUddin by gunshot taking him at the place nearer to the culvert of their village. Hearing a diabolical event happened from villagers was quite likely. Thus, hearsay narrative made by P.W.02, P.W.03 and P.W.04 carries probative value. Besides, killing the non-combatant civilian Sohrab Uddin does not appear to have been controverted in any manner.

186. Already it stands proved that the gang was formed of accused (1) S.M Aminuzzaman Faruk (2) A.K.M Akram Hossain (3) Md. Emdadul Haque @ Khaja Doctor (died during trial) and (4) Md. Maklesur Rahman @ Tara in carrying out designed criminal acts in course of all phases of attack. It depicts too that P.W. 12 heard from the people that the accused persons and their cohorts by launching attack had substantially contributed first in accomplishing the killing of three civilians. Then the P.W.12 and others on moving toward the last part of Bibirchar they found bullet hit dead body of **SohrabUddin** lying under a culvert. It could not be controverted. There is no reason to disbelieve P.W.12. In this way annihilation of four civilians happened to materialize the goal of the criminal enterprise to which the accused persons indicted were active part.

187. P.W.11 is also a hearsay witness who also testified that the gang had attacked their house after effecting killing of Abdul Mannan, Mobarak and Sohrab Uddin (victims of the event arraigned in charge no.01). Such hearsay version seems to have been corroborated from other evidence and circumstances and thus it carries probative value and credence.

188. The witnesses, the relatives of victims claim to have seen the event leading to killing their near relatives. It has been divulged from their testimony that the accused (1) S.M Aminuzzaman Faruk (2) A.K.M Akram Hossain (3) Md. Emdadul Haque @ Khaja Doctor (died during trial) and (4) Md. Maklesur Rahman @ Tara werewith the gang at the crime site and they had active participation in committing the killings by gun shots. It increases the liability of the accused persons.

189. Statement of one cited witness Kitab Ali recorded by the IO (Investigation Officer) which has been received in evidence as permitted under section 19(2) of the Act of 1973 goes to show that this witness had to get engaged with the locally formed Razakar Bahini under grave coercion and life threat. This witness thus obviously had fair space of experiencing prohibited criminal activities conducted by the accused persons.

190. Statement of Kitab Ali recorded by the IO tends to show that the accused persons were culpably engaged in causing killing of four civilians by launching attack, committing looting and arson by launching attack at civilians' houses which seems to be corroborative to testimony of the witnesses examined in Tribunal.

191. Statement of cited witness Kitab Ali (died during trail) recorded by the IO also depicts commission of criminal acts constituting the offences of 'abduction', 'confinement', 'torture', 'arson' and 'murder' as arraigned and it gets steady corroboration from ocular testimony of other witnesses examined on oath in Tribunal.

192. In the case in hand, facts unveiled lead to conclude that sharing common intent of the gang and knowing consequence the accused persons opted to remain actively associated with the gang. Presumably, intention was to provide culpable assistance and contribution in accomplishing the killings of unarmed pro-liberation civilians, to further policy and plan of Pakistani occupation army. From this point of view as well the accused persons indicted, being part of joint criminal enterprise [JCE-

Basic Form], incurred liability for the killing of numerous unarmed pro-liberation civilians.

193. Facts and circumstances divulged lead to deduce that the attack arraigned was directed against the civilian population which was intensified according to the designed plan. It stands proved that the crimes committed were *related* to the attack on a civilian population as it occurred in context of war of liberation and that the accused persons indicted *knew* that their act and conduct were so related to the accomplishment of crimes, the killings.

194. Tribunal notes that *mens rea* of committing the offence of murder as crime against humanity is the intent to kill or the intent to inflict serious injury and harm in reckless disregard of human life. The standard of *mens rea* required is intentional and premeditated killing. What has been appeared in the case in hand? Facts and circumstances divulged lead to the unerring conclusion that the accused persons in exercise of their nexus with Al Badr Bahini and Razakar Bahini remained with the gang being its part when it conducted the systematic attack. Such act and conduct are sufficient to deduce that their *mens rea*

was to participate in accomplishing the goal of the attack, by providing substantial contribution and facilitation

195. From the facts and circumstances unveiled it is well proven that the accused persons had the intention to kill or inflict serious injury and harm to human livelihood in the reasonable knowledge that their acts and conduct were likely to cause the death of the victims and other criminal acts.

196. In view of above, it is justifiably deduced that the accused persons indicted are guilty of murder of pro-liberation defenceless civilians as they were consciously engaged with the criminal enterprise intending to kill civilians.

197. In this way the accused persons sharing mens rea participated in perpetrating the crimes of killing of numerous civilians. Engaging in conduct which is unlawful is sufficient to prove mens rea. In this regard it has been observed by the **ICTY Trial Chamber** in the case of **Kupreskic** that--

“The *mens rea* for murder is that the accused “engaging in conduct which is unlawful, intended to kill another person or to cause this person grievous bodily harm, and has caused the death of that person.”

**[Kupreskic ICTY Trial
Chamber, Judgment: January 14, 2000,
para. 560]**

198. It appears that defence simply denied what the P.W.s testified in relation to the commission of principal crime, the brutal killings. No effort seems to have been made to diminish and taint the narrative made by witnesses by cross-examining them. The way of cross-examining the P.W.s does not seem to be closer to its object i.e. to diminish the narrative made by the P.W.s. In this regard the **Appellate Division of Supreme Court of Bangladesh in the Criminal Review Petition Nos. 17-18 of 2013** preferred by Abdul Quader Molla observed that –

“It is to be noted that the object of cross-examination is to bring out desirable facts of the case modifying the examination-in-chief. The other object of cross-examination is to bring out facts which go to diminish or impeach the trustworthiness of the witness”.

**[Abdul Quader Molla, Criminal review
Petition Nos. 17-18 of 2013, Judgment
page 35]**

199. It has been argued on part of defence that there is no evidence to show as to which accused allegedly participated in committing the killings. But Tribunal notes that there can be no

room to deduce that mere presence of the accused persons at the crime sites does not make them responsible for the crimes happened. Rather, their presence with the gang of attackers at the crime sites, as already proved constituted their ‘participation’ as such act had significant effect to promote the accomplishment of killings. In this regard it has been observed by the **ICTY Trial Chamber** that—

“Mere presence constitutes sufficient participation under some circumstances so long as it was proved that the presence had a significant effect on the commission of the crime by promoting it and that the person present had the required *mensrea*.”

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

200. History says that in 1971, in context of war of liberation annihilation of pro-liberation civilians in the name of combating counterpart was the policy of Pakistani occupation army. The victims, as found proved, used to provide assistance to freedom-fighters, taking stance in favour of the war of liberation.

201. Why the accused persons remained stayed with the gang at crime sites? It may safely be inferred that they too were conscious part of the criminal enterprise, in exercise of their membership in auxiliary force(s) and being aware of the

consequence they provided substantial assistance and aid to the gang in carrying out horrific killing of numerous civilians.

202. Therefore, presence of accused persons at the crime sites with the gang of army men indisputably had impact and causal link in targeting the civilians and the accused persons knowingly aided and assisted to execute the murderous enterprise.

203. Not only the physical participation of an accused in accomplishing killing but his act or conduct is to be assessed in determining his liability for the crimes committed. It is now settled jurisprudence that conscious presence of accused person indicted at the crime sites with the criminal enterprise is sufficient for holding him criminally liable for the ‘common design’. In the case in hand, the accused persons knew the designed scheme of collective murder and took part to enforce the murderous scheme—it has been found proved beyond reasonable doubt.

204. It is now well settled proposition that where a common design of a group of attackers exists and the group has carried out its purpose, then no distinction can be drawn between the ‘finger man’ and the ‘trigger man’. This view finds support from

the observation made by the **ICTY Appeal Chamber**, in the case of **Tadic**, that–

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

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

205. Based on facts and circumstances unveiled it is thus concluded that the accused persons actively and knowingly participated by recklessly endorsing the brutal killing to happen within the eye sight of dear ones of victim as part of ‘systematic attack’. Such barbaric act caused grave mental harm to the dear ones of victims in grave breaches of customs and laws of war which rather constituted the offence of ‘**torture**’.

206. Cumulative evaluation of facts revealed leads to conclude that the accused (1) S.M Aminuzzaman Faruk (2) A.K.M Akram Hossain (3) Md. Emdadul Haque @ Khaja Doctor (died during trial) and (4) Md. Maklesur Rahman @ Tara (remained

absconded and arrested at the phase of summing up) being part of the 'pack of wolves' and in most terrific manner had acted consciously first in getting the victims unlawfully captured that eventually led to brutal extinction of victims' lives by gun shot. Such prohibited acts accomplished in systematic manner were rather extremely derogatory to international humanitarian law and gravely shocking to humankind.

207. Tribunal reiterates that offences of 'Crimes against Humanity' which were committed in 1971 during the war of liberation directing civilian population and protected group are being tried under 1973 Act, and thus it is obvious that they were committed in the '**context**' of the 1971 war of liberation. This 'context' itself is sufficient to prove the existence of a '*systematic attack*' on Bangladeshi self-determined population in 1971.

208. It is to be kept in mind that the task of determination of accountability of a person accused of offences enumerated in section 3(2) of the Act of 1973 involves a quite different jurisprudence. Proof of all forms of criminal responsibility, through 'participation' in any manner can be given by direct or circumstantial evidence. It is now settled jurisprudence. Circumstantial evidence relates to circumstances surrounding an

event or offence arraigned from which a fact at issue may also be logically inferred.

209. In the case in hand, we got it well proved from facts and circumstances divulged that the accused (1) S.M Aminuzzaman Faruk (2) A.K.M Akram Hossain (3) Md. Emdadul Haque @ Khaja Doctor (died during trial) and (4) Md. Maklesur Rahman @ Tara (remained absconded and arrested at the phase of summing up) in exercise of their affiliation with the *para militia* auxiliary forces got consciously engaged in carrying out the systematic attack in a designed manner that resulted not only in brutal killing of civilians but it resulted too in devastating activities with grave coercion and horror.

210. What was the mode of participation of accused persons in committing the crimes arraigned? In light of reasoned deliberation made herein above the accused persons indicted will also be responsible for all that naturally results from the commission of the act of the 'systematic attack' arraigned. That is to say, the offence of crimes against humanity is often the cumulative outcome of conducts and acts of individuals forming part of gang of attackers.

211. Does only the actual executor of the crime incur liability for the commission of a **‘group crime’**? The principled conception in this regard states that--

‘The principle of fair attribution of personal liability, however, permits criminal law liability not only for the physical executor of the crime (for instance, person A, who with intent stabbed B to death and thus committed murder), but also for others who exercised their freedom of choice to participate in a criminal plan or enterprise (for example, to murder person B). This makes it possible to attribute criminal liability to persons other than the principal perpetrator for the exact roles they played in carrying out the offence.’

[‘A Theory of Punishable Participation in Universal Crimes’: Terje Einarsen and Joseph, Rikh of; 2018, Torkel Opsahl Academic E Publisher Brussels, page 85]

212. In the case in hand, it already stands proved that accused (1) S.M Aminuzzaman Faruk (2) A.K.M Akram Hossain (3) Md. Emdadul Haque @ Khaja Doctor (died during trial) and (4) Md. Maklesur Rahman@ Tara(remainedabsconded till summing up and arrested on 21.6.2023)had acted being part of the Joint Criminal Enterprise [JCE] knowing object of the attack directing civilians.

213. Totality of facts revealed as discussed above leads to the conclusion that the accused persons were present with the gang at the crime sites not as mere spectators or bystanders and for any pious purpose. Their affiliation with the local auxiliary forces leads to the conclusion that their presence at the sites attacked was not blameless. Rather, it may be irresistibly construed that they remained with the gang sharing culpable and common intent and such act substantially aided, facilitated and contributed to the accomplishment of brutal killings and devastating activities, the goal of the designed criminal mission. From this point of view the accused persons indicted are found equally liable for the crimes committed as arraigned in this count of charge.

214. In view of jurisprudence evolved it is thus not required to show that which accused actually committed the killing of which victim by gun shot. Being part of the joint criminal enterprise [JCE] they all too incurred criminal liability for all the criminal acts committed in course of systematic and deliberate attacks. In this regard we recall the observation of ICTY Appeal Chamber that--

“Criminal responsibility may be imputed to all participants within the common enterprise

where the risk of death occurring was both a predictable consequence of the execution of the common design and the accused was either reckless or indifferent to that risk”.

[Tadic Appeal Judgement, ICTY Appeal Chamber: para. 204.]

215. Out of four accused indicted in this count of charge one accused Md. Emdadul Haque @ Khaja Doctor died during trial and thus proceeding so far as it related to him stood abated. Therefore, no finding as to his liability for the crimes proved is going to be rendered despite the fact that he too was a co-perpetrator of the crimes proved.

216. Finally, based on reasoned findings made above we arrive at decision that prosecution has been able to prove that accused (1) S.M Aminuzzaman Faruk (2) A.K.M Akram Hossain and (3) Md. Maklesur Rahman @ Tara(**remained in absconsion till summing up phase and arrested on 21.06.2023**) incurred criminal liability for aiding, abetting, facilitating, substantially contributing and participating, by their culpable act and conduct forming part of systematic attack to the commission of criminal acts constituting the offences of ‘**abduction**’, ‘**confinement**’, ‘**torture**’, ‘**arson**’ and ‘**murder**’ as crimes against humanity as enumerated in section 3(2)(a)(g)(h) of the International Crimes(Tribunals) Act of 1973 read with section

4(1) of the Act of 1973 which are punishable under section 20(2) of the said Act of 1973.

Adjudication of Charge 02: [02 accused indicted]

[Event no.02 as narrated in page nos. 34- 37 of the formal charge]

[Offences of abduction, confinement, torture and murder of Md. Abdul Hannan of village-Jalalpur under police station Nokla of District [now]- Sherpur]

217. Charge: That on 27 July 1971 at about 12:00 P.M. the accused (1) S.M Aminuzzaman Faruk seeing **Md. Abdul Hannan**[15/16 years old] standing beside Nokla-Sherpur road forcibly picked him up on the Pakistani army vehicle by which he was coming toward Nokla from Sherpur and took him away to Nokla camp.

In the evening the father of Md. Abdul Hannan and others moved to the camp when they saw the accused S.M Aminuzzaman Faruk and his associates including Shamsuzzaman Master present there and also saw one **Md. Sahjahan Ali Saju** of their neighbouring village detained there. Shamsuzzaman Master ordered the father and relatives of the victim to bring 13,000 taka as ransom.

Afterwards, on the same day at about 08:00 P.M the father and relatives of the victim collecting the said amount of money came to the camp when they knew that the detained victim was

transferred to the Al Badr camp set up at Nokla Bilateral High School. With this the father and relatives of the victim then moved to the said camp where they met Shamsuzzaman Master who informed them that the victim Hannan was being interrogated to extract information about the freedom-fighters.

But afterward, on the same day at about 12:00 A.M the accused S.M Aminuzzaman Faruk started causing torture to the victim by charging bayonet and at a stage the victim attempted to escape by jumping into the adjacent pond when the accused S.M Aminuzzaman Faruk and Md. Maklesur Rahman @ Tara and their accomplices by getting him hold in the **pond bayoneted him to death**. After independence his body was buried on the bank of the said pond.

Therefore, the accused (1) S.M Aminuzzaman Faruk and (2) Md. Maklesur Rahman @ Tara(**remained in absconsion till summing up phase and arrested on 21.06.2023**) have **been** charged for participation, abetment , facilitating and substantial contribution, by their act and conduct forming part of systematic attack to the commission of criminal acts constituting the offences of ‘**abduction**’, ‘**confinement**’, ‘**torture**’ and ‘**murder**’as crimes against humanity as enumerated in section 3(2)(a)(g)(h) of the International Crimes(Tribunals) Act of 1973

read with section 4(1) of the Act of 1973 which are punishable under section 20(2) of the said Act of 1973.

Evidence of witnesses examined

218. Tribunal notes that **three (03)** witnesses have been examined as P.W.07, P.W.08 and P.W.10 in support of this count of charge. Additionally, prosecution, by filing an application under section 19(2) of the Act of 1973 has urged to receive the statement of one witness Kitab Ali made to the IO in evidence as he died during trial.

219. Before we weigh the testimony of the three witnesses first it is essential to state what these witnesses narrated in Tribunal. Now, let us see what the witnesses recounted before Tribunal in respect of the arraignment.

220. P.W.07 Md. Azahar Ali (61) is now a resident of village-Jalalpur under police station Nokla of District [now] Sherpur. In recounting the event arraigned in this count of charge P.W.07 stated that on 10th day of Bangla month Bhadra in 1971 at about 12:00 noon he and his cousin brother Abdul Hannan were on the way to Nokla Bazar and at a stage they got halted behind a banyan tree, on Nokla Sherpur road. At that time Pakistani army being accompanied by Al Badr Aminuzzaman Faruk arrived

there by a vehicle and took away his cousin brother Abdul Hannan to Nokla Thana, on forcible capture.

221. P.W.07 next stated that with this being frightened he returned back home and disclosed the event. On the same day he along with his father and Fufa(father's sister's husband) moved to Nokla Thana where they found Abdul Hannan and Sufi Shahjahan (victim of the event arraigned in charge no.03) detained in custody. His (P.W.07) father and Fufa then requested Razakar Shamsuzzaman Master, Al Badr Aminuzzaman Faruk (accused), Razakar Emdadul Haque Khaja (now dead) and Razakar Maklesur Rahman (accused) to set Abdul Hannan released. But they then defying it stated that Hannan (victim) was an associate of freedom-fighters. Then his father and Fufa gave them 13,000 Taka for releasing Hannan and returned back home with the hope that Hannan would be released in exchange of this amount of ransom money.

222. P.W.07 also stated that on the following day he along with his father and Fufa again moved to Nokla Thana when Razakar Shamsuzzaman Master and Al Badr Aminuzzaman Faruk (accused) informed them that Abdul Hannan was set at liberty in night. Then they returned back home.

223. P.W.07 continued stating that on 09 December, 1971 when the Nokla Thana locality got liberated one Chan Mia Razakar and Bhongir Ma came to their house and informed that Al Badr Aminuzzaman Faruk (accused) gunned down Abdul Hannan to death on 10th day of Bangla month Bhadra in 1971 taking him to the pond of Nokla Pilot High School and his dead body was made dumped on the bank of the pond. Then they unearthed the dead body of Abdul Hannan therefrom and buried it at their family graveyard.

224. Finally, P.W.07 stated that accused Aminuzzaman Faruk, Maklesur Rahman Tara, Emdadul Haque Khaja and Akram Hossain studied in Nokla Pilot High School and he (P.W.07) too was a student of Nokla Primary school, adjacent to it and thus he knew them beforehand.

225. During cross-examination P.W.07 in reply to defence question put to him stated that in 1971 he was 11/12 years old; that during investigation the investigation officer visited the house of his cousin sister Moti; that his cousin sister Moti obstructed him (P.W.07) not to make statement against the accused persons; that the witness Md. Mahbubul Alam Jannat is his neighbour.

226. P.W.07 denied defence suggestions that his cousin sister did not agree to make statement implicating the accused Faruk and Tara and thus she was not made witnesses in this case; that the accused persons were not involved with the event alleged; that they were not Razakars and Al Badrs and what he testified implicating these accused was untrue and tutored.

227. P.W.08 Md. Khairul Islam(58) is now a resident of village-Bazardi under police station Nokla of District Sherpur. He is a hearsay witness in relation to the event arraigned in this count of charge.

228. In respect of the event arraigned in this count of charge P.W.08 stated that he heard from relatives of Hannan (victim) that on 27 August in 1971 at about 12:00 noon Al Badr Aminuzzaman Faruk and his cohort Razakars forcibly captured Hannan from Nokla-Sherpur road and took him away to Nokla Thana camp by a vehicle. He (P.W.08) also heard that in night of the same day Hannan was killed and his dead body was made dumped on the bank of the pond. On 09 December, 1971 after Nokla Thana locality got liberated, relatives of Hannan recovered the dead body of Hannan from the bank of the pond

and buried it at village Jalalpur and he (P.W.08) attended the funeral.

229. During cross-examination P.W.08 admits in reply to defence question that according to voter list his date of birth is **01.06.1966**. P.W.08 denied defence suggestions that in 1971 he was a kid; that he did not hear the event he testified; that he did not know the accused persons; that what he testified implicating the accused persons was untrue and tutored.

230. P.W.10 Dr. Md. Billal Alam(59)is currently a resident of 61, Lake Circus, Dolphin Goli, Kalabagan, Dhaka. In 1971 he was studying in class VI in Nokla High School, staying at his paternal home in Nokla. He chiefly testified in respect of the event arraigned in charge no.03.

231. In respect of the event arraigned in this charge no.02 P.W.10 **Dr. Md. Billal Alam** simply narrated a fact related to the event arraigned. P.W.10 stated that on hearing the act of taking away his uncle Shahjahan Ali Saju on forcible capture(as arraigned in charge no.03) he along with his father, elder brother Khorshed Alam, and Mahbubul Alam Jannat moved to Nokla Thana where they found his uncle and Abdul Hannan (victim of the event arraigned in charge no.02) detained there.

232. Defence cross-examined the P.W.10 chiefly in relation to event arraigned in charge no.03. However, P.W.10 denied defence suggestions that no event he narrated happened; that the accused were not Al Badrs and were not involved with the event alleged and that what he testified implicating the accused was untrue and out of rivalry over land dispute.

233. It is to be noted that in addition to evidence of abovewitnesses examined in Tribunal in support of this count of charge, statement of one cited witness Kitab Ali whose name finds place in serial no. 11 of the volume of statement of witnesses has been received in evidence under section 19(2) of the Act of 1973, as prayed by prosecution on ground that this witness died on 18.11.2018, during trial. On going through his statement it transpires that he is a direct witness to facts related to this count of charge as according to his statement in 1971 he was forced to get affiliated in locally formed RazakarsBahini under grave coercion.

Finding with reasoning on evaluation of evidence

234. The learnedprosecutor argued, drawing attention to the narrative made by the witnesses including direct witness that the event of forcible capture happened in day time and it has been

proved that the accused S.M Aminuzzaman Faruk and his accomplices took away the victim to the camp by an army vehicle on forcible capture. Testimony in this regard could not be controverted by defence. It has been proved too that another accused Md. Maklesur Rahman @ Tara too was involved with the event that ended in killing the detained victim. His nexus and presence at the camp prove it indubitably.

235. Per contra, **Mr. Abdus Sobhan Tarafdar**, the learned defence counsel argued that the witnesses relied upon by prosecution are not credible; that of three witnesses one P.W.08 is incompetent witness as he was a kid in 1971; that there is no evidence to show the alleged participation of the accused persons in perpetrating the alleged killing.

236. Tribunal notes that in view of the arraignment brought in this count of charge first it has been alleged that the victim, an unarmed civilian was forcibly captured and then he was kept confined at the Nokla camp. It has been alleged that accused S.M Aminuzzaman Faruk actively participated in effecting forcible capture of the victim. Next, both accused indicted were found to have had active concern and nexus with the activities carried out at the camp where the victim was kept confined. We thus require determining whether the accused persons had

conscious and active concern with all phases of the event that ended in killing the detained victim Abdul Hannan.

237. On appraisal of uncontroverted ocular testimony of P.W.07 it is evinced that on 10th day of Bangla month Bhadra in 1971 at about 12:00 noon he and his cousin brother Abdul Hannan were on the way to Nokla Bazar when Pakistani army being accompanied by accused Al Badr S.M. Aminuzzaman Faruk arrived there by a vehicle and took his cousin brother Abdul Hannan (victim) away to Nokla Thana, on forcible capture.

238. The above unimpeached ocular version of P.W.07 also demonstrates that accused Al Badr S.M. Aminuzzaman Faruk being part of the gang substantially aided in effecting forcible capture of pro-liberation civilian Abdul Hannan. This phase of attack happened in day time. P.W.07 was with the victim when he was unlawfully apprehended and thus he had natural occasion of seeing the accused S.M. Aminuzzaman Faruk accompanying the gang and the act of taking away the victim Abdul Hannan on forcible capture. Defence does not seem to have been able to controvert this crucial phase of the event arraigned in any manner.

239. What happened next? Unimpeached testimony of P.W.07 depicts that on the same day he, his father and Fufa (father's sister's husband) moved to Nokla Thana camp and approached to Al Badr S.M. Aminuzzaman Faruk, Razakar Emdadul Haque Khaja (died during trial)) and Razakar Md. Maklesur Rahman to secure release of detained Abdul Hannan. Defence could not controvert it. Such effort to get back dear one made on part of the relatives of victim Abdul Hannan was natural and credible. Be that as it may, it may be justifiably deduced that the accused S.M. Aminuzzaman Faruk, and Razakar Md. Maklesur Rahman had significant domination over the said camp and they were culpably associated with the prohibited activities conducted there, in keeping the victim detained in captivity.

240. It also stands proved from unimpeached testimony of P.W.07 that the accused persons even despite obtaining ransom money did not mind to set the victim released readily and the relatives of victim came back home with the hope that the victim would be released. But testimony of P.W.07 demonstrates that the accused persons defying such appeal did not set the detained victim Abdul Hannan released. It too could not be impeached. Thus, the accused persons indicted were responsible even for the ending consequence of such unlawful

detention of the victim at the camp with which they had explicit and culpable nexus.

241. The fact of keeping the victim Abdul Hannan in Nokla Thana camp seems to have been corroborated from ocular testimony of P.W.10. In respect of the event arraigned in charge no.02 P.W.10 **Dr. Md. Billal Alam** narrated a fact chained to the event arraigned in the charge under adjudication.

242. It appears that P.W.10 on hearing the act of taking away his uncle Shahjahan Ali Saju on forcible capture (as arraigned in charge no.03) he along with his father, elder brother Khorshed Alam, and Mahbubul Alam Jannat moved to Nokla Thana camp where they found his uncle Shahjahan Ali Saju and **Abdul Hannantoo** (victim of the event arraigned in charge no.02) detained there. Defence could not taint this fact.

243. The above fact thus demonstrates that Nokla Thana camp was rather a concentration camp where the accused persons and their accomplices used to keep pro-liberation civilians unlawfully detained in captivity which was gravely detrimental to human rights and international humanitarian law. This piece of untainted version of P.W.10 lends corroboration to the fact of

keeping the victim Abdul Hannan unlawfully detained in captivity at the Nokla camp.

244. Eventually what fate the detained victim Abdul Hannan had to face? Did he get release from captivity in exchange of ransom money? In this respect naturally there is no direct evidence. Horrific context prevailing in 1971 did not permit it. However, from circumstances unveiled combined with crucial facts unveiled it may be well inferred.

245. It transpires that the accused persons even despite obtaining ransom money did not set the victim released readily and the relatives of victim came back home with the hope that the victim would however be released. But the victim Abdul Hannan was not made freed. Appeal seeking release of detained victim made on part of his relatives was trickily defied by the accused persons. It indicates that the accused persons orchestrated the design to actuate the ultimate object of the attack, the killing of the detained victim, a pro-liberation civilian.

246. Uncontroverted sworn narrative of P.W.07 demonstrates that after the Nokla Thana locality got liberated the relatives of victim heard from one Chan Mia Razakar and Bhongir Ma that Al Badr S.M. Aminuzzaman Faruk gunned down Abdul Hannan

to death on 10th Bhadra in 1971 taking him to the pond of Nokla Pilot High School and his dead body was made dumped on the bank of the pond. What a notoriety! Sources of hearing the above fact relating to the principal crime, the killing seem to be natural and thus hearsay evidence in this regard carries credibility. Defence does not seem to have made effort to refute this post event crucial fact.

247. Evidence presented demonstrates that on unearthing the dead body of Abdul Hannan (victim) it was buried at his family graveyard. It too remained undisputed. This piece of fact too was chained to the killing of victim which the P.W.07 and others heard from one Chan Mia Razakar and Bhongir Ma. Defence could not dispute it too that on hearing the fact of killing the relatives of victim unearthed his dead body and buried it at their family graveyard.

248. In view of the above undisputed facts and circumstances it has been proved beyond doubt that the victim Abdul Hannan was eventually annihilated, even defying his relatives' approach to set him freed. The accused S.M. Aminuzzaman Faruk had played key role not only in effecting forcible capture of victim Abdul Hannan but he culpably participated even in liquidating the victim by gunshot. It stands proved.

249. The unshaken facts divulged prove the culpable association and active concern of accused persons indicted with Nokla Thana camp. Accused Md. Maklesur Rahman@Tara indicted in this count of charge was seen present at the Nokla Thana camp when the relatives of victim made appeal to release the victim from captivity. This accused was not with the gang when the victim was unlawfully detained, true. But culpable concern of this accused with the successive activities carried out at the camp where the victim was kept unlawfully confined leads to conclude that he too knowingly aided, substantially facilitated and contributed in accomplishing the principal crime, the killing of detained victim.

250. It is true that none had occasion of witnessing the act of killing. But merely for this reason participation of accused persons even at this ending phase of atrocious event does not stand confused. Already it has been proved beyond reasonable doubt that the accused S.M. Aminuzzaman Faruk and Md. Maklesur Rahman @ Tara had explicit dominance over the Nokla camp where the victim was kept detained and therefore it may be well inferred that the accused persons were consciously 'concerned' also in effecting the outcome of the attack, the

killing. In this regard we recall the observation made in the case of Tadic by the ICTY trial chamber which is as below:

“Actual physical presence when the crime is committed is not necessary . . . an accused can be considered to have participated in the commission of a crime . . . if he is found to be ‘concerned with the killing.’” [**Tadic, (ICTY Trial Chamber)**, May 7, 1997, para. 691]

251. Since the victim detained at the Nokla Thana camp did not return back despite providing ransom money by his relatives it may be well deduced that the accused persons having dominance over the Nokla Thana camp rather opted to materialize the object of the criminal design by annihilating the victim and eventually it happened and in this way accused Al Badr S.M. Aminuzzaman Faruk and Razakar Md. Maklesur Rahman@ Tara being the infamous actors triggered the act of wiping out the detained victim Abdul Hannan, we deduce it unerringly, based on facts and circumstances unveiled.

252. In cross-examination P.W.07 in reply to defence question put to him stated that in 1971 he was 11/12 years old. Drawing attention to it the learned defence counsel argued that since P.W.07 was a minor boy in 1971 it was not possible for him to recount the event, even if he allegedly experienced it. Thus, he

cannot be termed as a competent witness and what the P.W.07 claims to have allegedly experienced does not carry credibility.

253. It is found that the P.W.07 was 12 years old in 1971, true. It has been admitted by P.W.07 in his cross-examination. In the case in hand, it appears that prosecution relied upon P.W.07 and P.W.10 in support of this count of charge. They seem to be more capable witnesses in memorizing what they experienced and heard in respect of the event arraigned.

254. Tribunal notes that episodic memory filled with shock retains in human memory for ever as it involves traumatic and horrific experience. It is true that P.W.07 and P.W.10 were young aged boys in 1971. But it is now well settled that mere young age cannot be a ground to discard one's testimony if the same appears to be natural and carries probative value. **The Appellate Division of the Supreme Court of Bangladesh** in rendering such observation in this regard 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]

255. In view of above settled propositions we are not convinced to agree with the defence submission. It appears that P.W.07 is the key direct witness who despite the existing horrific situation had natural occasion of seeing the acts forming part of the systematic attack leading to abduction, confinement of victim Abdul Hannan which eventually ended in brutal killing.

256. 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 P.W.07 and P.W.10 has thus reliably portrayed the event.

257. P.W.08 **Md. Khairul Islam is a hearsay witness**. Hearsay evidence is not inadmissible per se if it carries probative value and gets corroboration from other evidence. Now, we require seeing whether hearing the event as claimed by P.W.08 was

credible and whether recounting such facts what he allegedly heard is probable. **P.W.08** claims to have heard the event of forcibly taking away the victim Abdul Hannan from his (Hannan) relatives.

258. In cross-examination P.W.08 admitted in reply to defence question that according to voter list his date of birth is **01.06.1966**. In absence of anything contrary it appears that in 1971 P.W.08 was simply a kid of five (05) years old. The learned defence counsel drawing attention to this admitted fact argued that it was not likely for a kid of five years old to retain in his memory what he allegedly saw.

259. We are agreed with the submission made by the learned defence counsel. It is indeed difficult to memorize what the P.W.08 allegedly heard in respect of the event when he was only five (5) years old kid. Thus, we are not convinced to take the hearsay testimony of P.W.08 into account for determining the arraignment brought in this count of charge. It is improbable to recount what the P.W.08 allegedly claims to have heard when he was simply a kid of 5 years old. Claim of hearing the event as testified by P.W.08 is not believable. Thus, hearsay evidence of

P.W.08 does not carry any degree of probative value and credibility and it deserves to be kept aside from consideration.

260. However, merely for the above reason it cannot be said that prosecution failed to prove the arraignment. It is now well settled that testimony of even a single witness is sufficient to prove the event and involvement of accused indicted if it inspires credence. According to established jurisprudence we must keep in mind that corroboration is not a legal requirement to arrive at a finding. In this regard it has been observed by the ICTR Trial Chamber that –

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

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

261. It is also noteworthy to state too that not the quantity but the quality of evidence is to be considered. In the case of A.T.M Azharul Islam the **Appellate Division of Supreme Court of Bangladesh** has relied upon the observation made by the ICTR which is as below:—

“In the case of Prosecutor V. Bagilibema, Case No. ICTR-95-1A-A Appeal Chamber held that it is well settled that “the testimony of a single witness on a material fact may be accepted as evidence without the need for corroboration.”

[14 SCOB [2020] AD , Criminal Appeal No. 12 of 2015, Judgment 31 October 2019, A.T.M. Azharul Islam Vs. Chief Prosecutor, ICT, Para 242]

262. In view of discussion and reasoning made herein above based on evaluation of evidence and settled proposition it appears that ocular testimony of only P.W.07 is found to have proved the event arraigned and explicit culpable concern and participation of accused persons indicted therewith. P.W.10 too testified the fact of seeing the victim detained at Nokla Thana camp and it gets corroboration from testimony of P.W.07.

263. Tribunal notes 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 Kitab Ali whose name finds place in serial no.11 of the volume of statement of witnesses has been received in evidence under section 19(2) of the Act of 1973, as prayed by prosecution on ground of his death on 18.11.2018, during trial.

264. Sub-section (2) of section 19 of the ICT Act of 1973 runs as follows: “(2) 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.”

265. In view of provision contemplated in Sub-Section (2) of section 19 of the ICT Act of 1973 it appears that statement recorded by Investigating Officers of a witness who at the time of trial is dead may be received in evidence. Tribunal thus ordered in affirmative in response to the prayer sought in this regard on part of prosecution.

266. We have perused the statement of witness Kitab Ali (already died during trial) made to the IO. He seems to be a vital eye witness but could not be adduced and examined as he died during trial. It demonstrates that in 1971 he was forced to join the local Razakar Bahini under coercion and threat and thus he naturally had fair opportunity of seeing the criminal activities carried out around the locality by the accused persons belonging to said locally formed Razakar Bahini and Al Badr Bahini

267. It appears that the statement of this witness Kitab Ali (died during trial) recorded by the IO gets axiomatic corroboration from evidence of direct witness examined in Tribunal, in relation to the event 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 material facts related to the event arraigned.

268. Statement of Kitab Ali recorded by the IO patently demonstrates that the accused(1) **S.M Aminuzzaman Faruk** and (2) **Md. Maklesur Rahman @ Tara** belonging to locally formed auxiliary force **got the** victim Abdul Hannan (victim of charge no.02)unlawfully captured and had kept him in confinement at Nokla Thana hajot camp. It gets consistent corroboration from the narrative made by witnesses in Tribunal on oath.

269. It appears too from statement of Kitab Ali made to the IO that he being a Razakar of the camp saw the accused persons causing inhumane torture to detained victims. Statement of Kitab Ali made to the IO also depicts that the accused persons and their cohorts actively participated in perpetrating the brutal

killing of two detained civilians (victims of charge no.02 and 03).

270. Now, let us resolve the question of liability. In a case involving the 'system crime' liability can be established by showing that the accused indicted had intent to participate in committing the crime and that his act substantially contributed to its commission. Such contribution does not necessarily require physical participation in accomplishing the killing constituting the offence of murder as crime against humanity, the principal crime. It is now well settled.

271. In the case in hand since the accused S.M. Aminuzzaman Faruk and Md. Maklesur Rahman @ Tara were found present at the Nokla Thana camp where the victim was kept unlawfully confined. It may be thus indisputably inferred that the accused persons were aware of the consequence of their unlawful act.

272. It stands proved that a bogus hope of releasing the victim despite trickily extracting ransom money the accused persons rather readily made the relatives of victim returned back. All these culpable acts suggest that the intent of the accused persons was to materialize the goal of their collective criminal mission

by making it ended in brutal killing of the detained victim Abdul Hannan.

273. Such act of the accused persons had explicit causal effect which leads to conclude that without their contribution and substantial facilitation the killing of victim Abdul Hannan, detained at the camp would not happen. Facts unveiled suggest concluding that the accused S.M. Aminuzzaman Faruk and Md. Maklesur Rahman @ Tara consciously contributed to the commission of crimes in execution of a common criminal purpose and thus they incurred criminal liability as a form of 'commission' of a crime.

274. Act of defying the appeal made for release of the detained victim despite receiving ransom money rather explicitly proves that the object of the accused persons was to annihilate the victim. Their substantial facilitation forming part of the systematic criminal design was chained to the ending phase of the attack, the killing.

275. It is not required to prove their physical participation in all phases of the event, by direct evidence. Thus, they incurred liability for brutally wiping out the detained victim Abdul

Hannan. In this regard, the **Appellate Division of the Supreme Court of Bangladesh** in the **Criminal Appeal No. 12 of 2015** in the case of **A.T.M Azharul Islam** has observed as below:

“Over and above, in order to incur criminal liability in a case of crime against humanity, the accused himself need not have to participate in all aspects of the criminal conduct. Therefore, the accused is criminally liable under section 4(1) of the Act of 1973 and the Tribunal rightly found him guilty for substantially abetting and facilitating the actual commission of the offence of murder and arson as crimes against humanity as specified in section 3(2) (a)(c)(g) and (h) of the Act”

[14 SCOB [2020] AD , Criminal Appeal No. 12 of 2015, Judgment 31 October 2019, A.T.M. Azharul Islam Vs. Chief Prosecutor, ICT, Para 134]

276. Presence and culpable association of accused persons with Nokla Thana camp rather promoted to activate the object of the criminal mission which ended in annihilation of detained pro-liberation civilian. It is abundantly patent from facts and circumstances that the accused persons had explicit espousal to the object of the criminal design and thereby they consciously made them active part of the criminal mission, to further the goal of the criminal enterprise.

277. In the case in hand, it stands proved that the accused S.M. Aminuzzaman Faruk and Md. Maklesur Rhaman @ Tara contributed by sharing common intent to commit the killing and thus they cannot absolve liability, regardless of the level and mode of their contribution to its commission. Participation in a joint criminal enterprise [JCE-Basic Form] made them equally liable as co-perpetrators. Tribunal also reiterates that providing **‘assistance’ or ‘facilitation’** to the commission of a crime may not always be tangible. It may be perceived or inferred from circumstances and material facts. It has been observed by the **ICTY Trial Chamber in the case of Simic, Tadic and Zaric** that –

“The acts of aiding and abetting need not be tangible, but may consist of moral support or encouragement of the principals in the commission of the crime.”

[ICTY Trial Chamber :Case No. IT-95-9-T, Judgment: 17 October 2003, Para- 162]

278. It is now jurisprudentially settled that every person, forming part of the group of attackers, if found to have had contribution to the crimes committed in violation of international humanitarian law is considered a perpetrator regardless of the nature of his participation. All the participants

are thus equally guilty of the crime regardless of the role each played in its agreed commission. This view finds support from the observation of the **ICTY Trial Chamber** in the case of **Vasiljevic** 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.”

[Vasiljevic, ICTY Trial Chamber, November 29, 2002, para. 67]

279. The criminal acts forming part of conducting the attack arraigned 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 pro-liberation Bangalee population in 1971, we deduce it. At the same time evolved jurisprudence tells that-- “A single murder may constitute a crime against humanity if it is perpetrated within the context of a widespread or systematic attack.” **[Seromba, (Trial Chamber), December 13, 2006, para. 357]**

280. In the case in hand the accused persons' involvement in the criminal acts forming part of systematic attack indubitably formed a link in the chain of causation. Basic category of JCE involves cases where all co-perpetrators are found to have acted pursuant to a common design, possessing the same criminal intention in effecting the common design even if each co-perpetrator carried out a different role in accomplishing the killing and thus all the members of JCE possessed the intent to actuate the killing, the principal crime.

281. It would be relevant to note that the Joint Criminal Responsibility or commonly known as, Joint Criminal Enterprise [JCE-Basic Form] is a widely used as liability doctrine that has been playing a inner role in the fixation of guilt of the accused arraigned for the crimes committed in violation of international humanitarian law. Section 4 of the Act of 1973 incorporates the notion of JCE doctrine into our legislation. Section 4(1) of the Act reads as:

“When any crime as specified in section 3 is committed by several persons, each of such person is liable for that crime in the same manner as if it were done by him alone.”

282. The material element of a JCE [basic form] refers to ‘common purpose’. The facts and circumstances unveiled suggest to irresistible conclusion that the accused persons and their cohorts carried out the criminal acts forming part of ‘systematic attack’, sharing common purpose and object.

283. The notion ‘**Participation**’ includes both direct participation and indirect participation. Accused S.M. Aminuzzaman Faruk and Md. Maklesur Rhaman @ Tarain exercise of their affiliation with auxiliary forces and villainous nexus with the Nokla Thana camp had knowingly and sharing common intent acted in organizing the culpable arrangement for the annihilation of the victim to happen. Facts and circumstance divulged lead to this unerring conclusion.

284. In the case in hand the accused persons’ involvement in the criminal acts forming part of systematic attack indubitably formed a link in the chain of causation. We conclude. Therefore, they incurred criminal liability as if they themselves triggered the principal crime, the barbaric killing of an unarmed civilian. In this regard the legal proposition enunciated in ICTY Trial Chamber in the case of Tadic is as below:

“In sum, the accused will be found criminally culpable for any conduct where it is

determined that he knowingly participated in the commission of an offence that violates international humanitarian law and his participation directly and substantially affected the commission of that offence through supporting the actual commission before, during, or after the incident. He will also be responsible for all that naturally results from the commission of the act in question.”

[Tadic ICTY Trial Chamber; Judgment, para. 692.]

285. It stands proved that substantial role in getting the victim forcibly captured, by accompanying the gangand dominance over the camp where the detained victim was kept confined indisputably indicate substantial contribution of accused S.M. Aminuzzaman Faruk even to the perpetration of the killing the victim, the upshot of the attack.

286. Another accused Md. Maklesur Rahman @ Tara was also substantially associated with the camp and had actedsubstantially to keep the victim detained there in captivity. In this way this accused too contributed to the accomplishment of the killing, the tragic fate of the detained victim. The accused persons indicted thus had acted as the authors of the act of annihilation of the victim Abdul Hannan which tantamount to their ‘**participation**’, we deduce.

287. On due and integrated evaluation of the intrinsic value of evidence tendered before us, in respect of facts materially related to the principal event of killing unarmed pro-liberation civilian Abdul Hannan, we are unanimously persuaded to arrive at a finding that the prosecution has been able to prove beyond reasonable doubt that the accused **(1) S.M Aminuzzaman Faruk and (2) Md. Maklesur Rahman @ Tara** by their culpable act and conduct forming part of systematic attack directing non combatant civilian 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’, ‘torture’ 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 3(1) of the Act.

Adjudication of Charge 03: [02 accused indicted]

[Event no.03 as narrated in page nos. 37- 40 of the formal charge]

[Offences of abduction, confinement, torture and murder of Sahjahan Ali @ Saju of village-Bajerdi under police station-Nokla of District [now]- Sherpur]

288. Charge: That on 27 August 1971 at about 05:00 P.M a group formed of the accused (1) S.M Aminuzzaman Faruk

being accompanied by his accomplices Md. Mojibur Rahman [now dead], Abdul Kader [now dead] and others forcibly captured **Md. Shahjahan Ali @Saju**, an organizer of the war of liberation from the place adjacent to Nokla Bazaar when he was returning from mosque after saying Asar prayer and then he was taken away to Nokla police station.

On getting information, brother and other family members of the victim rushed to the said police station where they saw one Md. Hannan of Jalalpur village detained too. Defying appeal one self-proclaimed Daroga Mojibur denied setting the victim on release as instructed by the accused S.M Aminuzzaman Faruk and (2) Md. Maklesur Rahman @ Tara. The victim and another detainee Md. Hannan were then transferred to the torture cell set up at Nokla Bilateral High School adjacent to the Nokla police station.

Later on, in the night of 27 August 1971 Md. Shahjahan Ali @Saju was gunned down to death taking on the bridge of Nokla Subarnakhali canal. On 29.8.1971 his body was found floating in Badagoir Bil. The body of the victim was buried after getting it recovered.

Therefore, the accused (1) S.M Aminuzzaman Faruk and (2) Md.Maklesur Rahman @ Tarahave been charged for

participation, abetment , facilitating and substantial contribution, by their act and conduct forming part of systematic attack to the commission of criminal acts constituting the offences of **‘abduction’, ‘confinement’, ‘torture’ and ‘murder’** as crimes against humanity as enumerated in section 3(2)(a)(g)(h) of the International Crimes(Tribunals) Act of 1973 read with section 4(1) of the Act of 1973 which are punishable under section 20(2) of the said Act of 1973.

Evidence of Witnesses Examined

289. This count of charge involves the prohibited criminal acts of abduction, confinement and murder of one unarmed pro-liberation civilian Shahjahan Ali Saju. The event arraigned happened in context of war of liberation in 1971. The gang accompanied by the accused persons indicted allegedly participated in committing the crimes arraigned. Prosecution, to prove the arraignment examined four witnesses namely, P.W.06, P.W.07, P.W.08 and P.W.10. Before we weigh the narrative the witnesses have made let us see what they have testified in Tribunal.

290. P.W.06 Md. Mahbubul Alam @ Jannat (63) is a resident of village--Bazardi under police station Nokla of District Netrokona and at present 198/2, Ahammad Nagar Paikpara,

Mirpur-1, Dhaka. In 1971 he was student of class X. He is a direct witness to the crucial facts related to the event of attack arraigned in this count of charge.

291. Before recounting the event P.W.06 stated that at the end of April in 1971, after the war of liberation ensued he along with his elder brother Syed Alam Manju and local youths started getting organised and in the last week of April his brother Syed Alam Manju moved to India to have freedom-fighter's training.

292. P.W.06 also stated that at the end of April, 1971 Pakistani army got stationed in Nokla and formed peace committee by engaging locals Shamsuzzaman, Abdus Sattar, Amjad Hossain and others and they forcibly took possession of the house of Sharat Poddar. Two camps—one of Pakistani army, Al Badrs, Razakars and another one of peace committee were established at Nokla high school.

293. P.W.06 next stated that they the people who took stance in favour of the liberation war being headed by **his uncle Shahjahan Ali Saju** started communicating information secretly about the activities of Pakistani army, Al Badr and Razakars. Being aware of it, on 27th August in 1971 in evening Al Badr Aminuzzaman Faruk, Razakar Maklesur Rahman Tara,

Razakar Akram Hossain and their accomplice Razakars forcibly captured his (P.W.06) uncle (Shahjahan Ali Saju) from the place near the mosque at Nokla Bazar and took him away to the camp. At that time he (P.W.06) was on way back to home through the road in front of Nokla Thana when he saw the gang taking away his uncle. On seeing it he coming back home disclosed it to all.

294. P.W.06 continued stating that he, his two brothers and father then attempted to get his uncle released by moving to Nokla Thana. But on advice of the officer-in-charge of Nokla Thana they then moved to the office of the peace committee. But they were informed from that office that on the following day his (P.W.06) uncle would be set at liberty. With this they came back home.

295. P.W.06 also stated that on the following day he, his father and two brothers again moved to Nokla Thana and made request for release of his uncle when the self declared Daroga Razakar Mujibur informed that his uncle had been sent to Nokla school camp. With this they then moved to the Nokla school camp and asked the peace committee chairman Shamsuzzaman to provide information about his uncle. But he (Shamsuzzaman) told that his (P.W.06) uncle would not be released as he was a source of

freedom-fighters. With this when they were about to return back from Nokla school camp they met Razakar Chan Mia who informed them that Al Badr Aminuzzaman Faruk, Razakar Maklesur Rahman, Razakar S.M Akram and other Razakars gunned down his (P.W.06) uncle Sahjahan Ali Saju to death in the preceding night taking him to the Subrnakhali Bridge and his dead body was thrown into the river. Then they on hearing it returned back home.

296. P.W.06 next stated that on 29th August in 1971(two days after the event happened) one of their relatives Engraj Mia, a resident of the place nearer to Subarnakhali Bridge came to their home and informed that his(P.W.06) uncle Shahjahan Ali Saju's dead body was found floating in the river, about two kilometers away from Subarnakhali Bridge.

297. P.W.06 also stated that then they started moving through the road in front of Nokla Thana to collect the dead body when Aminuzzaman Faruk, Maklesur Rahman Tara and their accomplices obstructed them and told that the dead body could not be collected without permission of the peace committee. Then they on having permission of the peace committee brought

back his uncle's dead body to home and buried it. He found numerous signs of injuries on his uncle's dead body.

298. P.W.06 finally stated that the Al Badrs and Razakars he named were the residents of their locality and he (P.W.06) and Aminuzzaman Faruk and Maklesur Rahman Tara used to study in the same school and that is why he knew them beforehand.

299. In cross-examination, P.W.06 stated in reply to defence question that his maternal uncle Dr. Abdul Jalil contested national assembly election in 1996 as a Jamat-E- Islami candidate; that he could not say whether his maternal uncle was Al Badr commander; that earlier no case was initiated over the event of killing his uncle Shahjahan Ali Saju; that the accused Aminuzzaman Faruk was expelled from Nokla school when he was a student of VIII.

300. P.W.06 denied defence suggestions that accused persons were not Al Badr and Razakar; that his father intending to grip the land property of his uncle Shahjahan Ali Saju facilitated his killing by Al Badr commander Dr. Abdul Jalil and that for this reason no case was initiated over the event of his uncle's killing; that his brother Syed Ali Manju was not a freedom-fighter; that

what he testified was untrue and that the event he testified did not happen.

301. P.W.07 Md. Azahar Ali (61) is now a resident of village-Jalalpur under police station Nokla of District Sherpur. He is the cousin brother of Abdul Hannan, the victim of the event arraigned in charge no.02. In addition to narrating the facts related to charge no.02 P.W.07 stated fact related to the unlawful confinement of Shahjahan Ali Saju at the same camp as arraigned in charge no.03.

302. P.W.07 stated that on 10th day of Bangla month Bhadra in 1971 in evening he along with his father and Fufa (father's sister's husband) moved to Nokla Thana where they found Abdul Hannan(victim of the event alleged in charge no.02) and Sufi Shahjahan (victim of the event alleged in charge no.03) detained in custody.

303. P.W.07 next stated that on the following day he along with his father and Fufa again moved to Nokla Thana when Razakar Shamsuzzaman Master and Al Badar Aminuzzaman Faruk informed them that Abdul Hannan (victim of the event arraigned in charge no.02) was set at liberty in night. Then they returned back home and on the following day they again moved to Nokla

Bazar when they heard that dead body of detained Shahjahan Saju @ Sufi Shahjahan was found floating in the river Subarnakhali.

304. P.W.07 denied defence suggestions that the accused persons were not Al Badr and Razakar; that what he testified implicating the accused persons with the event alleged was untrue and tutored.

305. P.W.08 Md Khairul Islam(58) is now a resident of village-Bazardi under police station Nokla of District Netrokona. He chiefly recounted what he allegedly experienced in respect of the event arraigned in charge no.02. In addition to it he stated what he allegedly heard about the event arraigned in this count of charge, i.e. charge no.03.

306. P.W.08 stated that he heard from his vatija (brother's son) Mahbubul Alam Jannat that on 27th August in 1971 in evening Al Badr Aminuzzaman Faruk, Razakar Maklesur Rahman Tara, Razakar Akram Hossain and their accomplice Razakars forcibly captured his (P.W.08) cousin brother Shahjahan Ali Saju, an organizer of the war of liberation from the place nearer to the Nokla Bazar mosque and took him away to Nokla Thana

Razakar camp where he was subjected to torture and at a stage he was gunned down to death (at this stage the P.W.08 burst into tears).

307. P.W.08 also stated that two days after the event dead body of Sahjahan Ali Saju could be recovered from the place near the Subrnakhali Bridge and bringing at home it was buried. He (P.W.08) remained present when the dead body was recovered and buried. The Al Badr and Razakar he named were from their neighbouring localities and thus he knew them before hand.

308. In cross-examination, P.W.08 in reply to question put to him by the Tribunal stated that he could not say in which class he used to study in 1971. P.W.08 admits that date 01.06.1966 has been shown as his date of birth in the voter list.

309. P.W.08 denied defence suggestions that the accused persons were not Al Badr and Razakar; that he did not see and hear what he testified as at that time he was a child; that the accused persons were not involved with the event alleged and that what he testified was untrue and tortured.

310. **P.W.10 Dr. Md. Billal Alam(59)** is currently a resident of 61, Lake circus, Dolphin Goli., Kalabagan, Dhaka. Presently

he is the principal, Sir Salimullah Medical College. In 1971 he was a student of class VI. He stated that in 1971 his Uncle Shahjahan Ali Saju and elder brother Md. Syed Alam Manju joined the war of liberation on receiving training in India. P.W.10 stated facts significantly chained to the event arraigned.

311. P.W.10 narrated that on 27th August in 1971 at about 04:00 P.M. his uncle Shahjahan Saju, his brother Khorshed Alam, cousin brother Gias Uddin, Tuinna Bepari, Hares dealer were returning back to home after saying Asar prayer at Nokla Bazar Jame Masjid and on their way back Al Badr Shamsuzzaman Faruk, Al Badr Maklesur Rahman Tara, Al Badar Kader, Al Badar Mujibur Rahman (self declared Daroga) and their cohort Al Badars and Razakars forcibly captured his uncle Shahjahan Saju and took him away to Nokla Thana. He (P.W.10) heard it from his brother after he came back home.

312. P.W.10 continued stating that then on the same day at dawn his father, elder brother Khorshed Alam, Mahbulul Alam Jannat and he (P.W.10) moved to Nokla Thana where they found his uncle Shahjahan Saju and Abdul Hannan (victim of the event arraigned in charge no.02) detained . They failed to get

his uncle released even by making approach to the peace committee chairman.

313. P.W.10 next stated that on the following day they again moved to Thana to get his uncle released. But they came to know that on the preceding night he was shifted to the camp set up at school and then they moved to the camp where they found Al Badar Shamsuzzaman who told them that his uncle was kept detained for extracting information by interrogation. They then returned back and on their way they met Razakar Chan Mia of their neighbouring village who disclosed that in the preceding night his (P.W.10) uncle Shahjahan Saju was shot to death taking him near the Subarnakhali Bridge. They did not have trace of his uncle's dead body there.

314. P.W.10 further stated that on 29th August , 1971 they came to know that his uncle's (Shahjahan Ali Saju)dead body was found floating in Badagoir swamp, about two kilometers away from Subarnakhali Bridge. They then moved to collect the dead body when Al Badr Aminuzzaman Faruk and his cohorts obstructed them, but on his (P.W.10) father's request they were permitted to go on. Then they found his uncle's dead body tied up with rope and a sack full of bricks floating at the swamp (at this stage P.W.10 broke down into tears). They found many

bullet hit injuries on his uncle's dead body. They bringing the dead body to home buried it. He knew the Al Badrs he named beforehand.

315. In cross-examination P.W.10 stated in reply to defence question that he could not say whether any case was initiated over the event he testified, after independence achieved; that accused S.M. Aminuzzaman Faruk was engaged in teaching profession since after 1975 in the college established in the name of his(P.W.10) grand-father Jal Mahmud. P.W.10 denied defence suggestions that no event he narrated happened; that the accused were not Al Badrs and were not involved with the event alleged and that what he testified implicating the accused was untrue and out of rivalry over land dispute.

316. It appears that in addition to evidence of witnesses examined in Tribunal in support of this count of charge, statement of cited witness Rafiqul Alam @ Badal and Kitab Ali whose name finds place in serial no. 04 and 11 respectively 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 these witnesses died during trial. In exercise of discretion and inherent

power Tribunal received statement of the witness Rafiqul Alam @ Badal made to the IO into evidence.

Finding with Reasoning on Evaluation of Evidence

317. By drawing attention to evidence of witnesses examined the learned prosecutor urges that facts and circumstances materially related to the event arraigned have been proved. Defence could not refute the commission of the crimes arraigned and participation of accused persons indicted in committing the same. Circumstances and facts unerringly connect the accused persons indicted to the commission of offences of abduction, confinement, torture and killing of victim **Shahjahan Ali Saju**. The accused persons were with the gang, sharing common intent, when the victim was forcibly captured; keeping the victim detained at Nokla camp which was under active supervision and control of accused persons and it reasonably prove their culpable concern even to the act of killing, prosecution argued.

318. **Mr. Abdus Sobhan Tarafdar**, the learned defence counsel, on contrary, argued that testimony of witnesses suffers from inconsistency and exaggeration; that P.W.08 was kid of 5 year old in 1971 and thus it was not possible for him to recount

the event alleged and thus what he narrated is untrue; that there is no evidence to show that the accused persons were involved in accomplishing the alleged killing of victim. P.W.06 is not a credible witness as he has testified also implicating Akram Hossain as an accomplice of the gang although he has not been indicted in this count of charge. Such exaggeration makes his testimony unbelievable.

319. It appears that the event arraigned happened in phases. First, the victim Shahjahan Ali Saju was forcibly captured and was taken away to Nokla camp. Second, the victim was kept unlawfully confined at the camp. Finally, the victim was gunned down to death taking him to the Subrnakhali Bridge and his dead body was thrown into the river. Therefore, facts related to each phase were chained to each other and the attack eventually ended in vicious annihilation of detained victim, a pro-liberation civilian.

320. In view of above, prosecution requires proving first, forcible capture of the victim by launching attack. Second, the act of keeping the victim unlawfully detained at the camp and finally the act of brutal extinction of the victim by gunshot taking him to the Subrnakhali Bridge. At the same time

complicity and participation of accused persons indicted therewith also require to be established.

321. It is evinced that victim Shahjahan Ali Saju was the uncle of P.W.06. At the relevant time P.W.06 was on way back to home through the road in front of Nokla Thana when he saw the gang accompanied by Al Badr S.M. Aminuzzaman Faruk, Razakar Md. Maklesur Rahman Tara, Razakar Akram Hossain and their accomplice Razakars taking away his uncle on forcible capture toward the Nokla camp.

322. It appears that P.W.06 also stated that Razakar Akram Hossain too was with the gang of attackers when it conducted the attack to effect forcible capture of the victim. But Razakar Akram Hossain has not been indicted in this count of charge. Only two accused have been indicted in this count of charge. Thus, it appears that P.W.06 in recounting this phase of event leading to forcible capture of his uncle (victim) has made exaggeration by stating name of Razakar Akram Hossain too as one of members of the group of attackers. It is indeed exaggeration which does not readily taint testimony of P.W.06 in its entirety.

323. Tribunal notes that such discrepancy or exaggeration could be due to the fallibility of perception and memory and the lapse of long passage of time and it does not taint the core narrative made by P.W.06 on the material facts chained to the event. Besides, the maxim '*falsus in uno, falsu in omnibus*' (false in one thing, false in everything) is neither a sound rule of law nor a rule of practice.

324. The substratum of the prosecution case or the material parts of the evidence related to the event arraigned cannot obviously be disbelieved merely for the reason of any such exaggeration. However, we require paying attention to the core essence of testimony of P.W.06.

325. The Appellate Division of Supreme Court of Bangladesh in resolving the issue of discrepancy cited decision of ICTR rendered in the case of **Jean-Paul Akayesu** which is as below

“In the case of **Prosecutor V. Jean-Paul Akayesu, Case No. ICTR-94-4-T**, the issue of passage of time, trauma and memory as impacting witness testimony have been considered. In this case, the defence had argued that there had been systematic collusion among prosecution witness to provide false testimony. This court responded, however, by pointing out other factors that could produce the

kinds of inconsistencies noted by the Defence. The judgment notes that such discrepancies could be due to the fallibility of perception and memory and the operation of the passage of time:

“.....Memory over time naturally degenerates, hence it would be wrong and unjust for the Chamber to treat forgetfulness as being synonymous with giving false testimony.”

[14 SCOB [2020] AD , Criminal Appeal No. 12 of 2015, Judgment 31 October 2019, A.T.M. Azharul Islam Vs. Chief Prosecutor, ICT, Para 128]

326. Therefore, we are of view that merely for the reason of such exaggeration testimony of P.W.06 in respect of unlawful capture of victim Shahjahan Ali Saju that happened in day time and participation of accused persons indicted shall not go on air in its entirety. Rather, this fact gets corroboration from facts happened at the camp, subsequent to the first phase of attack.

327. On evaluation of ocular narrative of P.W.06 it appears that the act of forcible capture and keeping the victim detained at the camp and participation and concern of two accused S.M. Aminuzzaman Faruk and Md. Maklesur Rahman @ Tara could not be controverted. Unimpeached ocular testimony of P.W.06 demonstrates that accused S.M Aminuzzaman Faruk and his

accomplices forming part of the gang actively participated in effecting forcible capture of the victim.

328. Ocular narrative of P.W.06 also depicts that afterward, another accused Md. Maklesur Rahman @ Tara indicted is found to have had facilitation and concern in perpetrating prohibited criminal activities at the camp where the victim was kept unlawfully confined. Therefore, the attack leading to forcible capture and unlawful confinement of victim at the camp and explicit participation of the accused persons indicted therewith stands proved from ocular testimony of P.W.06.

329. What happened next to taking away the detained victim to Nokla Thana camp? It has been arraigned that forcible capture of victim Shahjahan Ali Saju eventually ended in his killing. Defence does not seem to have been able to controvert the act of forcible capture of Shahjahan Ali Saju, as testified by ocular witness P.W.06.

330. It stands proved that P.W.06, his two brothers and father attempted to get his uncle's (victim) release by moving to Nokla Thana camp. But on advice of the officer-in-charge of Nokla Thana they then moved to the office of the peace committee when trickily the hope was given to set the victim released on

the following day. Naturally, despite being frustrated the relatives of victim had to come back with such anticipation of getting the victim released.

331. It is evinced too that on the following day P.W.06, his father and two brothers again on moving to Nokla Thana came to know that the victim had been shifted to Nokla school camp. Then they moved to the Nokla school camp where the peace committee chairman Shamsuzzaman told that the victim would not be released as he was a source of freedom-fighters. In this way all endeavors made on part of victim's relatives to get the victim freed came in vain.

332. What fate the victim had to face? How the relatives of victim came acquainted with the tragic fate of the detained victim? It has been divulged from ocular testimony of P.W.06 that on the way of their returning back from Nokla school camp they heard from Razakar **Chan Mia** that Al Badr S.M. Aminuzzaman Faruk, Razakar Md. Maklesur Rahman, **Razakar A.K.M Akram** and other Razakars gunned down the detained victim **Shahjahan Ali Saju to death** in the preceding night taking him to the Subrnakhali Bridge and his dead body was thrown into the river.

333. On due appraisal of evidence presented already we have found that the P.W.06 has made exaggeration by stating name of Razakar A.K.M. Akram Hossain too as one of members of the group of attackers and such exaggeration does not affect the prosecution case and it does not taint the core testimony of P.W.06 in its entirety. Thus, and taking the testimony of P.W.06 into rational consideration we find that accused Al Badr S.M. Aminuzzaman Faruk, Razakar Md. Maklesur Rahman @ Tara were actively engaged in perpetrating the killing of victim Shahjahan Ali Saju .

334. Naturally, none of witnesses or relatives of victim had occasion of seeing the ending phase of the event, the killing. The witnesses do not claim it as well. But the above facts prove it indisputably that the object and common intent of the criminal design was to wipe out the detained victim Shahjahan Ali Saju and the accused (1) S.M Aminuzzaman Faruk and (2) Md. Maklesur Rahman @ Tara (remained absconded till the phase of summing up and arrested on 21.6.2023) having close nexus and dominance over the Nokla camp and local Al Badr Bahini had acted culpably to materialize the object of the designed criminal mission.

335. It stands proved from testimony of P.W.06 that two days later, victim Shahjahan Ali Saju's dead body was found floating in the river, about two kilometers away from Subarnakhali Bridge. Then they were on move to collect the dead body when accused S.M. Aminuzzaman Faruk, Md. Maklesur Rahman @ Tara and their accomplices obstructed them. Such post event conduct of accused persons exceeded the limit of cruelty and aggression to pro-liberation civilian. At the same time such post event prohibited conduct of accused persons adds assurance to their active concern and criminal liability in committing the murder of the detained victim.

336. However, it is evinced that finally on having permission of the peace committee the relatives of victim brought his dead body to home and buried it. Numerous signs of injuries were found on victim's dead body. All these material facts remained unshaken. In this way the act of forcible capture of the victim ended in his brutal annihilation.

337. Finding abundant signs of injuries on victim's dead body proves that the victim was subjected to serious physical torment in captivity, before he was gunned down to death. The accused persons cannot evade accountability of such torturous act. The prohibited and unlawful criminal acts committed directing the

victim, a pro-liberation civilian indubitably encompasses a wide array of coercive and detrimental also to the mental well being of relatives of the victim.

338. We are justifiably convinced to assume that such cruelty was done to the detained victim for the reason that he used to act as a source of freedom-fighters, taking stance in favour of the war of liberation. It indicates extreme aggression of the accused persons who opted to collaborate with the Pakistani occupation army, to further policy of wiping out the Bangalee pro-liberation civilians and such criminal acts happened in context of the war of liberation.

339. It appears that accused S.M. Aminuzzaman Faruk and Md. Maklesur Rahman @ Tara used to study in the same school with the P.W.06. Thus, naturally it was quite likely of recognizing the accused (1) S.M Aminuzzaman Faruk and (2) Md. Maklesur Rahman @ Tara(absconding till the phase of summing up and arrested on 21.6.2023)accompanying the gang in effecting forcible capture of the victim and confining him at the Nokla camp, in exercise of their affiliation in locally formed auxiliary forces.

340. We do not find any reason of terming the core narrative made by the P.W.06 untrue. Rather, P.W.06 is a competent and natural witness who recounted the material facts chained to the event of attack which ended in atrocious killing of the detained victim by gun shot. Accused persons are found to have had explicit concern and involvement with all the phases of the event, facts and circumstances divulged irresistibly lead to this conclusion.

341. The second phase of attack involving the unlawful act of keeping the victim Shahjahan Ali Saju detained at Nokla camp stands to have been corroborated by another direct witness P.W.07 Md. Azahar Ali who is the cousin brother of Abdul Hannan, the victim of the event arraigned in charge no.02.

342. We got it proved from uncontroverted testimony of P.W.07 that the victim Shahjahan Ali Saju was kept detained along with the victim of the event arraigned in charge no.02 at Nokla camp and the accused persons were found culpably present at the camp when the relatives of victim Abdul Hannan (of the event arraigned in charge no.02) coming there approached for release of the victim.

343. The above material facts lend to the unerring conclusion that the victim Shahjahan Ali Saju was first forcibly captured as testified by P.W.06 and then the gang accompanied by the accused (1) S.M Aminuzzaman Faruk and (2) Md. Maklesur Rahman @ Taradeliberately secured his unlawful confinement at Nokla camp. Therefore, the accused persons indicted being the members of the joint criminal enterprise [JCE] wereresponsible for the result of such criminal acts done in furtherance of the common object, in conjunction with attack.

344. It has been divulged that on the following day P.W.07 heard that detained victim Shahjahan Ali Saju @ Sufi's dead body was found floating in the river Subarnakhali. It gets corroboration also from P.W.06. Defence could not impeach it in any manner.

345. Thus, it is evinced that dead body of victim Shahjahan Ali Saju was found floating in the river. Hearing the fact of killing the victim from one Razakar **Chan Mia of** Nokla school camp and recovery of the dead body of victim do not seem to have been controverted by the defence in any manner. Can this hearsay version of P.W.07 be acted upon? Yes, it can be acted upon even absence of any corroboration. In this regard we recall

the observation made by the **ICTR Trial Chamber** in the case of **Rwamakuba** which is as below:

“Chamber also has a broad discretion to admit hearsay evidence, even when it cannot be examined at its source and when it is not corroborated by direct evidence [**Rwamakuba, ICTR Trial Chamber para 34**]

346. However, in the case in hand, hearsay testimony as to the fate of the victim carries probative value and credence as it gets corroboration from other pre-killing material circumstances which lead to the unmistakable conclusion that the accused (1) S.M Aminuzzaman Faruk and (2) Md. Maklesur Rahman @ Tara(absconding till the phase of summing up and arrested on 21.6.2023) had concern and active participation in perpetrating the barbaric killing.

347. In respect of the event arraigned in this charge no.03 P.W.10 is a hearsay witness. His hearsay evidence too carries probative value as the fact what he heard seems to have been corroborated by the ocular testimony of P.W.06 and P.W.07. He heard the event of forcible capture of victim from his brother. Source of hearsay evidence of P.W.10 is thus not anonymous.

348. Moreover, he (P.W.10) too found his uncle Shahjahan Saju (victim of the event arraigned in charge no.03) and Abdul Hannan (victim of the event arraigned in charge no.02) detained together when they moved to the camp with an attempt to secure release of his uncle detained Shahjahan Ali Saju. But they failed to get his uncle released even by making approach to the peace committee chairman.

349. In view of above rational discussion we got it proved from uncontroverted testimony of P.W.06, P.W.07 and P.W.10 that the victim was kept unlawfully detained at Nokla camp and the accused (1) S.M Aminuzzaman Faruk and (2) Md. Maklesur Rahman @ Tarawere found present at the camp when the relatives of victim coming there approached for release of the victim.

350. The requisite intent and purpose of the accused persons may be inferred from the circumstances, which include the foresee ability of death as a consequence of the accused's acts. It stands proved that the accused persons had significant dominance over the Nokla camp where the victim was kept detained. It patently proves that the accused persons knowing consequence had acted recklessly and culpably which

substantially facilitated unlawful confinement of the victim that ended in his barbaric killing.

351. Prosecution also relied upon another witness who has been examined as P.W.08. It appears that P.W.08 Md Khairul Islam is a hearsay witness. In 1971 admittedly P.W.08 was a kid of only five years old. Be that as it may, rationally it is not probable to recount what he claims to have heard about the event alleged. Besides, the claim of his presence at the time of recovery of the dead body of victim from the killing site too seems to be incredible. What the P.W.08 testified does not carry any probative value and credence, we deduce. Thus, testimony of this P.W.08 deserves to be kept aside from consideration. Already in determining the charge no.02 we have observed it and abstained from taking the narrative made by P.W.08 into consideration.

352. However, keeping the testimony of P.W.08 aside from consideration does not leave any degree of doubt as to what the P.W.06, P.W.07 and P.W.10 have narrated in respect of the event. Rather, it appears that the event arraigned in this count of charge is found to have been proved from corroborative evidence of P.W.06, P.W.07 and P.W.10.

353. In addition to sworn testimony of witnesses examined we have also perused the statement of one witness Rafiqul Alam @ Badal (already died during trial) made to the IO which has been received into evidence under section 19(2) of the Act of 1973. Shahjahan Ali @Saju the victim of the event arraigned in charge no.03 was uncle of this witness. His (Rafiqul Alam @ Badal) statement made to the IO in respect of forcible capture of his uncle and keeping him confined at the camp and finally annihilating the detained victim as arraigned in this count of charge gets consistent corroboration from the ocular testimony of witnesses examined in Tribunal.

354. Also the statement of another cited witness Kitab Ali made to the IO has also been received into evidence under section 19(2) of the Act of 1973 as he too died during trial, in support of this count of charge. He seems to be a competent witness as in 1971 he was forced to join local Razakar Bahini and thus he had practical occasion of being aware of criminal activities carried out by the accused persons indicted, belonging to locally formed auxiliary force.

355. Core essence of statement of Kitab Ali made to the IO also patently demonstrates that the accused**(1) S.M Aminuzzaman Faruk and (2) Md. Maklesur Rahman @ Tara** belonging to locally formed auxiliary force unlawfully captured victim Shahjahan Ali @ Saju (victim of charge no.03) and had kept him in confinement at the camp. It also gets consistent corroboration from the narrative made by witnesses examined in Tribunal on oath. We do not find any reason to keep the statement of Kitab Ali made to the IO aside from consideration.

356. 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. We do not feel it expedient to state the entire narrative what this witness stated before the IO.

357. However, it appears too from statement of Kitab Ali made to the IO that he being a Razakar of the camp saw the accused persons causing inhumane torture to detained victim. Statement of Kitab Ali made to the IO also depicts that the accused persons and their cohorts actively participated in perpetrating the brutal killing of two detained civilians (victims of charge no.02 and 03), in exercise of their affiliation with locally formed auxiliary force.

358. Based on integrated appraisal of facts and circumstances unveiled as made above it is evinced that the accused (1) S.M Aminuzzaman Faruk and (2) Md. Maklesur Rahman @ Tara(absconding till the phase of summing up and arrested on 21/6/2023), in exercise of their culpable affiliation with auxiliary force and being part of the criminal gang intended to provoke or induce the commission of the crimes and they were aware of the substantial likelihood that the commission of crimes would be a probable consequence of their acts. It proves all the elements of their *mens rea* of crimes committed.

359. No one had occasion of seeing the act of killing the detained victim by gunshot. But in the background of the facts unveiled and evidence as discussed above, the only likely conclusion is that the accused persons were knowingly and actively concerned even in accomplishing killing of victim with common intention, by aiding, abetting and facilitating, constituting the offence of crime against humanity.

360. To prove criminal liability it is not required to show that the accused persons physically participated in perpetrating the killing of detained victim. In this regard we recall the observation rendered by the **Appellate Division of Bangladesh**

Supreme Court of Bangladesh in the case of **A.T.M. Azharul Islam Vs. Chief Prosecutor** which reads as below:

“Over and above, in order to incur criminal liability in a case of crime against humanity, the accused himself need not have to participate in all aspects of the criminal conduct. Therefore, the accused is criminally liable under section 4(1) of the Act of 1973 and the Tribunal rightly found him guilty for substantially abetting and facilitating the actual commission of the offence of murder and arson as crimes against Humanity as specified in section 3 (2)(a)(c)(g) and (h) of the Act.”

[14 SCOB [2020] AD A.T.M. Azharul Islam Vs. Chief Prosecutor, Criminal Appeal No. 12 of 2015, para 134]

361. In view of foregoing in order to incur criminal liability in a case involving the offence of ‘crime against humanity’, the accused himself need not have to participate in all aspects of the criminal conduct. The only reasonable conclusion to be drawn from the evidence and facts unveiled is that the accused persons knew that their act and conduct and presence with the gang and at the camp would have an encouraging effect on the perpetration of the killing, in violation of international humanitarian law.

362. Tribunal notes that providing ‘assistance’ or ‘facilitation’ to the commission of a crime may not always be tangible. It may be perceived or inferred from circumstances and material facts. It has been observed by the ICTY **Trial Chamber in the case of Simic, Tadic and Zaric** that –

“The acts of aiding and abetting need not be tangible, but may consist of moral support or encouragement of the principals in the commission of the crime.” [Case No. IT-95-9-T, Judgment: 17 October 2003, Para- 162]

363. Keeping the above settled jurisprudence together with the context prevailing we arrive at decision that the accused (1) S.M Aminuzzaman Faruk and (2) Md. Maklesur Rahman @ Tara (absconding till the phase of summing up and arrested on 21.6.2023) incurred criminal liability as if they themselves triggered the principal crime, the barbaric killing of an unarmed pro-liberation civilian. In this regard we recall the legal proposition enunciated in **ICTY Trial Chamber** in the case of **Tadic** which is as below:

“In sum, the accused will be found criminally culpable for any conduct where it is determined that he knowingly participated in the commission of an offence that violates international humanitarian law and his

participation directly and substantially affected the commission of that offence through supporting the actual commission before, during, or after the incident. He will also be responsible for all that naturally results from the commission of the act in question.”

[Tadic Case ICTY Trial Chamber: Judgement, para. 692]

364. Totality of evidence lead to conclude that the accused parsons participated in the attack conducted by being present and concerned with the organized gang and that they were aware that their nexus with the auxiliary force and Razakar camp would have encouraged the commission of principal crime. In this way the accused persons participated in the killing by instigating, aiding and abetting the commission of the crime.

365. On intrinsic and coherent evaluation of the value of evidence tendered before us, in respect of facts materially linked to the principal event of killing an unarmed pro-liberation civilian, we are unanimously swayed to arrive at a finding that the prosecution has been able to prove beyond reasonable doubt that the accused **(1) S.M Aminuzzaman Faruk and (2) Md. Maklesur Rahman @ Taraby** their culpable act and conduct forming part of systematic attack directing non combatant civilian are 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**’, ‘**torture**’ 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 3(1) of the Act.

Adjudication of Charge 04: [04 accused indicted of whom 1 died during trial]

[Event no.04 as narrated I n page nos. 40- 44 of the formal charge]

[Offence of enslavement [forced labour] as crime against humanity]

366. Charge: That Pakistani occupation army got stationed in Nokla in May 1971 and then with the assistance on part of the accused (1) S.M Aminuzzaman Faruk (2) A.K.M Akram Hossain (3) Md. Emdadul Haque @ Khaja Doctor(died during trial) and (4) Md. Maklesur Rahman @ Tara they established their camps at Nokla Bilateral High School and Nokla Police station. Since then the accused persons started confining civilians and compelling them in digging and making bunkers for the army men at those camps. The accused persons used to cause torture to civilians who denied carrying out their order. The coercive situation forced many people to be displaced. Such forced labour continued till 09 December 1971 when Nokla got freed.

Therefore, the accused (1) S.M Aminuzzaman Faruk (2) A.K.M Akram Hossain (3) Md. Emdadul Haque @ Khaja Doctor (died during trial) and (4) Md. Maklesur Rahman @ Tara (absconding till the phase of summing up and arrested on 21.06.2023) have been charged for participation, abetment, facilitation and substantial contribution, by their act and conduct forming part of systematic attack to the commission of criminal acts constituting the offence of ‘**enslavement**’ [**forced labour**]as **crimes against humanity**as enumerated in section 3(2)(a)(g)(h) of the International Crimes(Tribunals) Act of 1973 read with section 4(1) of the Act of 1973 which are punishable under section 20(2) of the said Act of 1973.

Evidence of witnesses examined

367. This count of charge involves the act of ‘forced labour’ constituting the offence of ‘enslavement’ as crime against humanity. It has been arraigned that after the Pakistani occupation army got stationed at Nokla, two camps –one at Nokla Bilateral High School and another at Nokla Police station were formed and then the civilians were forced in digging and making bunkers for the army men at those camps and civilians were subjected to torture when they used to defy to do such forced act, till end of November, 1971.

368. Prosecution, to substantiate this count of charge, relies upon four witnesses i.e. P.W.06, P.W.08, P.W.09 and P.W.10. They claim themselves to be the victims of the event arraigned. Before we weigh what the witnesses testified let us first see the narrative they made in Tribunal

369. P.W.06 Md. Mahbubul Alam Jannat(63) , a resident of village-Bazardi under police station Nokla of District (now) Sherpur and currently has been residing at 198/2, Ahammad Nagar Paikpara, Mirpur-1, Dhaka. P.W.06 being a victim of criminal acts related to the event alleged in charge no.04 testified, in addition to the event arraigned in charge no.03.

370. P.W.06 stated that he, his brother Billal Alam, Khorshed Alam, Habibur Rahman(now dead), the younger brother of his grand-father used to provide information to freedom-fighters and being aware of it Al Badr Faruk, Razakar Maklesur Rahman Tara, Razakar S.M. Akram and their cohort Razakars taking them forcibly to Nokla Thana camp and Nokla High School camp used to force them to dig out bunkers and they made them forced to go on with such act till end of November, 1971 and they used to cause physical torture to them very often. P.W.6 stated that he knew the Al Badr and Razakars he named as they

were from their locality and since accused Maklesur Rahman used to study in same school with him.

371. Defence denied what has been stated by P.W.06. In cross-examination P.W.06 denied defence suggestions that the accused persons were not Al Badr and Razakars; that he did not know them beforehand; that they did not use to provide information to freedom-fighters and what he testified implicating the accused persons was untrue and tutored.

372. P.W.08 Md. Khairul Islam(58) is a resident of village-Bazardi under police station Nokla of District (now) Sherpur. In addition to stating the event arraigned in charge nos.3 and 4 P.W.08 also stated the facts related to the event alleged in charge no.04. He claims himself to be one of victims of the event involving the alleged offence of ‘forced labour’.

373. P.W.08 stated that Al Badr Aminuzzaman Faruk, Razakar Maklesur Rahman Tara, Razakar Akram Hossain and their cohort Razakars used to force him, Jannat, Badal, Billal, Nurul Haque and others of their village to get engaged in digging out bunkers at Nokla Thana Razakar camp and Nokla High School Razakar camp till the locality of Nokla got liberated and they

also used to cause physical torture to them. P.W.08 also stated that the Al Badr and Razakars he named were from their neighbouring localities and thus he knew them beforehand.

374. In cross-examination, P.W.08 admits in reply to defence question put to him that according to voter list his date of birth is 01.06.1966. He also stated that he could not say as to who was the Al Badr commander and Razakar commander in Nokla Thana in 1971.

375. P.W.08 denied defence suggestions that in 1971 he was a kid; that he did not see and hear the event alleged; that the accused persons he named were not Al Badr and Razakars; that he did not know them and that what he testified implicating the accused persons was untrue and tutored.

376. **P.W.09 Md. Nurul Haque (57/58)** is a resident of village Kaida Uttar, under police station Nokla of District (now) Sherpur. He claims himself to be one of victims of the event alleged in this count of charge i.e. charge no.04.

377. P.W.09 stated that after the war of liberation ensued Al Badr Aminuzzaman Faruk, Razakar Akram Hossain, Razakar Maklesur Rahman Tara, Razakar Mojibur Rahman (now dead)

and Razakar Khaja Mia(now dead) by taking him along with Badal, Billal, Jannat, Khairul Islam of their neighbouring village forcibly engaged them in digging out bunkers and other works at Nokla Thana camp and Nokla High School Razakar camp and used to cause torture to them when they refused to do such work. Till Nokla Thana locality got liberated on 09th December, 1971 they were kept so engaged in doing such act forcibly. P.W.09 finally stated that he knew the Al Badr and Razakars he named beforehand as they were from the same locality.

378. **P.W.10 Dr. Md. Billal Alam**(59) was a student of class VI in Nokla High School in 1971 and used to stay at his parental home. He stated that at the end of April in 1971 after the Al Badr and Razakar Bahini formed Al Badr Aminuzzaman Faruk and his associates forced him, his brother Mahbubul Alam (P.W.06), Khorshed Alam and Md. Khairul Islam (P.W.08) to get engaged in digging out bunkers, taking them to the camps and they used to torture them when they refused to do such work.

379. In cross-examination, P.W.10 admits that his date of birth is 01.01.1961. Defence denied what the P.W.10 stated in relation to the arraignment brought in this count of charge.

Finding with Reasoning on Evaluation of Evidence

380. Learned prosecutor Rezia Sultana Begum drawing attention to the testimony of victims of the event arraigned argued that it could be proved that the accused persons indicted were concerned in keeping the victims forcefully engaged in digging out bunkers of two camps; that such prohibited ‘forced labour’ constituted the offence of ‘enslavement’ as crime against humanity. Defence could not distort the narrative of victims, by cross-examining them.

381. On contrary, the learned defence counsels argued that the testimony of witnesses is not credible and the witnesses are not trustworthy. The witnesses relied upon in support of this count of charge were minor, kid and adolescent at the relevant time. Keeping the kids and minors forcibly engaged in digging out bunkers for months together is not at all believable. Testimony of witnesses relied upon suffers from reasonable doubt and the arraignment brought is untrue.

382. It appears that the four witnesses relied upon in support of this count of charge claim to be the victims of alleged ‘forced labour’. It is arraigned that they were kept forcefully engaged in

digging out bunkers at Razakar camps for months together i.e. till the month of November, 1971.

383. In light of the arraignment brought prosecution first needs to prove that the prohibited act constituting the offence of 'enslavement' happened and next, involvement and complicity of accused persons indicted is to be proved. However, in arriving at decision now let us evaluate what the witnesses testified.

384. P.W.06 Md. Mahbubul Alam Jannat claims himself to be one of victims of the alleged forced labour. His version depicts that the accused persons indicted used to force them to dig out bunkers and they had kept them forcefully engaged to go on with such prohibited act till end of November, 1971 and they used to cause physical torture to them very often.

385. It is not clear as to whether the P.W.06 and others were forced to do such work of digging out bunkers keeping them detained at the camps. That is to say, the alleged prohibited act of forcing them in digging out bunkers seems to be devoid of specificity which creates reasonable doubt. Further, the alleged prohibited act of engaging P.W.06, P.W.08, P.W.09 and P.W.10

in digging bunkers for long six months does not inspire credence.

386. It appears that P.W.08 also claims himself to be one of victims of the event involving the alleged offence of forced labour. But in cross-examination, P.W.08 admits in reply to defence question put to him that according to voter list his date of birth is 01.06.1966. That is to say, in 1971 P.W.8 was a kid of only five (5) years old. Be that as it may, it is not at all credible that one 5 years old kid was chosen by the accused persons or the Pakistani army to make him engaged forcibly in digging out bunkers for months together.

387. Such alleged forced engagement in digging out bunkers could have been done by selecting adult persons of the locality. Thus, what the P.W.08 narrated does not carry any degree of credence and he seems to be an untrustworthy witness in respect of the arraignment brought in this count of charge. We thus keep his testimony aside from consideration.

388. Next, P.W.09 Md. Nurul Haque also claims to be one of victims of the prohibited act arraigned. According to his testimony he and others were kept forcibly engaged in digging out bunkers and other works at Nokla Thana camp and Nokla

High School Razakar camp and the accused persons used to cause torture to them when they used to refuse to work. According to P.W.09 till Nokla Thana locality got liberated on 09 December, 1971 they were kept so engaged in doing such act forcibly.

389. We see that in cross-examination P.W.09 stated in reply to defence questions put to him that he studied up to class V; that in 1976/1977 probably he used to study in class V. That is to say, in 1971 P.W.09 was a kid of 5 years old. Thus, selecting a five (5) years old kid for digging out bunkers forcefully is not reliable and what he stated is not credible. We cannot take his narrative too into consideration.

390. Another prosecution witness Dr. Md. Billal Alam who testified as P.W.10 claims to be one of victims of the prohibited act of forced labour arraigned. He in addition to testify the facts related to the events arraigned in charge nos. 2 and 3 also stated that the accused persons indicted forced him along with P.W.06 and P.W.08 in digging out bunkers at Razakar camps since the end of November in 1971. Testimony of P.W.10 so far as it relates to the event arraigned in this count of charge does not carry any credibility as already stating reasons we abstained

from taking the narrative made by P.W.06 and P.W.08 into consideration.

391. It is evinced that P.W.08 was a five (5) years old kid, P.W.09 was a five (5) years old kid in 1971. P.W.10 admits that his date of birth is 01.01.1961. Thus, it is evinced too from testimony of P.W.10 that in 1971 he too was a boy of 10 years old and P.W.06 was an adolescent of 14 years old. Thus, testimony of P.W.10 that they (P.W.06 and P.W.08) were kept forcefully engaged in digging out bunkers for months together does not carry any degree of credence.

392. We agree with the defence argument that selecting kids and minors in digging out bunkers for months together is not at all believable. The alleged prohibited act involving heavy physical labour was not possible to materialize by engaging kids and minors. Testimony of witnesses relied upon suffers from reasonable doubt, benefit of which goes in favour of the accused persons.

393. Alleged forceful engagement of P.W.06, P.W.08, P.W.09 and P.W.10 who claim to be the victims of such prohibited act of forced labour arraigned is not believable as at the relevant

time all these witnesses were minor, kid and adolescent. Besides, actually how many bunkers were allegedly prepared for two camps? It is not clear. Testimony of witnesses suffers from specificity and credibility. Thus, forcing them in digging bunkers for long six months, as arraigned is not credible. The indictment brought suffers from reasonable doubt, benefit of which goes to defence.

394. On integrated and rational evaluation of evidence adduced we come to unanimous decision that prosecution failed to prove the arraignment brought in this count of charge beyond reasonable doubt. The event arraigned appears to be incredible. Benefit of doubt goes in favour of the accused persons.

395. In view of above, the accused (1) S.M Aminuzzaman Faruk (2) A.K.M Akram Hossain and (3) Md. Maklesur Rahman @ Tara (remained absconded till summing up stage and arrested on 21.06.2023) absconding) are found **NOT GUILTY** for the charge constituting the offence of ‘**enslavement**’ as crimes against humanity specified in section 3(2)(a)(g) of the Act of 1973.

XI. Conclusion

396. We reiterate that Section 3(1) of the ICT Act of 1973 provides jurisdiction of trying and punishing even any ‘individual’ or ‘group of individuals’ including any ‘member of auxiliary force’ who commits or has committed, in the territory of Bangladesh any of crimes mentioned in section 3(2) of the Act, apart from member of armed or defence forces.

397. In the case in hand, the evidence led by the prosecution depicts that the accused persons are found to have had physically accompanied the group of perpetrators in conducting the systematic attacks and also to have had participated, abetted and substantially contributed, by their culpable act and conduct, to the commission of the crimes, murder of numerous pro-liberation civilians proved **(as listed in charge nos.1,2 and 3)**, in exercise of their alliance with locally formed auxiliary forces —Al Badr Bahini and Razakar Bahini.

398. Based on evidence and facts unveiled we have already arrived at the conclusion that the accused (1) S.M Aminuzzaman Faruk (2) A.K.M Akram Hossain and (3) Md. Maklesur Rahman @ Tara **(remained in absconion till summing up phase and arrested on 21.06.2023)** were ‘concerned’ as participants and had also abetted, facilitated and

substantially contributed to the commission of the offences of killing numerous civilians and destructive activities as arraigned in **charge no. 1.**

399. In respect of charge nos. 2 and 3 two accused(1) S.M Aminuzzaman Faruk and (2) Md. Maklesur Rahman @ Tara (remained in absconsion till summing up phase and arrested on 21.06.2023) have been indicted and on integrated evaluation of evidence tendered they two are found criminally liable for the crimes arraigned in these two counts of charges[charge nos. 2 and 3]

400. Tribunal notes that one accused Emdadul Haque @ Khaja doctor too was indicted in charge nos. 1 and 4. But he died during trial. However, three accused tried jointly have been found criminally responsible for designed horrendous atrocities directed against the civilian population committed in context of the war of liberation 1971 in the territory of Bangladesh.

401. Objective of such culpable collaboration and participation of accused persons was aimed to annihilate the Bangalee civilian population intending to resist the Bengali nation in achieving its independence. Pattern and extent of attacks proved demonstrate it patently.

402. We have recorded our reasoned finding that the three accused incurred liability for the crimes proved. Accordingly, they are held criminally responsible under section 4(1) of the Act of 1973 and also under the doctrine of JCE- Form-I for the commission of crimes proved as listed in **charge nos. 1,2 and 3.**

XII. VERDICT ON CONVICTION

403. Tribunal restates that burden of proving the guilt or criminal liability of the accused persons indicted squarely lies upon the prosecution. In the case in hand, in proving three counts of charges (excepting charge no.04) brought against the accused persons, this settled standard has been found to be reasonably met as the accused (1) S.M Aminuzzaman Faruk (2) A.K.M Akram Hossain and (3) Md. Maklesur Rahman @ Tara (**remained in absconsion till the phase of summing up and arrested on 21.06.2023**) are found to have incurred liability for the systematic dreadful crimes including killing of numerous civilians committed in 1971 during the war of liberation which have been proved beyond reasonable doubt.

404. Having meticulous and judicial appraisal of all the evidences presented before us and argument advanced by both

sides and based upon settled and evolved jurisprudence, the Tribunal [ICT- 1] **UNANIMOUSLY** finds the accused-

Three (03) accused (1) S.M Aminuzzaman Faruk (2) A.K.M Akram Hossain and (3) Md. Maklesur Rahman @ Tara(remained in absconsion till summing up phase and arrested on 21.06.2023)

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

Two (02) accused (1) S.M Aminuzzaman Faruk and (2) Md. Maklesur Rahman @ Tara (remained in absconsion till summing up phase and arrested on 21.06.2023)

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

Two(02) accused (1) S.M Aminuzzaman Faruk and (2) Md. Maklesur Rahman @ Tara (remained in absconsion till summing up phase and arrested on 21.06.2023)

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

Three(03) accused (1) S.M Aminuzzaman Faruk (2) A.K.M Akram Hossain and(3) Md. Maklesur Rahman @ Tara

CHARGE NO.4: NOT GUILTY of the offences of ‘Enslavement’ [forced labour]as crimes against humanity as enumerated in section 3(2)(a)(g)(h) of the International Crimes(Tribunals) Act of 1973

XIII. VERDICT ON SENTENCE

405. The learned prosecutor, at the ending phase of summing up placed, urged for highest punishment taking the intrinsic gravity of offences and mode of participation of the accused persons who are found to have incurred criminal liability for their conscious participation to the commission of crimes proved.

406. Conversely, the learned defence counsels submitted that since prosecution failed to prove complicity and participation of accused persons with the commission of alleged offences the accused persons deserve to be acquitted. In fact, no submission

on sentencing matter drawing any mitigating factor, if any has been advanced on part of defence.

407. In the case in hand, the three accused have been found guilty beyond reasonable doubt for aiding and substantially contributing in committing the crimes as listed in **charge no.1** and two accused are found criminally liable for the crimes as listed in **charge nos. 2 and 3**. Thus, considering the intrinsic enormity of crimes they cannot evade the appropriate punishment for the crimes proved. We reiterate that ‘no innocent person be convicted, let hundreds guilty be acquitted’—the principle has been changed in the present time. In this regard it has been observed by the Indian Supreme Court that--

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

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

408. It is to be noted that the Tribunal, a court of law meant to try the internationally recognized crimes is to act on the basis of evidence presented together with settled legal propositions. Already all the three accused persons have been found guilty

beyond reasonable doubt for the offences with which they have been indicted, on assiduous appraisal of evidence and circumstances led on part of the prosecution.

409. The criminal events that resulted in deliberate killing of numerous unarmed civilians and causing mental harm to the civilians were the split depiction of the total horrific atrocities committed in violation of international humanitarian law and the laws of war against the Bengali non combatant pro-liberation civilians in the territory of Bangladesh in 1971. The convicted accused persons deliberately collaborated and participated in accomplishing the crimes, to further policy and plan of Pakistani occupation army. It too should be kept in kind in awarding sentence.

410. It is to be noted that the Tribunal is authorized to award any sentence, instead of capital punishment, if it considers appropriate in light of proportionate to the gravity of offence and degree of culpability to the convicted person who has been found guilty beyond reasonable doubt.

411. At the same time we reiterate that letters of law does not consider the level of the offender, in awarding sentence. It

considers the level and gravity of the offence for committing which the offender is found guilty. At the same time mode of participation of the convicted accused in perpetrating the crimes proved too requires to be considered. In the case in hand, the offences proved were of gravest nature indeed that shake human conscience, the humanity and civilization.

412. On integrated evaluation of evidence presented together with facts and circumstances it has been proved that the three accused (1) S.M Aminuzzaman Faruk (2) A.K.M Akram Hossain and (3) Md. Maklesur Rahman @ Tara (**remained in absconsion till summing up phase and arrested on 21.06.2023**) have been found guilty of crimes as listed in **charge no.1** and two accused (1) S.M Aminuzzaman Faruk and Md. Maklesur Rahman @ Tara (**remained in absconsion till summing up phase and arrested on 21.06.2023**) are found liable also for the crimes committed in 1971 during the war of liberation which ended in barbaric killing of unarmed civilians as listed in **charge nos.02 and 03**.

413. We got it proved that the accused persons in exercise of their explicit affiliation with the locally formed para militia force Razakar Bahini and Al Badr Bahini deliberately participated to the commission of barbaric criminal acts with

fanaticism and sadism directing the pro-liberation civilians. The victims sacrificed their lives for the reason of their stance in favour of the war of liberation.

414. Accountability for the crimes committed and commensurate punishment is the aim of criminal proceedings involving such grave crimes. Tribunal also notes that the gravity of the offence proved is to be considered as ‘the litmus test’ in awarding an appropriate sentence. In the case of **Jelisić**, 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 Jelisić, July 5, 2001, para. 94]

415. The events of systematic attacks leading to horrendous killing of numerous civilians as arraigned in charge nos. 01, 02 and 03 formed fragmented portrayal of myriad and untold barbaric atrocities committed directing pro-liberation Bangalee civilians in 1971 with grave aggression, in violation of international humanitarian law.

416. It stands proved that the convicted accused (1) S.M Aminuzzaman Faruk (2) A.K.M Akram Hossain and (3) Md.

Maklesur Rahman @ Tara(**remained in absconsion till summing up phase and arrested on 21.06.2023**) knowingly and deliberately participated by aiding and facilitating in accomplishing the killings being part of the group of attackers. **(as listed in charge no. 1).**

417. It has also been proved that the two accused persons (1) S.M Aminuzzaman Faruk and (2) Md. Maklesur Rahman @ Tara (**remained in absconsion till summing up phase and arrested on 21.06.2023**)consciously aided and provided substantial contribution and moral support and approval too, by virtue of their culpable affiliation in auxiliary forces, to the commission of tragic killing of 02 unarmed civilians **(as listed in charge no.2 and 3).**

418. In awarding appropriate sentence in a case involving the offence of murder as crime against humanity we must eye on the intrinsic gravity of the crime proved. In respect of awarding sentence the **Appellate Division of Supreme Court of Bangladesh** has observed in the case of **A.T.M Azharul Islam** that—

“It is the duty of the Courts/Tribunals toward sentence commensurate with the gravity of the crimes. Imposition of lesser sentence causes

injustice not only to the victims of crime but also to the whole society.....”

[14 SCOB [2020] AD , Criminal Appeal No. 12 of 2015, Judgment 31 October 2019, A.T.M. Azharul Islam Vs. Chief Prosecutor, ICT, Para 206]

419. In awarding sentence in a case involving the offences enumerated in the Act of 1973 due attention needs to be paid to the shock and trauma sustained by the relatives of victims together with the preamble of the Act of 1973. The intrinsic magnitude of the offence of ‘murder’ as ‘crimes against humanity’ is indeed predominantly appalling to the conscience of mankind.

420. The nature of diabolical crimes itself portrays terrible magnitude and gravity and in the event of success of prosecution in proving the charges the accused persons must and must deserve just and appropriate punishment.

421. Mode of participation of convicted accused persons in perpetrating horrendous killing of four unarmed civilians is found to be explicitly grave **(as listed in charge no.01)**. They played as key actors in actuating the killing in serious violation of international humanitarian law. Accused persons’ active and visible association with the locally stationed Pakistani

occupation army was indeed the fair indicative of their high level of culpability.

422. Undeniably, the punishment to be awarded must reflect both the calls for justice from the victims and sufferers of the crimes, as well as respond to the call from the nation as a whole to end impunity for colossal human rights violations and diabolical crimes committed during the war of liberation 1971.

423. However, Tribunal is of view that sometimes even long term imprisonment instead of highest (capital) punishment is considered appropriate as in such case the convicted offenders remaining behind the bar shall have space of realizing what wrongful misdeeds filled with notoriety they had committed in perpetrating the crimes proved. Besides, old age and their sickness together form mitigating factor which need to be considered as well in awarding sentence.

424. In view of reasoned deliberation as made above and considering the gravity of the offences, mode of participation of convicted accused persons in committing the offences proved and also keeping the mitigating factors as focused above into account we are of the **UNANIMOUS** view that justice would be met if the convicted accused **(1) S.M Aminuzzaman Faruk,**

(2) A.K.M Akram Hossain and (3) Md. Makleshur Rahman @ Tara (remained in absconion till summing up phase and arrested on 21.06.2023) who have been found guilty beyond reasonable doubt for the horrendous crimes with which they have been charged are condemned and sentenced as below, under the provision of section 20(2) of the Act of 1973:

**Hence, it is
ORDERED**

That accused --

(1) S.M Aminuzzaman Faruk, son of late Shamsuzzaman and late Amena Khatun of village-Eshibpur, Ward no.05, Nokla Pourashava under police station-Nokla of District [now]-Sherpur,

(2) A.K.M Akram Hossain, son of late Azizur Rahman and late Amena Khatun of village-Bibirchar under police station-Nokla of Distract[now]-Sherpur, at present- 80/6 Etakhula Road under police station-Kotowali of District-Mymensingh **AND**

(3) Md. Makleshur Rahman @ Tara (remained in absconion till summing up phase and arrested on 21.06.2023) son of late Moyej Uddin Ahmed and late Maleka Khatun of village-Kursha Badagair, Ward no.06, Nokla Pourashava under police station-Nokla of District[now]-Sherpur-

are found **UNANIMOUSLY** guilty of the offences of ‘murder’, ‘abduction’, ‘confinement’, ‘torture’ and

‘other inhuman acts’ as ‘crimes against humanity’ enumerated in section 3(2) of the International Crimes(Tribunals) Act, 1973 as arraigned in **CHARGE NO.01**. Accordingly, they be **UNANIMOUSLY** convicted andcondemned to the **sentence as below for this charge**, under section 20(2) of the Act of 1973

‘Sentence of imprisonment for life’ for the crimes as listed in **CHARGE NO.1** under section20(2) of the International Crimes (Tribunals) Act, 1973.

Two (02) accused (1) S.M Aminuzzaman Faruk and (2) Md. Makleshur Rahman @ Tara(remained in absconsion till summing up phase and arrested on 21.06.2023)-

are foundUNANIMOUSLY guilty of the offences of **‘murder’, ‘abduction’,‘confinement’, ‘torture’** and **‘other inhumane acts’ as ‘crimes against humanity’** enumerated in section 3(2) of the International Crimes(Tribunals) Act, 1973 as arraigned in **CHARGE NOS.2 and 3 [02charges]**. Accordingly, they be **UNANIMOUSLY** convicted andcondemned to the **sentence as below for these two charges**, under section 20(2) of the Act of 1973

‘Sentence of imprisonment for life’under section20(2) of the International Crimes (Tribunals) Act, 1973 for the crimes as listed in **CHARGE NO.2;**

AND

‘Sentence of imprisonment for life’ under section 20(2) of the International Crimes (Tribunals) Act, 1973 for the crimes as listed in **CHARGE NO.3.**

However, **‘Sentence of imprisonment for life’** awarded in respect of charge nos.1, 2 and 3 to the convict (1) **S.M Aminuzzaman Faruk** and (2) **Md. Maklesur Rahman @ Tara (remained in absconsion till summing up phase and arrested on 21.06.2023)** shall get merged.

Accused (1) **S.M Aminuzzaman Faruk**, (2) **A.K.M Akram Hossain** and (3) **Md. Maklesur Rahman @ Tara (remained in absconsion till summing up phase and arrested on 21.06.2023)** are found **UNANIMOUSLY NOT GUILTY** of offence arraigned in **CHARGE NO.4** and thus they be **acquitted** thereof.

Three (03) convicted accused (1) **S.M Aminuzzaman Faruk**, (2) **A.K.M Akram Hossain** and (3) **Md. Maklesur Rahman @ Tara** [present on dock as have been brought from prison] be sent to prison together with conviction warrant.

Let a copy of the Judgment be transmitted together with the conviction warrant to **the Senior Jail Super, Dhaka Central**

Jail, Keraniganj, Dhaka for information and necessary compliance.

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

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

The convicted accused (1) **S.M Aminuzzaman Faruk** (2) **A.K.M Akram Hossain** and (3) **Md. Maklesur Rahman @ Tarashall** have right to prefer appeal before the Appellate Division of the Supreme Court of Bangladesh within the time stipulated in law. Thus, let certified copy of the judgment be furnished to the convicts at once, free of cost, for preferring appeal.

Justice Md. Shahinur Islam, Chairman

Justice Md. Abu Ahmed Jamadar, Member

Justice K.M. Hafizul Alam, Member