

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. 11 of 2016

[Arising out of ICT-BD Misc. Case No.11 of 2015]

[Charges: Participating, committing, aiding and contributing 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) Doctor Khondaker Golam Sabbir Ahmed
- (2) Md. Hormuj Ali
- (3) Md. Fakhruzzaman (**absconding**)
- (4) Md. Abdus Sattar and
- (5) Khondaker Golam Rabbani (**absconding**).

For the Prosecution:

Mr. Golam Arief Tipoo, Chief Prosecutor with

Mr. Mokhlesur Rahman Badal, Prosecutor

Mr. Sultan Mahmud, Prosecutor

Ms. Sabina Yesmin Khan, Prosecutor

Mr. Tapas Kanti Baul, Prosecutor and

Rezia Sultana Begum, Prosecutor

For the defence

Mr. Mizanul Islam, Advocate and **Mr. Gazi M.H. Tamim**, Advocate, Supreme Court of Bangladesh: **Engaged Counsels** for accused (1) Khondaker Golam Sabbir Ahmed.

Mr. Abdus Sobhan Tarafdar, Advocate, Supreme Court of Bangladesh: **Engaged Counsel** for accused (2) Md. Hormuj Ali and (3) Md. Abdus Sattar and **State defence Counsel** for accused (4) Md. Fakhruzzaman (**absconding**) and (5) Khondaker Golam Rabbani (**absconding**).

Date of delivery of Judgment: 20 February, 2023

JUDGMENT

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

I. Introductory Words

1. Trial of the case in hand commenced against eight (08) accused (1) M.A Hannan (2) Md. Rafiq Sajjad (3) Doctor Khondaker Golam Sabbir Ahmed (4) Mizanur Rahman @ Mintu (5) Md. Hormuj Ali (6) Md. Fakhruzzaman, (7) Md. Abdus Sattar and (8) Khondaker Golam Rabbani, by framing charges arraigning commission of the offences as crimes against humanity enumerated in the International Crimes(Tribunals) Act, 1973 committed in the localities under police stations Mymensingh Sadar, Trishal and Gouripur of District

Mymensingh in 1971, during the war of liberation of Bangladesh.

2. Prosecution alleges that in 1971 the accused persons indicted were actively affiliated with the locally formed Razakar Bahini and Al Badr and they, in exercise of their dominant nexus with the auxiliary force consciously participated and culpably collaborated with the Pakistani occupation armed force in carrying out revolting atrocious acts aiming to annihilate the pro-liberation civilians, in furtherance of policy and plan of resisting the Bangalee nation in achieving its self-determination and long cherished independence.

3. In course of trial three (03) accused M.A Hannan, Md. Rafique Sajjad and Mizanur Rahman @ Mintu died on different dates and proceeding so far as it related to them stood abated. Eventually trial concluded against five (05) accused of whom three are in prison and two accused (1) Md. Fakhruzzaman and (2) Khondaker Golam Rabbani have been absconding. Three accused (3) Doctor Khondaker Golam Sabbir Ahmed (4) Md. Hormuj Ali and (5) Md. Abdus Sattar have been in prison.

4. Today, this unanimous Judgment is being rendered by this Tribunal [ICT-1] for the prosecution of persons belonging to

auxiliary force allegedly responsible for the serious offences known as ‘system crimes’ as enumerated in the International Crimes (Tribunals) Act, 1973 [hereinafter referred to as the ‘Act of 1973] committed in violation of international humanitarian law in the territory of Bangladesh in 1971, during the war of liberation.

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

II. Formation and Jurisdiction of the Tribunal

6. The Act No. XIX enacted in 1973 in our sovereign parliament is meant to prosecute crimes against humanity, genocide and system crimes as enumerated in the Act committed in violation of customary international law is *ex-post facto* legislation. It is fairly permitted. Tribunal reiterates that the 1973 Act of Bangladesh has the merit and means of ensuring the standard of safeguards recognized universally to be provided to the person accused of offences punishable under the Act of 1973. And it is being maintained duly.

7. Tribunal reiterates that the Act of 1973 has been enacted to prosecute, try and punish not only the 'armed forces' but also the perpetrator[s] belonging to 'auxiliary force[s]', or who committed the offences even in the capacity of an 'individual' or a 'group of individuals' or 'organization'. 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 prosecuted and tried under the Act of 1973.

8. This Tribunal constituted under the Act of 1973 is utterly a domestic judicial forum but meant to try 'internationally recognized crimes' or 'system crimes' committed in violation of international humanitarian law during the war of liberation in 1971 in the territory of Bangladesh. Merely for the reason that the Tribunal is preceded by the word "international" and possessed jurisdiction over crimes such as Crimes against Humanity, Crimes against Peace, Genocide, and War Crimes, it will be mistaken to assume that the Tribunal must be treated as an "International Tribunal". Already this Tribunal is known even to the global community as a 'domestic judicial forum' which is meant to prosecute and try the internationally recognized crime happened in 1971, in war time situation.

III. Historical backdrop and Context

9. The offences arraigned for perpetration of which the accused persons have been indicted were not isolated crimes. Those are recognized as ‘international crimes’ as those happened in war time situation directing unarmed civilian population, to further specific policy and plan. The events narrated in all counts of charges framed indubitably form part of dreadful atrocities committed directing pro-liberation civilians which constituted the offences of crimes against humanity in 1971 in the territory of Bangladesh during the nine-month blood-spattered glorified war of liberation.

10. We opt to pen our observation that the verdict of the Tribunal is not only aimed to render its decision on the arraignment brought. The verdict to be rendered also mirrors the horrific truth and the context behind the commission of dreadful criminal acts and this truth shall create youth quake to go ahead with the spirit of the war of liberation and firm patriotism. Trial of the perpetrators of horrendous crimes committed in violation of international humanitarian law is indicia of valid and courageous endeavor to come out from the culture of impunity.

11. In portraying the historical background, in succinct, that ensued the war of liberation of the Bangalee nation in 1971 it is necessary to restate that in August, 1947, the partition of British India based on two-nation theory, gave birth to two new states, one a secular state named India and the other the Islamic Republic of Pakistan. The western zone was named West Pakistan and the eastern zone was named East Pakistan, which is now Bangladesh. Since then the Bangalee nation started suffering disparity and inequality in all spheres of livelihood. It is now historically settled.

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

13. The history goes on to depict that in the general election of 1970, the Awami League under the leadership of Bangabandhu Sheikh Mujibur Rahman, the Father of the Nation became the majority party of Pakistan. But calculatingly defying the

democratic norms the Pakistan Government did not care to respect this overwhelming majority. As a result, movement started in the territory of this part of Pakistan and Bangabandhu Sheikh Mujibur Rahman, the Father of the Nation in his momentous speech of 7th March, 1971, called on the Bangalee nation to start struggle for independence.

14. About the glowing speech of 7th March 1971 it is to be noted with enormous pride that the historic March 7th speech of Bangabandhu Sheikh Mujibur Rahman, the Father of the Nation has been recognized by the UNESCO as a ‘world documentary heritage’. The 07th March gleaming speech of Bangabandhu calling on the freedom-loving Bangalees crucially activated and inspired the whole Bangalee nation, excepting a few pro-Pakistan people to get prepared for the war of liberation.

15. In the early hour of 26th March, following the onslaught of “Operation Search Light” by the Pakistani Military on 25th March 1971, Bangabandhu Sheikh Mujibur Rahman declared Bangladesh independent immediately before he was arrested by the Pakistani authorities. The ‘aggression’ that resulted in untold violation of civilians’ rights and their indiscriminate killings in the territory of Bangladesh began with launching the ‘operation

searchlight’ which was in grave breaches of Geneva Convention 1949.

16. The above backdrop depicts that in the War of Liberation that ensued in 1971, all Bangalee people of the then East Pakistan utterly supported and participated in the call to make their motherland Bangladesh free, but a small number of Bangalees, Biharis, other pro-Pakistanis, as well as members of a number of different religion-based pro-Pakistan political parties, particularly Jamaat E Islami (JEI) and its student wing Islami Chatra Sangha (ICS), Muslim League, Convention Muslim League started culpably collaborating with the Pakistani occupation army with intent to aggressively resist the conception of independent Bangladesh to annihilate the dream of self-determination of Bangalee nation.

17. It is now historically settled that the members of Razakar Bahini, a para militia force did not keep them distanced from the strategy of JEI to further the policy and plan of the Pakistani occupation army in carrying out barbaric atrocities. This is now a settled history of which this Tribunal takes judicial notice as permitted by the Act of 1973 and the ROP.

18. History also depicts that local collaborators belonging to auxiliary force[s] got actively engaged in accomplishing the crimes directing civilian population, being imbued by the policy and plan of the Pakistani occupation army on explicit and vigorous endorsement of Jamaat E Islami [JEI] a potential pro-Pakistan political party. The local collaborators truly had acted as traitors. It is now a settled history which needs no further document to prove.

19. The legislation enacted in 1973 remained dormant for decades together chiefly for the brutal assassination of Bangabandhu Sheikh Mujibur Rahman, the Father of the Nation and most his family members on 15 August 1975 and also for the state of mind of the military usurpers who started ruling the country and for the reason of rehabilitating the people who took strapping stance with the Pakistani occupation army in 1971. With this the military regimes permitted the culture of impunity.

20. The untold atrocious resistance on part of thousands of local collaborators belonging to Razakar Bahini, Al-Badr Bahini finally could not impede the nation's valiant journey to freedom. Undeniably, the way to self-determination for the Bangalee

nation was strenuous, swabbed with enormous blood, struggle and immense sacrifices.

21. In the present-day world history, conceivably no nation paid as extremely as the Bangalee nation did for its self-determination and for achieving independent motherland. The nation shall remain ever indebted to those best sons, mothers and daughters of the soil who paid supreme sacrifices for an independent motherland – **Bangladesh**. The nation always pays deep tribute and homage to the blood of three millions of patriotic martyrs and innocent defenceless people.

IV. Brief Account of the Accused Persons

22. Before we render our reasoned decision on charges framed let us have a look what has been portrayed in the formal charge about the identity and status the accused persons had in 1971. In the case in hand, out of eight accused indicted three died during trial and thus proceeding so far as it related to them stood abated vide Tribunal's orders as stated in the 'procedural history' segment of the judgment. Thus, now just let us eye on the brief account only of five accused i.e. accused (1) Doctor Khondaker Golam Sabbir Ahmed (2) Md. Hormuj Ali (3) Md. Fakhruzzaman (**absconding**) (4) Md. Abdus Sattar and (5) Khondaker Golam Rabbani (**absconding**).

(i) Doctor. Khondokar Golam Sabbir Ahmed

Accused Doctor. Khondokar Golam Sabbir Ahmed is the son of late Khondokar Abdur Rashid and Mosammat Amena Khatun of 53/ka, Golki Bari Road, Mymensingh Sadar, District-Mymensingh. He was born on 04.01.1947. He passed S.S.C from Mymensingh Zilla School in 1963 and completed MBBS degree in 1972 from Mymensingh Medical College. During student life he was the member of Islami Chattra Sangha [ICS], student wing of Jamaat-E-Islam and contested student union election of Mymensingh Medical College as V.P candidate in 1969. During the Liberation War in 1971 he **joined in Al-Badr Bahini** and **as a close associate of Peace Committee leader accused M.A Hannan (died during trial)** he allegedly got engaged in carrying out heinous offences in different places of Mymensingh District.

(ii) Khondokar Golam Rabbani (absconding)

Accused Khondokar Golam Rabbani is the son of late Khondaker Abdur Rashid and Mosammat Amena Khatun of 30/ka, Golki Bari Road, Mymensingh Sadar, District-Mymensingh. He was born on 28.10.1952. He passed S.S.C from Mymensingh Zilla School in 1967 and H.S.C from Junior Training College Dhaka in 1972. He also passed B.A from

Dhaka University in 1987. During student life he was the member of Islami Chattra Sangha [ICS], student wing of Jamaat-E-Islami. During the Liberation War in 1971 he joined in Al-Badr Bahini and as a close associate of Peace Committee leader accused M.A Hannan (died during trial) he was allegedly involved in committing atrocious activities.

(iii) Md. Hormuj Ali

Accused Md. Hormuj Ali is the son of Saad Akkas of Shommukh Boilor, Police Station-Trishal, District-Mymensingh. He was born on 06.06.1943. He completed his 'Kariana' Course from local Madrasha before independence of Bangladesh. He was a supporter of Jamaat-E-Islami. During the War of Liberation in 1971 he joined in locally formed armed Razakar Bahini and as a close associate of Peace Committee leader accused M.A Hannan (died during trial) allegedly got involved in committing atrocious activities.

(iv) Md. Abdus Sattar

Accused Md. Abdus Sattar is the son of late Kudrat Ali Mondol and late Mosammat Kabiron Nesa of 5/16, Jail Road Outer Stadium, Mymensingh Sadar, District- Mymensingh. He was born on 05.06.1952. He studied up to class VIII. He was a follower of Convention Muslim League. During the Liberation

War in 1971 as **close associate of Peace Committee leader accused M.A Hannan (died during trial) and an active member of locally formed armed Razakar Bahini** he allegedly committed heinous offences in different places of Mymensingh District.

(v) Md. Fakhruzzaman (absconding)

Accused Md. Fakhruzzaman is the son of late Abdul Wahed and late Halima Akhter Khatun of 3 Ka/1, College Road, Mymensingh Sadar, District- Mymensingh. He was born on 14.07.1955. He passed S.S.C in 1970 from Mymensingh Zilla School, H.S.C in 1972 and B.A in 1976 from Anandamohan College, Mymensingh. He also passed M.A from Dhaka University in 1978. He was an active member of Islami Chattra Sangha [ICS], the student wing of Jamaat-E-Islami [JEI] since prior to 1971. During the Liberation War in 1971 he as a close associate of Peace Committee leader accused M.A Hannan(died during trial) and an active member of locally **formed Razakar Bahini** allegedly got engaged in carrying out atrocious activities in different places of Mymensingh District, as alleged.

V. Procedural History

23. The investigation Agency of the International Crimes Tribunal(ICT-BD) started investigation pursuant to compliant

register serial no. 56 dated 28.07.2015, in respect of commission of offences enumerated in section 3(2) of the Act of 1973 allegedly perpetrated by the accused persons during the war of liberation in 1971.

24. During investigation, the IO prayed through the chief prosecutor on 28.07.2015 considering which Tribunal by its order dated 01.10.2015 issued warrant of arrest. Five [05] accused (1) M.A Hannan (2) Md. Rafiq Sajjad (3) Doctor Khondaker Golam Sabbir Ahmed (4) Mizanur Rahman @ Mintu and (5) Md. Hormuj Ali could be arrested in execution of warrant of arrest and on production of them before the Tribunal ordered their detention in prison, for the purpose of going on with proper and effective investigation.

25. In course of investigation, five accused persons detained in prison were interrogated at the safe home of the investigation agency as permitted by the Tribunal.

26. On conclusion of investigation, the IO submitted its report together with documents and materials collected and statement of witnesses, before the Chief Prosecutor on 11.07.2016 recommending prosecution of eight [08] accused persons for the offences enumerated in the Act of 1973.

27. The Chief Prosecutor , on the basis of the report and documents submitted therewith by the Investigation Agency, placed the 'Formal Charge' on 30.10.2016 under section 9(1) of the Act of 1973 before this Tribunal alleging that the accused persons had committed the offence of crimes against humanity including aiding, abetting and also for complicity to commit such crimes arraigned in the formal charge alleging that those were perpetrated during the period of War of Liberation in 1971 around the localities under Police Stations-Trishal, Gouripur and Kotwali, District- Mymensingh.

28. The Tribunal, under Rule 29(1) of the Rules of Procedure, took cognizance of offences as mentioned in section 3(2) read with section 4(1) of the Act of 1973 on 11.12.2016, by application its judicial mind to the Formal Charge and materials and documents forming part of the record.

29. Out of eight [08] accused three [03] accused could not be arrested. After having the report in execution of warrant of arrest issued against them the Tribunal, for the purpose of holding proceeding in absentia against them ordered publication of notice in two national daily news papers as required under

Rule 31 of the ROP 2010 read with Section 10A of the Act of 1973.

30. It appears that after publication of such notice in two daily news papers one accused Md. Abdus Sattar surrendered before the Tribunal on 28.03.3017 when he was sent prison. However, two accused Md. Fakhruzzaman and Khondaker Golam Rabbani did not turn up within the time stipulated in the notification and as such treating absconding Tribunal appointed Mr. Abdus Sobhan Tarafdar, Advocate, Supreme Court of Bangladesh as state defence counsel to defend these two absconding accused. In addition to these two accused three other accused too have been defended by Mr. Abdus Sobhan Tarafdar.

31. **Mr. Mizanul Islam**, Advocate, Supreme Court of Bangladesh defended three accused detained in prison namely M.A Hannan, Md. Rafiq Sajjad and Doctor Khondaker Golam Sabbir Ahmed.

32. Hearing on charge framing matter concluded on 23.01.2019. Afterward, on 27 May, 2019 by its **order no.23 framed charges against eight accused of them two accused Md. Fakhruzzaman and Khondaker Golam Rabbani had been in absconsion.**

33. The charges so framed were read over and explained to six accused detained in prison, namely (1) M.A Hannan (2) Md. Rafiq Sajjad (3) Doctor Khondaker Golam Sabbir Ahmed (4) Mizanur Rahman @ Mintu (5) Md. Hormuj Ali and (6) Md. Abdus Sattar to which they pleaded not guilty and claimed to be tried according to law.

34. Trial thus commenced on framing six counts of charges. After placing opening statement prosecution started adducing and examining witnesses to substantiate the arraignments brought in the charges framed. Defence duly cross-examined the prosecution witnesses.

35. In course of trial prosecution by filing an application under section 19(2) of the Act of 1973 read with Rule 46A of the ROP 2010 prayed to receive statement of six witnesses made to the IO as they already died during trial. Tribunal allowed the application. After closure of examination of witnesses both sides place their respective summing up which ended on 02.01.2023 and then the case was kept in CAV i.e. for delivery and pronouncement of judgment.

36. It is to be noted that three (03) accused detained in prison namely Mizanur Rahman @ Mintu , Md. Rafique Sajjad and accused M.A. Hannan died during trial on 21.03.2020,15.05.2021 and 15.06.2021 respectively and thus proceeding so far as it related to them stood abated by virtue of Tribunal's orders passed on 20.10.2020 and 22.06.2021.

VI. Applicable laws

37. The offences enumerated in the Act of 1973 are known as system crimes committed in context of war time situation. Section 23 of the Act of 1973 debars the applicability of the Code of Criminal Procedure, 1898 and the Evidence Act, 1872 in dealing with the proceedings by the Tribunal.

38. In adjudicating the arraignments brought under adjudication and liability of each accused therewith the Tribunal is authorized to take judicial notice of any fact of common knowledge which is not needed to be proved formally by tendering evidence [Section 19(4) of the Act], in addition to the ocular evidence tendered. Even the Tribunal shall not be bound by the technical rules of evidence and may admit any evidence which it deems to have probative value [section 19(1) of the Act of 1973]. The Tribunal shall have discretion to consider hearsay

evidence by weighing its probative value [Rule 56(2)] and credence.

39. The Act of 1973 provides right of accused to cross-examine the prosecution witnesses on his credibility and to take contradiction of the evidence given by him [Rule 53(2)]. But it is to be noted that in the judgment of *Abdul Quader Molla* it has been observed by the **Appellate Division of the Supreme Court of Bangladesh** that-- “Sub-rule (2) of rule 53, speaks of ‘contradiction of the evidence given by him’. This word ‘contradiction’ is qualified by the word ‘examination-in-chief’ of a witness. So, the contradiction can be drawn from the statements made by a witness in his' examination-in-chief’ only, not with respect to a statement made to the investigating officer of the case in course of investigation” **[Page 196 of the Judgment]**.

40. It has been further observed by the Appellate Division that-- “There is no scope to draw contradiction of the statement of a witness made in course of examination-in-chief with his/her earlier statements made to the investigating officer or other agency.”**[page-205 of the Judgment]**.

41. On closure of examination of prosecution witnesses the Act of 1973 provides opportunity of examining witnesses and adducing documents by the defence according to list of witnesses and documents, if submitted in compliance with provision of section 9(5) of the Act of 1973 and within time stipulated in the order framing charges.

42. The Act of 1973, the guiding legislation and the Rules (ROP) have effectively ensured the universally recognized defence rights. Moreover, the Tribunal, in exercise of its prudence and inherent powers as contained in Rule 46A of the ROP, has adopted numerous practices for ensuring fair trial by providing all possible and legitimate rights of the accused.

VII. Summing up

Summing up by the prosecution

43. Rezia Sultana Begum, the learned prosecutor submitted that the accused persons have been indicted of offences as crimes against humanity committed in 1971 in Mymensingh. It has been proved that the accused persons in exercise of their affiliation in local Al Badr and Razakar Bahini participated in launching the attack arraigned leading to abduction, confinement, torture and murder of numerous unarmed civilians.

Unimpeached testimony of direct witnesses explicitly proves accused persons' involvement with the criminal acts forming part of systematic attack.

44. The learned prosecutor next argued on each charge and mode of participation of the accused indicted drawing attention to the testimony of witnesses of whom some are direct witnesses to facts related to the event arraigned. Defence could not impeach the crucial facts proved chained to the event of attack and participation of accused persons indicted therewith.

45. The learned prosecutor also argued that the accused M. A Hannan (died during trial) was the key perpetrator and main player of the attacks and he had acted pursuant to the design and policy of the Pakistani occupation army and the other accused persons belonging to local Razakar Bahini. But he and two other accused Mizanur Rahman @ Mintu and Md. Rafiq Sajjad too died during trial. Defence could not controvert the narrative recounted by the ocular witnesses in any way by cross-examining the witnesses.

46. Mr. Mizanul Islam, the learned Advocate, Supreme Court of Bangladesh, engaged Counsel for accused Khondaker Golam Sabbir Ahmed argued that this accused had no affiliation with any para

militia force in 1971; that it could not be proved by adducing any documentary evidence; that there is no evidence to connect him with the offence as arraigned in charge no.04. Prosecution witnesses testified inconsistently in respect of nexus of this accused with the event arraigned in charge no.04.

47. Mr. Abdus Sobhan Tarafdar, the learned Advocate, Supreme Court of Bangladesh defended the accused Md. Hormuj Ali as engaged counsel. He argued that this accused had no involvement with Razakar Bahini and he was not associated with the gang in committing the offences arraigned in charge nos. 02 and 03. Testimony of prosecution witnesses in relation to this charge is contradictory and inconsistent. None of prosecution witnesses implicate this accused with the alleged event arraigned in charge no.03. Also his alleged complicity with the event arraigned in charge no.03 suffers from reasonable doubt. Admittedly, wife of victim Abdur Rahman (charge no.03) initiated a case over the event of her husband's killing where she did not implicate this accused and thus it creates patent doubt as to alleged participation of the accused Md. Hormuj Ali with the event alleged. Besides, statement of Rahima, the wife of victim Abdur Rahman, made to the IO does

not state implication of this accused in any manner with the alleged event arraigned in charge no.03

48. Mr. Abdus Sobhan Tarafdar learned Advocate, Supreme Court of Bangladesh also as **State Defence Counsel** for accused Md. Fakhruzzaman, Md. Abdus Sattar and Khondaker Golam Rabbani argued that testimony of prosecution witnesses in support of charge no.04 suffers from inconsistency and it could not be proved that these accused had association with local Al Badr Bahini and Razakar Bahini. Their alleged presence with the gang and alleged act forming part of the attack could not be proved by credible evidence.

VIII. Did the accused persons belong to Razakar Bahini and Al Badr Bahini in 1971 and what was the objective of forming this auxiliary force?

49. The Act of 1973 permits to prosecute even an ‘individual’ for the commission of any of offences enumerated in section 3 of the Act. However, in the case in hand, all the five accused persons are alleged to have had membership or affiliation in the locally formed Razakar Bahini and Al Badr Bahini.

50. No document could be collected during investigation to show that the accused persons belonged to Razakar Bahini and

Al Badr Bahini. The IO (P.W.13) admits it. It is to be noted that due to lapse of long passage of time collecting documentary evidence is a challenging task indeed. Relevant documents could have been destroyed taking advantage of regime change. Thus, merely for this reason testimony of witnesses in respect of affiliation of accused persons with auxiliary force cannot be turned down readily. This matter can be well unfolded from ocular testimony of witnesses who testified the events arraigned.

51. Accused M.A. Hannan (died during trial) was the key architect of the crimes arraigned. In 1971 he was a local peace committee leader. It stands proved from documentary evidence. It appears that in the case in hand it has been arraigned that the accused persons had acted as close accomplices of M.A Hannan (died during trial) in perpetrating alleged atrocious acts directing civilians population.

52. On having close eye to the facts related to the events arraigned it may be presumed that the accused persons made them engaged in such association with M.A Hannan(died during trial) which leads to the conclusion that they were affiliated with auxiliary force. However, it shall come to the fore when the charges will be adjudicated.

53. The Act of 1973 permits prosecution even of ‘individual’ or ‘group of individuals’ for the commission of any of offences enumerated in section 3 of the Act. In absence of any documentary evidence in support of affiliation of accused persons with auxiliary force or Al Badr Bahini they cannot be absolved of liability, if proved. Non production of any relevant document in this regard thus does not negate their alleged association with those para militia forces.

54. It has been arraigned in the case in hand that the group of perpetrators responsible for launching attack directing civilians was formed of Razakars, Al Badrs together with the army and peace committee men. It is now settled history that ‘Razakar’ Bahini was formed simultaneously with the formation of ‘peace committee’, in 1971, to further the policy of Pakistani occupation army. We take it to judicial notice.

55. Presumably accused M.A. Hannan (died during trial) as its dominant leader organised the formation of ‘Razakar’ Bahini and even Al Badr Bahini over whom he had substantial influence and de facto control. Al Badr Bahini known as ‘action section’ of Jamaat-E-Islami was formed of comparatively more educated youths having association with ICS, the student wing of Jamaat-E-Islami.

56. Brief profile of accused Khondokar Golam Rabbani and Doctor Khondokar Golam Sabbir Ahmed goes to show that they were respectively MBBS student and HSC student in 1971. It is not disputed. Thus, their alleged culpable nexus with the accused M.A Hannan (died during trial) in perpetrating atrocities arraigned suggests inferring that they had affiliation in local Al Badr Bahini.

57. It transpires that P.W.04 and P.W.11 in narrating the event arraigned stated implication of accused **Md. Hormuj Ali** terming him Razakar. Defence does not deny it in his cross-examination.

58. It also transpires that P.W.06 testified in support of charge no.04 stating the accused **Khondokar Golam Rabbani, Doctor Khondokar Golam Sabbir Ahmed and Md. Fakhruzzaman** as Al Badr. P.W.02 in his testimony termed accused **Md. Abdus Sattar** as a Razakar. Defence does not seem to have denied it in any manner in cross-examination of these witnesses. This matter may be well resolved on evaluation of total evidence in adjudicating the charges framed.

59. Testimony of P.W.02, the brother of victim of the event arraigned in charge no.04 demonstrates that the victim was

taken away to the torture cell set up at District Council Duk Bungalow, on forcible capture. Accused Khondokar Golam Rabbani, Doctor Khondokar Golam Sabbir Ahmed and Md. Fakhruzzaman and Razakar Md. Abdus Sattar were engaged in effecting such forcible capture, the charge no.04 framed arraigns.

60. It appears that 3/4 days after the event arraigned in charge no.04 P.W.02 moved to Kotwali police station to have trace of his unlawfully captured brother when he was informed that his brother had been detained at the torture cell set up at District Council Duk Bungalow. It could not be impeached. Rather, it depicts too that on moving to the Mymensingh Duk Bungalow he saw causing inhumane torture to his detained brother.

61. Commission of offences arraigned in charge no.04 and involvement of accused persons therewith will be determined on due evaluation of evidence in the segment of adjudications of charge. But now it transpires that a torture cell was set up at Mymensingh District Council Duk Bungalow and the accused persons had nexus with this torture cell. P.W.06 heard it too from P.W.02.

62. By which group of people the said torture cell or Al Badr camp set up at Mymensingh District Council Duk Bungalow was operated and activities were carried there? Who had nexus with this torture cell?

63. In this regard we see that the Appellate Division of the Supreme Court of Bangladesh in the Criminal Appeal No.62 of 2013(in the case of **Muhammad Kamaruzzaman**) has rendered finding that –

“The Al Badar Bahini was formed at Mymensingh under the leadership of Islami Chatra Sangha, Pakistan occupation forces gave them arms. The main camp of the Al-Badar Bahini was at Dak Banglow of Mymensingh Zila Parishad”

[Criminal Appeal No.62 of 2013; Muhammad Kamaruzzaman; Judgment 03 November 2014; page 437]

64. In view of above settled fact coupled with evidence of P.W.02 and P.W.06 it may be deduced at this stage that accused persons might have had nexus with the Al Badr camp of Mymensingh that was set up at Mymensingh District Council Duk Bungalow. However, it may be well proved when each charge will be adjudicated. Considering the evidence of P.W.02 and P.W.06 it may be deduced unerringly that accused

Khondokar Golam Rabbani, Doctor Khondokar Golam Sabbir Ahmed, and Md. Fakhruzzaman had affiliation and nexus with the Al Badr camp of Mymensingh that was set up at Mymensingh District Council Duk Bungalow. Thus, it may be justifiably inferred that they were the members of para militia force 'Al Badr Bahini formed in Mymensingh in 1971.

65. The above uncontroverted fact indubitably leads to an unerring conclusion that the accused persons got associated with accused M.A Hannan (died during trial) being imbued by the ideology of formation of Razakar Bahini and Al Badr Bahini.

IX. General Considerations Regarding the Evaluation of Evidence in a case for the crimes enumerated in the Act of 1973

66. We consider it to reiterate that the proceedings before the Tribunal-1 are guided by the International Crimes (Tribunals) Act 1973 and the Rules of Procedure 2010[ROP] formulated by the Tribunal-1 under the powers conferred in section 22 of the Act.

67. Tribunal notes that a criminal trial is in fact a voyage to discovery in which truth is the quest. In the case in hand, truthfulness of the criminal acts constituting the alleged offences

enumerated in the Act of 1973 chiefly rests upon oral evidence presented by the prosecution and documentary evidence as well.

68. The horrific context existed in 1971 naturally left little room for the people or civilians to witness all the phases of attack. It is to be kept in mind that the context prevailing in 1971 within the territory of Bangladesh will adequately illuminate as to whether it was probable to witness all the phases of atrocities carried out as spectator. Due to the nature and pattern of crimes arraigned and post-conflict instability, these crimes usually may not be well-documented by post-conflict authorities. All these realities also need to be kept in mind in assessing the evidence presented.

69. It is to be noted too that an insignificant discrepancy does not tarnish witness's testimony in its entirety. Any such discrepancy needs to be contrasted with surrounding circumstances and testimony of other witnesses. This view in respect of weighing any such discrepancy finds support from the observation made by the ICTR Trial Chamber in the case of **Nchamihigo which is as below:**

“The events about which the witnesses testified occurred more than a decade

before the trial. Discrepancies attributable to the lapse of time or the absence of record keeping, or other satisfactory explanation, do not necessarily affect the credibility or reliability of the witnesses.....The Chamber will compare the testimony of each witness with the testimony of other witness and with the surrounding circumstances.”

[The Prosecutor v. Simeon Nchamihigo, ICTR-01-63-T, Judgment, 12 November 2008, para 15]

70. Further, inconsequential inconsistency by itself does not taint the entire evidence made by witness before the Tribunal. This principle is compatible with the evolved jurisprudence as well as with the Act of 1973. 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.

71. However, according to universally recognized jurisprudence and the provisions as contained in the ROP of the ICT-1 onus squarely lies upon the prosecution to establish accused persons’ presence, acts or conducts forming part of attack that resulted in actual commission of the offences of crimes against humanity as

enumerated in section 3(2) of the Act of 1973 for which they have been arraigned.

X. Applicable laws to be considered in adjudicating the charges

72. Tribunal restates the settled and the universally recognised principle that until and unless the accused persons are found guilty they shall be presumed innocent. Assessment of the evidence presented is to be made on the basis of the totality of the evidence presented in the case before us and also considering the context prevailing in 1971 in the territory of Bangladesh. Credibility of evidence adduced is to be weighed in context of its relevance and circumstances.

73. Provisions as contemplated in the International Crimes (Tribunals) Act, 1973 and the Rules of Procedure (ROP) formulated by the Tribunal [ICT-1] under the powers conferred in section 22 of the Act are applicable to the proceedings before the Tribunal.

74. The Tribunal may admit any evidence which it deems to have probative value [Section 19(1) of the Act] and relevant to resolve the matters involved. The Tribunal shall have discretion to consider hearsay evidence by weighing its probative value

[Rule 56(2)]. Tribunal notes that evidence, which appears to be “second-hand”, is not, in and of itself, inadmissible. Rather, it is to be assessed, like all other evidence, considering its credibility and its relevance.

75. The defence shall have liberty to cross-examine prosecution witness questioning credibility of what is stated in examination-in-chief and to take contradiction of the evidence given by him [Rule 53(2)]. Defence shall have right to examine witnesses [Section 10(1) (f) of the Act of 1973] in support of defence, if any. It is to be noted that both the Act of 1973 and the Rules of Procedure (ROP) have adequately ensured the universally recognised rights of the defence.

76. Additionally, the Tribunal, in exercise of its discretion and inherent powers as contained in Rule 46A of the ROP, has adopted numerous practices for ensuring fair trial by providing all possible and recognized rights of the accused.

77. We reiterate that it is now well settled proposition that the testimony even of a single witness on a material fact does not, as a matter of law, require corroboration. This view finds support also from the decision in the case of **Kordic and Cerkez**, wherein it has been observed that, ---

“The Appeals Chamber has consistently held that the corroboration of evidence is not a legal requirement, but rather concerns the weight to be attached to evidence”.

[Kordic and Cerkez ICTY Appeal Chamber December 17, 2004, para. 274]

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

XI. The way of adjudicating the charges

79. The alleged crimes happened more than five decades back, in 1971 and as such memory of live witness may have been faded. Invaluable documents related to the events arraigned and nexus of the accused persons with the auxiliary force could have been destroyed. Thus, collecting and organizing evidence was indeed a valid challenge for the investigation agency.

80. In the case in hand, it appears that the evidence produced by the prosecution in support of the arraignments brought is mainly testimonial. Some of prosecution witnesses allegedly directly

experienced the dreadful events and material facts relating to the event of attack and they have narrated it before the Tribunal. The trauma they sustained naturally could have an impact on their testimonies. We must keep, it in mind.

81. The Tribunal restates too that it is required to examine whether the alleged facts constituted the offences alleged and involvement of the accused therewith in a most dispassionate manner, keeping it in mind that the accused is presumed innocent till he is found guilty. In this regard the Tribunal (ICT-1) recalls the provisions contemplated in section 6(2A) of the Act of 1973.

82. Prosecution, in the light of the nature and pattern of the events arraigned in charges framed, is squarely burdened to prove-(**i**) commission of the crimes alleged (**ii**) how the accused persons acted in aiding or providing facilitation, encouragement or moral support or approval to the commission of any of crimes arraigned (**iii**) the accused persons indicted had acted being part of Joint Criminal Enterprise[JCE] (**iv**) context of committing the alleged crimes (**v**) the elements necessary to constitute the offence of crimes against humanity (**vi**) liability of the accused.

Adjudication of Charge no. 01: [03 accused indicted of whom 01 died during trial]

[Event no.01 as narrated in the formal charge: page 19-21]

[Offences of ‘abduction’, ‘torture’ and ‘murder’]

83. Charge: That being persuaded by the declaration announced on 23.04.1971 by the accused M.A Hannan (died during trial) and Moulana Foyzur Rahman [now dead], the chairman of peace committee that sculpture Abdur Rashid was a *kefir* as he made statues of God-Goddess of Hindu religion the accused (1) **M.A Hannan (died during trial) (2) Khondokar Golam Robbani, (3) Md. Fakhruzzaman** and their Bihari accomplices unlawfully detained Abdur Rashid from his house on 24.04.1971 at about 10:00 A.M and took him away by buckling behind a jeep, with chanting slogans-- Nara-e-Takbir’, ‘Pakistan Zindabad’. Since then the detainee could not be traced.

Therefore, accused (1) M.A Hannan (died during trial) (2) Khondokar Golam Robbani and (3) Md. Fakhruzzaman have been charged for participating, facilitating, aiding and substantially contributing to the commission of offences of ‘**abduction**’, ‘**torture**’ and ‘**murder**’ as crimes against humanity as enumerated in section 3(2)(a)(g)(h) of the International Crimes (Tribunals) Act, 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

84. Prosecution relied upon testimony of three witnesses who have been examined as P.W.01, P.W.02 and P.W.05. Of them P.W.01 is the wife of victim martyr sculptor Abdur Rashid. The two other witnesses (P.W.02 and P.W.05) claim to have witnessed the facts pertinently related to the event arraigned. Now let us have look to what they have narrated on oath in Tribunal.

85. P.W.01 Lutfa Begum @ Renu (64) is a resident of 14, Fulbaria By-lane Akua Chowrangi Morh under police station Kotwali of District Mymensingh. P.W.01 is the wife of victim martyr Abdur Rashid. P.W.01 stated that she got married in 1970 and in the first part of 1971 she had been staying at her conjugal home at Golki Para under police station Kotwali of District Mymensingh. Her husband was a sculptor.

86. P.W.01 next stated that on 21 April in 1971 Pakistani army got stationed in Mymensingh and with this she along with others being scared then got sheltered at village-Barea under police

station Kotwali of District Mymensingh. But however, her husband and husband's elder brother Abul Hossain continued staying at home.

87. In narrating the event P.W.01 stated that on 24 April in 1971 she heard from people that on that day at about 10:00 A.M. Pakistani army men forcibly captured her husband as identified by local Biharis and took him away. She moved to her paternal home, 10/12 days after the event. Then her husband's elder brother Abul Hossain and others came to her paternal home and informed that Pakistani army men took away her (P.W.01) husband on unlawful capture and since then he could not be traced even. Her husband's elder brother did not disclose anything more.

88. Defence declined to cross-examine the P.W.01, presumably her testimony does not implicate any of accused indicted with the event of attack leading to abduction and killing of her husband Abdur Rashid.

89. P.W.02 Khandaker Abdur Rahim @ Mintu (64) is a resident of 119-Ka, Jail Road, Mymensingh. In 1971 he was a resident of 62, Ram Babu Road, Nuton Bazar, Kotwali,

Mymensingh. In 1971 he was a student of class VIII. P.W.02 narrated facts related to the event arraigned in **charge no.01**.

90. P.W.02 stated that on 21 April in 1971 Pakistani army got stationed in Mymensingh and then they all of the family inmates got sheltered at Dapunia Primary School under Kotwali police station. He came back home 2/3 days later and opened their business concern, the guest house.

91. P.W.02 continued stating that on 24 April in 1971 at about 10:00 A.M he was sitting at the cash box of their guest house when he saw Pakistani army dragging away sculptor Abdur Rashid, buckling him up behind army jeep. He (P.W.02) saw one Pakistani army and his accomplices Abu Ali Khan (now dead), **Fakhruzzaman (accused indicted), Golam Rabbani (accused indicted), Golam Sabbir** and some Biharis standing on that jeep who were chanting slogan 'Pakistan Zindabad'.

92. P.W.02 further stated that on the following day he heard that on 23 April, 1971, the day prior to the event Imam Moulana Faizur Rahman of Kotwali Boro Masjid expressed a 'Fatwa' terming the sculptor Abdur Rashid as 'Kafir'. P.W.02 further stated that since then sculptor Abdur Rashid could not be traced.

93. P.W.05 Md. Obayed Ullah (65) is a resident of village-Goldanga (Kajibari) under police station Kotwali of District Mymensingh. In 1971 he was a student of class VI in a Madrasa. He stated that after the war of liberation ensued his Madrasa remained closed and thus he used to assist his father at Rahmania Press and Kashemia Kutubkhana. He is a direct witness to facts related to the event arraigned in charge no.01.

94. P.W.05 stated that on 23 April in 1971 he went to Kashemia Kutubkhana and then to offer Jummah prayer he moved to Mymensingh Boro Masjid. After offering Jummah prayer he saw Abdur Rouf, a businessman of Trunkpotti staying inside the mosque told “ Moulana Faizur Rahman, Imam of Boro Masjid told that sculptor Abdur Rashid use to create sculptures of God of Hindus and thus he is a ‘Kafir and killing him is thus an *‘Imanidayitto’*’.

95. P.W.05 continued stating that on the following day i.e. on 24 April, 1971 at about 10:00 A.M he went to their Kashemia Kutubkhana. On hearing uproar he came out and saw a Jeep of Pakistani army pointing by heavy fire arms coming toward north. Some army men had been at that jeep. Toyob and Toha two sons of Moulana Faizur Rahman and some Bangalees and Biharis were behind the jeep by chanting slogan ‘Naraye Takbir,

Aallahu Akbar'. He (P.W.05) saw that sculptor Abdur Rashid was taking away toward the bank of the river Brahmaputra, crumpling him up behind the jeep. Later on, he heard from people that sculptor Abdur Rashid was killed and his dead body could not be traced even. Defence declined to cross-examine the P.W.05.

Finding with Reasoning on Evaluation of Evidence

96. The learned prosecutor argued that uncontroverted testimony of witnesses prove it beyond reasonable doubt that the victim sculptor Abdur Rashid was forcibly captured and taken away by the group formed of Pakistani army, local Biharis and the accused persons indicted. Dead body of victim could not be traced. Defence does not dispute that the victim was eventually killed. Participation of two accused in effecting forcible capture of victim was an act prior to the event of killing and thus since these accused facilitated the first phase of attack they were consciously concerned event with the act of annihilation of the victim sculptor.

97. The learned prosecutor further argued that the attack was designed and planned as it has been proved to that on the preceding day referring the Imam of the mosque it was incitingly announced that the victim sculptor Abdur Rashid was

a 'Kafir' and he needed to be killed. The accused persons were knowingly concerned with the criminal design the object of which was to extinction of sculptor Abdur Rashid.

98. On contrary, the learned defence counsel argued that none of witnesses implicated the accused M.A Hannan (died during trial) and excepting P.W.02 none of two other witnesses implicated any of accused with the event alleged. Accused Golam Sabbir Ahmed has not been indicted in this count of charge. But P.W.02 has implicated him. There is no evidence as to the commission of alleged killing. Thus, the two accused cannot be held liable for the crimes arraigned.

99. It depicts from the arraignment brought in this count of charge that the act of forcible capture of victim sculptor Abdus Rashid happened in day time, by launching a designed attack pursuant to an inciting announcement that Abdur Rashid was a 'Kafir' and accused **(1) M.A Hannan (died during trial) (2) Khondokar Golam Rabbani, (3) Md. Fakhruzzaman** and their Bihari accomplices were allegedly engaged in taking away the victim by accomplishing his unlawful capture and since then the victim could not be traced, the charge framed arraigns.

Of three accused indicted one accused **M.A Hannan died during trial.**

100. It depicts from testimony of P.W.02 that on the preceding day of the event happened Imam Moulana Faizur Rahman of Kotwali Boro Masjid expressed a 'Fatwa' terming the sculptor Abdur Rashid as 'Kafir'. P.W.02 heard it. Defence does not seem to have denied it even. This piece of hearsay evidence was chained to the event of designed attack leading to taking away the victim Abdur Rashid on forcible capture.

101. Three accused (1) M.A Hannan (died during trial) (2) Khondokar Golam Rabbani (absconding) and (3) Md. Fakhruzzaman (absconding) have been indicted in this count of charge i.e. charge no.01. Of them accused M.A Hannan died on 15 June 2021 and thus proceeding so far as it related to him stood abated.

102. In view of above, it is not required to resolve the question of alleged criminal liability of the accused M.A Hannan. Besides, it appears that none of three P.W.s states any manner of involvement of accused M.A Hannan (died during trial) with the commission of any criminal act relating to the event of attack.

Therefore, now, let us see how far the prosecution has been able to prove accusation against two other accused indicted in this count of charge.

103. P.W.01 the wife of the martyr victim stated what she heard about abduction of her husband. It appears that P.W.01 does not implicate any of two accused indicted with the event arraigned. Rather, P.W.01 stated that Pakistani army men forcibly captured her husband as identified by local Biharis and they took him away. Testimony of P.W.01 does not demonstrate that any of two accused indicted was with the gang at the site when the attack was being conducted in effecting forcible capture of the victim.

104. But it stands proved from uncontroverted evidence of P.W.02, a direct witness that the act of abduction of victim sculptor Abdur Rashid happened in day time. Ocular testimony of P.W.02 demonstrates that by launching attack the Pakistani army dragged away sculptor Abdur Rashid, buckling him up behind army jeep when P.W.02 also saw accused Md. Fakhruzzaman, Khondokar Golam Rabbani, Khondokar Golam Sabbir and some Biharis stood on that jeep when they were chanting slogan 'Pakistan Zindabad'.

105. It is manifested from the above piece of ocular version that accused Md. Fakhruzzaman and Khondokar Golam Rabbani were with the group of attackers and the attack was planned intending to annihilate a pro-liberation civilian. Presumably, such culpable presence of these two accused with the gang was not for any pious purpose but indisputably it was intended to provide assistance and aid in effecting forcible capture of sculptor Abdur Rashid.

106. Hearsay testimony of P.W.01, the wife of the victim depicts that Pakistani army men forcibly captured her husband as identified by local Biharis and took him away. The people from whom she heard the event might not have disclosed presence of the accused persons indicted with the gang in accomplishing the attack.

107. Thus, mere non disclosure of complicity of the accused persons by P.W.01 does not taint prosecution case in any manner, particularly when it stands proved from ocular testimony of P.W.02 that accused Md. Fakhruzzaman, Khondokar Golam Rabbani were with the gang when it got the victim unlawfully captured.

108. It may be unerringly inferred that on active and culpable assistance and facilitation of accused Md. Fakhruzzaman, Khondokar Golam Rabbani and their cohorts belonging to auxiliary force and Pakistani army got the victim identified and unlawfully captured him. The accused **Md. Fakhruzzaman and Khondokar Golam Rabbani** knowingly and sharing intent had provided such culpable and active assistance and facilitation. We deduce this irresistible conclusion.

109. It reveals that P.W.02 implicated two accused indicted and also accused Khondokar Golam Sabbir Ahmed. Implicating accused Khondokar Golam Sabbir Ahmed with the event arraigned is exaggeration. He has not been indicted in this count of charge. But merely for this reason the testimony of P.W.02 shall not be discarded in its entirety.

110. Tribunal notes that lapse of long passage of time may influence the aptitude of witness to recall the facts the witness heard and experienced with sufficient and exact precision. Therefore, assessment of the evidence is to be made on the basis of the totality of the evidence presented in the case before us. It would be appropriate jurisprudentially and logical if, in the process of appraisal of evidence, we separate the grains of

acceptable truth from the chaff of exaggerations and improbabilities which cannot be accepted and acted upon.

111. Implication of two accused with the first phase of the event arraigned seems to have been proved by a single direct witness P.W.02, although P.W.01, the wife of the victim does not implicate any of accused indicted as perpetrator. But it does not affect the prosecution case. Presumably, P.W.01 might have deliberately suppressed the involvement and complicity of the accused indicted, for the reason best known to her.

112. It is now well settled that the testimony even of a single witness on a material fact does not, as a matter of law, require corroboration and in such situation, the Tribunal requires to carefully scrutinize the evidence before relying upon it to a decisive extent. In the case in hand, P.W.02 is a competent direct witness who observed how the first phase of the event of attack was conducted. We do not find any reason to disbelieve him. Defence could not controvert this piece of crucial fact unveiled in ocular testimony of P.W.02.

113. However, if we take the sworn uncontroverted narrative of P.W.02, a direct witness into account it may be irresistibly inferred that two accused Khondokar Golam Rabbani and Md.

Fakhruzzaman indicted were with the gang, intending to facilitate the criminal act of forcible capture of victim Abdur Rashid, the husband of P.W.01 leading to his killing.

114. These two accused were seen stood on the army jeep when forcible capture of the victim occurred. We got it proved from unimpeached testimony of P.W.02. Why the accused persons accompanied the gang formed of Pakistani occupation army? Purpose is quite clear. They indeed knowingly assisted and facilitated the act of abduction of the victim, sharing intent of the criminal enterprise. Their presence with the gang constituted their sufficient participation as it had a significant effect on the commission of the crime by promoting it, sharing *mens rea*.

115. Taking away the victim buckling behind the army jeep, as found proved was indeed a grave and beastly ‘**torture**’ caused to the detained victim. The two accused persons accompanying the gang aided and facilitated substantially in conducting such grave prohibited act.

116. It stands proved that the victim Abdur Rashid could not be traced since he was taken away on unlawful capture. The charge framed arraigns it too. The witnesses too testified it. Defence

does not seem to have made any effort to controvert it. These two accused persons have been indicted also to commit the offence of ‘murder’ of the detained victim.

117. It is to be noted that to prove the offence of murder as crime against humanity committed in context of war it is not required to prove the recovery of dead body. Killing of detainee may be well proved from circumstances unveiled. In this regard it has been propounded in the case of **Kvocka** by the ICTY that--

“The fact of a victim’s death can be inferred circumstantially from all of the evidence presented to the Trial Chamber. All that is required to be established from that evidence is that the only reasonable inference from the evidence is that the victim is dead as a result of acts or omissions of the accused or of one or more persons for whom the accused is criminally responsible.”

[**Kvocka** , ICTY Appeals Chamber, February 28, 2005, para. 260]

118. Naturally, none had opportunity of seeing the ultimate fate of the detained victim. However, it transpires that P.W.05 who too saw the gang taking away the sculptor Abdur Rashid toward

the bank of the river Brahmaputra, tying him up behind the jeep. Later on, P.W.05 heard from people that sculptor Abdur Rashid was killed and his dead body could not be traced even. Defence could not impeach it in any manner.

119. Since it stands proved that the detainee could not be traced since he was taken away on unlawful abduction pursuant to an inciting announcement made on the preceding day that Abdur Rashid was a 'Kafir', it may be indubitably concluded that the attack eventually ended in killing Abdur Rashid and the gang made the dead body untraceable.

120. Settled jurisprudence tells that proof of all forms of criminal responsibility can be given by direct or circumstantial evidence. Indubitably the two accused indicted sharing intent of the group aided and facilitated the act of forcible capture of sculptor Abdur Rashid. Killing of victim was the upshot of the attack. Thus, the accused persons being part of the criminal enterprise incurred liability also for the act of killing the detained victim. Although, there is no evidence that the accused persons actively participated in killing.

121. Circumstances and facts unveiled related to the event of attack till the victim was taken away by the gang is sufficient to

prove concern and participation of these two accused even to the phase of killing. In this regard we recall the observation of ICTY Trial Chamber made in the case of Tadic 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, Judgment: May 7, 1997, para. 691]

122. Tribunal notes that context prevailing in 1971 within the territory of Bangladesh adequately illuminates as to whether it was likely to witness the atrocity of killing as spectator. Context of committing such crime and totality of its horrific contour naturally left little room for the people or civilians to witness the event of the killing arraigned. Therefore, it is not required to show the active participation of accused persons at this ending phase of the event, particularly when it stands proved that their act and conduct in course of first phase of attack had explicit causal nexus with the ending phase of the event.

123. It is now well settled that act prior, amid and subsequent to the commission of principal crime is sufficient to prove accused's liability. In the case in our hand we are to perceive and infer that the two accused acted having 'awareness' coupled with his conscious decision to accompany the principals to the crime site. Besides, "the assistance may occur before, during or after the principal crime has been perpetrated."(**Limaj et al., (Trial Chamber), November 30, 2005, para. 517)** .

124. In view of above participation of the accused Khondokar Golam Rabbani and Md. Fakhruzzaman in actuating the act of taking away the victim on forcible capture is sufficient to prove their culpable involvement even with the ending phase of the attack, the killing of the victim. The accused persons knowing foreseeable consequence actively collaborated with the Pakistani army, in exercise of their affiliation with Al Badr Bahini, para militia auxiliary force, to further policy of resisting the pro-liberation civilians.

125. It stands proved from facts and circumstances chained to the attack that the gang formed of two accused persons and their accomplices and Pakistani army men had perpetrated the killing of an unarmed civilian Abdur Rashid by conducting

‘systematic attack’, sharing common intent and thus killing even of a single protected civilian constituted the offence of ‘crime against humanity’. In this regard the observation made by the **ICTY Trial Chamber** in the case of **Seromba** may be noted here which is as below:

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

126. On broad and intrinsic evaluation and careful appraisal of evidence and facts divulged as discussed above we are convinced to record our finding that the prosecution has been able to prove beyond reasonable doubt that accused **(1) Khondokar Golam Rabbani (absconding) and (2) Md. Fakhruzzaman (absconding)** being part of collective criminality participated, substantially contributed, aided and abetted in committing criminal acts which resulted in ‘**abduction**’, ‘**torture**’ and ‘**murder**’ of an unarmed pro-liberation civilian constituting the offences as crimes against humanity as enumerated in section 3(2) (a)(g)(h) of the Act of 1973 for which he incurred liability under section 4(1) of the Act of 1973.

Adjudication of Charge no. 02:[02 accused indicted of whom 01 died during trial]

**[Event no.02 as narrated in the formal charge: page 21-23]
[Offences of ‘arson’, ‘other inhumane act’ and ‘murder’]**

127. Charge: That on 02.08.1971 at about 10:00 A.M the accused (1) **M.A Hannan (died during trial)** and (2) **Md. Hormuj Ali** being accompanied by their accomplices Mahatab Tarafdar [now dead], Mohsin Tarafdar [now dead], Shafiqul Islam Bhola [now dead], Golakata Poto [now dead], Bogu Kari [now dead] by launching attack at Hindu populated vicinity known as ‘Boilor Hindu Palli’ under police station-Trishal of District Mymensingh torched the houses of Hindu civilians and unlawfully detained Sree Jotish Chandra Chakraborti @ Sentu and fired gunshot to him that resulted in injuries and he fell down. Then the **accused M.A Hannan (died during trial)** taking rifle from one of their accomplice Razakars shot him to death when he was taken to him.

Therefore, accused (1) M.A Hannan and (2) Md. Hormuj Ali have been charged for participating, facilitating, aiding and substantially contributing to the commission of offences of ‘**arson**’, ‘**other inhumane act**’ and ‘**murder**’ as crimes against humanity as enumerated in section 3(2)(a)(g)(h) of the International Crimes (Tribunals) Act, 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

128. In order to prove the arraignment brought in this count of charge prosecution relied upon four witnesses who have been examined as P.W.03, P.W.04, P.W.07 and P.W.12. Of them P.W.03 and P.W.04 are direct witness to facts relating to the event arraigned. Before we weigh their sworn narrative first let us see what they have testified.

129. P.W.03 Md Majibur Rahman (67) is a resident of village-Boilor Hindu Palli under police station Trishal of District Mymensingh. In 1971 he was 15/16 years old. He is a direct witness to the facts related to event arraigned in charge no.02. Additionally, he also testified what he heard about the event arraigned in charge no.03.

130. P.W.03 stated that in the middle of Bangla month Sravan in 1971 at about 10:00/10:30 A.M. he had been staying at his father's grocery shop at Boilor Puraton Bazar when he saw the people running away with saying that Pakistani army and Razakars were coming toward west from the east end by setting fire at houses. With this shutting down the shop he (P.W.03)

was on move toward east when he saw houses of Hindus of Boilor Hindu Palli ablaze on fire and heard gun firings.

131. P.W.03 also stated that he also saw Razakar Hannan (died during trial), **Razakar Hormuj**, Razakar Bholo, Razakar Patol, Razakar Mohsin Tarafder, Razakar Gedu chairman and their cohort Razakars and Pakistani army men moving and the said Razakars were dragging bullet hit **Sentu (victim)**. Razakar Hannan (died during trial) then told '**why have you not yet finished the Hindu people?**' By uttering it Hannan (died during trial) then taking the gun from his cohort Razakar gunned down the Hindu youth to death.

132. P.W.03 next stated that then the Pakistani army and Razakars moved to the bank of the river in front of Dhanikhola mosque taking **detained Kunju Karmaker and Tagu Karmaker** with them and then M.A Hannan (died during trial) gunned them down to death there, he (P.W.03) saw it going behind them. P.W.03 stated that the accused persons he named were from their neighbouring localities and thus he knew them beforehand.

133. On cross-examination done on part of accused M.A Hannan (died during trial) P.W.03 stated in reply to defence

question put to him that bullet hit Sentu (victim) was kept at the place which was about half kilometer away from Sentu's house; that in 1971 about 400/500 Hindu residents used to live at village Boilor Hindu Palli; that their house was adjacent to Boilor Hindu Palli ; that their (P.W.03) house was about one kilometer far from Sentu's (victim) house; that Sentu's father was a rich man in the locality. P.W.03 denied defence suggestion that the accused M.A Hannan was not a Razakar and what he testified implicating him was untrue.

134. P.W.04 Md. Mofij Uddin (67) is a resident of village-Ujan Boilor under police station Trishal of District Mymensingh. He is a direct witness to the facts related to the event arraigned in charge no.02. Additionally, he also testified what he heard about the event arraigned in charge no.03.

135. P.W.04 stated that in the mid of Bangla month Sravan in 1971 at about 10:00 A.M. he was engaged in cultivating land with his father when he saw the house of Kala Chan doctor ablaze and heard gun firing. Then he and his father moved toward east through the road when they saw Pakistani army and Razakars setting fire. He saw the Razakars Hannan(died during trial), **Hormuj Razakar** and Bogukari Razakar (now dead)

moving to west who were dragging bullet hit Sentu , the son of Kala Chan doctor toward west side, with them. Then he (P.W.04) saw the perpetrators making bullet hit Sentu stood in front of house of Jahur Ali Kamar when Razakar Hannan taking rifle from Razakar Hormuj gunned him down to death. Pakistani army and Razakars committed arson at 20/25 houses of Hindu civilians of that village.

136. P.W.04 next stated that he also saw the Pakistani army and Razakars taking away **Kunju Karmaker and Togu Karmaker tying them up toward the Ghatla of mosque** crossing the bridge over the river and then Razakar Hannan (died during trial) gunned them down to death and threw their dead bodies into the river. Kala Chan doctor then taking the dead body of his son Sentu made it floated in the river.

137. On cross-examination done on part of accused M.A Hannan (died during trial) and Hormuj Ali P.W.04 stated in reply to defence question that the place where he was engaged in cultivating land was about 100 yards far from the house of Kala Chan doctor; that there was a bridge over Sutia river, between Boilor Hindu Palli and Dhani Khola; that on seeing the Pakistani army and Razakars he and his father did not flee and

they followed them secretly and the many people of the locality too had witnessed what they saw.

138. P.W.04 denied defence suggestions that he did not see the event he testified; that the accused were not Razakars and they were not involved with the event alleged and that what he testified implicating the accused was untrue and out of political rivalry.

139. P.W.07 Ahammad Ali (69) is a resident of Boilor Hindu Palli under police station Trishal of District Mymensingh. P.W.07 is a freedom-fighter. He is a hearsay witness in respect of this count of charge. Additionally, he testified too in respect of the event arraigned in charge no.03.

140. In respect of charge no.02 P.W.07 stated that he heard from the people of the locality that on 16th day of Bangla month Sravan in 1971 at about 10:00 A.M a group formed of Mymensingh peace committee chairman M.A. Hannan (died during trial), Razakar Hormuj, Boilor UP chairman Mahtab Uddin (now dead), Dhanikhola UP chairman Mohsin Tarafder (now dead), Razakar commander Shafiqul Haque Bhola (now dead) and their accomplice Razakars and Pakistani army men by launching attack at Boilor Hindu Palli Pal para, Kamar para,

Munshi Para committed indiscriminate looting and arson. In course of the event Sentu, the son of Kala Chan doctor was shot to death.

141. In cross-examination done on part of accused Md. Hormuj Ali P.W.07 denied defence suggestion that the accused Md. Hormuj Ali was not a Razakar; that he did not hear the event; that the event he testified was untrue and that the accused was not involved with the event alleged and what he testified implicating this accused was untrue and tutored.

142. P.W.12 Md. Nazrul Islam @ Bulbul Master (72) is a resident of village-Kakchar under police station Trishal of District Mymensingh. He is a hearsay witness in respect of this count of charge (charge no.02). In 1971 he was a student of BA first year. P.W.12 stated that after the war of liberation ensued, at the end of June local Abdur Rahman Member sent him and others to India to have training of freedom-fighters. He came to know from people deported to India that on 02 August in 1971 Boilor UP chairman Mahtab Uddin Sarker (now dead), Dhanikhola UP chairman Mohsin Tarafder (now dead), Hormuj Ali of Boilor Union, Dhanikhola Razakar commander Bhola (now dead) and their cohort Razakars and Pakistani occupation

army led by Mymensingh peace committee chairman M.A Hannan (died during trial) by launching attack at Boilor Hindu Palli, Munshipara and Palpara burnt down the house of Kala Chan doctor and M.A Hannan gunned down his son Sentu to death. Then the gang killed Kunju Karmaker and Togu Karmaker by gunshots and threw their dead bodies into river. Then the gang had carried out looting and arson at the houses of Hindu civilians.

143. P.W.12 has been cross-examined on part of accused Md. Hormuj Ali only in respect of the event arraigned in charge no.03 as narrated by the P.W.12. No cross-examination in respect of arraignment brought in charge no.02 has been done.

Finding with Reasoning on Evaluation of Evidence

144. The learned prosecutor drawing attention to ocular testimony of P.W.03 and P.W.04 argued that by launching systematic attack the gang led by accused M.A. Hannan (died during trial) conducted attack leading to looting, devastating activities, forcible capture of defenceless civilians and brutal annihilation of numerous civilians including Hindu civilians. Defence could not impeach the facts unveiled in their evidence in any manner.

145. It has been also argued that the two other witnesses P.W.07 and P.W.12 are hearsay witnesses and their testimony has been corroborated by ocular testimony of two other witnesses. The systematic attack was carried out in context of war of liberation directing civilian population, to further policy of the Pakistani occupation army. The accused persons physically participated in committing the horrific crimes arraigned. Defence could not create any degree of doubt to the evidence presented in support of this count of charge.

146. On contrary, the learned state defence counsel defending the accused Md. Hormuj Ali argued that the testimony of witnesses suffer from inconsistencies; that it was not possible of seeing the alleged event as testified by the witnesses as they were far from the alleged site, at the relevant time; that testimony of two hearsay witnesses suffers from lack of probative value.

147. It appears that the charge framed arraigns that by launching attack the gang accompanied by accused **M.A Hannan** (died during trial) **and Md. Hormuj** Ali actively participated in killing Sentu the son of Kala Chan doctor, torched the houses of Hindu civilians and unlawfully detained Sree Jotish Chandra

Chakraborti @ Sentu and fired gunshot to him that resulted in injuries. Then **accused M.A Hannan (died during trial)** allegedly shot him to death.

148. Tribunal notes that of two accused indicted one M.A. Hannan died during trial. However, in order to determining liability of other accused **Md. Hormuj** Ali it is indispensable to see too the role the accused M.A Hannan had in course of the attack arraigned, in materializing the object of the criminal mission.

149. It is evinced that P.W.03, a direct witness who saw the group formed of Pakistani army and Razakars coming toward west from the east end by setting fire at houses. With this shutting down the shop he (P.W.03) was on move toward east when he saw the houses of Hindus of Boilor Hindu Palli ablaze on fire and heard gun firings.

150. The above piece of unimpeached testimony of P.W.03 demonstrates patently that the gang was engaged in initiating the systematic attack by committing arson with gun firing. Such deliberate devastating and intimidating criminal acts were

intended to spread grave horror to the civilians causing untold trauma.

151. It is evinced too from uncontroverted testimony of P.W.03 that Razakar Hannan (died during trial), **Razakar Md. Hormuj Ali** and their cohort Razakars and Pakistani army men, in course of attack dragged out bullet hit Sentu when Razakar Hannan (died during trial) told '**why have you not yet finished the Hindu people?**' After uttering such provocative words, M.A. Hannan then taking a gun from his cohort Razakar gunned down the Hindu youth Sentu to death.

152. P.W.03 stated in reply to defence question put to him in cross-examination that bullet hit Sentu (victim) was kept at the place which was about half kilometer away from Sentu's house. It rather affirmed the killing of bullet hit Sentu as testified by the P.W.03.

153. Individual criminal responsibility attaches to person who, being part of the criminal plan aided and contributed in execution of a crime. In view of above it thus stands proved that accused M.A Hannan (died during trial) with extreme hatred actually participated in committing killing of victim Sentu by

gunshot. It is also evinced that the accused Md. Hormuj Ali was with the gang which leads to the conclusion that knowing foreseeable consequence he provided aid and substantial assistance in perpetrating the criminal acts including the brutal killing of Sentu, an unarmed civilian.

154. We got it proved from ocular testimony of P.W.03 that M.A Hannan (died during trial) was the actual perpetrator of the killing an unarmed civilian Sentu with extreme aggression. At the same time it gets corroboration from testimony of P.W.04 that the attack was initiated by setting the house of Kala Chan doctor, the father of victim Sentu on fire and with gun firing and the gang accompanied by accused Md. Hormuj Ali and cohort Razakars brought out bullet hit Sentu , the son of Kala Chan doctor toward west side, with them.

155. What happened next? It is evinced from unimpeached testimony of P.W.04 that the perpetrators then making bullet hit Sentu stood in front of house of Jahur Ali Kamar when accused M.A Hannan (died during trial) taking rifle from accomplice Razakar **Md. Hormuj Ali** gunned him down to death. What a vicious aggression! It is hard to believe that this accused was a human being. The criminal gang was led by the accused M.A

Hannan (died during trial), we deduce. Accused **Md. Hormuj Ali** being armed was with the gang, it stands proved. Defence does not seem to have been able to shake this crucial fact in any manner. Tribunal is satisfied that the accused persons indicted, being part of the systematic attack knowingly and actively participated in accomplishing the brutal killing. It has been proved beyond reasonable doubt.

156. The above unimpeached grave culpable act also proves it that accused Md. Hormuj Ali was with the gang being armed, sharing object of the criminal mission and knowing foreseeable consequence. Such culpable presence of the accused Md. Hormuj Ali being armed with the gang rather instigated and substantially induced the commission of the killing and other criminal acts. In this way the accused Md. Hormuj Ali too participated in accomplishing the killing and other criminal acts including devastating activities directing Hindu civilians' property. The **ICTY Trial Chamber** in the case of **Brdjanin** has observed that--

“For instigation, “[i]t has . . . to be demonstrated that the accused intended to provoke or induce the commission of the crime, or was aware of the substantial

likelihood that the commission of a crime would be a probable consequence of his acts.”

[Brdjanin, ICTY Trial Chamber, September 1, 2004, para. 269]

157. In the case in hand, the accused Md. Hormuj Ali is thus viewed as a participant in perpetrating the killing of victim Sentu as he did not withdraw him from the group or acted in any way against the conduct of the group. Thus, he too being active part of the criminal enterprise, in exercise of his affiliation with Razakar Bahini incurred equal liability.

158. The aggressive attack did not end only in effecting brutal killing the victim Sentu. It stand proved too from uncontroverted narrative of P.W.04, a direct witness that Pakistani army and Razakars forming the criminal enterprise committed ‘**arson**’ at 20/25 houses of Hindu civilians of that village, in conjunction with the attack. Arson committed directing civilians’ property constituted the offence of crime against humanity.

159. Additionally, the grave devastating activities resulted from such arson forming part of the systematic attack was indeed grave breaches of normal livelihood of civilans. The gang, as it

appears, had opted to spread horror and untold intimidation among the Hindu community of the vicinity attacked which resulted immense mental suffering to civilians constituting the offence of '**other inhumane act**'.

160. Ocular testimony of P.W.03 demonstrates that the accused Razakar Md. Hormuj Ali was with the gang when it apprehended bullet hit victim Sentu, by launching attack. It also depicts that accused M.A Hannan (died during trial) on seeing bullet hit victim Sentu told - **why have you not yet finished the Hindu people?** Such hateful violent utterance was patent reflection of grave hatred to the Hindu community. Also it reflects that the accused M.A Hannan was the person having dominance over the gang of attackers and he was the key actor who triggered the accomplishment of the killing and it happened in context of the war of liberation, in violation of international humanitarian law. .

161. It stands proved too from ocular narrative of P.W.03 that the gang after accomplishing the killing of Sentu moved back toward west taking two other Hindu detainees Kunju Karmaker and Tagu Karmaker with them. At a stage M.A. Hannan (died

during trial) gunned down Kunju Karmaker and Tagu Karmaker to death on the bank of the river, in front of Dhanikhola mosque.

162. The above phase of event is found to have been corroborated from ocular testimony of P.W.04 who too witnessed the act of killing these two Hindu civilians on taking them to the bridge over Sutia River. The victims of the crimes were targeted because of their membership in Hindu religious community. In this way Hindu Civilians too were annihilated by gunshot. Presumably, object of the criminal mission was also to liquidate pro-liberation Hindu civilians by conducting systematic attack at Hindu dominated vicinity.

163. P.W.07 Ahammad Ali and P.W.12 Md. Nazrul Islam @ Bulbul Master are hearsay witnesses to the event arraigned. P.W.12 is a freedom-fighter. He heard that the gang led by accused M.A Hannan (died during trial) and accompanied by accused Md. Hormuj Ali and their cohorts by launching attack at Hindu populated vicinities conducted looting, arson and in conjunction with the attack Sentu the son of doctor Kala Chan was gunned down to death.

164. P.W.07 too echoed the same version. His hearsay testimony demonstrates too that indiscriminate devastating

activities were carried out at Hindu populated vicinities and in conjunction with the attack accused M.A Hannan (died during trial) gunned down Sentu the victim to death and the two other Hindu detainees Kunju Karmaker and Tagu Karmaker too were gunned down to death and their dead bodies were left abandoned in the river. It happened pursuant to systematic attack directing Hindu population.

165. According to settled jurisprudence of International Law ‘hearsay evidence’ is not inadmissible *per se*, even when it is not corroborated by direct evidence. Even the Tribunal can safely act on anonymous hearsay evidence without any corroboration. In support of it we may rely upon observation of ICC made in the case of **Lubanga** [ICC Pre-Trial Chamber; January 29, 2007, para 106].

166. In the case in hand, it appears that P.W.12 is a freedom-fighter and at the relevant time he had been in India. He heard the horrific event arraigned from people deported to India. There is no reason of disbelieving what he heard in respect of the event from people deported to India. Presumably, being gravely intimidated the Hindu civilians of the vicinity attacked

opted to deport to India and naturally the P.W.12 heard the event arraigned from them.

167. Tribunal notes that the event arraigned in this count of charge does not rest upon hearsay evidence of P.W.07 and P.W.12. Now just we require seeing whether the hearsay evidence of P.W.07 and P.W.12 gets corroboration from other direct evidence.

168. It appears that it has been proved from unimpeached ocular testimony of P.W.03 and P.W.04, two direct witnesses as to how the attack was conducted by the gang formed of accused persons indicted along with Pakistani army and cohort Razakars and how it carried out criminal acts including killing of Hindu civilians and devastating activities. Their hearsay testimony carries probative value as it gets corroboration from ocular testimony of P.W.03 and P.W.04. Defence does not seem to have been able to refute hearsay narrative of P.W.07 and P.W.12.

169. Based on evaluation of evidence Tribunal finds that the facts unveiled do not leave any degree of doubt that the accused Md. Hormuj Ali being an active and armed member of the group of perpetrators had the common objective in committing

the criminal acts including the killing of numerous Hindu civilians. It depicts too from ocular testimony of P.W.04 that in course of the attack accused M.A Hannan (died during trial) taking the rifle from his accomplice accused Md. Hormuj Ali gunned down the bullet hit victim Sentu to death. It remained uncontroverted. It demonstrates that the accused Md. Hormuj Ali knowing the foreseeable consequence participated in activating the object of the gang.

170. Inherent pattern and extent of killing of unarmed civilians and the class the victims belonged indubitably suggest the conclusion that the crimes arraigned in this count of charge were perpetrated by an 'organised squad' formed of local infamous Razakars including the accused Md. Hormuj Ali a close armed accomplice of accused M.A Hannan (died during trial) by whom the gang was led to conduct the systematic attack. However, we refrain from rendering decision in respect of liability of accused M.A Hannan as he already died during trial.

171. On due appraisal of facts and circumstances unveiled in evidence and in view of reasoned finding as made above we arrive at decision that prosecution has been able to prove beyond reasonable doubt that the accused **Md. Hormuj Ali**

indicted in this count of charge had participation, by his act and conduct forming part of systematic attack directed against the civilian population in accomplishing the offences of **‘arson’, ‘other inhumane act’ and ‘murder’** as crimes against humanity as enumerated in section 3(2)(a)(g)(h) of the International Crimes (Tribunals) Act, 1973 and is held liable under section 4(1) of the Act of 1973.

Adjudication of Charge no. 03:[02 accused indicted]

**[Event no.03 as narrated in the formal charge: page 23-26]
[Offences of ‘arson’, ‘torture’, ‘abduction’, ‘confinement’ and ‘murder’]**

172. Charge: That on 02.08.1971 at about 11:00 A.M after carrying out attack as narrated in charge no. 02 the accused (1) **M.A Hannan(died during trial)** and (2) **Md. Hormuj Ali** being accompanied by their accomplices destroyed the house of A. Rahman, a freedom fighter of village-Boiler Munshipara under police station-Trishal of District Mymensingh by setting those on fire terming him ‘miscreant’.

On 07.08.1971 being misinformed by one of his companions Felu [now dead] A. Rahman being unarmed came out of their shelter place, the house of Gedu Bepari of village-Bhanganamarir Char under police station- Gouripur of District-

Mymensingh along with Felu when the Razakars forcibly captured him and Gedu Bepari and took them away, by boat, to room no. 210/Ka, Fazlul Haque Hall of Agricultural University, Mymensingh, the 'joint torture cell'.

Thereafter, on 09.08.1971 the **accused M.A Hannan (died during trial)** visited the torture cell and on his order the detainee A. Rahman was then shot to death taking him out of the cell. Another detainee Umed Ali Master was kept confined at the torture cell for more than three months when he was subjected to severe torture in captivity and eventually he got released there from. After independence the decomposed body of victim A. Rahman was buried.

Therefore, accused **(1) M.A Hannan (died during trial)** and **(2) Md. Hormuj Ali** have been charged for participating, facilitating, aiding and substantially contributing to the commission of offences of **'arson', 'torture', 'abduction', 'confinement' and 'murder'** as crimes against humanity as enumerated in section 3(2)(a)(g)(h) of the International Crimes (Tribunals) Act, 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

173. Arraignment brought in this count of charge rests upon testimony of 07 witnesses who have been examined as P.W.03, P.W.04, P.W.07, P.W.08, P.W.09, P.W.11 and P.W.12, as contended by prosecution. Let us see what they have testified.

174. P.W.03 Md Majibur Rahman (67) is a resident of village-Boilor Hindu Palli under police station Trishal of District Mymensingh. In 1971 he was 15/16 years old. He chiefly testified the event arraigned in charge no.03.

175. P.W.03 stated that the gang formed of **Razakar Hannan, Razakar Hormuj, Razakar Bhola, Razakar Patol, Razakar Mohsin Tarafder, Razakar Gedu** chairman and their cohort Razakars and Pakistani army after conducting the attack as arraigned in charge no.02 then moved back toward south and he started following them and he saw the gang setting the house of Abdur Rahman commander by fire and they committed looting as they did not find Abdur Rahman available. Razakar Abdul Hannan (died during trial) then also uttered that 'kill Abdur Rahman wherever you find him'. Then the gang had left the site.

176. P.W.03 further stated that, few days after the event said happened he heard from people that freedom-fighter Abdur Rahman was taken to Mymensingh Agricultural University on forcible capture and was kept detained there by the gang led by Razakar Hannan (died during trial) and he was subjected to torture in captivity and later, on order of Hannan (died during trial) he was gunned down to death. The dead body of Commander Abdur Rahman was made dumped on the bank of the river. After Bangladesh got liberated his family inmates recovered the decomposed body of Abdur Rahman and buried it at his home. He (P.W.03) too participated in the funeral ceremony.

177. P.W.04 Md. Mofij Uddin (67) is a resident of village-Ujan Boilor under police station Trishal of District Mymensingh. He is a direct witness to the facts related to the events arraigned in charge no.02 and 03.

178. In respect of the event arraigned in charge no.03 P.W.04 stated that next to the event happened as arraigned in charge no.02 he also saw the Pakistani army and Razakars setting fire at the house of freedom-fighter commander Abdur Rahman and then the gang had left to site.

179. P.W.04 also stated that few days after this event happened he learnt that on order of Hannan Razakar (died during trial) and his accomplices forcibly captured Abdur Rahman from the site Bhangnamari Char and took him away to Mymensingh Agricultural University where he was kept confined for two days when he was subjected to torture and then was gunned down to death and his dead body was dumped on the bank of the river. After Bangladesh got liberated wife of martyr Abdur Rahman and his brother and relatives recovered the dead body of Abdur Rahman by digging the site and buried it at home. P.W.04 stated that he was present at the funeral ceremony of martyr Abdur Rahman.

180. On cross-examination done on part of defence P.W.04 denied defence suggestion that he did not see the Pakistani army and Razakars setting the house of Abdur Rahman on fire; that he did not hear that on accused Hannan's(died during trial) his accomplice Razakars took away Abdur Rahman on forcible capture to Mymensingh Agricultural University where he was allegedly kept in captivity and two days later he was killed by gunshot and his dead body was dumped on the bank of the river; that accused Md. Hormuj Ali was not involved with the event he testified and that what he testified was untrue and tutored.

181. P.W.07 Ahammad Ali (69) is a resident of Boilor Hindu Palli under police station Trishal of District Mymensingh. P.W.07 is a freedom-fighter. He narrated the event formed of criminal acts leading to killing his co-freedom-fighter Abdur Rahman, as arraigned in charge no.03.

182. In respect of the event arraigned in charge no.03 P.W.07 stated that on 07th August, 1971 they the 100 freedom-fighters intending to move to India got sheltered at different houses of Vangonmarai, being divided into groups. He (P.W.07), freedom-fighter commander Abdur Rahman, Felu, Bulbul Master, Reju, Abul Hashem got sheltered at the house of Gedu Bepari.

183. P.W.07 next stated that on the following day a group formed of Razakars started searching them by chanting 'Joy Bangla' slogan. With this their commander Abdur Rahman attempted to go out but they resisted him. But their companion Felu insisted Abdur Rahman to go out and with this Abdur Rahman moved to Razakars when they attempted to inflict blow on his head by rifle. But Abdur Rahman snatching the rifle ran away and the Razakars following him eventually captured Abdur Rahman with the rifle. The Razakars then took away

Abdur Rahman and the son of Gedu Bepari toward Mymensingh Agricultural University by crossing the river by a boat. The other Razakars and Pakistani army men started gun firing directing them and with this they got dispersed and fled away.

184. P.W.07 further stated that later on, he heard that on direction of peace committee chairman M.A. Hannan (died during trial) freedom-fighter Abdur Rahman was shot to death and his dead body was made dumped on the bank of the river. Three months after Bangladesh got liberated wife of martyr victim recovered the dead body and buried it.

185. On cross-examination done on part of accused Md. Hormuj Ali P.W.07 stated in reply to defence question put to him that he knows Abu Taher, Abul Mohsin Tarafdar, Yakub Ali Mondol, Mahatab Uddin Ahammad, Abdul Khalek, Shafiqul Islam, Md. Foyzur Rahman, Sahed Ali, Waliullah, Md. Abdur Rashid, Asirud, Kelu and Sabedullah, the residents of their locality; and that his home and home of freedom fighter commander Abdur Rahman are located at same vicinity.

186. P.W.07 denied defence suggestion that Abdur Rahman commander had conflict with Abu Taher, Abul Mohsin

Tarafdar, Yakub Ali Mondol, Mahatab Uddin Ahammad, Abdul Khalek, Shafiqul Islam, Md. Foyzur Rahman, Sahed Ali, Waliullah, Md. Abdur Rashid, Asirud, Kelu and Sabedullah since prior to the war of liberation ensued; that he did not hear the event he testified; that the accused was not a Razakar and was not involved with the event he testified and that what he testified implicating this accused was untrue and tutored.

187. **P.W.08 K.M Khalid Babu** (65) is a resident of Kajibari, Gologonda under police station Kotwali of District Mymensingh. At present he is a Member of Parliament elected from Mymensingh-5 Constituency and now is the State Minister, Ministry of Cultural Affairs, Government of the People's Republic of Bangladesh. He is the victim of the event arraigned in charge no.06.

188. In addition to narrating how he was unlawfully captured and kept detained at the camp and torture he sustained in captivity P.W.08 also stated that on 09 August, 1971 in the night Al Badrs took away some detainees from the room where he (P.W.08) was kept confined and they never returned back. Later on, he (P.W.08) heard that freedom-fighter Abdur Rahman and other civilians who were kept detained in their room were killed.

189. P.W.09 Abdur Razzak (59) is a resident of Bhangnamarirchar under police station Trishal of District Mymensingh. In 1971 he was 9/10 years old. He narrated facts related to the event arraigned in charge no.03

190. P.W.09 stated that in 1971, during the rainy season freedom-fighter Abdur Rahman along with 30/35 co-freedom-fighters came to their village and got stayed at their home. Two days later a group of Razakars entered their village with 'Joy Bangla' slogan. Then he saw freedom-fighter Abdur Rahman and other freedom-fighters and his father was moving to receive those people (guessing them pro-liberation people) who were chanting such slogan and he (P.W.09) followed them. When they reached near to them they encircled them and one Razakar inflicted rifle blow on the neck of freedom-fighter Abdur Rahman. Then Abdur Rahman snatching the rifle started running away but fell down inside a ditch. Then Razakars fired gunshot directing Abdur Rahman but the bullet rather smacked a cow. He (P.W.09) saw those Razakars causing torture to Abdur Rahman and his (P.W.09) father. At that time Pakistani army men arrived there who had kept their village besieged. At a stage, exchange of fire took place between freedom-fighters and Razakars and freedom-fighters on being dispersed moved back.

He (P.W.09) being stayed at distance saw those Razakars and Pakistani army taking away his father and Abdur Rahman.

191. P.W.09 next stated that later on, he heard that his father and Abdur Rahman were kept detained at the camp set up in Mymensingh Agricultural University where they were subjected to torture in captivity.

192. P.W.09 further stated that one month and eighteen days after the event of attack happened he came to know that his father was alive. Three months ten days after the event happened his father was set at liberty and he came back home.

193. What the P.W.09 heard from his survived father? P.W.09 stated that he heard from his father that two days after their abduction M.A Hannan (died during trial) of peace committee and Imam Faizur Rahman (now dead) of Mymensingh Boro Masjid going to Agricultural University ordered to annihilate the detained freedom-fighter commander Abdur Rahman. On such order the Razakars had killed Abdur Rahman and had dumped his dead body at the place known as Jamtala. His (P.W.09) father also told that Khalid Babu (P.W.08) and other

civilians detained at Agricultural University camp were subjected to torture.

194. On cross-examination P.W.09 denied defence suggestions that he did not see and hear the event he narrated; that Abdur Rahman's killing happened in some other way and his wife initiated a case over such killing against the persons who were involved in that killing.

195. P.W.11 Md Alamgir Hossain (52) is a resident of village-Boilor Hindu Palli under police station Trishal of District Mymensingh. In 1971 he was one and half years old. He is the son of victim martyr freedom-fighter Abdur Rahman. He is a hearsay witness. He claims to have learnt the event arraigned from his mother.

196. P.W.11 stated that his father was a freedom-fighter. He heard from his mother that his father was an organizer of the war of liberation and commander of Trishal freedom-fighters. In addition to what he heard in relation to the event arraigned in charge no.03 P.W.11 stated that the gang on the same day i.e. on 02 August in 1971 moved back to Munshipara and the people on seeing them started fleeing. His (P.W.11) mother then taking him with her went into hiding inside a nearer bush. The peace

committee leader M.A Hannan (died during trial) and his accomplices burnt down their house. His mother disclosed too that at that stage of the event M.A Hannan (died during trial) calling name of his (P.W.11) father uttered – **“Rahman member is freedom-fighters commander, he will be killed by gunshot”**. Next M.A Hannan (died during trial) and his cohorts moved toward his (P.W.11) maternal grand-father’s house at Kakchar and burnt down the house.

197. P.W.11 continued stating that his mother also disclosed that on 07 August in 1971 his father’s co-freedom-fighters Adam Ali (now dead) and Reaz Uddin (now dead) coming to their house informed to his mother that his father was detained from Bhangnamari Char and was taken away to the torture cell set up in Mymensingh Agricultural University where he was subjected to torture. On hearing it his mother then along with his (P.W.11) sister’s husband moved to peace committee leader M.A. Hannan’s (died during trial) residence in Mymensingh town On 10 August, 1971 and requested to release his father. M.A Hannan (died during trial) told that **‘on my order your husband has been killed by gun shot on 09 August, 1971’**. M.A Hannan (died during trial) threatened her mother that she

too would be killed by gunshot if she did not leave. Then his mother returned back home.

198. P.W.11 next stated that after independence achieved the people identified the site where the dead body of his father was dumped. His mother then with the assistance of other people recovered the decomposed dead body of his father and buried it bringing to home.

199. P.W.11 finally stated that after he grew up his mother disclosed the event many times. Additionally, he heard the event also from relatives and neighbours. His mother died on 18 May, 2021.

200. In cross-examination P.W.11 stated in reply to defence question put to him that date 31.10.1072 has been sown as his date of birth in the voter list which is correct; that accused Hormuj Ali as resident is about one kilometer far from that of their own; that he is not aware as to whether his mother initiated a case being number GR-84(2)/72 over the event of his father's killing. P.W.11 denied defence suggestions that his mother has not been adduced as a witness in this case as accused Hormuj Ali was not shown as an accused in the case initiated by his

mother; that he did not hear the event of his father's killing and what he testified was untrue and tutored.

201. P.W.12 Md. Nazrul Islam @ Bulbul Master (72) is a resident of village-Kakchar under police station Trishal of District Mymensingh. He is a hearsay witness in respect of this count of charge (charge no.03). In 1971 he was a student of BA first year. He joined the war of liberation on receiving training in India. After narrating what he heard in respect of the event arraigned in charge no.02 P.W.12 narrated too what he heard in relation to the event leading to killing Abdur Rahman as arraigned in charge no.03.

202. P.W.12 stated that M.A Hannan (died during trial) being accompanied by Hormuj Ali and their cohort Razakars and Pakistani army men committed looting and arson at the house of Abdur Rahman Member's house and the house of other civilians. He (P.W.12) also came to know that on 05 August in 1971 Abdur Rahman Member along with 100 civilians got sheltered at different houses when they arrived at Bhangnamari Char, on the way to India to receive training of liberation war. On 07 August Abdur Rahman Member and others were taking rest after having their lunch when a group of Razakars by

chanting 'Joy Bangla' slogan started searching the freedom-fighters. At that time Abdur Rahman Member along with his companion Felu came out when a Razakar inflicted rifle blow on head of Abdur Rahman. Then Abdur Rahman attempted to escape by snatching rifle but fell down inside a ditch. Then some Razakars got Abdur Rahman captured and also Umed Ali Master present there. Then the Razakars and Pakistani army took away Abdur Rahman and Umed Ali to the torture cell set up in Mymensingh Agricultural University where they were subjected to torture in captivity.

203. P.W.12 also stated that on 09th August, 1971 Abdur Rahman Member was gunned down to death on order of M.A Hannan (died during trial) and his dead body was dumped on the bank of river Brahmaputra. Three months after Bangladesh got liberated Abdur Rahman's dead body was recovered from the bank of the river Brahmaputra and was buried taking it at home. He (P.W.12) also attended the funeral ceremony.

204. In cross-examination, P.W.12 stated in reply to defence question put to him that he met Abdur Rahman's wife Rahima Khatun, after Bangladesh got liberated; that Rahima Khatun initiated a case in 1972 against 13 persons including UP

chairman Mohsin Tarafder over the event of killing her husband; that he could not recollect the names of accused of that case, as initiated by Rahima. P.W.12 denied defence suggestion that Rahima Khatun did not lodge such case implicating present accused Md. Hormuj Ali; that Rahima did not state Md. Hormuj Ali's name as an accused of the case she initiated.

Finding with Reasoning on Evaluation of Evidence

205. **Mr. Md. Sultan Mahmud**, the learned prosecutor argued that conducting the attack leading to abduction, confinement, torture and murder of the detained unarmed freedom-fighter Abdur Rahman has been proved. Two accused have been indicted in this count of charge. Of them one M.A Hannan died during trial. The evidence presented proves participation of another accused Md. Hormuj Ali with the crimes committed. Since the accused Md. Hormuj Ali was present with the gang when it conducted the attack at victim's house he may be presumed to have had contribution and participation even with the next attack conducted few days later. Defence could not impeach all these facts.

206. On contrary, **Mr. Abdus Sobhan Tarafdar** the learned defence counsel for accused Md. Hormuj Ali argued that none

of witnesses relied upon by the prosecution has implicated the accused Md. Hormuj Ali with the alleged act of abduction, confinement and murder of the victim. Most of prosecution witnesses are hearsay witnesses and their hearsay version does not carry probative value and credence. Mere presence with the gang, even if proved, when it conducted attack at the house of victim five days prior to attack leading to victim's forcible capture does not connect him with the next alleged attack occurred five days later and thus he deserves acquittal.

207. This count of charge principally involves the offences of abduction, confinement and murder of one unarmed freedom-fighter Abdur Rahman. Two accused (1) M.A Hannan (died during trial) and (2) Md. Hormuj Ali have been indicted in this charge. It is alleged that the gang formed of these two accused and their accomplices had conducted the attack that ended in killing of the victim after keeping him confined at the 'joint torture cell' at the Agricultural University, Mymensingh.

208. In light of arraignment brought the matters pertinently necessary to be determined are that—

- Devastating activities carried out at the house of victim few days prior to the act of victim's forcible capture;

- Forcible capture of victim Abdur Rahman;
- Keeping the victim confined at the torture cell set up at Agricultural University, Mymensingh;
- Finally, the victim was gunned down to death;
- Complicity and involvement of the accused persons indicted.

209. The event arraigned consists of phases, the principal attack happened on 07.08.1971, five days after an attack conducted at the house of the victim. This phase involves unlawful capture of the victim, second, keeping the victim confined at the camp and finally the event ended in killing the victim, the charge framed arraigns. Let us see how the attack was conducted on 07.08.1971 and alleged participation of accused persons indicted therewith.

210. P.W.09 claims to be an eye witness to the attack conducted at the house of victim Abdur Rahman. His testimony demonstrates that the gang formed of Razakars conducted attack at their (P.W.09) house where victim Abdur Rahman and his companions remained stayed. But none of two accused indicted has been implicated by P.W.09 with the attack arraigned.

211. P.W.07 was a co-freedom-fighter of the victim. According to his narrative the Razakars got the victim captured when he

attempted to escape, in course of the second attack. It depicts too from hearsay testimony of P.W.12 that some Razakars got Abdur Rahman captured and he was taken away to the torture cell set up in Mymensingh Agricultural University where he was subjected to torture in captivity. It appears that testimony of P.W.12 too does not depict that any of accused persons indicted formed part of the group of attackers.

212. In view of above, the act of unlawful capture of the victim stands proved. But, neither P.W.09 nor the P.W.07 implicates any of accused indicted with the event arraigned. However, taking away the victim Abdur Rahman on forcible capture by launching systematic attack seems to have been corroborated even by other witnesses.

213. P.W.03 testified that the gang led by accused M.A Hannan (died during trial) forcibly captured the victim Abdur Rahman and kept him unlawfully confined at Mymensingh Agricultural University camp. But testimony of P.W.03 too does not implicate the accused Md. Hormuj Ali with this designed criminal attack.

214. Another hearsay witness P.W.11, the son of the victim stated that he heard the event from his mother and he too stated

that the gang led by M.A. Hannan (died during trial) carried out the attack at their house and finding his father not available the gang moved back. P.W.11 does not implicate the accused Md. Hormuj Ali in any manner with any phase of the event of attack leading to his father's abduction and confinement at the camp.

215. However, based on evidence of P.W.03 and P.W.11 as discussed above it reveals that the group of attackers was led by accused M.A. Hannan (died during trial) in effecting forcible capture of victim Abdur Rahman. We may thus safely conclude, based on unimpeached hearsay testimony of P.W.03 and P.W.11 that the accused M.A Hannan (died during trial) had played dominant role in materializing the object of the criminal design.

216. But prosecution could not prove participation of accused Md. Hormuj Ali with second phase of the event that happened on 07.08.197 and thus we find no evidence in respect of participation of the accused Md. Hormuj Ali with the event arraigned leading to abduction, confinement and killing of the victim.

217. What happened next to unlawful capture of the victim? Is there any evidence and fact or circumstance to show complicity

and involvement of the accused Md. Hormuj Ali too with the activities carried out at the camp leading to causing torture and killing the victim?

218. Naturally, no one had any opportunity of witnessing the criminal acts carried out at the camp and the act of annihilation of the detained victim. However, we require seeing whether the accused persons indicted were by their act and conduct concerned in materializing the killing of victim.

219. Based on unimpeached narrative made by P.W.03, P.W.07 and P.W.08 it stands proved that the detained victim Abdur Rahman was finally shot to death after keeping him in captivity at the 'torture camp' set up at Mymensingh Agricultural University. Since we have got it proved that the criminal mission was conducted by the group formed of Razakars led by accused M.A Hannan (died during trial) we may irresistibly deduce that M.A Hannan (died during trial) was the key perpetrator and on his leading and substantial contribution eventually the detained victim was liquidated by gun shot after keeping him confined at the camp at Mymensingh Agricultural University.

220. Unimpeached hearsay testimony of P.W.12 demonstrates that victim Abdur Rahman was gunned down to death on order of M.A Hannan (died during trial) and his dead body was dumped on the bank of river Brahmaputra. Three months after Bangladesh got liberated Abdur Rahman's dead body was recovered from the bank of the river Brahmaputra and was buried taking it back at home. He (P.W.12) also attended the funeral ceremony. This uncontroverted fact unveiled proves it indisputably that the victim was eventually gunned down to death. Defence could not controvert it.

221. P.W.04 too heard the attack leading to forcible capture of Abdur Rahman, keeping him confined and two days later he was gunned down to death, although P.W.04 in stating the event has not implicated accused Md. Hormuj Ali in any manner. Thus, the act of killing the victim after keeping him in captivity for two days stands proved. Another hearsay witness P.W.07 echoed the same version. But their testimony does not indicate complicity of accused Md. Hormuj Ali with all these criminal acts.

222. Tribunal notes that there is no evidence and fact or circumstance which may lead to show that another accused

indicted Md. Hormuj Ali being part of the criminal enterprise facilitated and participated in committing the crimes of abduction, confinement and murder of the victim.

223. P.W.03 heard that the victim after keeping him confined at the camp was killed. But testimony of P.W.03 does not demonstrate any involvement of accused Md. Hormuj Ali with the criminal activities operated at the camp. Rather, we may conclude that accused M.A Hannan (died during trial) was knowingly concerned with the criminal acts done to victim in captivity and finally his brutal killing as it stands proved that the gang led by him forcibly captured the victim and took him away to the camp.

224. Participation and concern of only accused M.A Hannan (died during trial) stands proved from hearsay evidence of P.W.07 and P.W.12 as it is found that on order of M.A Hannan(died during trial) the detainee was shot to death. It gets corroboration from P.W.08. Besides, defence could not impeach it.

225. It appears that P.W.08 was a victim of the event arraigned in charge no.06. Being a detainee at the same camp he naturally

had occasion of seeing Abdur Rahman confined at the camp. According to P.W.08 later on he heard that detainee Abdur Rahman was killed by Razakars and Al Badrs. But his testimony even does not depict any form of complicity of accused Md. Hormuj Ali with any criminal activities done to victim at the camp.

226. In view of above discussion dominant participation of accused M.A Hannan (died during trial) has been unveiled true and it could not be impeached. But this accused died during trial, on 15.06.2021 and proceeding so far as it related to him stood abated. Therefore, we refrain from arriving at decision as to his liability. At the same time it appears that prosecution has totally failed to prove participation of another accused indicted Md. Hormuj Ali with the event leading to abduction, confinement and murder of the victim in any manner.

227. Tribunal notes that the charge framed arraigns that five days prior to the principal attack leading to victim's forcible capture the accused **(1) M.A Hannan** (died during trial) and **(2) Md. Hormuj Ali** being accompanied by their accomplices destroyed the house of Abdur Rahman, by launching attack at his house and committed arson by setting the house on fire

terming him 'miscreant'. The victim could not be apprehended as he was not available at home. This attack was conducted five days prior to the next attack happened on 07.08.1971.

228. It stands proved from unimpeached testimony of P.W.12 that few days prior to the event of attack leading to forcible capture of the victim Abdur Rahman accused M.A Hannan (died during trial) being accompanied by accused Md. Hormuj Ali and their cohort Razakars and Pakistani army men committed '**looting**' and '**arson**' at the house of Abdur Rahman Member's house and the house of other civilans. Defence could not controvert it. We find no reason of disbelieving this version.

229. The above gets corroboration also from P.W.03 who saw the gang formed of Razakar Hannan (died during trial), **Razakar Md. Hormuj Ali**, Razakar Bhola, Razakar Patol, Razakar Mohsin Tarafder, Razakar Gedu chairman and their cohort Razakars and Pakistani army setting the house of Abdur Rahman commander on fire and they committed looting as they did not find Abdur Rahman available.

230. The above attack happened few days prior to the principal event leading to Abdur Rahman's forcible capture by launching

attack at different site. In describing the attack conducted at the house of Abdur Rahman, few days prior to the principal event leading to Abdur Rahman's forcible capture the P.W.03 and P.W.12 testified consistently implicating the accused **Md. Hormuj Ali** indicted with such devastating activities conducted at the house of Abdur Rahman.

231. Such prohibited criminal acts indubitably were grave breaches of human rights causing severe detriment to the normal livelihood of civilians constituting the offence of '**other inhumane act**' and the accused **Md. Hormuj Ali** indicted actively participated in committing such derogatory prohibited acts.

232. But it could not be found proved that the accused Md. Hormuj Ali was present with the gang at any phase of the event happened on 07.08.1971 as arraigned i.e. few days after committing such devastating activities as unveiled in testimony of P.W.03 and P.W.12.

233. Now, in absence of any evidence merely based on the fact that accused Md. Hormuj Ali indicted forming part of the group participated in conducting attack at the house of victim Abdur Rahman it cannot be concluded that accused Md. Hormuj Ali

too was present with the gang of attackers when it effected forcible capture of the victim, few days later by conducting another attack at another place.

234. Presence of accused Md. Hormuj Ali with the gang when it attacked the house of the victim does not lead to infer, in absence of any evidence, that this accused was present even with the gang when it conducted next attack, five days after the first attack conducted.

235. P.W.12 admits that a case was initiated in 1972 by Rahima, the wife of victim Abdur Rahman over the event of killing of her husband against thirteen (13) persons. P.W.12 could not say against whom said case was initiated. Rahima has not been examined. Long after commencement of trial she died and as such prosecution prayed to receive her statement made to IO under section 19(2) of the Act of 1973.

236. On prayer of prosecution, statement of Rahima Khatun, the wife of victim Abdur Rahman made to the IO has been received in evidence under section 19(2) of the Act of 1973 read with Rule 46A of the ROP 2010 as this witness died during trial. On going through the statement of Rahima Khatun made to the IO it

reveals that she has not implicated any of accused persons indicted in this count of charge with the event arraigned leading to killing her husband.

237. Next, since the earlier case over the event initiated by Rahima the wife of victim does not accuse any of accused arraigned in the case in hand in charge no.03. Thus doubt also seems to have been strengthened as to any involvement of accused persons indicted with the event of killing Abdur Rahman. Such benefit goes in favour of the accused.

238. In view of above, we arrive at decision that prosecution has totally failed to prove the nexus of accused **Md. Hormuj Ali** with any phase of the event of second attack leading to the commission of the offences of **‘abduction’, ‘confinement’ torture’ and ‘murder’** as crimes against humanity as enumerated in section 3(2)(a)(g)(h) of the International Crimes (Tribunals) Act, 1973 and thus he is found **not liable** for these offences.

239. But it stands proved the accused **Md. Hormuj Ali** being part of the group of attackers by his act and conduct facilitated and contributed to the commission of the devastating activities

carried out at the house of Abdur Rahman, conducted few days prior to the principal event of attack constituting the offences of **‘other inhumane act’** as crime against humanity enumerated in section 3(2)(a)(g)(h) of the Act of 1973 and he incurred criminal liability under section 4(1) of the Act of 1973.

Adjudication of Charge no. 04:[07 accused indicted of whom 03 died during trial]

**[Event no.04 as narrated in the formal charge: page-26-30]
[Offences of ‘abduction’, ‘confinement’, ‘torture’ and ‘murder’]**

240. Charge: That on 17 November 1971 at about 3:00/04:00 P.M. the accused (1) Khondokar Golam Rabbani, (2) Khondokar Golam Sabbir Ahmed and (3) Md. Fakhruzzaman and their 7/8 cohort Razakars and Al Badr unlawfully detained Khondokar Abdul Ali Ratan and his brother A. Rahim Mintu when they were on the way to Mymensingh Medical College Hospital by rickshaw. At that time accused (4) Md. Rafiq Sajjad (died during trial), (5) Md. Abdus Sattar and (6) Md. Mizanur Rahman alias Mintu (died during trial) arrived there by a jeep and took Khondokar Abdul Ali Ratan away by the jeep making him blindfolded to the District Council Duk Bungalow near Kotwali police Station which was the concentration camp where he was subjected to torture.

The accused M.A Hannan (died during trial) defied the appeal made to him in the first part of December, 1971 by the mother of the detainee to secure his release. On the 07th day of December, 1971 at night the accused M. A Hannan (died during trial), and Md. Mizanur Rahman alias Mintu (died during trial), Md. Rafique Sajjad (died during trial) and Md. Abdus Sattar came in front of the Duk Bungalow and accused M.A Hannan (died during trial) ordered to wipe out all the detainees taking them on the bank of the river Brahmaputra. Accordingly accused Md. Fakhruzzaman, Khondokar Golam Rabbani and Doctor Khondokar Golam Sabbir Ahmed and their other cohorts Razakars forcibly took away all the eight (08) detained victims including Khondokar Abdul Ali Ratan on the bank of the river Brahmaputra adjacent to the said Duk Bungalow and killed them by gunshots and threw all the dead bodies in the Brahmaputra River.

Therefore, accused (1) M.A Hannan (died during trial) , (2) Md. Mizanur Rahman alias Mintu(died during trial), (3) Md. Rafiq Sajjad (died during trial), (4) Khondokar Golam Rabbani, (5) Doctor Khondokar Golam Sabbir Ahmed, (6) Md. Fakhruzzaman and (7) Md. Abdus Sattar have been charged for participating, facilitating, aiding and substantially contributing

to the commission of 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, 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

241. In order to substantiate the arraignment brought in this count of charge prosecution relied upon P.W.02, P.W.05 and P.W.06. Of them P.W.02 is the brother of victim Abdul Ali Ratan and he claims to have witnessed the criminal acts forming part of alleged attack leading to taking away his brother on forcible capture. P.W.06 is also the brother of the victim. Let us eye on what the witnesses testified in relation to this count of charge.

242. P.W.02 Khandaker Abdur Rahim @ Mintu (64) is a resident of 119-Ka, Jail Road, Mymensingh. In 1971 they were residents of 62, Ram Babu Road, Nuton Bazar under police station Kotwali, Mymensingh. In 1971 he was a student of class VIII. In addition to narrating the facts related to the event

arraigned in charge no.01.P.W.02 also testified the facts linked to the event arraigned in charge no.04. P.W.02 is the younger brother of victim Abdul Ali Ratan.

243. P.W.02 stated that 3/4 days after the event of unlawfully taking away sculptor Abdur Rashid (as arraigned in charge no.01) he (P.W.02) joined the war of liberation. On 17 November in 1971 he along with his elder brother Abdul Ali Ratan, maternal uncle Abdul Kader Turi and cousin brother Md. Sahjahan were on move by two rickshaw toward Mymensingh Medical College to bring the dead body of his auntie Hajera Khatun and when they arrived in front of Makbul Radio Service at the place at Ganginarpar morh 7/8 people coming by bicycle obstructed their rickshaw.

244. P.W.02 continued stating that Toyab (now dead), Golam Rabbani, Golam Sabbir, and Fakhruzzaman were amongst the bicycle riders. Few times later there arrived a jeep and Razakar Mizanur Rahman @ Mintu (died during trial), Razakar Abdus Sattar, Razakar Abu Ali Khan (now dead) got down from the jeep and unlawfully apprehended his (P.W.02) brother Abdul Ali Ratan, made him boarded in the jeep and took him away.

245. P.W.02 next stated that 3/4 days after the event he moved to Kotwali police station to have trace of his brother when he was informed that his brother had been detained at the torture cell set up at District Council Duk Bungalow. Then he moved to the Duk Bungalow where he saw that his brother was subjected to inhumane torture (at this stage the P.W.02 burst into tears). Then he returned back home. Later on, his mother moved to the then MLA M. A Hannan (died during trial) with an appeal to get his (P.W.02) brother released but Hannan (died during trial) was found not available.

246. P.W.02 Finally stated that on 07 December, 1971 at about 10:00 P.M. he moved to the site next to the Duk Bungalow where he saw Al Badr Toyob (now dead), Al Badr Fakhruzzaman, Al Badr Golam Sabbir, Razakar Sattar, Razakar Abu Ali Khan (now dead), Al Badr Didar (now staying in USA), Al Badr Shelly(now untraced) and their cohort Razakars taking his brother and other detainees toward the bank of the river Brahmaputra where they gunned them down to death and abandoned the dead bodies there. He then returned back home.

247. In respect of reason of knowing the accused persons he implicated P.W.02 stated that the Razakars and Al Badrs he

named used to often visit their 'guest house' and thus he knew them beforehand.

248. In cross-examination P.W.02 admits that on 18 December, 1971 freedom fighter Manik and his (P.W.02) freedom-fighter brother Khandaker Abdul Gani detained two persons on allegation of killing his (P.W.02) brother Khandaker Abdul Ali Ratan. But P.W.02 denied that one of those two was sent to prison on allegation of killing his brother and one was set at liberty who was Khandaker Golam Sabbir Ahmed, an accused of this case.

249. On cross-examination done on part of accused Md. Abdus Sattar and absconding accused Md. Fakhruzzaman and Khondokar Golam Rabbani P.W.02 stated in reply to defence question put to him that the town (Mymensingh) became almost people less when the Pakistani army got entered in Mymensingh town; that accused Khondokar Golam Rabbani is the brother of accused Khondokar Golam Sabbir Ahmed; that accused Md. Abdus Sattar used to work at the motor garage of the then MLA M.A. Hannan (died during trial); that he could not say what the accused Khondokar Golam Rabbani and Md. Fakhruzzaman

used to do and that he could not say in what profession these three accused were engaged.

250. P.W.02 denied defence suggestions that what he testified was untrue; that at the relevant time accused Khondokar Golam Rabbani and Khondokar Golam Sabbir Ahmed used to stay at their native village, not in Mymensingh town; that he did not know the accused persons and what he testified implicating them was untrue and that they were not Razakar or Al Badr and that they were not involved with the event he testified.

251. P.W.05 Md. Obayed Ullah (65) is a resident of village-Gologonda (Kajibari) under police station Kotwali of District Mymensingh. He chiefly testified the event arraigned in charge no.01. In addition to it he also testified what he heard in relation to the event arraigned in charge no.04.

252. P.W.05 stated that he heard from people that in the mid of November, 1971 the Razakars took away their neighbour Abdul Ali Ratan on forcible capture and had kept him detained in Mymensingh Duk Bungalow and in December he was annihilated.

253. Defence declined to cross-examine the P.W.05.

254. P.W.06 Khandaker Abdur Rahman Swapan (63/64) is a resident of 119-Ka, Jail Road under police station Kotwali of District Mymensingh. In 1971 he was student of class VI. He is the brother of victim Khandaker Abdul Ali Ratan. He is a hearsay witness in respect of the event arraigned in charge no.04.

255. P.W.06 stated that on 15 November, 1971 cousin sister of his mother died in Mymensingh Medical College Hospital. Two days later his (P.W.06) brother Abdur Rahim Mintu and Abdul Ali Ratan (victim) were on move to Mymensingh Medical College by rickshaw and when they arrived at the place near Makbul Radio House at Ganginarpar Morh 7/8 Al Badrs encircled their rickshaw. He (P.W.06) heard from his brother Abdur Rahim Mintu that Toyob, the son of Imam of Boro Masjid, Golam Rabbani, Golam Sabbir and Fakhruzzaman were with the gang. Few times later a green color jeep arrived there by which Al Badr Mizanur Rahman Mintu (died during trial), Sattar, Abu Ali Khan (now dead), Khayer took away Abdul Ali Ratan on forcible capture making him boarded on the said jeep toward District Council Duk Bungalow. His (P.W.06) brother Abdur Rahim (P.W.02) coming back home disclosed the event.

256. Finally, P.W.06 stated that on 07 December, 1971 he heard from his brother Abdur Rahim Mintu that his brother Khandaker Abdul Ali Ratan, the victim along with 8/9 detainees were killed taking them on the bank of the river Brahmaputra.

257. On cross-examination done on part of accused Mizanur Rahman @ Mintu (died during trial), Md. Fakhruzzaman, Md. Abdus Sattar, Khondoker Golam Rabbani and Khondoker Golam Sabbir Ahmed P.W.06 denied defence suggestions that his brother did not disclose any event; that these accused were not Al Badrs and Razakars; that they were not involved with the event he testified; that they did not move to M.A Hannan's house and that what he testified was untrue and tutored.

Finding with Reasoning on Evaluation of Evidence

258. The learned prosecutor drawing attention chiefly to ocular testimony of P.W.02, the brother of the victim argued that it has been proved that the accused persons indicted by their culpable act and conduct participated in accomplishing criminal acts leading to brutal killing of detained victim Abdul Ali Ratan. Defence could not refute it by cross-examining the P.W.02. Besides, hearsay testimony of P.W.05 and P.W.06 gets corroboration from P.W.02. The first phase of attack in effecting

forcible capture of the victim happened in day time and the P.W.02 was with the victim when the event of attack was conducted.

259. It has been further argued that naturally P.W.02 being a competent witness had occasion of seeing the activities carried out by the gang formed of accused persons. It has been further argued that Mymensingh District Council Duk Bungalow was used as a torture and detention camp where the victim was kept confined along with other detainees and it has been proved from evidence of P.W.02. It is not required to show which member of the gang had actually participated in committing the killing. Their culpable presence in the criminal enterprise is sufficient for holding them liable for the killing, the upshot of the systematic attack.

260. Conversely, it has been argued on part of defence that the P.W.02 is not a credible witness and his testimony remained uncorroborated. The three accused Khondoker Golam Rabbani, Khondoker Golam Sabbir Ahmed and Md. Fakhruzzaman had been in their native village, at the relevant time and thus they were not involved with the alleged event. It has been admitted by the P.W.02 that two persons were detained on allegation of

killing the victim by the freedom-fighters and one of them was set at liberty and this man was Khondoker Golam Sabbir Ahmed and thus now testimony implicating this accused with the alleged event is untrue.

261. It has been further argued that statement made by the IO (P.W.13) shall go to show that present accused Khondokar Golam Rabbani and Khondokar Golam Sabbir Ahmed were not made accused in the compliant petition initiated over the event arraigned in Judicial Magistrate Court in 2015.

262. Tribunal notes that in all seven (07) accused were indicted in this count of charge. Of them three accused M.A Hannan, Md. Mizanur Rahman alias Mintu and Md. Rafiq Sajjad died during trial, on different dates and thus proceeding so far as it related to them stood abated vide Tribunal's orders. Thus, now in adjudicating the arraignment brought we require determining liability of rest four (04) accused (1) Khondokar Golam Rabbani, (2) Khondokar Golam Sabbir Ahmed, (3) Md. Fakhruzzaman and (4) Md. Abdus Sattar.

263. The event arraigned in this count of charge consisted of phases. First phase happened by forcibly capturing the victim

when he was on the way to Mymensingh Medical college along with his brother (P.W.02). Second phase involved the act of confining the victim at the camp set up at Mymensingh District Council Duk Bungalow. Finally, the victim along with other detainees was annihilated by gunshots, taking them on the bank of the river Brahmaputra. This charge rests chiefly upon P.W.02, the brother of the victim. Two other witnesses are hearsay witnesses.

264. It is evinced from ocular testimony of P.W.02, the brother of victim that on 17 November in 1971 he along with his elder brother Abdul Ali Ratan, maternal Uncle Abdul Kader Turi and cousin brother Md. Sahjahan were on move by rickshaw toward Mymensingh Medical College to bring the dead body of his auntie Hajera Khatun. It could not be refuted by defence.

265. What happened on their way to medical College, as testified by the P.W.02? It stands proved that when they arrived in front of Makbul Radio Service at the place at Ganginarpar morh 7/8 people accompanied by accused Khondoker Golam Rabbani, Khondoker Golam Sabbir Ahmed, and Md. Fakhruzzaman coming there by bicycle obstructed their rickshaw.

266. The above part of the event happened in day time. Presumably, the movement of the targeted victim somehow got leaked to the perpetrators. Obstructing the victim and his brother was not intended for any pious purpose as it was connected to the act of taking way the victim on forcible capture.

267. It patently transpires from ocular narrative of P.W.02 that few minutes later there arrived a jeep and Razakar Mizanur Rahman @ Mintu(died during trial) , Razakar Md. Abdus Sattar, Razakar Abu Ali Khan(now dead) got down from the jeep and unlawfully detaining his (P.W.02) brother Abdul Ali Ratan made him boarded in the jeep and took him away. It could not be impeached in any manner.

268. The above facts lead to irresistible conclusion that obstructing the victim and others happened when they were on move to Mymensingh Medical College and then getting the victim forcibly captured was actuated in a planned way. Thus, the act of Khondoker Golam Rabbani, Doctor Khondoker Golam Sabbir Ahmed, Md. Fakhruzzaman and Md. Abdus Sattar was explicitly chained to the act of forcible capture of the victim and in this way they participated in effecting forcible capture of the victim, an unarmed pro-liberation civilian.

269. P.W.06 is another brother of the victim. He heard the event from his brother Abdur Rahim (P.W.02) after he came back home. Hearsay narrative of P.W.06 also consistently demonstrates that accused Khondoker Golam Rabbani, Khondoker Golam Sabbir Ahmed, Md. Fakhruzzaman and Md. Abdus Sattar were with the criminal enterprise when it on getting the victim forcibly captured took him away toward District Council Duk Bungalow by a jeep. Hearsay evidence of P.W.06 carries probative value and credence as it gets consistent corroboration from P.W.02 from whom he knew the event.

270. On integrated evaluation of facts unveiled in ocular testimony of P.W.02 it stands proved that accused Khondokar Golam Rabbani, Khondokar Golam Sabbir Ahmed, Md. Fakhruzzaman and Md. Abdus Sattar actively participated in effecting unlawful and forcible capture of the victim and they knowing the consequence of their act took away the detained victim by a jeep toward the District Council Duk Bungalow by a jeep.

271. Facts unveiled lead to deduce that the attack was systematic and planned to which the accused Khondoker Golam Rabbani, Khondoker Golam Sabbir Ahmed, Md. Fakhruzzaman

and Md. Abdus Sattar forming part of the criminal enterprise had acted culpably and jointly sharing intent to get the victim captured.

272. What happened next to taking away the victim on forcible capture? The victim was kept confined at the torture cell set up at District Council Duk Bungalow where he was subjected to torture in captivity. We got it proved from testimony of P.W.02. It transpires that 3-4 days later P.W.02 moved to Kotowali police station to have trace of his brother the victim when he was informed that his brother had been kept detained at the torture cell set up at District Council Duk Bungalow. Defence could not impeach it. Keeping an unarmed civilian in protracted captivity itself encompasses severe mental harm and torture which was gravely detrimental to human rights.

273. It is evinced that on having such information P.W.02 then moved to the Duk Bungalow where he saw that his brother was subjected to inhumane torture. In recounting it in Tribunal P.W.02 burst into tears. Such demeanor of the P.W.02 in stating this traumatic view makes his narrative much more credible. Defence does not seem to have been able to refute this prohibited and brutal act done to the detained victim in

captivity. Indisputably the P.W.02 sustained untold trauma on seeing his detained brother being tortured at the camp set up at Duk Bungalow.

274. Naturally, readily it was not possible of doing anything on part of the P.W.02 despite seeing causing such torture to his detained brother. On seeing such criminal acts done to his brother Ratan detained at the camp P.W.02 returned back home. It transpires that next the mother of the victim moved to the then MLA M. A. Hannan (died during trial) with an appeal to get his (P.W.02) brother released but Hannan (died during trial) was found not available.

275. The above piece of post event fact gets corroboration from P.W.06 Khandaker Abdur Rahman Swapan, one brother of the victim. His testimony depicts too that he (P.W.06) along with his mother and elder sister moved to Muslim League leader M.A Hannan's (died during trial) house with an appeal for release of the victim. But despite the appeal the Razakars present there did not act to release his (P.W.06) brother. Then they returned back home.

276. Such effort made on part of relatives of the detained victim to accused M.A Hannan (died during trial) to get the victim

released indisputably indicates that M.A Hannan (died during trial) was the key architect of the attack and the criminal mission that ended in victim's killing on his explicit signal , we deduce it irresistibly.

277. The horrific event finally ended in atrocious killing of the detained victim Khondokar Abdul Ali Ratan. In a case involving the offence of killing happened in context of war of liberation direct evidence is not always expected. But in the case in hand, ocular testimony of P.W.02, a single direct witness is sufficient to prove facts chained to the event arraigned. Also even anonymous hearsay evidence is admissible in this regard, if it inspires credence.

278. Naturally, in context of war time situation it was not possible of seeing the act of accomplishing the killing a detained civilian. However, in the case in hand, uncontroverted ocular testimony of P.W.02 demonstrates that on moving to the site next to the Duk Bungalow on 07 December, 1971 at about 10:00 P.M. P.W.02 saw Al Badr Toyob (now dead), Al Badr Md. Fakhruzzaman, Al Badr Khondokar Golam Sabbir Ahmed, Razakar Md. Abdus Sattar, Razakar Abu Ali Khan (now dead), Al Badr Didar, Al Badr Shelly and their cohort Razakars taking

his detained brother and other detainees toward the bank of the river Brahmaputra where they gunned them down to death and abandoned the dead bodies there. Then on seeing it P.W.02 returned back home. This crucial piece of ocular evidence related to the killing, the ending phase of the event remained unimpeached. Thus and in absence of anything contrary we are forced to believe that the P.W.02 witnessed the diabolical ending phase of the event i.e. killing his detained brother along with other detainees.

279. The above decisive piece of fact as unveiled from ocular testimony of P.W.02 indubitably suggest to the conclusion that accused Al Badr Md. Fakhruzzaman, Al Badr Khondokar Golam Sabbir Ahmed, Razakar Md. Abdus Sattar used to maintain close and culpable nexus with the camp set up in District Council Duk Bungalow and in exercise of their affiliation with the camp and auxiliary force they actively participated even in accomplishing the annihilation of the victim and other detainees, to further policy of Pakistani occupation army. P.W.05 and P.W.6 are hearsay witnesses in respect of the killing arraigned. Their hearsay narrative gets corroboration from P.W.02 and related facts unveiled.

280. It is not likely to have direct evidence of a common intention. It is to be inferred from the facts and circumstances of each case. The facts unveiled in the case in hand together with the above principle, do not leave any degree of doubt that all the members of the group of perpetrators including the accused persons accompanying the group had a common objective in committing the act of unlawful capture of the victim Abdul Ali Ratan and taking away in a brutal manner. Each one of the accused persons thus participated in the crimes including the killing, facts and evidence presented lead to conclude it unerringly.

281. Annihilation of detained victim by gunshot was the outcome of the systematic attack leading to victim's unlawful capture. It already stands proved that four accused Khondokar Golam Rabbani, Khondokar Golam Sabbir Ahmed, Md. Fakhruzzaman and Md. Abdus Sattar actively participated in effecting such unlawful capture by launching systematic attack. Thus, it is justifiably concluded that they all were participants even to the commission of the killing the victim Khondokar Abdul Ali Ratan. And they did it on explicit approval and signal of accused M.A. Hannan (died during trial) who had *de facto* influence over the local Al Badr and Razakar Bahini.

282. It appears from statement of one cited witness Md. Shajahan (died during trial) made to IO which has been received in evidence under section 19(2) of the Act of 1973 read with Rule 46A of the ROP, 2010 that it too implicates three accused Khondokar Golam Rabbani, Khondokar Golam Sabbir Ahmed and Md. Fakhruzzaman with the event arraigned. He is eye witness and his statement made to IO appears to have been corroborated by the witnesses examined in Tribunal in support of this count of charge.

283. Killing the victim and other detainees took place on the bank of the river Brahmaputra and after materializing the brutal annihilation the dead bodies were left abandoned in the river. It is to be noted that since the killing arraigned in war time situation it is not necessary to show the recovery of dead body to prove the killing. In this regard we recall the observation made by the ICTY Trial Chamber in the case of **Krnjelac** that-

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“Proof beyond reasonable doubt that a person was murdered does not necessarily require proof that the dead body of that person has been recovered. [T]he fact of a victim’s death can be inferred circumstantially from all of the evidence presented to the Trial Chamber.”

[Krnojelac, (ICTY Trial Chamber), March 15, 2002, para. 326]

284. It stands proved that being part of the criminal enterprise the four accused (1) Khondokar Golam Rabbani, (2) Khondokar Golam Sabbir Ahmed (3) Md. Fakhruzzaman and (4) Md. Abdus Sattar incurred criminal liability under the doctrine of JCE (Basic Form) for all the criminal acts leading to killing, the upshot of the systematic attack committed by conducting reckless systematic and deliberate attack, to materialize the common object. 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.]

285. P.W.06 stated that on 07 December, 1971 he heard from his brother Abdur Rahim Mintu (P.W.02) that his brother Khandaker Abdul Ali Ratan, the victim along with 8/9 detainees were killed taking them on the bank of the river Brahmaputra.

This hearsay piece of evidence could not be refuted and it gets corroboration from P.W.02.

286. In cross-examination P.W.02 admits that on 18 December, 1971 freedom fighter Manik and his (P.W.02) freedom-fighter brother Khandaker Abdul Gani detained two persons on allegation of killing his (P.W.02) brother Khandaker Abdul Ali Ratan.

287. It has been argued on part of defence drawing attention to cross-examination of P.W.02 that of those two detained in connection with the killing of victim one Khandaker Golam Sabbir Ahmed, who is accused in the case in hand was set at liberty and thus now there is no space to deduce that this accused being part of the gang had committed the crimes arraigned.

288. It appears that the above defence case has been suggested to P.W.02, in cross-examination. But P.W.02 denied it blatantly. Thus and in absence of any proof in support of such defence suggested to P.W.02 it cannot be said that this accused did not form part of the criminal gang, particularly when it has been found proved from evidence that he too was a co-participant to

the commission of the crimes including the killing of the detained victim.

289. Mr. Gazi M.H. Tamim drawing attention to cross-examination of the IO (P.W.13) argued that admittedly the present accused Khondokar Golam Rabbani was not the 'Golam Rabbani' who was made accused in the complaint case initiated in 2015 by Rahima Khatun the wife of victim of charge no.03 and that the said compliant petition also involved the alleged killing of Abdul Ali Ratan the victim of this count of charge (charge no.04). Thus and since based on the said compliant petition investigation agency of Tribunal concluded its investigation it may be inferred that the present accused Khondokar Golam Rabbani was not involved with the event arraigned in this count of charge. This accused would have been made accused in the said compliant petition if really he was involved with the event arraigned.

290. We are not in agreement with the above defence contention. It is true that the investigation agency of Tribunal taking the said compliant petition initiated in Judicial Magistrate court Mymensingh started investigation over the atrocious events. But such compliant petition by itself is not any

substantive evidence and it carries no evidentiary value. Tribunal notes that lodgment of compliant petition or FIR just sets the law on motion. Only on conclusion of investigation it may be well unearthed as to the commission of crimes arraigned and involvement and complicity of persons therewith.

291. Not the person named 'Golam Rabbani' (whose father's name is different) who was made accused in the compliant petition but in investigation present accused Khondokar Golam Rabbani has been found to have had complicity with the event arraigned and accordingly formal charge was submitted recommending prosecution of this accused. But it too is not conclusive proof of this accused's complicity and involvement with the criminal acts alleged in this charge. We require seeing how far the prosecution has been able to prove it by adducing credible evidence. We have already got it proved that accused Khondokar Golam Rabbani too being part of the criminal enterprise consciously participated in accomplishing the crimes arraigned.

292. Mr. Gazi M.H. Tamim the learned defence counsel argued that according to the formal charge one cited witness Abdul Aziz too was allegedly tortured in captivity and he was

kept confined at the camp along with Khondokar Abdul Ali Ratan, the victim of this count of charge. But prosecution did not care to adduce and examine him and no explanation has been provided in this regard. It creates doubt as to credibility of uncorroborated testimony of P.W.02.

293. We are not with the above contention as advanced on part of defence. It is now well settled that evidence tendered must be weighed and not counted. It is to be tested whether the evidence of P.W.02, a single direct witness carries a ring of truth and credible. It is quality of evidence not quantity which matters for proving prosecution case. Each and every witness cited is not necessary to be examined.

294. It is not required to insist upon plurality of witnesses. It shall not be necessary for proof or disproof of a fact, to call any particular number of witnesses. Settled proposition is that even a single witness's testimony may be acted upon in arriving at decision, if it is found to be credible.

295. Liability of an accused can be well determined on the basis of the statement even of single eye witness provided his credibility is not shaken and if he is found to be a truthful

witness. In the case in hand, it depicts that defence could not refute the core essence of ocular narrative of P.W.02 by cross-examining him and as such there is no reason to keep his ocular narrative aside from consideration.

296. Therefore, non-examination of alleged cited witness Abdul Aziz does not have adverse effect on prosecution case unless testimony of witness (P.W.02) examined is not found cogent and reliable. Tribunal notes that if the testimony of a single witness is found reliable, there is no legal impediment to arrive at decision as to participation and complicity of the accused persons indicted based on such ocular testimony. In the case in hand P.W.02 is a competent and credible witness.

297. Mr. Gazi M.H. Tamim the learned defence counsel also argued that charge framed arraigns that the event of abduction, confinement and killing was conducted by accused Khondokar Golam Rabbani, Khondokar Golam Sabbir Ahmed, M.A Hannan and Pakistani army. But the witnesses particularly P.W.02's testimony does not state the presence of M.A Hannan and Pakistani army at the time of effecting killing alleged. Thus P.W.02 is not a credible witness.

298. We see no reason to depart from the logical and well-founded proposition that merely for an inconsistency witnesses' testimony in its entirety is to be disbelieved, particularly when it appears that defence could not controvert the core essence of ocular narrative of eye witness. In this regard the ICTR Trial Chamber in the case of Kayishema observed that --

“Eyewitness testimony cannot be simply disregarded out-of-hand on the premise that it *may* not be an exact recollection. Accordingly, it is for the Trial Chamber to decide upon the reliability of the witness' testimony in light of its presentation in court and after its subjection to cross examination.”
[KAYISHEMA ICTR Trial Chamber; page 70]

299. It has been observed too in the said case that—

“.....Some inconsistencies and imprecision in the testimonies are expected and were carefully considered in light of the circumstances faced by the witnesses.
[KAYISHEMA ICTR Trial Chamber, page75]

300. Tribunal restates that human memory is faded with the lapse of long passage of time. It stands proved that a camp was set up at District Council Duk Bungalow and it was operated by the Pakistani occupation army and accused M.A Hannan (died during trial) who in exercise of leading position in local peace committee had *de facto* influence over this camp.

301. The torture cell was set up at Mymensingh District Council Duk Bungalow which was located on the bank of the river Brahmaputra. Brutal and indiscriminate killings of pro-liberation civilians were conducted on the bank of the river Brahmaputra in 1971, during the war of liberation. It depicts from a report published in the **Daily Dainik Bangla, 18 February, 1972** that ---

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 Zxi jx Kti nZ`v Kiv ntZv| cti Hme jvki
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302. It is evinced that the torture cell set up at Mymensingh District Council Duk Bungalow was located on the bank of the river Brahmaputra. We got it proved even in the case in hand that the victim along with other civilians detained at this camp was eventually shot to death and their dead bodies were thrown to the river. The fact unveiled in the above report adds assurance to the diabolical atrocities including killing the victim and other civilians after taking them at the said camp.

303. In the case in hand, we already got it proved too that after taking away the victim on forcible capture the relatives moved to M.A Hannan (died during trial) with an appeal for release of the detained victim. But the effort eventually failed. That is to say, it may be justifiably deduced that the accused M.A Hannan (died during trial) having nexus with the camp had explicit endorsement of confining the victim at the camp and finally in actuating the killing of the victim taking him on the bank of the river Brahmaputra.

304. In view of above and due to fallibility of memory mere failure to state actual presence of M.A Hannan at the killing site does not make the testimony of P.W.02 in this regard tainted in its entirety. Rather, unimpeached ocular testimony of P.W.02

demonstrates credibly as to how, when and on whose contribution and facilitation the detained victim and other detainees were gunned down to death.

305. It appears too that defence by putting suggestion to P.W.02 took the plea of alibi by claiming that at the relevant time accused Khandaker Golam Rabbani and Khandaker Golam Sabbir Ahmed had been staying at their native village, not in Mymensingh town.

306. In raising the plea of alibi, these two accused not only deny that they committed or were involved with the commission of crimes for which they are charged with but also assert that they were 'elsewhere' than at the site of the crimes alleged when those were committed. But mere putting such suggestion is not sufficient to prove the plea of alibi. There is no evidence before us to resolve this plea.

307. The plea of *alibi* has to be proved with absolute certainty so as to completely exclude the possibility of the presence of the accused in the crime locality. It is to be noted too that prosecution's burden never lessens for the reason of success or

failure to prove the plea of alibi. It has been observed by the ICTR Appeal Chamber that—

“The only purpose of an alibi is to cast reasonable doubt on the Prosecutor’s allegations, which must be proven beyond reasonable doubt. In alleging an alibi, the accused merely obliges the Prosecution to demonstrate that there is no reasonable likelihood that the alibi is true.”

[*Nahimana, Barayagwiza and Ngeze, (Appeals Chamber), November 28, 2007, para. 417*]

308. It is settled that an accused does not bear the burden of proof beyond reasonable doubt in relation to establishing an alibi but only needs to produce evidence likely to raise a reasonable doubt in the prosecution case. But in the case in hand there is no such effort on part of defence. Rather, evidence presented by the prosecution proves participation and complicity of these two accused with the event arraigned.

309. Chiefly on the basis of nexus of the accused persons with the torture cell and M.A Hannan (sided during trial), the potential architect of atrocious activities it already stands proved that the accused Khandaker Golam Rabbani and Khandaker Golam Sabbir Ahmed were significantly associated with ICS,

the student wing of Jamaat-E-Islami. It is now historically settled that the 'Al Badr' Bahini, the 'action section' of Jamat-E-Islami was formed of ICS members. What was the object of forming such 'action section'?

310. Al-Badr used to act as the Pakistan army's 'death squads'. [Source: **Pakistan Between Mosque And Military: Hussain Haqqani**: published by Carnegie Endowment For International Peace, Washington D.C, USA first published in 2005, page 79]. Thus, acting as 'death squad' of Pakistan occupation army in furtherance of policy and plan unequivocally proves that the Al-Badr force was a *para militia* force created to assist the Pakistan army as its auxiliary force. [**Mir Quasem Judgment 02.11.2014;; ICT-BD-2 Case 03 of 2013 , para-598**]

311. Referring a report published in **The daily Sangram** 24 April 1971 a report titled **গণসংগঠন ও কক্সবন্দার আওতাধীন মসজিদ** published in **The Daily Bhorer Kagoj**, 31 October 2007 which speaks as below

গণসংগঠন ও কক্সবন্দার আওতাধীন মসজিদ ২৪ **গণসংগঠন ও কক্সবন্দার আওতাধীন মসজিদ**
লেডি আফিও এজি নং, ২২ গণসংগঠন (১৯৭১) ও কক্সবন্দার
গণসংগঠন ও কক্সবন্দার আওতাধীন মসজিদ **১** **মসজিদ ও কক্সবন্দার**
মসজিদ ও কক্সবন্দার আওতাধীন মসজিদ **১** **গণসংগঠন ও কক্সবন্দার**

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312. The above indubitably leads to unerring conclusion that being imbued by such objective of Al Badr Bahini the accused Khandaker Golam Rabbani and Khandaker Golam Sabbir Ahmed and other accused belonging to Razakar Bahini got engaged in perpetrating horrific atrocities in 1971 in Mymensingh directing pro-liberation civilians.

313. The attack arraigned that ended in killing a civilian as already proved and it was a ‘system crime’, not an isolated one and there had been a ‘context’ in committing such crime directing the civilian. It has been found proved that culpable act and conduct accused (1) Khondokar Golam Rabbani, (2) Doctor Khondokar Golam Sabbir Ahmed (3) Md. Fakhruzzaman and (4) Md. Abdus Sattar obviously had an encouraging or approving effect on the actual perpetration of the horrific

killing. The act of these accused, by its consequences, objectively formed part of systematic attack.

314. Rational and integrated evaluation of evidence provided on part of prosecution reflects, beyond reasonable doubt that ‘participation’ of accused **(1) Khondokar Golam Rabbani, (2) Doctor Khondokar Golam Sabbir Ahmed (3) Md. Fakhruzzaman and (4) Md. Abdus Sattar** being part of the criminal enterprise resulted in killing of non combatant civilian. These four accused are found to have had aided, facilitated, substantially contributed to the commission of offences of **abduction’, ‘confinement’, ‘torture’ and ‘murder’** as specified in section 3(2)(a)(g)(h) read with section 4(1) of the International Crimes (Tribunals) Act, 1973 which are punishable under section 20(2) of the Act.

Adjudication of Charge no. 05: [03 accused indicted of whom 02 died during trial]

[Event no.05 as narrated in the formal charge: page 30-32]

[Offences of ‘abduction’, ‘confinement’ and ‘torture’]

315. Charge: That on 23.04.1971 at dawn a group formed of Biharis and Pakistani occupation army forcibly captured Md. Abed Hossain Khan of 45/1 Shaheb Ali Road, Natun Bazar, police station-Kotwali of District Mymensingh when he, sensing the attack, attempted to escape and then he was taken to the

house of the accused (1) M.A Hannan (died during trial) at 59, Ram Babu Road, Mymensingh Sadar and then was kept confined in a tin shed room located at the southern side of his residence, along with other detainees.

Thereafter, the accused (2) Md. Abdus Sattar and (3) Md. Mizanur Rahman (died during trial) being accompanied by their armed cohorts came there and started beating the detained Md. Abed Hossain Khan. The victim was then handed over to the Pakistani occupation army on order of the accused M.A Hannan (died during trial) and was taken to Kotwali police station where he was kept confined.

Two days later, the detained victim was sent of Mymensingh Jail and then to Dhaka Cantonment. On the following day, the victim was taken away to the army camp at Joydevpur and one month later he was brought back to Dhaka cantonment and was kept confined in a godown along with numerous detainees. In the name of interrogation he and other detainees were subjected to torture in captivity and thus the victim became sick and eventually, on 28.07.1971 the victim got released.

Therefore, accused (1) M.A Hannan (died during trial), (2) Md. Abdus Sattar and (3) Md. Mizanur Rahman (died during trial) have been charged for participating, facilitating, aiding and substantially contributing to the commission of offences of **‘abduction’**, **‘confinement’** **‘torture’** as crimes against humanity as enumerated in section 3(2)(a)(g)(h) of the International Crimes (Tribunals) Act, 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 Witness Examined

316. Prosecution relied upon a single witness to establish the arraignment brought in this count of charge. The witness has been examined as P.W.10. He is the victim of the alleged event.

317. P.W.10 Abid Hossain Khan (67) is a resident of 45/1, Saheb Ali Road, Notun Bazar under police station Kotwali of District Mymensingh. He is the victim of the event arraigned in charge no.05. In 1971 he was SSC examinee.

318. P.W.10 stated that after the declaration of independence by Bangabandhu he joined the war of liberation and got stationed at

place Jalchatra of Madhupur along with 30/35 freedom-fighters. 3/4 armed EPRs coming from Tangail joined them.

319. P.W.10 next stated that on 21 April, 1971 at about 10:00/11:00 A.M. they faced brush gun firing from helicopter and mortar shell attack when they got dispersed to different places. After the gun firing came to cessation they again got reassembled and came to Madhupur road and moved to Mymensingh by truck. He (P.W.10) moved to his home taking rifle with 40 rounds bullet with him. Finding his parents and brothers and sister not available at home he then kept the rifle and bullets hidden inside a jungle nearer to home and he remained in hiding inside home.

320. P.W.10 continued stating that on 23 April, 1971 at the time of dawn Biharis Khalek Kosai, Monir Kosai and Jamir Kosai being accompanied by 2/3 Pakistani army men besieged their home. Sensing it he (P.W.10) jumping the wall of their home went into hiding behind the toilet of adjacent home. On search Khalek found him (P.W.10) staying there and Pakistani army then dragged him out there from. Khalek Kosai (butcher) smacked him and Pakistani army inflicted severe rifle blow to him. Then they made him boarded on a rickshaw and took him

away to the home of peace committee chairman Hannan (died during trial) where he was kept detained inside a room where he found Razakar Satter, Razakar Mizanur Rahman (died during trial) standing having rifle in hand. 4/5 youths were kept detained there. Razakar Sattar and Mintu started beating him and with this he started screaming when Hannan arrived there and on seeing bleeding injury on his head asked to hand him over to Pakistani army. Then he was taken to Kotwali Thana where he was kept detained.

321. P.W.10 also stated that two days later he was shifted to Mymensingh Jail and 7/8 days later he was taken to Dhaka Cantonment by a military truck. One day later he was again shifted to Pakistani army camp set up at Bhawal Rajbari in Gazipur where he was kept detained for one month and was subjected to brutal torture. At a stage he became gravely sick and then he was taken to the food godown adjacent to Dhaka Cantonment Flying Club where he found 40/50 Bangalees detained. They were subjected to regular torture there in captivity.

322. Finally, P.W.10 stated that on 28.07.1971 he and two other detainees were set at liberty, but coming out there from they

became scared seeing a number of Razakars. Then they moved to Army Major and requested him to provide a clearance certificate. Then the Major provided it and taking it he (P.W.10) came out when military police obstructed him and then he had shown the clearance certificate and on seeing it he was allowed to leave. He (P.W.10) then came back Mymensingh by a bus. P.W.10 proved the said clearance certificate as Exhibit-1 (photocopy of the document is annexed in prosecution documents volume page no.62). P.W.10 stated that the investigation officer, during investigation examined him and seized the photocopy of the clearance certificate.

323. In cross-examination on part of accused Md. Abdus Sattar P.W.10 in reply to defence question put to him stated that he could not recollect since which date he was kept detained in Dhaka Cantonment, but he was set released on 28.07.1971. P.W.10 denied defence suggestion that what he testified implicating accused Md. Abdus Sattar was untrue.

Finding with Reasoning on Evaluation of Evidence

324. The learned prosecutor argued that this charge rests upon sole witness who is the victim of the event arraigned. Defence could not taint his ocular narrative in any manner. Of three

accused indicted in this count of charge two already died during trial. Accused M.A. Hannan was the key actor of the designed criminal mission. There is no bar to arrive at decision on acting upon the testimony of a single witness, the victim. Defence could not shake credibility of P.W.10, the victim.

325. It has been further argued that the victim an unarmed freedom-fighter was first kept confined at the torture cell at M.A Hannan's house where he was subjected to severe torture on having assistance of the accused indicted and then the victim was shifted to Kotwali police station and then to Jail and then to army camp and Dhaka cantonment where he was kept confined in protracted captivity. For all the criminal acts the accused persons indicted were responsible as they were quite aware of the consequence of their unlawful acts.

326. On part of defence it has been argued that testimony of P.W.10, a single witness relied upon by the prosecution does not seem to have been corroborated by examining any other witness. The accused Md. Abdus Sattar was not involved in any manner with the attack alleged leading to victim's alleged forcible capture, confinement and causing torture to him. Admittedly, this accused was an employee of accused M.A

Hannan's (died during trial) motor garage and had no nexus with the alleged event. Thus, he deserves acquittal.

327. It appears that three accused have been indicted in this charge. Of them two M.A Hannan and Md. Mizanur Rahman died during trial. Now, we require resolving the arraignment so far as it relates to the rest one accused Md. Abdus Sattar. This count of charge involves the offences of 'abduction', 'confinement' 'torture' as crimes against humanity.

328. Victim P.W.10 is a freedom-fighter. It is evinced from uncontroverted testimony of P.W.10 that at the relevant time he had been at home keeping arms and bullets hidden inside a jungle nearer to home. Presumably, presence of the freedom-fighter victim somehow got leaked and the gang formed of Biharis and 2/3 Pakistani army had carried out systematic attack on 23 April 1971 and got the unarmed victim forcibly captured.

329. It is evinced from ocular narrative of P.W.10, the victim that on sensing the attack he went into hiding behind the toilet of adjacent home. But Pakistani army then dragged him out there from. Khalek Kosai (butcher) smacked him and Pakistani army inflicted severe rifle blow to him. In this way P.W.10 was

apprehended. It remained unimpeached. The attack was systematic and intending to resist the freedom-fighters, we deduce. At the relevant time the victim was unarmed.

330. What happened next? It is evident from unimpeached testimony of victim P.W.10 that the gang then took him away to the home of peace committee chairman accused M.A. Hannan (died during trial) where he was kept detained inside a room and there he found Razakar Md. Abdus Satter, Razakar Mizanur Rahman (died during trial) standing there having rifle in hand. P.W.10 also saw 4/5 youths kept detained there.

331. The above crucial fact clearly proves that the designer of the attack was indeed accused M.A Hannan (died during trial) and his cohort Razakars. Md. Abdus Sattar and Razakar Mizanur Rahman (died during trial) being accomplices of M.A Hannan (died during trial) were consciously concerned in effecting victim's confinement and causing torture to him and other detainees at accused M.A. Hannan's (died during trial) home. This fact proves too that M.A Hannan (died during trial) had *de facto* control and authority over the Al Badrs and Razakars of Mymensingh town.

332. The above untainted narrative of victim P.W.10 proves it too that a torture cell was being operated at the home of accused M.A Hannan (died during trial). Bringing the victim at this torture cell on forcible capture indubitably proves that M.A Hannan (died during trial) and his armed cohorts accused Md. Abdus Satter and Razakar Mizanur Rahman (died during trial) were actively concerned to the attack conducted, sharing intent.

333. It stands proved that along with others, the accused persons in exercise of their affiliation with auxiliary force and under dominant guidance of accused M.A Hannan (died during trial) had culpably acted in causing torture and beating the victim and then the injured victim was handed over to Kotwali police station, Mymensingh instead of setting him on release. Intention of such act of the accused persons was to leave the life of the detained victim in more horrific and intimidating situation and in doing so accused M.A Hannan (died during trial) had played a significant role in the organisation of such criminal mission, we deduce.

334. Such act of handing over the injured victim, an unarmed civilian was rather a deprivation of an individual's liberty which was arbitrary as it was done without due process of law. The

accused persons indicted did it as part of a widespread or systematic attack directed against unarmed civilian population despite having reasonable knowledge that their act was likely to cause arbitrary deprivation of physical liberty of the victim. Such prohibited acts leading to victim's prolonged confinement at jail, army camp and cantonment certainly encompassed grave physical or mental harm to victim.

335. Causing torture to victim keeping him confined at the torture cell at the home of M.A Hannan (died during trial) and presence of accused Md. Abdus Sattar being armed when the victim was tortured there proves that the state of mind of the accused was within the object of the joint criminal enterprise.

336. The only plausible inference that can be drawn from active and culpable participation of accused persons indicted, at this phase is that they were liable even for ensuring the subsequent prolonged confinement and mistreatment of victim at different camps and cantonment, despite their absence in those scenes.

337. We thus deduce that there is no doubt that torture in captivity to the victim subsequent to release from the torture cell at M.A Hannan's (died during trial) house was the natural and

foreseeable consequences to which the accused persons were quite aware.

338. Uncontroverted ocular testimony of P.W.10, the victim demonstrates that the accused persons led by M.A Hannan (died during trial) carried out gravely culpable criminal acts which consisted of practical assistance, encouragement or moral support even to the commission of subsequent prolonged unlawful confinement of the victim, an unarmed freedom-fighter. It is now well settled that the act of such assistance and facilitation may occur before or during the act constituting the crimes.

339. It transpires that two days later he (P.W.10) was shifted to Dhaka Cantonment from Mymensingh Jail by a military truck and one day later he was again shifted to Pakistani army camp set up Bhawal Rajbari in Gazipur where he was kept detained for one month and was subjected to brutal torture there. At a stage he became gravely sick and then he was taken to the food godown adjacent to Dhaka Cantonment Flying Club where he found 40/50 Bangalees detained. All these severe harm and mistreatment caused to the victim in prolonged captivity formed part of the attack in accomplishing which the accused persons were consciously concerned.

340. Substantial contribution and facilitation of accused persons indicted at initial phase of the attack in keeping a non-combatant freedom-fighter (P.W.10) in prolonged captivity itself causes mental and physical harm constituting the offence of 'torture' and 'inhumane acts' as crime against humanity. The grave wrongs were committed violating the norms of human rights and laws of war. Language fails to describe how traitor and violent the accused persons were against the pro-liberation civilians and freedom-fighters.

341. We are not agreed with defence argument that testimony of single witness P.W.10 cannot be acted upon in arriving at decision as prosecution did not opt to adduce any corroborative evidence. In the case in hand, facts and circumstances divulged coupled with the pattern of the arraignment naturally did not leave any space for any other person to witness the criminal acts happened in various phases. Besides, it is now well settled that the testimony even of a single witness on a material fact does not, as a matter of law, requires corroboration. The established jurisprudence is clear that corroboration is not a legal requirement for a finding to be made. In this regard **ICTR Trial Chamber** observed that-

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

[The Prosecutor v. Simeon Nchamihigo, Case No. ICTR-01-63-T, Judgment: November 12, 2008, Para- 14]

342. This view finds support also from the decision of **ICTY Appeals Chamber** in the case of Kordic and Cerkez, wherein it has been observed that-

"The Appeals Chamber has consistently held that the corroboration of evidence is not a legal requirement, but rather concerns the weight to be attached to evidence". **[Case No. IT-95-14/2-A, Judgment: 17 December 2004, Para- 274]**

343. It stands proved that finally, on 28.07.1971 P.W.10, the victim and two other detainees were set at liberty, but coming out from cantonment they became scared seeing a number of Razakars. Then they moved to Army Major and requested him to provide a clearance certificate. Then on obtaining a clearance certificate from Major he eventually came back. Defence could not controvert it. Rather, in cross-examination it has been

affirmed that the victim was set released on 28.07.1971 from Dhaka Cantonment.

344. The said clearance card has been proved and marked as Exhibit-1 by the P.W.10. It shows it patently that the victim was kept in confinement till 28.07.1971 i.e. for long three months after he got forcibly captured and confined and tortured at the home of accused M.A Hannan (died during trial) by the accused persons, by launching attack. P.W.10, the victim has proved this clearance card/pass which has been marked as Exhibit. Defence does not dispute it.

345. It is thus evinced that the victim P.W.10 got released three months after he apprehended and kept confined at accused M.A Hannan's (died during trial) home. Harm caused to the victim indisputably resulted in a grave and long-term disadvantage to his ability to lead a normal life. Such long term confinement of the victim, an unarmed freedom-fighter at different camps and cantonment was the outcome of 'collective criminality' of the accused persons indicted.

346. The three accused persons indicted thus substantially aided and abetted the commission of unlawful criminal acts to the victim keeping him in prolonged confinement at other places,

knowing the consequence, although it is not necessary to show that the accused persons were aware about the precise crimes to be committed at those scenes. In this regard **ICTY Trial Chamber** has observed in the case of Furundija that--

“Moreover, it is not necessary that the aider and abettor should know the precise crime that was intended and which in the event was committed. If he is aware that one of a number of crimes will probably be committed, and one of those crimes is in fact committed, he has intended to facilitate the commission of that crime, and is guilty as an aider and abettor.”

[ICTY Trial Chamber, Furundija Judgment 10.12.1998, para 246]

347. The accused Md. Abdus Sattar indicted led by accused M.A Hannan (died during trial) organised and implemented such prolonged unlawful confinement of the victim, an unarmed freedom-fighter. Intention was to resist the pro-liberation civilians by accelerating grave fear and panic. Thus, the accused cannot evade responsibility of such subsequent criminal acts done to the victim till he got released, three months after he got forcibly captured.

348. Tribunal notes that culpable act or conduct before or after the commission of crimes makes a person liable if it is found that his act had causal nexus and substantial contribution to the group of attackers.

349. It is now settled jurisprudence that criminal liability does not attach solely to individuals who physically commit a crime but may also extend to those who participate in and contribute to a crime in various ways, when such participation is sufficiently connected to the crime. In the case in hand, it has been proved that criminal acts of the accused persons indicted substantially contributed to the act of keeping the victim confined at various places for month together. The criminal acts done to the victim at initial phase had causal action nexus to victim's prolonged confinement and torture caused to him.

350. We have already noted that of three accused indicted two already died during trial although their participation, aid and facilitation in accomplishing the crimes are found to have been proved. However, now we arrive at decision that accused **Md. Abdus Sattar** incurred liability for his act that facilitated and contributed to the commission of crimes arraigned.

351. Finally, we arrive at decision that integrated evaluation of evidence, as discussed above, leads to the conclusion that the prosecution has been able to prove it beyond reasonable doubt that the accused **Md. Abdus Sattar**, in exercise of his nexus with locally formed Razakar Bahini knowingly and substantially participated, facilitated and contributed by acting in JCE, sharing common purpose and thus he incurred liability for the criminal acts done at all phases of the event arraigned.

352. Therefore, the accused **Md. Abdus Sattar** is found criminally liable under section 4(1) of the Act of 1973 for participating, abetting, substantially contributing, facilitating and for complicity in the commission of offences of **‘abduction’, ‘confinement’, and ‘torture’** as crimes against humanity as enumerated in section 3(2)(a)(g)(h) of the Act of 1973 which are punishable under section 20(2) of the said Act.

Adjudication of Charge No. 06:[01 accused indicted who died during trial]
[Event no.06 as narrated in the formal charge: page 33-34]
[Offences of ‘abduction’, ‘confinement’ and ‘torture’]

353. Charge: That on 07.08.1971 in afternoon a group formed of Pakistani occupation army and Razakars unlawfully detained K.M Khalid Babu from the place Swadeshi Bazar in front of the

house of the accused **M.A Hannan** (died during trial) **and** took him to the accused when he ordered to send him to the torture cell set up at the Agricultural University, Mymensingh. With this the detainee was taken away there and kept in captivity along with 05 other detainees.

On 09.08.1971 in the afternoon the accused **M.A Hannan** (died during trial) along with the Imam of Boro Masjid Moulana Foyzur Rahman [now dead] and other cohorts visited the torture cell and on the following day the victim got released on order of the Imam Moulana Foyzur Rahman.

Therefore, the accused (1) **M.A Hannan** (died during trial) was charged for participating, facilitating, aiding and substantially contributing to the commission of offences of **‘abduction’, ‘confinement’ and ‘torture** ‘as crimes against humanity as enumerated in section 3(2)(a)(g)(h) of the International Crimes (Tribunals) Act, 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 Witness Presented

354. After examining P.W.08 K.M. Khalid Babu on 09.02.201 in support of the event arraigned in this count of charge the sole accused indicted M.A Hannan died on 15.06.2021 and thus proceeding so far as it related to him stood abated vide Tribunal's order dated 22.06.2021. Accordingly, prosecution did not opt to examine any more witness in support of this charge.

355. However, now in order to let the truth to come to the fore we are going to see the sworn testimony of P.W.08, the victim, although there is no space of rendering finding in respect of liability of the accused indicted as he already died during trial. Let us see what the victim P.W.08 has recounted in Tribunal.

356. **P.W.08 K.M Khalid Babu (65)** is a resident of Kajibari, Gologonda under police station Kotwali of District Mymensingh. At present he is a Member of Parliament elected from Mymensingh-5 Constituency and now is the State Minister, Ministry of Cultural Affairs, Government of the People's Republic of Bangladesh. He is the victim of the event arraigned in charge no.06.

357. P.W.08 stated that in 1971 he was as student of class X in Mymensingh Nasirabad Collegiate School. In recollecting the

event arraigned P.W.08 stated that on 07 August, 1971 after the Johor prayer he started moving toward Swadeshi Bazar by paddling bicycle. When he arrived in front of home of M.A Hannan (died during trial) crossing Mymensingh Natun Bazar he saw some militias, Al Badrs and Razakars standing in front of the gate of the house and they detained him and tying him up took to the first floor of M.A Hannan's house with beating. On having his identity M.A Hannan (died during trial) told—'your brothers joined the war of liberation, your father did not care it despite warning your father'. Then M.A Hannan (died during trial) told the Razakars to take (P.W.08) him away. Then the Razakars took him away to the torture cell set up in Mymensingh Agricultural University's Fazlul Haque Hall where he was kept detained in room no. 210 of first floor. He (P.W.08) found 4/5 youths detained there and all of them were in injured condition.

358. P.W.08 next stated that on that day at the time of dusk Toyob (now dead), the son of Mymensingh District peace committee chairman Moulana Faizur Rahman along with his cohorts brought two civilians to their room and he saw them in tortured condition. Later on, having talked to them he (P.W.08) came to know that one of them was Umed Ali Master and

another one was Abdur Rahman who was a freedom-fighter. He also came to know that they two were apprehended from Gouripur. Razakars and Al Badrs caused inhumane torture to him bringing him out of the room. He (P.W.08) still carries signs of such torture. The detainees kept confined in the room too were subjected to torture severely bringing them out of the room successively.

359. P.W.08 next stated that on 09 August, 1971 at the time of dusk Mymensingh peace committee chairman Moulana Faizur Rhaman (now dead) and accused M.A Hannan (died during trial) along with their associates came to their room in which he and 8/10 were kept detained. Entering inside the room they told –‘why are they here’? At a stage he (P.W.08) offered Salam to Faizur Rahman and he on seeing him told –‘why are you here?’ Then they had left the room. On the following morning Toyob, the son of Moulana Faizur Rahman along with his associates came to their room and brought him (P.W.08) out and set him released and then he returned back home.

360. P.W.08 also stated that on 09 August, 1971 in the night Al Badrs took away some detainees from the room where he (P.W.08) was kept confined and they never returned back. Later

on, he (P.W.08) heard that freedom-fighter Abdur Rahman and other civilians who were kept detained in their room were killed. Finally, P.W.08 stated that they and accused M.A Hannan (died during trial) were from the same Union and thus he knew him beforehand.

361. On cross-examination done on part of accused M.A. Hannan (died during trial) stated in reply to defence question put to him P.W.08 stated that he could not say whether Most. Rahima Khatun the wife of freedom –fighter Abdur Rahman initiated any case over the event of killing her husband in 1972. P.W.08 denied defence suggestions that what he narrated implicating the accused was untrue and out of political rivalry; that the accused was not involved with the alleged event.

The Truth unveiled from Evidence of the Victim

362. The learned prosecutor has not placed argument on this count of charge as the sole accused indicted M.A. Hannan died during trial. However, it has been agitated that in light of evidence presented it may be seen how the event happened and how the victim (P.W.08) got released from the torture cell.

363. It appears that this count of charge indicts only one accused M.A Hannan (died during trial). The victim of the event

arraigned Mr. K.M Khalid Babu (now the State Minister for Ministry of Cultural Affairs, Government of the Peoples Republic of Bangladesh) came on dock of Tribunal on 09.02.2021 and recounted the event he experienced by making sworn testimony. Few months subsequent to testimony of victim P.W.08 the sole accused indicted M.A Hannan died on 15.06.2021 and thus proceeding so far as it related to him stood abated vide Tribunal's order dated 22.06.2021. Accordingly, prosecution did not adduce and examine any further witness in support of this count of charge. For this reason prosecution refrained also from placing argument on this count of charge.

364. In view of above we are to remain refrained from rendering decision in respect of liability, true. But since the victim testified in Tribunal before the accused indicted died the truth that has been demonstrated in ocular testimony of victim P.W.08 Mr. K.M Khalid Babu requires to come to the fore. For the truth being unfolded must stand.

365. Tribunal notes that victim of horrendous crimes committed in 1971 during the war of liberation still have been carrying untold trauma. How the event arraigned happened and on participation of which person(s) need to be unfolded based on

ocular evidence of the victim P.W.08. The truth in this regard will provide solace, even to some extent to the victim of the crimes arraigned.

366. What truth has been unveiled from ocular testimony of P.W.08? P.W.08 was a member of pro-liberation family. Attack was designed to resist the pro-liberation civilians and thus by getting the victim captured he was taken to the first floor of M.A Hannan's (died during trial) house. It appears from testimony of P.W.08 that on seeing him and knowing his identity accused M.A. Hannan (died during trial) told that –**‘your brothers joined the war of liberation, your father did not care despite several warnings’**. Then M.A Hannan (died during trial) ordered Razakars to take the victim away and then the Razakars took him away to the torture cell set up at Agricultural University, Mymensingh where he was kept confined in room no.210 where he saw 4/5 civilians kept detained .

367. Defence could not impeach the above facts related to the event. First it demonstrates that the accused M.A Hannan (died during trial) was extremely antagonistic to the freedom-loving civilians and the civilians who joined in the war of liberation. Presumably, the victim P.W.08 was targeted as he belonged to a

potential pro-liberation family and younger brother of freedom fighter.

368. It appears that the accused indicted was not present with the gang formed of Al Badrs and Razakars when it unlawfully apprehended the victim. But the victim was taken away to the torture cell as ordered by accused M.A. Hannan (died during trial), as testified by P.W.08. Such culpable act was rather formed part of systematic attack directing pro-liberation civilian.

369. It has been unveiled too that the accused M.A Hannan (died during trial) had dominating influence over the camp and activities carried out there. The civilians detained at the said camp were subjected to inhumane torture. This truth has been divulged from ocular testimony of P.W.08. Naturally, P.W.08 being detained at the camp had patent opportunity of seeing all those prohibited acts carried out at the torture cell.

370. Testimony of P.W.08 demonstrates that finally, three days later P.W.08 was set at liberty from the camp and such release was effected on endorsement of Mymensingh peace committee chairman Moulana Faizur Rhaman (now dead) who coming to

the camp along with M.A Hannan (died during trial) found him(P.W.08) detained there.

371. From the sworn testimony of P.W.08 the truth that has come to the fore is that the victim P.W.08 was forcibly captured and taken away to the torture cell at Mymensingh Agricultural University on endorsement of accused M.A Hannan (died during trial) where he was kept confined for three days. Keeping a protected civilian in such captivity itself caused torture which the victim coming on dock of the Tribunal recounted.

372. Another truth has been unfolded from sworn narrative of victim P.W.08 that accused M.A. Hannan (died during trial) substantially facilitated and contributed to the violation of rights of the victim, an unarmed civilian.

373. However, since the sole accused indicted in this count of charge died during trial and after the P.W.08 deposed in Tribunal and since proceeding so far as it related to the accused M.A Hannan stood abated due to his death during trial we refrain from rendering finding on his liability. With this, this count of **charge (charge no.06) is disposed of.**

XII. Conclusion

374. Through adjudication of charges framed it has been patently divulged that the accused persons being members of para militia forces and also having explicit culpable nexus with Pakistani occupation army had committed diabolical atrocities directing unarmed pro-liberation civilians. In this way they deliberately collaborated with the Pakistani occupation army in the name of resisting the war of liberation.

375. In the case in hand it has been proved that atrocities which are found proved paint a diabolical portrayal of notoriety and viciousness which was directed against the pro-liberation civilians in 1971 during the nine-month war of liberation. It is indeed hard to believe that despite being Bangalee people the accused persons opted to get connected with the para militia forces and Pakistani occupation army and being imbued by their policy they joined in Al Badr Bahini and Razakar Bahini.

376. Sworn unimpeached narrative of witnesses and victims depicts a portrayal of the tragic and dreadful nature of atrocities committed during nine month war of liberation in 1971, in violation of international humanitarian law and the laws of war.

The events of attack as found proved in the case in hand are split portrayal of violence committed directing Bangalee civilian population who fought for self-determination and independent motherland.

377. We are convinced that the evidence presented by the prosecution indisputably points guilt of the accused persons and is well consistent with their 'complicity' and 'participation' in the commission of the barbaric crimes proved. Their deliberate and prohibited act and conduct together with affiliation in Al-Badr Bahini and Razakar Bahini indisputably endorsed, encouraged and facilitated the commission of the crimes proved, we conclude.

378. In the case in hand, conduct, act, behaviour and the level of association of the accused persons with auxiliary forces together convincingly prove and qualify the constituent of **'participation'** to the accomplishment of the crimes proved as it substantially contributed to, or have had a substantial effect on the perpetration of the crimes for which the accused persons have been found liable.

379. The event of systematic attack attributed to the accused persons who are found criminally liable was not the outcome of

an individual action but it was the result of the collective prohibited activities of a group of Al-Badr and Razakars who all were conscious of the foreseeable consequence of such acts, at its preparatory stage and its actual commission stage too. The accused persons who are found criminally liable knowingly concerned with such shocking and horrendous crimes against humanity and thus are obviously known as the enemies of the mankind.

380. It has been proved too that the accused persons were not with the group of perpetrators as a mere spectators. It has been found proved that the accused persons accompanied the group of attackers 'sharing intent' in perpetuating the principal offence which made them part of the criminal enterprise. They were with the squad by providing culpable and active assistance till the designed criminal mission ended.

381. In adjudicating the charges we have found that act and conduct of the accused persons in perpetrating the system crimes patently mirror that they were rather traitors and had acted to activate the object and policy of the Pakistani occupation army, by maintaining 'static relation' for 'operational' purpose.

382. The globally known history is that monstrous atrocities in Bangladesh began on the mid-night of 25 March, 1971 with the launch of ‘Operation Searchlight’ and it continued till the nation achieved its independence on 16 December 1971. The blood-bathed history of the birth of our long cherished motherland—**Bangladesh** portrays untold extent of sacrifices.

383. The truth unfurled in trial held in Tribunal obviously will make the nation and especially the new generation enthused to go with the great spirit of the war of liberation and it shall also make the space to the global community of knowing in exchange of what extent of sacrifice the Bangalee nation eventually achieved its long cherished independence. Knowing the truth shall also stimulate the global community for a peaceful humankind and civilization in raising firm voice by saying—‘**Never Again**’.

XIII. Verdict on Conviction

384. The standard of the settled norm that burden of establishing the guilt or criminal responsibility of the persons accused of crimes arraigned squarely lies upon the prosecution has been found to be reasonably met as the accused (1) Doctor Khondaker Golam Sabbir Ahmed (2) Md.

Hormuj Ali (3) Md. Fakhruzzaman (**absconding**) (4) Md. Abdus Sattar and (5) Khondaker Golam Rabbani (**absconding**) are found to have incurred liability for the atrocious crimes which have been proved beyond reasonable doubt, as already determined.

385. In light of finding on determination of each count of charge rendered on the basis of intrinsic and due judicial appraisal of the evidence presented before us and argument advanced by both parties and also based upon jurisprudence evolved, the Tribunal [ICT-1] **UNANIMOUSLY** finds ---

Two (02) accused (1) Khondokar Golam Robbani (**absconding**) and (2) Md. Fakhruzzaman (**absconding**)

Charge No.01: GUILTY of aiding, abetting , assisting and participating in committing ‘**abduction**’, ‘**torture**’ and ‘**murder**’ constituting the offence of **crimes against humanity** as enumerated in section 3(2)(a)(g)(h) read with section 4(1) of the International Crimes (Tribunals) Act, 1973 and they be convicted and sentenced under section 20(2) of the said Act.

One (01) accused Md. Hormuj Ali

Charge No.02: GUILTY of participating, aiding, abetting and substantially contributing to the accomplishment of ‘**arson**’, ‘**other inhumane act**’ and ‘**murder**’ constituting the offences of crimes against humanity as enumerated in section 3(2)(a)(g)(h) of the Act of 1973 and he be convicted and sentenced under section 20(2) of the said Act.

One (01) accused Md. Hormuj Ali

Charge No.03: GUILTY of participating, substantially abetting, facilitating and contributing in committing the criminal acts constituting the offence ‘**other inhumane act**’ as crime against humanity as enumerated in section 3(2) (a) (g)(h) of the Act of 1973 he be convicted and sentenced under section 20(2) of the said Act.

Four (04) accused (1) Khondokar Golam Rabbani (**absconding**) (2) Doctor Khondokar Golam Sabbir Ahmed (3) Md. Fakhruzzaman(**absconding**) and (4) Md. Abdus Sattar

Charge No.04: GUILTY of participating by providing active, substantial and practical assistance in perpetration of ‘**abduction**’, ‘**confinement**’, ‘**torture**’ and ‘**murder**’ constituting the offences as crimes against humanity as enumerated in section

3(2)(a)(g)(h) read with section 4(1) of the Act of 1973 and they be convicted and sentenced under section 20(2) of the said Act.

One (01) accused Md. Abdus Sattar

Charge No.05: GUILTY of abetting, substantially contributing, facilitating and for complicity in the commission of offences of **‘abduction’, ‘confinement’, and ‘torture** ‘as crimes against humanity as specified in section 3(2) (a) (g)(h) of the Act of 1973 and he be convicted and sentenced under section 20(2) of the said Act.

XIV. VERDICT ON SENTENCING

386. The learned prosecutor concluded the summing up by placing reason in brief manner on awarding punishment to the convicted accused and urged highest punishment, particularly for the offence of killing of unarmed civilians including freedom-fighter (as listed in charge nos.1,2, and 4).

387. It has been submitted too that the convicted persons had carried out terrible criminal acts knowingly and being part of the criminal enterprise, in exercise of their affiliation in local Razakar Bahini and Al Badr Bahini. Appropriate and just punishment deserves to be awarded to lessen the pain and

trauma of victims and relatives of victims, the learned prosecutor added.

388. On contrary, no substantial urge on any mitigating factors has been made on part of defence in respect of awarding punishment. However, simply acquittal of accused persons has been urged contending that prosecution could not prove the liability of accused persons in committing the crimes arraigned.

389. In the case in hand, based on reasoned finding we got it proved that the accused (1) Khondokar Golam Rabbani and (2) Md. Fakhruzzaman are found guilty of offences as arraigned in **charge nos. 01 and 04** involving the act of **killing unarmed civilians**. Accused (3) Doctor Khondokar Golam Sabbir Ahmed too has been found guilty for the offence of killing an unarmed civilian (**as listed in charge no.04**).

390. Accused (4) Md. Abdus Sattar has been found guilty of offence of **killing unarmed civilian (as listed in charge no.04)** and also of offence of abduction, torture and confinement of one civilian (**as listed in charge no.05**).

391. Accused (5) Md. Hormuj Ali is found guilty of offence of actuating the killing of an unarmed civilian (**as listed in charge no.02**) and also of offence of ‘other inhumane act (**as listed in charge no.03**)

392. In the case in hand, the collective criminality as found proved was rather a show of prohibited might and grave aggression violating recognized human rights. The convicted accused persons have been found guilty not for committing any isolated offence as codified in normal penal law and as such the arraignment brought under the Act of 1973 itself portrays magnitude, intrinsic gravity and diabolical nature of the crimes. Thus, we, considering the gravity of offences proved and mode of participation of convicts accused persons, deem it apposite to render our agreed reasoned decision in awarding sentence.

393. In the case in hand, gravity and magnitude of offences (**as listed in charge nos.01, 02 and 04**) of which the convicted accused persons have been found guilty does not make any degree of space of attenuating the sentence to be awarded, true. But it appears too that accused M.A Hannan (died during trial) was the key player and trigger man of committing such diabolical crimes proved. On his explicit endorsement and *de*

facto influence over the local Al Badr Bahini and Razakar Bahini all those crime were perpetrated.

394. The convicted accused persons in exercise of their affiliation in Al Badr Bahini and Razakar Bahini had consciously opted to aid and contribute in committing the crimes which in fact happened on explicit backing and active participation of accused M.A Hannan (died during trial).

395. The convicted accused persons, as found obvious from circumstances and facts unveiled, were the loyal followers of accused M.A. Hannan (died during trial) and they had acted under *de facto* control and guidance of accused M. A Hannan (died during trial). But it does not diminish their responsibility as it has been proved that they too knowing consequence and sharing intent aided, abetted and contributed to the commission of the alleged crimes including the killing of civilians (**as arraigned in charge nos.01,02 and 04**). However, it may be taken into consideration as a determinative of awarding sentence.

396. However, finally Tribunal considers that being confined within the fences of prison may let the convicted accused

persons to sense what grave wrong doings and deliberate criminal acts they had committed directing defenceless civilians, being part of the collective criminality. In such case sentence of imprisonment for life of these convicted accused persons shall refer to shutting the 'outside world' out and shall keep their focus into the world within the fences or walls.

397. Keeping the factors as conversed above in mind we are of **UNANIMOUS** view that justice would be met if the accused (1) Doctor Khondaker Golam Sabbir Ahmed (2) Md. Hormuj Ali (3) Md. Fakhruzzaman (**absconding**) (4) Md. Abdus Sattar and (5) Khondaker Golam Rabbani (**absconding**) who have been found guilty beyond reasonable doubt for the crimes proved (**as arraigned in charge nos.1,2,3,4 and 5**) are condemned and sentenced as below, under the provision of section 20(2) of the Act of 1973.

Hence it is
ORDERED

Two (02) accused (1) Khondakar Golam Rabbani (absconding), the son of late Khondaker Abdur Rashid and Mosammat Amena Khatun of 30/ka, Golki Bari Road, Mymensingh Sadar, District- Mymensingh and **(2) Md. Fakhruzzaman (absconding),** the son of late Abdul Wahed and

late Halima Akhter Khatun of 3 Ka/1, College Road, Mymensingh Sadar, District- Mymensingh are found **UNANIMOUSLY guilty** of the offences of ‘**abduction**’, ‘**torture**’ and ‘**murder**’ as ‘**crimes against humanity**’ as enumerated in section 3(2) of The International Crimes (Tribunals) Act, 1973 in respect of **charge no.01** .

Accordingly, they be **UNANIMOUSLY** convicted and sentenced under section 20(2) of the Act of 1973:

‘**Sentence of imprisonment for life**’ for the crimes of ‘**abduction**’, ‘**torture**’ and ‘**murder**’ as listed in **charge no.01** under section 20(2) of The International Crimes (Tribunals) Act, 1973;

One (01) accused Md. Hormuj Ali, the son of Saad Akkas of Shommukh Boilor, Police Station-Trishal, District- Mymensingh is found **UNANIMOUSLY guilty** of the offences of ‘**arson**’, ‘**other inhumane act**’ and ‘**murder**’ as ‘**crimes against humanity**’ as enumerated in section 3(2) of The International Crimes (Tribunals) Act, 1973 in respect of **charge no.02** .

Accordingly, he be **UNANIMOUSLY** convicted and sentenced under section 20(2) of the Act of 1973:

‘Sentence of imprisonment for life ’ for the crimes of **‘arson’, ‘other inhumane act’ and ‘murder’** as listed in **charge no.02** under section 20(2) of The International Crimes (Tribunals) Act, 1973;

Accused Md. Hormuj Ali is also found **UNANIMOUSLY guilty** of the offence of **‘other inhumane act’** as enumerated in section 3(2) of The International Crimes (Tribunals) Act, 1973 in respect of **charge no.03**.

Accordingly, he be **UNANIMOUSLY** convicted and sentenced under section 20(2) of the Act of 1973:

sentence of ‘imprisonment for five (05) years’ for the offence of **‘other inhumane act’** as listed in **charge no.03** under section 20(2) of The International Crimes (Tribunals) Act, 1973;

Four (04) accused (1) Khondokar Golam Rabbani (absconding) (2) Doctor Khondokar Golam Sabbir Ahmed, son of late Khondokar Abdur Rashid and Mosammat Amena Khatun of 53/Ka, Golki Bari Road, Mymensingh Sadar, District-Mymensingh (3) Md. Abdus Sattar, son of late Kudrat Ali Mondol and late Mosammat Kabiron Nesa of 5/16, Jail Road

Outer Stadium, Mymensingh Sadar, District-Mymensingh **AND**
(4) Md. Fakhruzzaman (**absconding**), son of late Abdul Wahed
and late Halima Akhter Khatun of 3 Ka/1, College Road,
Mymensingh Sadar, District- Mymensingh are found
UNANIMOUSLY guilty of the offences of '**abduction**',
'**confinement**', '**torture**' and '**murder**' as listed in charge
no.04.

Accordingly, they be **UNANIMOUSLY** convicted and sentenced
under section 20(2) of the Act of 1973:

'Sentence of imprisonment for life' for
the crimes of '**abduction**',
'**confinement**', '**torture**' and '**murder**'
as listed in **charge no.04** under section
20(2) of The International Crimes
(Tribunals) Act, 1973;

One (01) accused **Md. Abdus Sattar** is also found
UNANIMOUSLY guilty of the offence of '**abduction**',
'**confinement**', and '**torture**' as enumerated in section 3(2) of
The International Crimes (Tribunals) Act, 1973 in respect of
charge no.05.

Accordingly, he be **UNANIMOUSLY** convicted and sentenced
under section 20(2) of the Act of 1973:

sentence of ‘imprisonment for five (05) years’ for the offence of **‘other inhumane act’** as listed in **charge no.05** under section 20(2) of The International Crimes (Tribunals) Act, 1973;

The **‘sentences of imprisonment’** as awarded shall run concurrently. The total period in custody of the convicted accused persons in connection with this case shall be deducted from the sentence awarded above.

Since two convicted accused Khondokar Golam Rabbani and Md. Fakhruzzaman have been absconding the **‘sentence of imprisonment’** as awarded above to them shall commence from the date of their arrest or surrender as required under Rule 46(2) of the Rules of Procedure, 2010(ROP) of the Tribunal-1.

Let **conviction warrant** be issued accordingly. Let the three (03) convicted accused persons present on dock be sent to prison together with the conviction warrant and a copy of this judgment.

Let a copy of the Judgment be transmitted together with the conviction warrant in respect of two absconding convicted accused to **(1)** the Secretary, Ministry of Home Affairs and **(2)**

the Inspector General of Police, Bangladesh Police, Police Head Quarters, Dhaka for information and necessary action and compliance.

The Secretary, Ministry of Home Affairs and the Inspector General of Police [IGP], Bangladesh Police are hereby directed to initiate effective and appropriate measure for ensuring arrest of the two convicted absconding accused (1) Khondokar Golam Rabbani and (2) Md. Fakhruzzaman.

Let a copy of the judgment also be sent to The District Magistrate, Dhaka for information.

Let certified copy of the judgment be furnished to the prosecution and also to the three convicted accused persons who are present in Tribunal, free of cost.

The three convicted accused (1) Doctor Khondokar Golam Sabbir Ahmed (2) Md. Hormuj Ali and (3) Md. Abdus Sattar present in Tribunal shall have right to prefer appeal to the Appellate Division of the Supreme Court of Bangladesh within 30(thirty) days from the date of conviction and sentence awarded, as permitted in section 21(1)(2) of the Act of 1973.

If any of the absconding convicted accused namely Khondokar Golam Rabbani and Md. Fakhruzzaman is arrested or surrenders within 30 (thirty) days of the date of the judgment and order of conviction and sentence he will be provided with certified copy of this judgment free of cost, for the purpose of preferring appeal.

Justice Md. Shahinur Islam, Chairman

Justice Md. Abu Ahmed Jamadar, Member

Justice K.M. Hafizul Alam, Member