

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. 02 of 2019

[Arising out of ICT-BD Misc case No. 03 of 2018]

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

Present:

Justice Md. Shahinur Islam, Chairman

Justice Md. Abu Ahmed Jamadar, Member

Justice Md. K.M. Hafizul Alam, Member

The Chief Prosecutor

Vs.

(1) Abdul Mannan Howlader @ Abdul Mannan Delar @ Mannaf, (2) Ashraf Ali @ Assrab Ali Howlader (3) Md. Moharaj Howlader @ Hatkata Moharaj and (4) Md. Nurul Amin Howlader [**absconding**]

For the Prosecution

Mr. Golam Arief Tipoo, Chief Prosecutor

Mr. Syed Haider Ali, Prosecutor

Mr. Mokhlesur Rahman, Prosecutor

Mr. Sultan Mahmud, Prosecutor

Mr. Md. Sahidur Rahman, Prosecutor

Rezia Sultana Begum, Prosecutor

Ms. Sabina Yesmin Khan, Prosecutor

Mr. Tapas Kanti Baul, Prosecutor

Mr. Mushfiqur Rahman, Prosecutor

For the Defence:

Mr. Gazi M. H. Tamim, Advocate, Supreme Court of Bangladesh: Learned **Engaged Counsel** for **three [03]** present accused **AND** learned **State Defence Counsel** for **one [01]** absconded accused.

Date of delivery of Judgment: 20 July, 2023

JUDGMENT

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

I. Introductory Words

1. At the outset Tribunal notes that trial of this case commenced on framing four counts of charges against six (06) accused namely, (1) Abdul Mannan Howlader @ Abdul Mannan Delar @ Mannaf, (2) Ashraf Ali @ Assrab Ali Howlader (3) Md. Moharaj Howlader @ Hatkata Moharaj (4) Md. Amir Hossain @ Hafez Md. Amir Hossain @ Amir Ali Howlader (5) Md. Nurul Amin Howlader **and** (6) Md. Siddiqur Rahman @ Siddique Howlader @ Siddique Munshi. But in course of trial,

two (02) accused Md. Amir Hossain @ Hafez Md. Amir Hossain @ Amir Ali Howlader and Md. Siddiquir Rahman @ Siddique Howlader @ Siddique Munshi indicted died on different dates. Accordingly, proceeding so far as it related to them stood abated by rendering necessary order by Tribunal.

2. In view of above, trial of the case eventually concluded only against four (04) accused and of them one accused Md. Nurul Amin Howlader has been absconding since pre-trial stage and he has been tried jointly in absentia.

3. The charges framed against the accused persons tells the atrocious events allegedly committed around the localities under police station-Bhandaria of District (now) Pirojpur in 1971, during the war of liberation directing the civilian population and protected group aiming to horrify and wipe them out, in furtherance of policy and plan of the Pakistani occupation army. The accused persons have been indicted for participating, aiding and contributing substantially in accomplishing such diabolical crimes, in exercise of their affiliation with auxiliary force.

4. The case involves the offences enumerated in section 3 of the International Crimes (Tribunals) Act, 1973. The accused persons have been arraigned of internationally recognized

crimes i.e. ‘crimes against humanity’ and ‘genocide’ which are among the most egregious harms to human dignity and human rights and those were perpetrated in 1971 in the territory of Bangladesh, during the War of Liberation.

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

6. Before we move on to render our verdict we take the opportunity to endorse the stamp our appreciation to the admirable assistance in elucidating jurisprudential aspects, provided by both sides, at all stages of proceedings.

7. Now, having regard to section 10(1) (j), section 20(1) and section 20(2) of the International Crimes (Tribunals) Act, 1973[Act No. XIX of 1973] this ‘Tribunal’ known as International Crimes Tribunal-1 (ICT-1) hereby renders and pronounces the following **unanimous** judgment.

II. Formation and Jurisdiction of the Tribunal

8. In response to nation’s demand The Tribunal [ICT-1] has been set up on 25 March 2010 under the Act XIX enacted in 1973 in our sovereign parliament. The Statute is *ex-post facto*

legislation. It is fairly permitted. .The notion of fairness and due process has been explicitly contemplated in the Act. Tribunal formed the Rules of Procedure, 2010 (ROP) under the powers conferred in section 22 of the principal legislation.

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

10. It is to be reiterated 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 crimes against humanity and the crimes enumerated in the Act of 1973.

11. Section 3(1) of the Act of 1973 manifests that even any person (individual), if he is *prima facie* found accountable either under section 4(1) or 4(2) of the Act of 1973 for the perpetration of offence(s) in violation of international humanitarian law and the laws of war, can be brought to justice under the Act.

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

III. Brief Historical Background

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

14. Since such partition, the Bangalee nation of the eastern part of Pakistan started experiencing grave disparity and exploitation in all spheres of their livelihood. In 1952 the Pakistani authorities attempted to impose 'Urdu' as the only State language of Pakistan ignoring Bangla, the language of the mainstream population of Pakistan. The people of the then East Pakistan then valiantly started movement to get 'Bangla' recognized as a state language and eventually turned to the movement for greater autonomy and self-determination.

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

ওগেটী মসমোঁ অগ্‌ত` ই গ্‌ই মসমোঁ, গেটী
মসমোঁ - ব'ব'জি মসমোঁ। র্‌গ্‌ এস্‌জ্‌ ব'ও

[The struggle this time is a struggle for emancipation. The struggle this time is a struggle for independence, Joy Bangla.]

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

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

18. The individuals having affiliation with those pro-Pakistan political parties and auxiliary forces got explicitly engaged in committing and facilitating the commission of appalling

atrocities directing civilian population in the territory of Bangladesh, in 1971. This is now a settled history of which this Tribunal takes judicial notice as permitted by the Act of 1973 and the ROP.

19. The horrific atrocities for which the accused persons indicted stood trial were not isolated from the policy and plan of the occupation Pakistani army who started its dreadful ‘mayhem’ since 25th March 1971 intending to stamp out the pro-liberation Bengali civilians. During the nine-month war of liberation three millions of brave sons of the soil laid their lives for the cause of independence and long cherished self determination. The nation also recalls and honors the hundreds of thousands of mothers and daughters who sacrificed their supreme honour. They too are valiant freedom-fighters.

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

“During the liberation war in Bangladesh, there were about eighty thousand Pakistani soldiers, twenty five thousand militia, twenty five thousand

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

[Source: Figures from the Fall of Dacca by Jagjit Singh Aurora in the Illustrated Weekly of India, 23 December, 1973]

21. The ‘mayhem’ started since 25th March 1971 intending to stamp out the Pro-liberation Bangalee civilians could not thrive to foil the highest sacrifice of the nation. Countless horrendous atrocious resistance on part of thousands of local collaborators having affiliation with the auxiliary forces could not impede the nation’s gallant voyage to freedom. Undeniably the ways to self-determination for the Bangalee nation was strenuous, swabbed with enormous blood, struggle and immense sacrifices.

22. London Times, in 1971, reported that – **“If blood is the price of independence, then Bangladesh has paid the highest price in history.”** The horrendous atrocities that continued for long nine months could not thrive to foil the highest sacrifice of

the Bangalee nation. The nation always pays tribute and homage to the blood of millions of patriotic martyrs and innocent defenceless people. Countless atrocious resistance on part of thousands of local collaborators could not impede the nation's valiant journey in achieving freedom and independent motherland.

23. Nation now demands global recognition of such horrendous atrocities committed in 1971. Researchers, scholars now need to go ahead to work on it raising effective voice in achieving global recognition, recalling untold sacrifice of millions of martyrs. Tribunal considers it indispensable to note that on the research based proposal initiated by Dr. Tawheed Reza Noor [son of martyred journalist Serajuddin Hossain], a visiting scholar of Binghamton University, NY the IAGS [International Association of Genocide Scholars] has recently adopted a 'resolution' acknowledging the offences of genocide, crimes against humanity and war crimes committed by the Pakistani occupation army and their local collaborators during the war of liberation in 1971 in the territory of Bangladesh.

24. In the resolution recently adopted by the **IAGS** (International Association of Genocide Scholars) acknowledged

the genocide, crimes against humanity and war crimes committed in 1971 in Bangladesh it has been conceded that –

“..... during the period of time under a second colonial rule, discriminatory policies against Bengalis, both Hindus and Muslims, were established such as prohibition to speak Bangla, imposition of Urdu was an official language, and violent persecution and repression of dissidents and social movements defending representations of Bengali identity and culture”.

[Source: IAGS Resolution to Declare the crimes Committed during the 1971 Bangladesh Liberation War as Genocide, Crimes Against Humanity and War Crime]

25. Adoption of resolution by the IAGS is indeed a significant stamp of recognition which perceptibly has taken the nation one stair ahead in achieving international recognition for the genocide and crimes against humanity brutally perpetrated in 1971.

26. We once again reiterate that in the present-day world history, conceivably no nation paid as extremely as the Bangalee nation did for its self-determination and independence. This truth filled with untold sacrifice now needs global recognition. The nation shall remain ever indebted to those best

sons and daughters of the soil who paid supreme sacrifices for an indelible motherland – **Bangladesh.**

IV. Brief account of the Accused

27. We have already stated that trial commenced on framing four (04) counts of charges against six (06) accused and in course of trial, of them two (02) accused Md. Amir Hossain @ Hafez Md. Amir Hossain @ Amir Ali Howlader and Md. Siddiqur Rahman @ Siddique Howlader @ Siddique Munshi died on different dates and thus proceeding so far as it related to them stood abated. Tribunal on appraisal of necessary papers including respective death certificate and on hearing both sides rendered necessary orders in this regard.

28. In view of above, trial proceeded and concluded only against **four (04)** accused (1) Abdul Mannan Howlader @ Abdul Mannan Delar @ Mannaf, (2) Ashraf Ali @ Assrab Ali Howlader (3) Md. Moharaj Howlader @ Hatkata Moharaj and (4) Md. Nurul Amin Howlader[absconding].

29. Thus, now before we render our decision on adjudication of charges arraigned let us have a look what has been stated in the formal charge about the identity and status these four (04) accused persons had in 1971.

(1) Abdul Mannan Howlader @ Abdul Mannan Delar @ Mannaf

Accused Abdul Mannan Howlader @ Abdul Mannan Delar @ Mannaf is the son of late Hashem Ali Howlader and late Amena Khatun of village-Hetalia, Police Station-Bhandaria, District-Pirojpur. His date of birth is 19.08.1943 [as per his NID]. He studied up to class VIII from Endurkani High School. He was an active member of the Muslim League. In 1971, during the liberation war he joined the Bhandaria Thana Peace Committee and then he joined in locally formed Razakar Bahini. Now he is an active supporter of Jamat-e- Islami. He in collaboration with the Pakistani occupation army actively participated and committed heinous crimes including crimes against humanity, prosecution alleges.

(2) Ashraf Ali @ Assrab Ali Howlader

Accused Ashraf Ali @ Assrab Ali Howlader is the son of late Najar Ali Howlader and Hajera Begum Nesa of Village-Hetalia, Police Station-Bhandaria of District Pirojpur. His date of birth is 20.11.1950 [as per his NID]. He studied up to class VIII. In 1971, during the liberation war he was an active supporter of Jamat-e- Islami. He joined the locally formed Razakar Bahini. He in collaboration with the Pakistani occupation army actively

participated and committed heinous crimes including crimes against humanity, prosecution alleges.

(3) Md. Moharaj Howlader @ Hatkata Moharaj

Accused Md. Moharaj Howlader @ Hatkata Moharaj is the son of late Mohabbat Ali Howlader and Sometto Banu of Village-Charkhali, Police Station-Bhandaria of District-Pirojpur. His date of birth is 03.03.1950 [as per his NID]. He studied up to class IV. In 1971, during the liberation war he was an active supporter of Jamat-E-Islami. He joined the locally formed Razakar Bahini. He in collaboration with the Pakistani occupation army actively participated and committed heinous crimes including crimes against humanity, prosecution alleges.

(4). Md. Nurul Amin Howlader [absconding]

Accused Md. Nurul Amin Howlader is the son of late Shamsul Haque Howlader and Most. Setara Begum of village-Hetalia under Police Station Bhandaria of District Pirojpur. His date of birth is 06.05.1955 [as per his NID]. He studied up to Bachelor of Arts (BA). In 1971, during the liberation war he joined the locally formed Razakar Bahini. He in collaboration with the Pakistani occupation army actively participated and committed

heinous crimes including crimes against humanity, prosecution alleges.

V. Procedural History

30. Before we enter into the discussion on legal and factual aspects involving characterization of crimes and incurring criminal liability for crimes arraigned procedural history reflecting the entire proceedings, charges framed and the laws applicable to the case need to be viewed in brief for the purpose of adjudicating the arraignment brought.

Commencement of Investigation

31. The Investigation Agency formed under The Act of 1973 started investigation pursuant to compliant register **serial no. 66 dated 12.04.2016**, in respect of offences enumerated in section 3(2) of the Act of 1973 allegedly perpetrated by the accused persons, being part of the criminal enterprise and in exercise of their culpable nexus with auxiliary force.

Issuance of Warrant of Arrest

32. During investigation, the Investigation Officer [IO] entrusted with task of investigation by filing an application through the chief prosecutor prayed for showing arrested of accused (1) Abdul Mannan Howlader @ Abdul Mannan Delar

@ Mannaf (2) Ajahar Ali Howlader @ Aju Munshi [died on 29.07.2019, after hearing charge framing matter] (3) Ashraf Ali @ Assrab Ali Howlader (4) Md. Moharaj Howlader @ Hatkata Moharaj and (5) Md. Fazlul Haque [died on 30.10.2018] who were in jail in connection with Bhandaria police station case no. 22 dated 23.05.2018 under section 25(gha) of the Special Powers Act, 1974.

33. Accordingly, on hearing allowing the application production warrant was issued by the Tribunal on 29.05.2018. Next, Tribunal by its order dated 10.07.2018 sent those five accused produced before Tribunal to prison showing them arrested in connection with this case, for the purpose of proper and effective investigation.

Interrogation of Arrested accused

34. On application filed on part of the investigation officer initiated through the chief prosecutor Tribunal permitted to interrogate the detained five accused in compliance with provision and accordingly they were interrogated on 15.07.2018 to 19.07.2018, as ordered. In course of investigation one detained accused Md. Fazlul Haque died on 30.10.2018 in Dhaka Medical College Hospital and then proceeding so far as it

related to this accused stood abated vide Tribunal's order dated 07.11.2018.

Submission of Investigation report

35. On conclusion of investigation, the IO submitted its report to the chief prosecutor together with documents and materials collected and statement of witnesses on 06.11.2018 recommending joint prosecution of seven [07] accused of whom three[03] were detained in prison.

Submission of Formal Charge

36. Chief Prosecutor, on the basis of the report and documents submitted therewith by the Investigation Agency, placed the '**Formal Charge**' on **11.02.2019** under section 9(1) of the Act of 1973 read with the Rule 18(1) of the ROP[ICT-1] before this Tribunal alleging that total seven (07) accused had committed the offences enumerated in section 3(2) of the Act of 1973 and also for complicity to commit such crimes narrated in the formal charge, during the period of War of Liberation in 1971, around the localities under police station- Bhandaria of District- Pirojpur.

Taking Cognizance of Offences

37. 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 **06.03.2019**, by application its judicial mind to the Formal Charge and materials and documents submitted therewith.

Publication of Notification for holding absentia trial against 03 Accused

38. Out of seven (07) accused three (03) could not be arrested in execution of the warrant of arrest issued on prayer of the prosecution. On getting report in execution of warrant of arrest against these three [03] accused namely Md. Amir Hossain @ Hafez Md. Amir Hossain @ Amir Ali Howlader, Md. Nurul Amin Howlader and Md. Siddiquir Rahman @ Siddique Howlader @ Siddique Munshi Tribunal ordered publication of notice in two national daily news papers in compliance with provision, for the purpose of holding proceeding in absentia against them.

39. But none of those three accused turned up in response to such notification and as such treating them absconded Tribunal by its order dated **11.06.2019** appointed **Mr. Gazi M.H Tamim**, Advocate, Supreme Court of Bangladesh as state defence counsel to defend the three absconding accused Md. Amir Hossain @ Hafez Md. Amir Hossain @ Amir Ali Howlader, Md. Nurul Amin Howlader **and** Md. Siddiquir Rahman @

Siddique Howlader @ Siddique Munshi, at the cost of government and fixed the date of hearing on charge framing matter which took place on 15.07.2019.

Proceeding abated in respect of one absconding accused before framing charges

40. Meanwhile, prosecution by filing an application on 01.09.2019 together with relevant papers informed the Tribunal that accused Ajahar Ali Howlader @ Aju Munshi who was on bail died on 29.07.2019 and prayed for necessary order. Accordingly, on hearing on this matter Tribunal ordered on 04.09.2019 that proceeding so far as it related to the accused Ajahar Ali Howlader @ Aju Munshi stood abated.

Charge Framing Hearing and Order

41. On closure of hearing on charge framing matter Tribunal eventually fixed 11th September 2019 for order. Tribunal by its order dated 11.09.2019 framed four (04) counts of charges, on having considered the Formal Charge and materials annexed therewith and also on hearing both sides.

42. The charges so framed against four accused persons were read over and explained (in Bangla) to the three accused (1) Abdul Mannan Howlader @ Abdul Mannan Delar @ Mannaf, (2) Ashraf Ali @ Assrab Ali Howlader (3) Md. Moharaj

Howlader @ Hatkata Moharaj present on dock . Having heard and understood the aforesaid charges framed they pleaded not guilty and claimed to be tried according to law.

43. The rest three [03] accused (4) Md. Amir Hossain @ Hafez Md. Amir Hossain @ Amir Ali Howlader (5) Md. Nurul Amin Howlader and (6) Md. Siddiqur Rahman @ Siddique Howlader @ Siddique Munshi have been absconding and as such the charges framed could not be read over and explained to them.

Opening statement and examining prosecution witnesses

44. On 17.10.2019 prosecution, after placing opening statement, started adducing and examining witnesses to substantiate the crimes arraigned. In course of trial two absconding accused Md. Amir Hossain @ Hafez Md. Amir Hossain @ Amir Ali Howlader and Md. Siddiqur Rahman @ Siddique Howlader @ Siddique Munshi died on 07.10.2021 and 28.05.2021 respectively and thus proceeding so far as it related to them accordingly stood abated respectively vide two distinct orders dated 28.11.2021 and 28.10.2021. Accordingly, the trial continued only against the four (04) accused namely (1) Abdul Mannan Howlader @ Abdul Mannan Delar @ Mannaf, (2) Ashraf Ali @ Assrab Ali Howlader (3) Md. Moharaj Howlader @ Hatkata Moharaj and (4) Md. Nurul Amin Howlader(absconding).

45. Trial of the case ended on closure of examining prosecution witnesses on 02.04.2023. Defence duly cross-examined the prosecution witnesses. Defence however declined to adduce any evidence.

Summing up of case

46. Prosecution started placing summing up on 12.01.2023 and it seems to have been concluded on 10.05.2023. Next, the learned defence counsel as well as state defence counsel concluded his respective summing up on 10.05.2023 and 18.05.2023. On closure of summing up on 21.05.2023 the case was kept CAV i.e. for delivery and pronouncement of judgment

VI. Applicable laws

47. The crimes of which the accused persons have been indicted and jointly tried in Tribunal-1 [ICT-BD] under the Act of 1973 are not isolated crimes. The crimes arraigned happened in 1971 during the war of liberation directing civilian population in systematic manner and as such those are recognized as ‘system crimes’. Thus, we deem it indispensable to eye on applicability of laws which need to be considered in determining the crimes arraigned which are known as ‘system crimes’ committed in violation of laws of war and international humanitarian law.

48. The Tribunal [ICT-BD] formed under the Act of 1973 is a domestic judicial forum, true. But section 23 of the Act of 1973 contemplates prohibition of applicability of the Code of Criminal Procedure, 1898 and the Evidence Act 1872. The proceedings before the Tribunal are thus guided by the International Crimes (Tribunals) Act, 1973 and the Rules of Procedure 2010[ROP-2010] formulated by the Tribunal-1 under the powers conferred in section 22 of the Act.

49. Tribunal does have jurisdiction to take judicial notice of any fact of common knowledge which is not needed to be proved by adducing evidence [Section 19(4) of the Act]. Even the Tribunal shall not be bound by technical rules of evidence and may admit any evidence which it deems to have probative value [section 19(1) of the Act of 1973] and credence. The Tribunal [ICT-BD] shall have judicial discretion to consider hearsay evidence by weighing its probative value [Rule 56(2)].

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

examine witnesses [Section 10(1) (f) of the Act of 1973] in support of defence case, if any.

51. The Tribunal may receive in evidence statement of witness recorded by Magistrate or Investigation Officer only when the witness who has subsequently during trial died or whose attendance cannot be procured without an amount of delay or expense which the Tribunal considers unreasonable [Section 19(2) of the Act].

52. In the case in hand prosecution has prayed by filing such application together with necessary papers and death certificate to receive statement of two (02) witnesses namely, Kitab Ali and Rafiqul Alam @ Badal (volume of statement of witnesses page nos. 31-35 and 14-17 respectively : made to IO) who died during trial . The prayer has been allowed.

53. Atrocities arraigned in all the four counts of charges were perpetrated in wartime situation and not in normalcy. The Tribunal notes that in adjudicating culpability of the persons accused of alleged criminal acts, context and situation existing at the relevant time i.e. the period of war of liberation in 1971[March 25 to December 16, 1971] is to be considered.

VII. Summing Up

Summing up: By the prosecution

54. Mr. Md. Shahidur Rahman, the learned prosecutor in placing summing up drew attention to oral testimony of witnesses examined and other materials. It has been submitted that the events arraigned constituting the offences of crimes against humanity and the offence of 'genocide' have been proved from ocular testimony of direct witnesses. Uncontroverted ocular narrative of witnesses also proves participation and complicity of the accused persons indicted in accomplishing the crimes arraigned beyond reasonable doubt.

55. The learned prosecutor further submitted that the crimes were committed directing pro-liberation civilians belonging to Hindu community in 1971, to further policy of Pakistani occupation army; that the accused persons had acted being active part of criminal enterprise, in exercise of their association with the locally formed auxiliary force; that they knowingly contributed and substantially facilitated in perpetrating the horrific crimes. The learned prosecutor placed argument categorically in respect of each charge which may be well addressed when we will move to adjudicate each charge independently.

Summing up by the defence

56. Per contra, **Mr. Gazi M.H Tamim**, the learned defence counsel as well as stated defence counsel argued that testimony of prosecution witnesses suffers from inconsistency; that some of witnesses who claim to have seen the alleged events had no reason of knowing the accused persons beforehand and thus they are not competent and credible witnesses; that the witnesses have implicated the accused persons out of rivalry; that it could not be proved beyond reasonable doubt that the accused persons being part of the criminal gang were engaged in perpetrating the crimes alleged. The accused persons did not allegedly belong to any auxiliary force. It has been asserted too that failure to establish accused persons' involvement in committing the alleged crimes should entail their acquittal. The learned defence counsel questioning truthfulness of testimony of witnesses placed argument in respect of each charge which may be well addressed in adjudicating each charge.

VIII. General Considerations Regarding the Evaluation of Evidence in a case involving the offences of Crimes against Humanity and Genocide

57. In the case in hand, prosecution depends heavily on sworn ocular testimony made before the Tribunal by the witnesses of whom some are allegedly direct witnesses and relatives of

victims and some are hearsay witnesses. It is to be noted that the testimony even of a single witness on a material fact does not, as a matter of law, require corroboration. It is now well settled that not the quantity but quality of witnesses needs to be viewed. The settled jurisprudence makes it clear that corroboration is not a legal requirement for a finding to be rendered.

58. We reiterate that discrepancy in testimony of witnesses, if occurs itself should not be the sole consideration to exclude the entire evidence and thus evidence on material fact, if found to be credible cannot be excluded. In this regard the ICTR Appeal Chamber laid its view that “the presence of inconsistencies within or amongst witnesses’ testimonies does not per se require a reasonable Trial Chamber to reject the evidence as being unreasonable” [**Muhimana, (Appeals Chamber), May 21, 2007, para. 58**]. In the task of assessing testimony of a witness this proposition is to be kept in mind.

59. The instant case involving the crimes enumerated in the Act of 1973 is chiefly founded on oral evidence presented on part of prosecution. The locals, relatives of victims and sufferers of atrocious activities coming on dock of Tribunal described what they experienced and saw during the atrocious attacks

conducted in 1971 around their localities. Apart from them some witnesses appear to have testified what they heard in respect of the events arraigned.

60. It has already been well settled that in a case under the Act of 1973 'hearsay evidence' is not inadmissible *per se*. Hearsay evidence is thus admissible and it may be taken into consideration if it is found to have been supported by 'other evidence'. The phrase 'other evidence' includes relevant facts, circumstances unveiled and testimony of ocular witnesses.

61. Obviously due to lapse of long passage of time the witnesses naturally may not be capable to memorize the precise detail and exact precision as to the events arraigned. However, the core essence of the horrific part of principal event always remains imprinted in the human memory if a person really had opportunity to see and experience the event of hideous nature. All these reality need to be viewed in assessing credibility of their testimony made on material facts.

62. Tribunal reiterates that in a criminal trial, two matters need to be determined. One is commission of the offence arraigned and another one is culpability of the person accused of such offence. In determining these two aspects Tribunal keeps it in

mind that the case in hand deals with the offences of crimes against humanity and genocide, and thus this nature of crime is known as ‘group crime’ or ‘system crime’ and not an isolated offence punishable under the normal Penal law.

63. Tribunal always recalls the settled jurisprudence that in committing crimes against humanity the person accused of such crime may not have physical participation. But his act or conduct---amid, prior or subsequent to the event, lawfully makes him criminally liable for the offence committed by others, if his act or conduct is found to have had substantial effect and contribution on the commission of such crime.

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

65. In respect of contradiction the Appellate Division, Supreme Court of Bangladesh already rendered its observation in the case of *Abdul Quader Molla* and it states that 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 in *Abdul Quader Molla Case*].

66. Hearsay testimony is not inadmissible *per se* in a trial under the Act of 1973. The matter of weighing hearsay evidence depends as to what extent the question of hearsay evidence is clarified by other evidence and it is proved to be reliable. In this regard, the decision in the case of *Limaj* it has been observed that “whether any weight, and if so, what weight will attach to [hearsay opinion] will depend to what extent the question of hearsay is clarified by other evidence and it is shown to be reliable [Archbold International criminal Courts: page 751: 9-104: HEARSAY].

67. 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.

68. The right to be presumed innocent until proven guilty relates to the protection of human dignity and is universally recognised jurisprudence of fair trial proceedings. In ICT-BD the provision that the burden of proving the charge shall squarely lie upon the

prosecution [Rule 50] is manifestation of the recognised theory of innocence of an accused until and unless he is held guilty through trial. Besides, a person charged with crimes as described under section 3(2) of the Act of 1973 shall be presumed innocent until found guilty [Rule 43(2) of the ROP]. It adds further assurance to this right.

69. Keeping the settled legal propositions as stated above in mind the Tribunal has taken the advantage to weigh the probative value and credence of evidence of witnesses made before the Tribunal, in relation to charges framed against the accused.

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

70. **Mr. Md. Shahidur Rahman**, the learned prosecutor submitted that the accused persons having nexus and affiliation with locally formed Razakar Bahini got consciously engaged in conducting atrocities around the localities under police station Bhandaria of District Pirojpur. Prosecution witnesses in narrating the events arraigned stated that they knew the accused persons beforehand and they being part of the criminal enterprise committed the barbaric atrocities. The witnesses'

testimony demonstrates that the accused persons belonged to Razakar Bahini.

71. It has been further submitted that the list of Razakars **[Exhibit-I Series]** and other documents as well patently prove their affiliation with Razakar Bahini. No documentary evidence to show affiliation of absconding accused Md. Nurul Amin Howlader could be collected, true. But oral testimony of the witnesses, the residents of the vicinities attacked demonstrates his nexus with the Razakar Bahini, an auxiliary force.

72. On contrary, **Mr. Gazi M.H. Tamim** argued that the alleged list of Razakars has been a created document for the purpose of this case; that this alleged list does not contain the name of two accused Md. Moharaj Howlader @ Hatkata Moharaj and Md. Nurul Amin Howlader. Rather, one prosecution document, an application made by accused Md. Nurul Amin Howlader seeking enlistment as freedom-fighter negates his alleged affiliation in Razakar Bahini. Prosecution witnesses testified falsely terming the accused persons Razakars.

73. The case in hand involves offences as crimes against humanity and genocide committed in 1971 in the territory of Bangladesh. The accused persons have been indicted for such

system crimes. History states that Razakar Bahini, an auxiliary force was created to collaborate with the policy of Pakistani occupation army. Policy was to resist the war of liberation by annihilating pro-liberation civilians and civilians belonging to Hindu community.

74. Liability of accused persons for the crimes of which they have been indicted will be duly determined when each charge is adjudicated. However, at this stage having look on the testimony of prosecution witnesses it transpires that the accused persons engaged in atrocities arraigned in exercise of their affiliation with Razakar Bahini were known to the residents of the localities targeted. In the case in hand it appears that the prosecution witnesses in recounting the horrific event arraigned termed the accused persons as Razakars. Defence simply denied it. It could not be controverted in any manner.

75. Naturally, the prosecution witnesses, the locals of the crime vicinities were fairly capable of being aware of the identity and activities of the accused persons in 1971. Holding membership of local Razakar Bahini by the accused persons and their notoriety thus indubitably became an 'anecdote' to them and the locality as well. On this score too testimony of witnesses in this

regard carries value and credence in arriving at decision that the accused persons belonged to local Razakar Bahini in 1971.

76. Testimony made by the witnesses, the victims and residents of the crime localities in respect of accused persons' engagement in locally formed Razakar Bahini inspires credence.

77. Besides, failure on part of the defence to impeach this fact based on oral testimony thus lawfully prompts to the unmistakable conclusion that the accused persons were actively associated with the locally formed Razakar Bahini, an 'auxiliary force' under control of Pakistani army for materializing their operational and other purposes during the War of Liberation in 1971.

78. It is now settled history that Bangalee traitors belonging to the Razakar Bahini committed and conducted untold atrocious acts like genocide and murder, abduction, torture, rape and other inhumane acts constituting the offences as crimes against humanity all over the territory of Bangladesh intending to execute the common design and policy of Pakistani occupation army, as its auxiliary force.

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

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

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

80. However, in the case in hand, it has been depicted that the name of accused Abdul Mannan Howlader @ Abdul Mannan Delar @ Mannaf finds place in serial no.14 of list of Razakars **[Exhibit-I Series : Prosecution Documents Volume page no. 09]** prepared by Bangladesh Muktijodhdha Sangsad, Pirojpur

District Unit Command. Name of accused Ashraf Ali @ Assrab Ali Howlader finds place in serial no. 15 of this list [Exhibit-I Series: Prosecution Documents Volume page no.09]

81. Additionally it transpires from the **Exhibit-I Series: Prosecution Documents Volume page no.s 13,14]** that accused Abdul Mannan Howlader @ Abdul Mannan Delar @ Mannaf , accused Ashraf Ali and accused Moharaj Howlader were prosecuted in a case under the Collaborators Order, 1972.

82. It also appears from the book title “**ivRvKvi I `vjvj AwfthvM tMÖZviKZt`i Zvwj Kv` (wWtmæi` 1971 t_+K gvP©1972 ch9)** published in 1999 that accused Abdul Mannan Howlader @ Abdul Mannan Delar @ Mannaf and accused Ashraf Ali @ Assrab Ali Howlader were arrested on 14.01.1972 and 13.01.1972 respectively and their names find places in serial no. 86 and 84 respectively in the list [**Exhibit-1 Series: Prosecution Documents volume page- 36]**. In absence of anything contrary it may be unerringly inferred that the information contained in this book is authoritative.

83. The book titled “**vctivRcj tRjvi gvPhyxi BvZnm : úgvqly ingvbó** published in 2011 [Exhibit-I Series : prosecution

Documents volume page nos. 21-22: Book's page- page 363 and 364] also depicts that names of accused Abdul Mannan Howlader @ Abdul Mannan Delar @ Mannaf and accused Ashraf Ali @ Assrab Ali Howlader find places in **serial no.s 31 and 50** respectively. There is nothing to question the authoritativeness of the information portrayed in this book.

84. Information contained in those authoritative books and other document lead to the conclusion that accused Abdul Mannan Howlader @ Abdul Mannan Delar @ Mannaf, accused Ashraf Ali and Md. Moharaj Howlader @ Hatkata Moharaj were notorious Razakars.

85. **Exhibit-I Series**, Page 18 of prosecution documents volume [page 152 of the book titled “**বিশ্ববিদ্যমান গণহত্যা** **বিবরণ** published in 2011] also tells that event of indiscriminate killing of numerous Hindu civilians of village Posharibunia under police station Bhandaria perpetrated by the gang formed of 45/50 Razakars[as arraigned in charge no.04]. It adds assurance to conclude that the accused persons were Razakars.

86. What about accused Md. Nurul Amin Howlader? There is no document before us to show his affiliation with locally

formed Razakar Bahini. However, it appears from a document submitted by prosecution that this accused applied on 18.10.2013 to get enlisted as freedom-fighter. This document depicts it. It is not understood why such document has been furnished on part of prosecution. But no document is before us to show that this accused has been so enlisted. Rather, his absconsion together with evidence presented showing his participation with the events arraigned indicates his affiliation with Razakar Bahini.

87. Tribunal reiterates that in 1971, during the war of liberation it was quite practicable indeed of knowing who got enrolled in locally formed Razakar Bahini. This Bahini was an auxiliary force [armed *para militia* force] created to use it for static purpose of the Pakistani occupation army and it got engaged in conducting mayhem and mass atrocities directing the civilian population.

88. Testimony made by the witnesses, the victims and residents of the crime localities in respect of accused persons' engagement in locally formed Razakar Bahini inspires credence. Mere inadequacy of documentary evidence as averred by the defence by itself does not turn down the fact of accused **Md.**

Nurul Amin Howlader's affiliation with the locally formed Razakar Bahini.

89. The information as has been depicted in the documents as discussed above together with the testimony of witnesses amply proves membership of all the four accused in locally formed Razakar Bahini.

X. Adjudication of Charges

Adjudication of Charge 01: [06 accused have been indicted of whom 02 died during trial]

[Event no.01 as narrated in the formal charge: page 25-29] [Offences of 'abduction', 'confinement', 'torture', 'looting', 'arson and 'murder' of 07[seven] civilians on forcible capture from the village- East Posharibunia under Police Station-Bhandaria of District- Pirojpur].

90. Charge: That on 04.06.1971 (20 Jaistha, 1378) at about 9:00 A.M a gang formed of about 10/12 Pakistani occupation army, 20/25 armed Razakar being accompanied by the accused (1) Abdul Mannan Howlader @ Abdul Mannan Delar @ Mannaf, (2) Ashraf Ali @ Assrab Ali Howlader, (3) Md. Moharaj Howlader @ Hatkata Moharaj, (4) Md. Amir Hossain @ Hafez Md. Amir Hossain @ Amir Ali Howlader(**died during trial**), (5) Md. Nurul Amin Howlader(**absconding**), (6) Md. Siddiquir Rahman @ Siddique Howlader @ Siddique Munshi(**died**

during trial), Md. Fazlul Haque Howlader (now dead) and Ajahar Ali Howlader @ Aju Munshi [**died on 29.07.2019**] by launching attack at Village-East Posharibunia under police station-Bhandaria of District-Pirojpur forcibly captured unarmed Hindu civilians namely-Mukunda Bihari Mallik @ Mukunda Dhulaidha, Chitta Ranjan Bepari, Satish Chandra Bepari, Sharat Chandra Majhi, Rashik Ghorami, Upendra Nath Mistri and Ananta Chashi from their houses and killed them by gunshot, looted their houses and set 40/50 houses on fire.

Therefore, the accused (1) Abdul Mannan Howlader @ Abdul Mannan Delar @ Mannaf, (2) Ashraf Ali @ Assrab Ali Howlader, (3) Md. Moharaj Howlader @ Hatkata Moharaj, (4) Md. Amir Hossain @ Hafez Md. Amir Hossain @ Amir Ali Howlader (died during trial) , (5) Md. Nurul Amin Howlader (absconding) and (6) Md. Siddiquir Rahman @ Siddique Howlader @ Siddique Munshi(died during trial), by such criminal acts forming part of systematic attack directing non-combatant Hindu civilian population, to further policy and plan of the Pakistani occupation army participated, facilitated, abetted, aided and substantially contributed to the commission offences of ‘abduction’, ‘confinement’, ‘torture’, ‘looting, ‘arson’ and ‘murder’ as crimes against humanity as enumerated

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

Evidence of Witnesses Examined

91. Prosecution to prove the arraignment indicted in this count of charge adduced and examined as many as six(06) witnesses who have testified in Tribunal as P.W.01, P.W.02 , P.W.03 , P.W.04 , P.W.10 and P.W.11. Of them excepting P.W.11 all are direct witnesses to facts related to the event of attack arraigned. Now, before we weigh their testimony let us see what the witnesses have described in Tribunal on oath.

92. P.W.01 Bijoy Krishna Bala (78) is a resident of village Purbo Posharibunia under police station Bhandaria of District Pirojpur. He is a freedom-fighter. In addition to the event arraigned in charge no.04 P.W.01 also recounted facts chained to the event of attack arraigned in charge no.01. P.W.01 first described the event arraigned in charge no.04 and then he stated what he heard in respect of the event arraigned in charge no.01.

93. P.W.01 stated that on 20th day of Bangla month Jaistha in 1971 at about 09:00/10:00 A.M. he had been at home when he heard frequent gun firing and with this he went into hiding

inside a bush wherefrom he saw the group formed of Razakar Fazlul Haque (now dead), Razakar Nurul Amin Howlader, Razakar Abdul Mannan Howlader, Razakar Moharaj Howlader, Amir Ali Howlader(died during trial), Ashraf Ali Howlader, Azahar Ali Howlader (now dead) [**as P.W.01 named implicating them in describing the event arraigned in charge no.04**] , 20/25 cohort Razakars and 10/12 Pakistani army committing looting and arson by launching attack at their village.

94. P.W.01 also stated that when the Razakars and Pakistani army moved back toward east he (P.W.01) came out of the hiding site and heard that Ananta Chashi, Upendra Nath Mistri, Mukunda Dhulaiddya, Chitta Ranjan Bepari, Satish Chandra Bepari were gunned down to death. Finally, P.W.01 stated that he knew the Razakars he name beforehand as they were from their neighbouring locality and village.

95. On cross-examination done on part of accused persons indicted P.W.01 stated in reply to defence question that the accused persons he named used to stay at their home, after independence of Bangladesh; that he joined the war of liberation as a freedom-fighter under command of Major Zia Uddin; and

that he did not initiate any case against the accused persons over the event he testified.

96. P.W.01 denied defence suggestions that the accused persons were not Razakars and they were not involved with the event he narrated; that he did not know the accused persons in 1971 ; that the event he testified did not happen and that what he testified implicating the accused persons was untrue.

97. P.W.02 Anil Chandra Majumder (66) is a resident of village- Purbo Posharibunia under police station Bhandaria of District Pirojpur. In addition to narrating the event arraigned in charge no.04 P.W.02 also recounted facts chained to the event of attack arraigned in charge no.01. He is a direct witness.

98. P.W.02 stated that after the war of liberation ensued he used to enthuse the local youths to join the war of liberation. On the 20th day of Bangla month Jaistha in 1971 at about 12:00/12:30 P.M. (afternoon) he was returning home from the home of neighbour Fazlul Haque Howlader after listening radio news when he heard burst of gun firing. Sensing the movement of Razakars the people started raising uproar and on hearing it he then being scared went into hiding in a bush behind the house of neighbour Sudhannya Mondol (now dead).

99. P.W.02 continued stating that remaining stayed inside the bush he saw Ananta Chashi, aid of Sudhannya Mondol fleeing toward jungle. At that time on looking toward west he (P.W.02) saw Razakar Amir Hossain Howlader(died during trial), Razakar Fazlul Haque Howlader (now dead), Razakar Nurul Amin Howlader, Razakar Abdul Mannan Howlader, Razakar Ashraf Ali Howlader, Razakar Azahar Ali Howlader (now dead), Razakar Siddique Munshi (died during trial), Razakar Moharaj Howlader and their 20/25 cohort Razakars and 10/12 Pakistani army coming toward east. He (P.W.02) also saw Razakar Amir Hossain Howlader (died during trial) gunning down **Ananta Chashi to death** when he attempted to flee by coming out of the bush.

100. P.W.02 continued narrating that remaining stayed in hiding inside the bush he also saw the Razakars and Pakistani army committing looting and arson at the house of Sudhannya Mondol. On that day said Razakars and Pakistani army committed looting at about 40/50 houses and burnt down those on fire.

101. P.W.02 also stated that at about 02:00 P.M the Razakars and Pakistani army quitted the site and then he returning back home found their house ablaze. He came to know from people

that said Razakars (as he already named) and Pakistani army gunned down seven (07) civilians including Mukunda Dhulaiddya, Chittaranjan Bepari, Satish Chandra Bepari, Sharat Chandra Majhi, Rashik Chandra Ghorami and Upendra Mistri to death.

102. On cross-examination done on part of accused persons indicted P.W.02 stated in reply to defence question that the accused persons he named used to stay at their home, after independence of Bangladesh; that he did not initiate any case over the event arraigned against the accused persons, but he heard that Anil Sikder the son of Bijoy Sikder initiated a case.

103. P.W.02 denied defence suggestions that the accused persons were not Razakars and they were not involved with the event he narrated; that he did not know the accused persons in 1971 ; that the event he testified did not happen and that what he testified implicating the accused persons were untrue.

104. P.W.03 Khitish Chandra Mondol (70) is a resident of village- Purbo Posharibunia under police station Bhandaria of District Pirojpur. In addition to narrating the event arraigned in charge no.04 P.W.03 also recounted facts chained to the event of attack arraigned in charge no.01. In 1971 he was 18/19 years

old. He is a direct witness to criminal acts conducted in course of attack arraigned.

105. P.W.03 stated that on 20th day of Bangla month Jaistha in 1971 at about 12:00/12:30 P.M. (afternoon) he had been at home when he heard gun firing from the west end. With this he being scared came out of home and got hidden by climbing in a gab tree. Ananta Chashi, domestic aid of his cousin brother Sudhendra Chandra Mondol was on move toward west, coming out of home when 10/12 Pakistani army and 20/25 armed Razakars were coming. He (P.W.03) then saw Razakar Amir Hossain(died during trial), Razakar Fazlul Haque Howlader (now dead), Razakar Nurul Amin Howlader, Razakar Abdul Mannan Howlader, Razakar Ashraf Ali Howlader and Razakar Azahar Ali Howlader @ Aju Munshi (now dead) accompanying the gang.

106. P.W.03 also stated that on seeing those Razakars and Pakistani army Ananta Chashi attempted to flee by running, coming out of bush when Razakar Amir Hossain Howlader (died during trial) gunned him down to death. The Razakars and Pakistani army carried out looting at 40/50 houses including their house and burnt down those on fire.

107. P.W.03 also stated that two/two and half hours after he got down from the tree and came to know that the Pakistani army and the Razakars he named gunned down Mukunda Dhulaidya, Chitta Ranjan Bepari, Satish Chandra Bepari, Sharat Chandra Majhi, Rashik Ghorami and Upen Mistri to death in addition to Ananta Chashi.

108. On cross-examination P.W.03 in reply to defence question put to him stated that he could not recollect the English date on which the event he testified happened; that the accused persons used to stay at their home after independence; that he did not initiate any prosecution against the accused over the event he testified.

109. P.W.03 denied defence suggestions that the event he testified did not happen; that he did not see and hear the event alleged; that the accused persons were not engaged in the event arraigned; that they were not Razakars and that what he testified implicating the accused persons was out of rivalry.

110. P.W.04 Sunil Chandra Mistri (65) is a resident of village-Purbo Posharibunia under police station Bhandaria of District Pirojpur. He recounted the facts chained to the event of attack

leading to killings arraigned in charge no.01. He is the son of one victim martyr Upendra Nath Mistri.

111. P.W.04 stated that on the 20th day of Bangla month Jaistha at about 09:00 A.M. he had been at home when on hearing gun firing from west end his uncle Satindra Nath Mistri (now dead), his mother and sisters went into hiding inside a banana garden of Boyati Bari crossing the Hetalia-Posharibunia canal. He and his father remained stayed at home.

112. P.W.04 next stated that on that day at about 10:00/10:30 A.M. a group formed of Razakars Amir Hossain Howlader (died during trial), Fazlul Haque Howlader(now dead), Nurul Amin Howlader, Abdul Mannan Howlader, Ashraf Ali Howlader, Azahar Ali Howlader (now dead), Siddique Munshi (died during trial), Hatkata Moharaj, 20/25 armed Razakars and 10/12 Pakistani army were coming toward their house and on seeing it he and his father attempted to flee but they forcibly captured his father. Then he remaining in hiding inside the room saw the Razakars gunning down his father to death taking him on the road, east to their house.

113. P.W.04 continued stating that after the Razakars had left the site he came out and moved to the banana garden of Boyati

Bari crossing the canal and disclosed the event he witnessed to his mother, uncle and sisters. He remaining stayed at the banana garden heard gun firing and saw the houses ablaze. On that day in evening they got sheltered at Jamadar house of village Hetalia. On the following day coming back home they dumped his father's dead body.

114. P.W.04 also stated that on the day the event happened the Razakars he named had killed six other civilians of the locality in addition to his father and burnt down 40/50 houses. They then deported to India. The Razakars he named were from neighboring village and thus he knew them beforehand.

115. On cross-examination done on part of accused persons indicted P.W.02 stated in reply to defence question that the accused persons he named used to stay at their home, after independence of Bangladesh; that he did not initiate any case over the event arraigned against the accused persons.

116. P.W.04 denied defence suggestions that the accused persons were not Razakars and they were not involved with the event he narrated; that he did not know the accused persons in 1971 ; that the event he testified did not happen and that what he testified implicating the accused persons were untrue.

117. P.W.10 Kamala Rani (63) is a resident of village-Purbo Posharibunia under police station Bhandaria of District Pirojpur. She is a direct witness to the event of attack leading to killing numerous Hindu civilians. She is a relative of victims. In 1971 she was 10/11 years old.

118. P.W.10 stated that in 1971 she used to stay at her paternal home along with her mother, grand-father Monohor Shiali, Hari Shiali and Laxman Shiali the two brothers of her grand-father and Mukunda Bihari Mallik @ Mukunda Dhulaiddya. At that time her father was not alive.

119. In recounting the event P.W.10 stated that on the 20th day of Bangla month Jaistha in 1971 at about 09:00 A.M. she and inmates had been staying home when they saw a group formed of Razakars Amir Hossain Howlader (died during trial) , Fazlul Haque Howlader (now dead), Nurul Amin Howlader, Mannan Howlader, Ashraf Ali Howlader, Azahar Ali Howlader(now dead), Hatkata Moharaj, Siddique Munshi (died during trial), their 20/25 cohort armed Razakars and 10/12 Pakistani army coming toward their home when they all being scared got hidden inside the bush adjacent to home.

120. P.W.10 also stated that remaining stayed inside the bush she saw Mukunda Bihari Mallik @ Mukunda Dhulaiddya falling down when attempted to flee. Then Razakar Amir Hossain gunned down him to death there. The other Razakars carried out looting and arson at their house.

121. P.W.10 next stated that the Razakars and Pakistani army then moved back toward Binapani bazar. Later on, she heard from people that on that day the Razakars she named in collaboration with the Pakistani army had killed Chittaranjan Bepari, Satish Chandra Bepari, Sharat Chandra Majhi, Ananta Chashi, Rashik Ghorami and Upendra Mistri by gunshots and looted 40/50 houses and burnt down those by setting fire. Being scared few days after they all deported to India secretly and returned back after independence achieved. The Razakars she named were from their neighbouring village and thus she knew them beforehand.

122. On cross-examination P.W.10 stated in reply to defence question that she did not see the accused persons till 4/5 years; that after independence none of their family initiated any case over the event allegedly committed around the locality.

123. P.W.10 denied defence suggestions that she did not see or hear the event alleged; that the event she testified did not happen; that the accused persons were not Razakars and were not involved with the event she testified and what she testified was untrue.

124. P.W.11 Chittaranjan Roy @ Chittaranjan Gasaru (72) is a resident of village-Purbo Posharibunia under police station Bhandaria of District Pirojpur. He is a direct witness to the event of attack leading to killing numerous Hindu civilians. In 1971 he was 20/21 years old. In addition to the event arraigned in charge no.04 P.W.11 narrated what he experienced in course of the event of attack arraigned in charge no.01.

125. P.W.11 stated that on the 20th day of Bangla month Jaistha in 1971 at about 09:00 A.M. he along with his parents , brothers and sisters had been at home when they perceived burst of gun firing from the house of Laxman Shiali, west end to their home . With this they all came out of home and went into hiding inside the nearer bushes.

126. P.W. 11 next stated that at about 10:00 A.M. they saw their home ablaze. In evening returning back home they found their home destructed by arson and household looted. He came to

know from neighbours that Razakars Amir Hossain Howlader (died during trial), Fazlul Haque Howlader (now dead), Razakar Nurul Amin Howlader, Mannan Howlader, Ashraf Ali Howlader, Azahar Ali Howlader(now dead), Hatkata Maharaj, Siddique Munshi(died during trial), their cohort 25/30 Razakars and 10/12 Pakistani army annihilated Mukunda Dhulaidya , Chittaranjan Bepari, Satish Chandra Bepari, Sharat Majhi, Roshik Ghorami, Upendra Mistri and Ananta Chashi of their village by gunshots and committed looting at 30/40 houses and then burnt down those by setting fire. Then at the end of Bangla month Jaistha his parents and inmates deported to India and however he remained stayed at home to keep the home guarded.

127. On cross-examination P.W.11 stated in reply to defence question that he could not say the name of parents of any of accused persons.

128. P.W.11 denied defence suggestions that she did not see or hear the event alleged; that the event she testified did not happen; that the accused persons were not Razakars and were not involved with the event she testified and what she testified was untrue.

Finding with Reasoning on Evaluation of Evidence

129. **Mr. Shahidur Rahman**, the learned prosecutor drawing attention to the testimony of prosecution witnesses relied upon argued that it could be proved beyond reasonable doubt that the gang formed of accused persons indicted, their cohorts and Pakistani occupation army conducted systematic attack directing unarmed civilians belonging to Hindu community of village-East Posharibunia. The witnesses including the relatives of victims witnessed the event and their description made in Tribunal could not be refuted in any manner.

130. It has been further argued that the invaders being accompanied by the accused persons carried out wanton destruction by committing looting and arson at numerous houses of civilians and seven Hindu civilians of the vicinity attacked were gunned down to death in brutal manner, in conjunction with the event. The accused persons being part of the designed collective criminality incurred liability for the killings and other prohibited acts. The accused persons indicted by their act and conduct consciously participated in accomplishing the criminal object of the gang, sharing intent. Defence could not taint the core essence of testimony of P.W.s, in any manner.

131. Mr. Gazi M.H. Tamim, the learned defence counsel contended that compliant petition initiated by P.W.01 Bijoy Krishna Bala over the events arraigned in charge no.01 and 04 before the Senior Juridical Magistrate, Pirojpur does not implicate one accused Moharaj Howlader @ Hatkata Moharaj and thus now testimony of P.W.01 and other witnesses implicating him with the event arraigned in this count of charge is not credible and what the P.W.s have testified implicating accused Moharaj Howlader @ Hatkata Moharaj and Ashraf Ali was untrue and tutored.

132. Tribunal notes that this count of charge involves the offences of barbaric and willful murder of seven (07) Hindu civilians namely Mukunda Bihari Mallik @ Mukunda Dhulaidha, Chitta Ranjan Bepari, Satish Chandra Bepari, Sharat Chandra Majhi, Rashik Ghorami, Upendra Nath Mistri and Ananta Chashi by launching designed attack at village-East Posharibunia under police station-Bhndaria of District Pirojpur.

133. The murderous squad allegedly formed of six (06) accused indicted, their cohort Razakars and Pakistani army men. The charge framed also arraigns that the criminal gang also carried out indiscriminate looting and arson, in conjunction with the attack. The event happened in day time i.e. at about 9:00 A.M.

Of six accused indicted two accused Md. Amir Hossain @ Hafez Md. Amir Hossain @ Amir Ali Howlader and Md. Siddiqur Rahman @ Siddique Howlader @ Siddique Munshi died during trial and accordingly proceeding so far as it related to them stood abated in compliance with the provision of law.

134. Before we weigh the testimony of witnesses we consider it proper to resolve the matter agitated on part defence. Tribunal notes that a petition being number MP 131/2015 Under Section 2(a)(c)(i)(ii) of the International Crimes (Tribunals) Act, 1973 was placed before the Senior Judicial Magistrate, Pirojpur by Bijoy Krishna Bala (P.W.01) seeking necessary order to transmit it to proper court of law (ICT-BD). The IO (P.W.13) Admits it. The petition alleges the killing of 26 civilians committed by the Pakistani occupation army and local Razakars including Razakars Md. Amir Hossain, Md. Fazlul Haque, Md. Nurul Amin and Abdul Mannan Howlader.

135. We have gone through the photocopy of the said petition submitted on part of defence. It is true that the said petition does not state name of two accused Moharaj Howlader @ Hat Kata Moharaj and Ashraf Ali. But merely for this reason we are not ready to term the sworn testimony of P.W.01 and the P.W.s

untrue. Rather, their testimony requires to be evaluated cumulatively.

136. It appears that the said complaint petition does not state the event of attack leading to killings in specific manner. The above petition was initiated simply to set the law on motion. Accordingly, the said petition that simply contains information about killing of 26 civilians was taken as the prima facie basis of complaint registrar serial no. 66 dated 12.04.2016 of the Investigation Agency formed under the Act of 1973 and pursuant to prima facie information contained therein the Investigation Agency started investigation. The statement made in the said petition was not the first and last word and it does not carry value of substantive evidence to prove a fact.

137. The task of investigation under the provisions contemplated in the Act of 1973 is thus the phase when the precise portrayal of the event of killings and involvement of the persons therewith has been prima facie unveiled based on evidence collected during investigation. Accordingly, prosecution having considered the investigation report and evidence collected during investigation recommended prosecution of the accused persons for the offences arraigned in charge nos. 01 and 04, by submitting formal charge.

138. The complaint petition cannot be considered as substantive evidence, that is to say, as evidence of facts stated therein. Because the narrative made therein is not made during trial, it is not given on oath, nor is it tested by cross-examination. Any such complaint petition initiated by a person could, however be used to simply corroborate or to contradict his testimony made in court of law.

139. The compliant petition cannot be used to contradict the evidence of any witness other than its maker. A witness may be cross-examined as to previous statement made by him in writing, drawing his attention to the statement made in such compliant petition. But what we see in the case in hand?

140. In the case in hand, it appears that the IO in his cross-examination admitted that Bijoy Krishna Bala (P.W.01), one survived victim and also the son of a victim initiated a compliant petition in the court of Senior Judicial Magistrate, Pirojpur over the event arraigned in charge no. 01 of the case in hand where four persons were made accused and not the accused Moharaj Howlader and Ashraf Ali. But it appears that drawing attention to the statement made in the said petition P.W.01 the maker thereof has not been cross-examined.

141. First, the sworn evidence of a direct witness (P.W.01) cannot be discarded or ignored because the witness had made an omission to implicate Moharaj Howlader @ Hat Kata Moharaj and Ashraf Ali as accused of the crimes arraigned in the said compliant petition, particularly if testimony of witness (maker of the compliant petition) made in Tribunal gets corroboration from other evidence and facts unveiled.

142. Next, the compliant petition cannot be used to contradict the evidence of any witness other than its maker. The IO was not the maker of the said compliant petition. Defence does not appear to have made any effort to contradict testimony of P.W.01 drawing attention to the statement made in said compliant petition by him. Obviously, said compliant petition cannot be used for the purpose of corroborating or contradicting any other witness other than the one (P.W.01) lodging it in the Magistrate court.

143. The truth as to the commission of offence and involvement and participation of perpetrators can be well unveiled only in trial based of evidence adduced. On careful appraisal of sworn testimony of P.W.01 and other P.W.s relied upon it appears that defence could not taint what they testified in respect of the designed barbaric event of killing of numerous Hindu civilians

and participation of accused persons indicted. Thus, mere omission of stating name of accused Moharaj Howlader @ Hat Kata Moharaj and accused Ashraf Ali in the said petition does not corrode the sworn testimony of witnesses including P.W.01 implicating these two accused as well.

144. Thus, mere omission of implicating the accused Moharaj Howlader @ Hat Kata Moharaj and Ashraf Ali in the said compliant petition should not readily be taken to mean the non-involvement of the two other accused namely Moharaj Howlader and Ashraf Ali in committing the crimes arraigned. This crucial aspect needs to be resolved based on evidence presented. Besides, absence of the name of these two accused in the said compliant petition was of no value because the maker of it (P.W.01) has not been questioned on this matter in cross-examination.

145. In view of above the sworn testimony of a direct witness P.W.01 and other P.W.s cannot be rejected or ignored simply for the reason that the said complaint petition initiated by P.W.01 in Judicial Magistrate Court, Pirojpur over the allegation of killing 26 civilians had made an omission to mention the name of two other accused. Testimony of P.W.01 and other P.W.s is to be weighed on cumulative and rational evaluation of

evidence of the witnesses examined in support of this count of charge, in arriving at decision.

146. Now, let us weigh the evidence presented. At the outset it is to be reiterated that onus always lies on prosecution to prove its case. Prosecution is to succeed on the strength of its own case and not on the weakness of the defence. Such burden cannot be discharged by weakness in defence case. Keeping this settled principle in mind now let us appraise the weight and values of what the witnesses have testified.

147. It is evinced from testimony of P.W.01 that the gang initiated its designed attack at about 09:00/09:30 A.M. with frequent gun firing that made him scared and thus he went into hiding inside a bush wherefrom he saw the group formed of Razakars Fazlul Haque (now dead), **Nurul Amin Howlader**, **Abdul Mannan Howlader**, Ashraf Ali Howlader, **Moharaj Howlader**, 20/25 cohort Razakars and 10/12 Pakistani army committing arson and looting. Defence could not dislodge it. That is to say, carrying out deliberate and wanton destruction causing detrimental impact upon livelihood of civilians property was the opening phase of the systematic attack conducted.

148. Such devastating activities carried out by the accused persons forming part of the criminal enterprise by launching attack as testified by the P.W.01 remained unimpeached. Besides, seeing such wanton devastating criminal activities conducted by the gang accompanied by the accused persons as narrated by P.W.01 was natural. Defence does to seem to have been able to impeach this pertinent fact.

149. We do not find any reason to question the credibility of P.W.01. Rather, he seems to be a natural and competent ocular witness and thus acting upon his uncontroverted testimony we arrive at decision that the bunch of invaders accompanied by the accused persons indicted had carried out the attack in systematic manner which eventually ended in wilful killing of numerous Hindu civilians by gunshot. Presumably, the criminal gang had conducted the designed attack arraigned directing the Hindu community.

150. It is manifested from testimony of P.W.01 that after the gang had left the site the P.W.01 came out of the hiding place and then he heard that Hindu civilians Ananta Chashi, Upendra Nath Mistri, Mukunda Dhulaidhya, Chitta Ranjan Bepari and Satish Chandra Bepari were gunned down to death.

151. In context of war time situation it was in most cases impracticable of witnessing the phase of horrific indiscriminate killing. Hearing frequent gun firing at the time of launching attack was chained to the phase of killing several Hindu civilians which the P.W.01 naturally came to know after the group of attackers had left the site. It was quite likely indeed. Thus, hearsay evidence so far as it relates to the killings carries probative value and inspires credence as it gets corroboration from other facts and circumstances.

152. Detection of bullet hit dead bodies of numerous Hindu civilians lying at the site attacked itself proves that the gang involved in committing devastating activities had also accomplished such indiscriminate killing of a number of Hindu civilians in a designed and planned manner, indisputably with specific intent to destroy the Hindu community, a protected group.

153. What has been revealed from testimony of other witnesses? It appears that P.W.02 Anil Chandra Majumder is a direct witness to the event arraigned. His ocular testimony demonstrates that at the relevant time he was returning home from the home of neighbour Fazlul Haque Howlader after

listening radio news when he heard gun firing and with this being sacred he went into hiding inside a bush behind the house of neighbour Sudhannya Mondol (now dead). Then remaining stayed inside the bush P.W.02 saw Ananta Chashi, aid of Sudhannya Mondol fleeing toward jungle.

154. But Ananta Chashi could not survive even going into hiding. It is evinced too that remaining in hiding place P.W.02 also witnessed Razakars Amir Hossain Howlader (died during trial), Fazlul Haque Howlader (now dead), Nurul Amin Howlader, Abdul Mannan Howlader, Ashraf Ali Howlader, Azahar Ali Howlader (now dead), Siddique Munshi (died during trial), Razakar Maharaj Howlader and their 20/25 cohort Razakar and 10/12 Pakistani army moving toward east. Then accused Razakar Amir Hossain Howlader (**died during trial**), gunned down **Ananta Chashi to death** when he attempted to flee by coming out of the bush. P.W.02 saw it. Defence could not controvert these crucial facts.

155. It thus stands proved from ocular version of P.W.02 that all the accused indicted accompanied the gang of attackers and substantially facilitated in materializing the object of the criminal mission by annihilating the Hindu civilians and Razakar Amir Hossain Howlader (died during trial) was the

actual perpetrator in accomplishing the killing Ananta Chashi.. It gets cogent corroboration from P.W.04, son of one victim martyred Upendra Nath Mistri.

156. It stands proved too from testimony of P.W.02 that the gang formed of accused Razakars, their cohorts and Pakistani army committed looting and arson at about 40/50 houses including the house of Sudhannya Mondol and burnt down those on fire. The attack conducted was indeed horrendous. Presumably, the accused persons played key role in activating horrendous criminal activities, with 'specific intent' and in doing so they knowingly collaborated with the Pakistani occupation army.

157. Committing such grave and indiscriminate devastating activities in violation of human right norm rather indicates the extreme attitude of the invaders to unarmed civilians belonging to Hindu community of the vicinity attacked. Defence does not seem to have been made any effort to refute this part of the event.

158. It appears that P.W.10 too sensing the attack went into hiding inside the bush wherefrom he witnessed the killing one victim Mukunda Bihari Mallik @ Mukunda Dhulaidya in

course of attack conducted. P.W.10 also heard the act of killing the other victims and coming back home after the gang moved back P.W.10 found 40/50 houses ablaze.

159. It stands proved that horrific devastating activities eventually compelled the survived relatives to deport to India secretly and they came back after independence achieved. Ocular testimony of P.W.10 also demonstrates that the murderous squad was actively accompanied by the accused persons. Defence does not seem to have made effort to refute the pertinent facts unveiled in testimony of P.W.10.

160. Unimpeached testimony of P.W.11, another direct witness and a resident of the vicinity attacked demonstrates that their home together with 30/40 houses was destructed by arson and household was looted. It is evinced from testimony of P.W.11 that after the horrendous event happened his parents and inmates deported to India. This piece of untainted fact indicates the extent of horror and coercion sparked amongst the Hindu community targeted.

161. Such premeditated terrorizing activities of wanton destruction obviously was not compatible with the norm of humanity and it is considered as grave violation of international

humanitarian law, as it happened during war time context. It was rather against humanity and fundamental rights of normal livelihood of civilians. Intent was to destroy the Hindu community.

162. The object was to terrorize the innocent civilians, which eventually caused 'serious mental harm' and it too was with intent to destroy the Hindu community and it substantially affected their fundamental right to property and normal livelihood which caused immense mental anguish to the inhabitants of the crime vicinities, in violation of international humanitarian law.

163. Devastating destruction of properties by committing looting and arson and coercive deportation of civilians quitting own homes by launching such organised attack was indeed express great contempt for the defenceless civilians and their normal livelihood.

164. It also depicts from testimony of P.W.04 that the relatives of victims instantly after the event happened opted to deport to India and it was due to coercion and horror spread through the designed attack conducted. Indubitably it impacted the normal livelihood of civilians. Such 'deportation' obviously took place

under grave coercion extended through the horrific systematic attack conducted.

165. Needless to say that the persons engaged in spreading such coercive and intimidating situation shall be held liable for ‘coercive displacement’ of civilians from their own home.

166. It is to be noted next that destruction of civilians’ property by committing ‘looting’ and ‘arson’ indubitably impacted detrimental effect on individuals’ fundamental right to maintain normal and smooth livelihood. Thus, such devastating activities caused enormous severe mental harm to the victims, the protected civilians and thus it constituted element of the ‘specific intent’ to destroy a protected group which characterizes the criminal acts collectively as the offence of ‘genocide’.

167. Intent of the gang being accompanied by the accused persons was clearly to execute wilful murder unarmed Hindu civilians and also to cause serious mental and physical harm. The Tribunal deduces based on facts unveiled that the accused persons forming part of the criminal enterprise must have known that their actions were likely to cause serious mental harm and suffering to the detained victims and that they

recklessly endorsed the consequences of their actions forming part of systematic attack in executing the indiscriminate killing of numerous members of Hindu religious group.

168. All the perpetrators including the accused persons indicted belonging to Razakar Bahini forming the death squad were equally involved with the indiscriminate destructive activities including looting and plundering the properties of civilians. The members of the group of perpetrators, therefore, were united in their common intention and 'specific intent' and they committed the crimes collectively and sharing the intent.

169. It has been divulged from unimpeached testimony of P.W.02 that after the gang moved back P.W.02 came to know from people that said Razakars (as he already named) and Pakistani army gunned down seven (07) civilians including Mukunda Dhulaidya, Chittaranjan Bepari, Satish Chandra Bepari, Sharat Chandra Majhi, Roshik Chandra Ghorami and Upendra Mistri to death. It depicts from uncontroverted testimony of P.W.02. Besides, this piece of heresy evidence gets corroboration from P.W.01.

170. Six accused have been indicted in this count of charge. According to P.W.01 that the gang of attackers was formed of

accused Nurul Amin Howlader, Abdul Mannan Howlader, Moharaj Howlader, Ashraf Ali Howlader, Amir Ali Howlader (died during trial), Azahar Ali Howlader (now dead), 20/25 cohort Razakars and 10/12 Pakistani army. It might not be practicable of recounting the event happened five decades back in 1971 with exact precision. We emphatically convey our view that omission in stating the name of other perpetrators thus does not make the testimony of P.W.01 untruthful. Presumably, P.W.01 stated what he actually saw remaining in hiding inside a bush. He might not have opportunity of seeing all the perpetrators forming the group, staying in such circumstance filled with intense horror. It rather makes the testimony of P.W.01 truthful.

171. Tribunal also notes that inconsistency or omission or contradiction appearing in the testimony of a witness does not corrode the credibility of a prosecution case. Mere inconsistency or omission occurred due to lapse of long passage of time would by itself not make the testimony of the witness unreliable. Testimony presented has to be appraised in each case as to what extent the evidence is worthy of acceptance.

172. However, it stands proved from ocular testimony of P.W.02 that all the six accused indicted were present at the crime site being part of collective criminality. Thus, mere non stating name of other co-invaders as found in testimony of P.W.01 does not create any degree of doubt as to presence of six accused with the gang when in conducted the attack leading to looting, arson and indiscriminate killings of Hindu civilians.

173. P.W.03 Khitish Chandra Mondol is the cousin brother of one victim Sudhendra Chandra Mondol. He witnessed how Ananta Chashi, domestic aid of his cousin brother Sudhendra Chandra Mondol was gunned down to death. It gets corroboration from P.W.02, one direct witness.

174. Uncontroverted testimony of P.W.03 depicts that when Ananta Chashi attempted to flee coming out of the bush Razakar Amir Hossain Howlader (**died during trial**) gunned him down to death. P.W.03 saw it. It has been unveiled too from testimony of P.W.03 that accused Razakars Amir Hossain Howlader (**died during trial**), Fazlul Haque Howlader (now dead), Nurul Amin Howlader, Abdul Mannan Howlader, Ashraf Ali Howlader and Azahar Ali Howlader @ Aju Munshi (now dead) accompanied the gang and culpably present at the crime site.

175. It transpires from unshaken ocular testimony of P.W.03 that on seeing the Razakars and Pakistani army one victim Ananta Chashi attempted to flee by running coming out of the bush when accused Razakar Amir Hossain Howlader (**died during trial**) **gunned** him down to death and the Razakars and Pakistani army then carried out looting at 40/50 houses including their house and burnt down those on fire.

176. It appears that P.W.04 Sunil Chandra Mistri is the son of one victim martyr Upendra Nath Mistri. He too experienced how his father was gunned down to death. Untainted testimony of P.W.04 demonstrates that on sensing movement of the gang accompanied by accused persons, their cohorts and Pakistani army toward their house he got hidden inside the room of their house and saw his father attempting to flee when the accused Razakars forcibly captured him (his father) and gunned him down to death taking him on the road, east to their house. Testimony of P.W.04 demonstrates too that on the following day coming back home they dumped his father's dead body. Defence does not seem to have been able to controvert the act of killing the father of P.W.04.

177. According to P.W.04 accused Razakars Amir Hossain Howlader (**died during trial**), Fazlul Haque Howlader, Nurul

Amin Howlader, Abdul Mannan Howlader, Ashraf Ali Howlader, Azahar Ali Howlader (now dead), Siddique Munshi **(died during trial) and** Hatkata Moharaj were with the gang when it conducted the attack. Defence could not controvert it. Presence of the accused persons with the squad itself leads to the conclusion that they all intending to materialize the ‘specific intent’ had facilitated and contributed in perpetrating the wilful killing of numerous Hindu civilians and also to commit intensive and wanton destruction of civilians’ property.

178. Thus, ocular account made by P.W.04 proves it patently that the accused persons indicted were with the squad sharing intent to materialize the object of the criminal mission by accomplishing arbitrary annihilation of Hindu civilians which was apparently grave violation of laws of war and international humanitarian law constituting the offence of ‘genocide’. It is to be reiterated that to prove the offence of ‘genocide’ it is not required to show that the entire protected group was targeted and annihilated. Seven Hindu civilians obviously formed a distinct part of a protected group. Facts and pattern of attack suggest to the conclusion that the specific intent of the gang was to destroy the Hindu religious group of the vicinity targeted,

although eventually seven civilians being members of local Hindu community were targeted and gunned down to death.

179. The attack did not get paused with the killing the father of P.W.04. It is evinced from testimony of P.W.04 that after accomplishing the attack leading to killing his father the criminal gang formed of accused persons, their cohorts and Pakistani army continued carrying atrocious activities by burning down houses. It stands proved from ocular narrative of P.W.04. Such destructive activities were intended to extend coercion and horror amongst the protected group targeted.

180. All the facts unveiled from untainted testimony of P.W.01, P.W.02, P.W.03 and P.W.04 cumulatively lead to the conclusion that the attack was designed and systematic, to further policy of Pakistani occupation army and the policy was to resist and liquidate pro-liberation Hindu civilians and to spread horror. The attack was thus with intent to cause wilful murder of targeted Hindu civilians, severe mental harm and to destroy the Hindu community, in part constituted the offence of 'genocide', instead of the offence as 'crimes against humanity'.

181. The proved crucial facts as revealed from untainted testimony of P.W.01, P.W.02, P.W.03 and P.W.4 related to the

crimes arraigned could not be refuted in any manner by the defence. It appears that defence simply denied what has been recounted by these prosecution witnesses. But it is not sufficient to taint or question the credibility of witness's testimony.

182. It has been questioned to prosecution witnesses on part of defence whether they initiated any case over the event arraigned. The witnesses replied in negative. Based on it the learned defence counsel argued that non initiation of any criminal prosecution in respect of the event alleged instantly after it happened creates doubt as to truthfulness of the event arraigned and what has been testified by the witnesses implicating the accused persons in this regard.

183. We are not with the above contention. Tribunal restates that there is no time limit in bringing criminal prosecution and thus delay due to non initiation of any case instantly after the offence committed does not create any impediment to prosecute the wrong doers for the crimes committed in 1971 in context of war of liberation and for such delay prosecution case does not suffer from any untruthfulness.

184. It stands proved that in course of attack P.W.10 Kamala Rani, relative of victims remaining stayed inside the bush saw

one victim Mukunda Bihari Mallik @ Mukunda Dhulaiddya falling down when attempted to flee and then Razakar Amir Hossain Howlader (died during trial) gunned down him to death there. The other Razakars carried out looting and arson at their house. In this way P.W.10 witnessed the accomplishment of killing one Hindu civilian Mukunda Bihari Mallik @ Mukunda Dhulaiddya, remaining in hiding inside a nearer bush. It could not be controverted by defence.

185. In respect of killing other Hindu civilans P.W.10 is a hearsay witness, true. But hearsay testimony of P.W.10 in respect of killing the other civilans gets corroboration from other witnesses. It depicts from hearsay testimony of P.W.10 that she later on heard from people that on that day the Razakars she named in collaboration with the Pakistani army had killed Chittaranjan Bepari, Satish Chandra Bepari, Sharat Chandra Majhi, Ananta Chashi, Rashik Ghorami and Upendra Mistri (06 Hindu civilans) by gunshots and committed looting at 40/50 houses and burnt down those by setting fire. Defence could not impeach it as well in any manner.

186. It is evinced from unimpeached testimony of P.W.02, P.W.03, P.W.04, P.W.10 and P.W.11 that in conjunction with the attack the group of attackers had carried out looting 40/50

houses and also burnt down those by setting fire. The offence of Plunder includes 'pillage' and 'looting'. Such act of plunder of private property was committed intentionally and unlawfully. Such devastating activities together with indiscriminate brutal killing of civilians belonging to Hindu community obviously indicate that 'specific intent' of the squad accompanied by the accused persons was to destroy the Hindu community, 'either whole or in part', an element to constitute the offence of 'genocide'.

187. It has been argued on part of defence that P.W.10 is not a credible witness and hearsay narrative made by the P.W.10 does not carry value and credence. P.W.10 is a tutored witness.

188. We are not agreed with this contention. Hearsay testimony of P.W.10 gets adequate corroboration from other direct witnesses' testimony. Already it has been settled that undeniably hearsay evidence is admissible and can be acted upon in arriving at decision on fact in issue, provided it carries reasonable probative value [Rule 56(2) of the ROP]. This view finds support from the principle enunciated in the case of *Muvunyi* which is as below:

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

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

189. It is found proved that accused Razakar Amir Hossain Howlader (died during trial) actively participated in gunning down the victim Mukunda Bihari Mallik @ Mukunda Dhulaiddya to death, in conjunction with attack launched. Uncontroverted and corroborative ocular testimony of P.W.02, P.W.03 and P.W.04 demonstrates that accused Razakar Amir Hossain Howlader (**died during trial**) also gunned down other civilian Ananta Chashi to death. That is to say, the accused Amir Hossain Howlader (**died during trial**) physically and with grave aggression participated in accomplishing the killing Hindu civilians.

190. At the same time it is found proved too that other accused indicted were present at the crime site being part of the criminal enterprise knowing consequence and consciously facilitated and aided in perpetrating the horrendous killings. Thus, they too had

participation in perpetrating the killings of unarmed Hindu civilians, we deduce.

191. On this score as well, it may be safely and justifiably concluded that the accused persons had conscious ‘concern’ and ‘participation’ even to the actual commission of the killing, and thus, they are found equally responsible for the commission of the deliberate murder of numerous Hindu civilians as well. In the regard we recall the jurisprudence propounded the ICTY Trial Chamber in the case of Tadic that-

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

[Prosecutor vs. Tadic, ICTY Trial Chamber, Case No. IT- 94-1-T, Judgment 7 May, 1997, para- 692]

192. In the case in hand, Tribunal is convinced to conclude that the presence of the accused persons with the group of attackers

was not at all blameless as they belonged to local Razakar Bahini, the object of forming which was to act under the command of armed force to further policy and plan of annihilating the pro-liberation Bengali civilians and civilians belonging to Hindu community.

193. Why did the accused persons remain stayed with the gang at crime sites? The accused persons knew the designed scheme of collective murder and took part to enforce the murderous scheme—it has been found proved beyond reasonable doubt. It may safely be inferred that they too were conscious part of the criminal enterprise, in exercise of their membership in auxiliary force and being aware of the consequence provided substantial assistance and aid to the gang in carrying out horrific mass killing, sharing common purpose.

194. There can be no room to deduce that mere presence of the accused persons at the crime sites does not make them responsible for the crimes happened. Rather, their culpable presence with the gang of attackers at the crime sites together with their membership in the locally formed Razakar Bahini constitutes ‘participation’. In this regard it has been observed by the ICTY that—

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

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

195. The Tribunal has duly considered and given appropriate weight to the evidence adduced at trial and took into consideration the demeanor of witnesses on the dock. The whole of the evidence as discussed above is convincing in arriving at the conclusion that the Hindu civilians were targeted pursuant to ‘specific intent’ and a planned and designed criminal operation to which the accused persons were conscious and active part.

196. The combination of facts unveiled proves it patently that the victims were killed in designed criminal actions directly connected to the context of war of liberation. This ‘context’ itself prompts even a person of common prudence that the offences as mentioned in section 3(2) of the Act of 1973 were inevitably the effect of part of ‘widespread or systematic attack’.

197. The offences of wanton devastation and deliberate killing of numerous civilians belonging to Hindu community were

committed in the ‘context’ of the 1971 war to materialize the ‘specific intent’ to destroy the Hindu religious group, in part. This context itself is sufficient to prove that the offence of reckless killing of numerous civilians belonging to a protected group indeed constituted the offence of ‘genocide’ which was perpetrated by launching deliberate and designed attack to resist the self-determined Bangalee population in 1971. Prohibited acts forming part of designed attack were indeed discriminatory as the victims were targeted because of their membership in Hindu religious group.

198. In the case in hand, defence, as it can be extracted from the trend of cross-examination, simply appears to be denial of accused persons’ presence with the group of attackers and that the prosecution witnesses had no reason of recognizing the accused persons. But defence could not bring any inconsistency in this regard, by cross-examining the P.Ws. Thus, in absence of anything contrary, it stands proved from evidence presented that an ‘attack’ was launched directing pro-liberation Hindu civilians of village- East Posharibunia under police station-Bhmadaria of District -Pirojpur on the date and time by the group of attackers being accompanied by the accused persons and in conjunction

with the attack seven defenceless Hindu civilians were deliberately killed by gunshots.

199. What was the object of the attack conducted? Why did the accused persons indicted accompany the criminal enterprise? It is now settled history that auxiliary forces such as the Razakars, the Al-Badr, the Al-Shams, the Peace Committee etc, were formed in 1971 essentially to act as teams to work in collaboration with the Pakistani occupation army in identifying and eliminating all those who were perceived to be pro-liberation, individuals belonging to minority religious groups especially the Hindu community, political group belonging to Awami League and Bangalee intellectuals and unarmed civilian population of Bangladesh.

200. Factual Matrix as unveiled in the case in hand leads to the unerring conclusion that the accused (1) Abdul Mannan Howlader @ Abdul Mannan Delar @ Mannaf, (2) Ashraf Ali @ Assrab Ali Howlader, (3) Md. Moharaj Howlader @ Hatkata Moharaj and (4) Md. Nurul Amin Howlader and two other accused indicted who died during trial in exercise of their affiliation with auxiliary force and nexus with the Pakistani occupation army were with the gang of attackers, sharing

common intent and purpose and thereby they consciously aided, abetted and substantially contributed and facilitated in perpetrating criminal acts, with 'specific intent' targeting the Hindu religious group of the vicinity attacked. Defence could not bring anything by cross-examining the prosecution witnesses that may lead to disbelieve what the witnesses have testified on oath.

201. Testimony of witnesses relied upon in support of this count of charge demonstrates that the group of attackers was formed of accused persons indicted, their cohorts and Pakistani occupation army. It leads to the irresistible conclusion that the accused persons and their cohorts rather being part of the gang collaborated and assisted the Pakistani occupation army in materializing the object of the criminal design, to further the policy of the Pakistani occupation army.

202. In view of above it may be justifiably inferred that the accused persons thus had conscious 'concern' and 'participation' even to the actual commission of the killing of numerous Hindu civilians and thus, they are found responsible for the commission of the horrendous murder of civilians in question as well. It has been observed by the ICTY Trial Chamber in the case of **Tadic** that-

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

[Prosecutor v. Tadic, ICTY Trial Chamber, Case No. IT- 94-1-T, Judgment 7 May, 1997, para- 692]

203. Tribunal reiterates that the Joint Criminal Responsibility or commonly known as, Joint Criminal Enterprise [JCE] is a widely used liability doctrine that has been playing a central role in the allocation of guilt for the offences arraigned. Section 4 of the Act of 1973 rather contemplates the JCE doctrine into our legislation. Section 4(1) of the Act reads as:

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

204. The factual matrix proved by the prosecution unerringly point towards the accused persons as the active ‘participants’ of

the group of perpetrators and as such there can be no escape from the conclusion that the crimes were committed on substantial contribution, assistance and participation of the accused persons.

205. In the case in hand, it stands proved that the accused persons being active part of the JCE [Basic Form] substantially facilitated and participated in committing grave criminal acts prohibited by Article 3 of Geneva Convention 1949.

206. Questioning ability of witnesses in recognizing the accused persons the learned defence counsel Mr. Gazi M.H. Tamim argued that the witnesses had no rational reason of knowing the accused persons beforehand and thus their testimony implicating the accused persons was simply tutored and suffered from untruthfulness.

207. In encountering the above defence contention prosecution submitted that the accused persons were from of neighbouring locality of the witnesses and thus they were naturally acquainted with the status and identity the accused had in 1971.

208. The learned defence counsel argued too that since the P.W.11 could not say the name of parents of accused person he did not have any acquaintance in respect of the accused persons

and thus what he testified implicating the accused persons is not credible.

209. We are not agreed with above defence contention. It is not necessary of knowing parents' name of a person to prove that this person is known to him. Besides, a person becomes known to the surrounding locals for his visible notoriety and infamous activities. Obviously the status and identity of accused persons due to their culpable affiliation with locally formed auxiliary force became anecdote around the localities. Naturally, it together with their notorious activities made them known to the locals including the witnesses. Thus, the reason as has been stated by the witnesses in respect reason of knowing the accused persons beforehand is quite likely.

210. On the basis of witnesses' uncontroverted testimony it transpires that the accused persons were not the residents of unusual distant locality. Rather, according to the P.W.s they were from their neighbouring locality. Prosecution has been able to establish that the accused persons had affiliation in locally formed Razakar Bahini. Indubitably such affiliation was intended to collaborate with the Pakistani occupation army in carrying out atrocious activities.

211. Thus, not merely for the reason that the accused persons were the residents of neighbouring locality but their activities filled with notoriety in exercise of nexus with Razakar Bahini too became anecdote around the locality which obviously made them known to the locals of the vicinities attacked. Therefore, Tribunal accepts the reason of knowing the accused persons beforehand as testified by the P.W.s.

212. It is evinced that accused Amir Hossain Howlader (died during trial) himself gunned down victims Hindu civilians including victim Ananta Chashi, in conjunction with the attack when the other accused persons were present at the crime site with the gang formed of cohort Razakars and Pakistani occupation army. It is not necessary to show that each of the accused persons indicted himself gunned down the victims to death.

213. ‘Committing’ connotes an act of ‘participation’, physically or otherwise directly or indirectly, in the material elements of the crime charged through positive acts, whether individually or jointly with others. It has been observed in the case of *Stakic*, that—

“A crime can be committed individually or jointly with others, that is, there can be several perpetrators in relation to the same crime where the conduct of

each one of them fulfils the requisite elements of the definition of the substantive offence.”

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

214. Culpable act and conduct and presence of the accused persons with the gang at the crime site as found proved are sufficient to constitute their ‘participation’ in accomplishing the goal of the systematic attack. Presence of the accused persons with the gang at the crime site has been found proved and it is sufficient to confirm their ‘participation’ even to the act of brutal killings.

215. Naturally, the Pakistani occupation army was not at all familiar with the communications and locations of villages or the information as to where a particular group of civilians used to reside and who were to be targeted for annihilation. It transpires that the accused persons, the local Razakars and their cohorts had enthusiastically opted to accompany the criminal gang formed of Pakistani occupation army and cohort Razakars and thereby they substantially urged and facilitated to perpetrate the attack targeting the pro-liberation non combatant Hindu civilians.

216. Totality of facts chained to the event of attack leads to conclude it unerringly that the accused (1) Abdul Mannan Howlader @ Abdul Mannan Delar @ Mannaf, (2) Ashraf Ali @ Assrab Ali Howlader, (3) Md. Moharaj Howlader @ Hatkata Moharaj and (4) Md. Nurul Amin Howlader had done the criminal acts pursuant to the design and plan of their own. They rather got engaged with the criminal enterprise to further the policy and plan of the Pakistani occupation army. They were the members of ‘auxiliary force’ which was under command of the armed force and as such they had consciously and actively participated to conduct the systematic attack knowing well about such policy.

217. It is now well settled jurisprudence that physical participation to the actual commission of the principal offence is not indispensable to incur culpable responsibility. In the case in hand, we conclude it too that the accused persons substantially contributed to the commission of ‘group crime’ and their contribution was ‘*intentional*’ and with the ‘*aim of furthering*’ the criminal activity of the group that resulted in killing numerous Hindu civilians which tantamount to their ‘participation’. It has been established that the accused persons

knowingly intended to commit deliberate violence to the life or person of the victims, the members of the Hindu community.

218. In view of above deliberation based on facts unveiled together with settled jurisprudential propositions participation of accused (1) Abdul Mannan Howlader @ Abdul Mannan Delar @ Mannaf, (2) Ashraf Ali @ Assrab Ali Howlader, (3) Md. Moharaj Howlader @ Hatkata Moharaj and Md. Nurul Amin Howlader being part of the squad in the commission of the crimes including killing of numerous civilians itself establishes an explicit understanding or arrangement which amounted to an 'agreement' formed between them. Such 'agreement' was to target the Hindu community in a designed manner with 'specific intent' to destroy it, in part. Thus and on appraisal of totality of facts unveiled we arrive at decision that the criminal acts of the accused persons rather constituted the offence of 'genocide' instead of offences of 'crimes against humanity'. Knowing consequence and intending to materializing the 'specific intent' the accused persons consciously accompanied the gang at the crime site and it is sufficient to deduce that the accused persons incurred liability under the doctrine of JCE [Basic Form] for all the crimes happened by launching attack.

219. On due and rational evaluation of the intrinsic value of evidence presented before us, in respect of facts materially related to the principal event of killing numerous unarmed civilians belonging to Hindu religious group, we are unanimously persuaded to arrive at a finding that the accused (1) Abdul Mannan Howlader @ Abdul Mannan Delar @ Mannaf, (2) Ashraf Ali @ Assrab Ali Howlader, (3) Md. Moharaj Howlader @ Hatkata Moharaj and (4) Md. Nurul Amin Howlader(absconding) by their culpable act and conduct forming part of systematic attack directing the Hindu religious group are criminally liable under section 4(1) of the Act of 1973 for participating, substantially abetting, facilitating and contributing in committing the criminal acts constituting the offences of ‘genocide’ as enumerated in section 3(2)(c)(g)(h) of the Act of 1973 which are punishable under section 20(2) read with section 3(1) of the Act.

Adjudication of Charge 02: [04 accused indicted of whom 01 died during trial]

[Event no.02 as narrated in the formal charge: page 29-33]

[Offences of ‘abduction’, ‘confinement’, ‘torture’, ‘plundering’ and ‘rape’ of Surabala Dasi @ Surabala Halder by launching attack at village-Charkhali under Police Station-Bhandaria of District-Pirojpur].

220. Charge: That on 16.08.1971 (30 Sravan 1378) at about 2:00 P.M. a group formed of the accused (1) Abdul Mannan Howlader @ Abdul Mannan Dealer @ Mannaf, (2) Ashraf Ali @ Assrab Ali Howlader, (3) Md. Moharaj Howlader @ Hatkata Moharaj, (4) Md. Siddiquir Rahman @ Siddique Howlader @ Siddique Munshi, Md. Fazlul Haque Howlader (now dead), Ajahar Ali Howlader @ Aju Munshi[died on 29.07.2019] and about 8/9 armed Razakar by launching attack at Village-Charkhali under police station-Bhandaria of District-Pirojpur unlawfully detained Amulya Ratan Howlader from his house, inhumanly tortured him and looted his house.

In conjunction with the attack, the accused (1) Abdul Mannan Howlader @ Abdul Mannan Delar @ Mannaf, (2) Ashraf Ali @ Assrab Ali Howlader and (3) Md. Siddiquir Rahman @ Siddique Howlader @ Siddique Munshi attacked the house of Surendra Nath Howlader of the said village and entering into the room committed rape upon Surabala Dasi, wife of Surendra Nath Howlader. On the same day at about 3.30 P.M the accused persons made the detained victim Amulya Ratan Howlader free, in exchange of ransom money of Taka 300/-.

Therefore, the accused (1) Abdul Mannan Howlader @ Abdul Mannan Delar @ Mannaf, (2) Ashraf Ali @ Assrab Ali Howlader, (3) Md. Moharaj Howlader @ Hatkata Moharaj and (4) Md. Siddiquir Rahman @ Siddique Howlader @ Siddique Munshi, by such criminal acts forming part of systematic attack directing non-combatant civilian population, to further policy and plan of the Pakistani occupation army participated, facilitated, abetted, aided and substantially contributed to the commission of the offences of **‘abduction’**, **‘confinement’**, **‘torture’**, **‘plundering’** and **‘rape’** as crimes against humanity as enumerated in section 3(2)(a)(g)(h) read with section 4(1) of the International Crimes (Tribunals) Act, 1973 which are punishable under section 20(2) of the Act of 1973.

Evidence of Witnesses Examined

221. Prosecution in order to prove the arraignment brought in this count of charge adduced and examined in all three witnesses who have been examined as P.W.05, P.W.06 and P.W.07. Of them P.W.05 is a victim of criminal acts conducted in conjunction with the attack. P.W.06 and P.W.07 are hearsay witnesses. Now, let us eye on what has been narrated by the witnesses.

222. P.W.05 Amulla Ratan Howlader (69) is a resident of village-Charkhali under police station Bhandaria of District Pirojpur. In 1971 he was a student of class X. He stated that he and all inmates of their family took stance in favour of the war of liberation and were affiliated with politics of Awami League, the pro-liberation political party .

223. P.W.05 in recounting the event arraigned in charge no.02 stated that on 16th August in 1971 at about 02:00 P.M. he and his parents, brother and sister had been at home. His younger sister Anjali Kritonia running back home from field, south to their home insisted them to flee by informing that Razakars were coming from south end. With this then they all fled to the east of their home. He (P.W.05) attempted to flee through the palm tree garden when Razakars Ashraf Ali Howlader, Mannan Howlader, Moharaj Howlader, Siddique Munshi (now dead), Fazlul Haque Howlader (now dead), Azahar Munshi(now dead) and their 8/9 cohort armed Razakars detained him and took him away to the courtyard of their home by inflicting beating.

224. P.W.05 continued stating that then keeping him guarded by one Razakar the other Razakars then looted household and then the Razakars taking him with them moved toward the house of

Surendra Howlader, north to their home. There he was kept guarded by one Razakar and the other Razakars then committed looting.

225. P.W.05 also stated that in course of the attack Razakars Mannan Howlader, Ashraf Ali Howlader and Siddique Howlader(died during trial) entering into the dwelling shed of Surendra Howlader and forcibly captured him and his wife Surabala. At a stage, Surendra Howlader managed to flee strategically. He (P.W.05) staying outside heard screaming of Surabala, the wife of Surendra Howlader. Few time after Razakar Mannan Howlader intended to fire gunshot directing him (P.W.05). He then appealed to set him freed with cry to Khealkathi Union peace committee chairman Mokhlesur Rahman Mallik present there. But the Razakars then defying it started moving toward Bhandaria taking him with them and on seeing this his mother started crying and at a stage Razakars released him in exchange of three hundred Taka.

226. P.W.05 also stated that on the same day at about 04:00 P.M he, along with his mother and brother's wife moved to Surendra Howlader's house when Surabala disclosed with shedding tears that Razakar Mannan Howlader, Ashraf Ali Howlader and

Siddique Howlader (died during trial) committed recurrent sexual invasion upon her.

227. P.W.05 finally stated that on that day in night on instruction of Sub-Sector Commander Major Zia Uddin he joined the war of liberation and received training at the place known as Bogi under police station Sarankhola of District (now) Bagerhat.

228. During cross-examination P.W.05 stated in reply to defence question that they did not initiate any case over the event alleged; that he could not say whether anyone initiated case against the accused over the alleged event; that the accused persons used to stay their home even after independence achieved and that the family of Surendra Howlader deported to India 15/16 years after independence achieved.

229. P.W.05 denied defence suggestions that the accused persons were not Razakars and were not involved with the commission of the event alleged; that the event he testified did not happen on the date and time alleged; that he did not see or hear the event and that what he testified implicating the accused was untrue.

230. P.W.06 Monoranjan Mistri (69) is a resident of village-Charkhali under police station Bhandaria of District Pirojpur. He recounted what he experienced in course of the event of attack arraigned. In 1971 he was a student of class VIII.

231. P.W.06 stated that all of his family inmates were followers of Awami League. On the 16th day of August in 1971 at about 02:00 P.M. he had been staying home when he heard from people that Razakars were coming forward. With this information they attempted to flee and he went into hiding insides a bush, west to their home. Few minutes after, he saw Razakars Abdul Mannan Howlader, Ashraf Ali Howlader, Moharaj Howlader, Siddique Munshi (now dead), Azahar Ali Howlader (now dead), Fazlul Haque Howlader (now dead) and Kader Mia Howlader (now dead) being accompanied by 8/9 cohort armed Razakars heading toward west.

232. P.W.06 next stated that on the same day at about 04:00/04:30 P.M. coming back home he heard from inmates that the Razakars he named had launched attack at the house of Amaullya Ratan Howlader. On hearing it he (P.W.06) then moved to Amulya Ratan Howlader's house and learnt from him that he was detained and beaten by Razakars he (P.W.06) named

and they looted household. Amulya Ratan Howlader also disclosed that at a stage of attack Razakars he named entered the house of Surendra Howlader and thumped him and at a stage Surendra Howlader managed to flee. Amulya Howlader (P.W.05) also disclosed that Razakars Abdul Mannan Howlader, Ashraf Ali Howlader and Siddique Munshi (died during trial) committed rape upon Surabala Howlader, the wife of Surendra Howlader, entering their dwelling room. Amulya Ratan also disclosed that he eventually got release in exchange of ransom money amounting taka 300 given to peace committee chairman Mokhlesur Rhaman.

233. Defence does not appear to have made any effort intending to taint what has been testified in examination-in-chief by the P.W.06. However, on cross-examination P.W.06 stated in reply to defence question that either he or any of his family inmates did not initiate any case over the event alleged against the accused persons. P.W.06 denied defence suggestions that the accused persons were not associated with Razakar Bahini; that the event he testified did not happen and that what he testified was untrue and tutored.

234. P.W.07 Sree Dinesh Chandra Mistri (60) is a resident of village-Charkhali under police station Bhandaria of District

Pirojpur. He is a hearsay witness to the facts related to the event arraigned in this charge no.02. He also testified in respect of the event arraigned in charge no.03. In 1971 he was 10/11 years old and was a student of class IV.

235. P.W.07 stated that on the 16th August, 1971 at about 01:00/01:30 P.M. he had been at home when he got information that Razakars of Bhandaria Razakar camp were coming toward their village and with this they all inmates of family went into hiding inside bush, west to their house. Few time after his uncle Monoranjan Mistri on seeing Razakars Abdul Mannan Howlader, Ashraf Ali Howlader, Moharaj Howlader, Azahar Ali Howlader, Siddique Howlader (now dead) ,Fazlul Haque Howlader and their 8/9 armed cohort Razakars told that they were on move toward west end from their house.

236. P.W.07 next stated that on the same day at about 04:00 P.M. they returned back home and heard from people that the Razakars he named by launching attack at the house of Amulya Ratan Howlader(P.W.05) detained him and tortured him and looted household. On hearing it he along with his mother, grand-mother and Uncle Monoranjan Mistri moved to Amulya Ratan Howlader's house when the inmates of Amulya Ratan Howlader disclosed that he (Amulya Ratan Howlader) was

beaten by the said Razakars on being detained and then the Razakars took him toward Suren Howlader's house, north to their house.

237. P.W.07 also stated that Amulya Ratan Howlader (P.W.05) also disclosed that Razakars Abdul Mannan Howlader, Ashraf Ali Howlader and Siddiqui Howlader entering inside Suren Howlader's dwelling room committed rape upon his wife Surabala when he (Amulya Ratan Howlader) heard her(victim) screaming and cry even staying outside. At that time Surendra Nath strategically fled away.

238. P.W.07 also stated that Amulya Ratan Howlader further disclosed that Razakars Abdul Mannan Howlader, Ashraf Ali Howlader, Moharaj Howlader and their cohorts attempted to kill him (Amulya Ratan Howlader) taking him on road directing gun to him and at that time peace committee chairman Moulavi Mokhlesur Rahman (now dead) arrived there and then mother of Amulya Ratan Howlader appealed with cry and provided taka 300 as ransom money in exchange of which then Amulya Ratan Howlader got released from the grip of Razakars. P.W.07 finally stated that the Razakars he named were from their neighbouring village and locality and thus he was acquainted with their identity.

Finding with Reasoning on Evaluation of Evidence

239. **Mr. Shahidur Rahman**, the learned prosecutor argued that of three witnesses examined P.W.05 had natural occasion of observing the criminal activities conducted in course of attack; that the facts he experienced sufficiently prove that the victim Surabala was sexually violated in conjunction with the attack and the accused persons being part of the criminal enterprise committed such beastly crime.

240. It has been further argued that the P.W.05 was unlawfully apprehended, the gang accompanied by the accused persons conducted looting, keeping the P.W.05 guarded under Razakar at the place adjacent to the dwelling shed of Surabala(victim of sexual ravishment) the accused persons committed rape upon Surabala entering inside her dwelling shed and the P.W.05 staying detained outside the said dwelling hut could hear screaming of Surabala which was chained to the commission of sexual violence committed upon her.

241. It has been also argued on part of prosecution that P.W.05 was forcibly captured and tortured and eventually he was set at liberty in exchange of ransom money. The two other witnesses i.e. P.W.06 and P.W.07 are hearsay witnesses and they heard the

event from P.W.05 on the same day. According to settled principle hearsay evidence is admissible if the same is found to have been corroborated by other evidence. Defence could not impeach the event arraigned, as described by the P.W.s. Rather, it could be established beyond reasonable doubt that the accused persons had played the role being conscious part of the criminal design leading to commission of 'confinement', 'torture' and 'rape'.

242. It has been further submitted on part of prosecution that it is sufficient to prove the act of sexual violence and non examination of the victim does not taint the truthfulness of the said beastly event. P.W.05 eventually got released in exchange of ransom money. The criminal acts done obviously caused mental harm to P.W.05 and his relatives as well. Hearsay version of two other witnesses gets corroboration from P.W.05.

243. On contrary, **Mr. Gazi M.H. Tamim** argued that it could not be proved that the accused persons indicted participated in accomplishing the alleged criminal acts. The witnesses had no reason of knowing the accused persons beforehand. The victim of alleged act of rape has not been examined although her statement appears to have been recorded by the IO. It creates reasonable doubt as to the truthfulness of the alleged event.

244. In determining the arraignment sketched in this count of charge we are to mainly adjudicate whether the victim Surabala was so forcibly apprehended and finally was subjected to sexual ravishment inside her dwelling shed and the accused persons were the perpetrators of accomplishing such grave sexual violence. In addition to this phase of event we require seeing whether the P.W.05 was forcibly captured and tortured and eventually he got released in exchange of ransom money.

245. It is evinced that the designed attack was first conducted at the house of P.W.05 when he was forcibly captured. Presumably, the reason was that the family of P.W.05 had stance in favour of war of liberation as depicted from testimony of P.W.05. The event happened at about 02:00 P.M. i.e. in day time. Despite attempt P.W.05 could not flee. Rather, it stands proved that he was apprehended by the gang accompanied by the accused persons. P.W.05 thus had fair occasion of seeing the accused Razakars and their cohorts forming the gang of attackers and naturally he experienced further criminal activities carried out by the gang.

246. What happened next? Unimpeached ocular testimony of P.W.05 demonstrates that Razakars then took him to the courtyard of their home with beating and then keeping him

guarded under one Razakar, the other Razakars then looted household. It too could not be controverted. Such reckless devastation was explicit reflection the antagonistic aptitude of accused person to the pro-liberation civilians.

247. Detaining an unarmed civilian, causing torture by pounding him and in presence of him carrying out act of looting household were rather the criminal acts which were prohibited by laws of customs and war. Such destructive criminal acts formed part of systematic attack constituting the offences of crimes against humanity (CAH), we deduce.

248. The above was the first phase of the event of attack. Testimony of P.W.05 demonstrates that next in conjunction with the attack the invaders including the accused persons indicted launched attack at the house of Surendra Howlader, north to their (P.W.05) home. It stands proved that Surendra Howlader was a neighbour of P.W.05. What happened after the attack conducted at the house of Surendra Howlader?

249. It stands proved too from ocular testimony of P.W.05 that the gang committed looting also at the house of Surendra Howlader, neighbour of P.W.05. We do not find any reason to

deduce that the P.W.05 had no reason of seeing this phase of attack.

250. What manners of violent activities were carried out by launching attack at the house of Surendra Howlader? P.W.05 is a competent direct witness to the criminal activities carried out at this phase of the event. Already we got it proved that keeping the detained P.W.05 guarded under one Razakars the rest of the accused Razakars Mannan Howlader, Ashraf Ali Howlader and Siddique Howlader(died during trial) entered inside the dwelling room of Surendra Howlader, the neighbour of P.W.05 and forcibly captured him and his wife Surabala.

251. Defence could not refute the above crucial fact by cross-examining the P.W.05. Rather, this fact leads to unerring conclusion that the P.W.05 had fair space of witnessing this phase of attack.

252. It is evinced too from unshaken testimony of P.W.05 that after getting apprehended, at a stage Surendra Howlader, husband of Surabala managed to flee strategically. But what fate Surabala, the wife of Surendra Howlader had to embrace? It depicts from testimony of P.W.05 that being detained and guarded he was staying just outside the house of Surendra

Howlader when he heard screaming of Surabala. Why Surabala the wife of Surendra Howlader started screaming after the invaders entered inside her dwelling shed? Before we resolve this pertinent factual issue let us see what fate the P.W.05 had to face consequent to his forcible capture.

253. It stands proved from testimony of P.W.05 that first, P.W.05 appealed to set him freed with cry to the peace committee chairman. But it was in vain. Then the gang started moving toward Bhandaria taking him with them. However, eventually on appeal with cry of his mother P.W.05 got released in exchange of ransom money amounting taka 300/-. In this way P.W.05 got survived sustaining traumatic experience. Defence does not seem to have made effort to controvert this ending phase of unlawful confinement of P.W.05.

254. We are of view that the criminal act of sexual invasion committed in the backdrop of war of liberation by the members of auxiliary force could reasonably be established even by the relevant facts as heard and seen by the surrounding people.

255. Surendra Howlader was a close neighbour of P.W.05. The gang keeping the P.W.05 guarded under one Razakar the accused Razakars Abdul Mannan Howlader, Ashraf Ali

Howlader and Siddique Munshi (died during trial) entering inside the dwelling room of Surendra Howlader forcibly captured Surendra Howlader and his wife Surabala. Surendra Howlader somehow managed to flee. Then P.W.05 heard screaming of Surabala remaining stayed at the place where he was kept guarded by Razakar. It appears that in no way all these facts could be impeached by defence.

256. Testimony of P.W.05 offers indisputable conclusion that the sexual invasion committed upon the victim Surabala was simply under coercion and unlawful force. Hearing screaming of the victim from her dwelling shed after the three accused invaders entered there is an inevitable indication of causing forcible and coercive act by the perpetrators that resulted in victim's sexual violation.

257. It thus stands proved from testimony of P.W.05 that the accused persons committed the beastly act inside victim's dwelling shed. By launching designed and systematic attack the accused persons being part of the collective criminality committed such gave criminal act which rather humiliated the humankind. The accused persons did not keep them abstained from grabbing supreme worth of one Hindu woman.

258. Screaming raised by the victim Surabala as testified by the P.W.05 was chained to what the P.W.05 later on heard from Surabala. Uncontroverted testimony of P.W.05 demonstrates that on the same day at about 04:00 P.M. he (P.W.05) along with his mother and brother's wife moved to Surendra Howlader's house when Surabala disclosed with shedding tears that Razakar Mannan Howlader, Ashraf Ali Howlader and Siddique Howlader committed recurrent sexual invasion upon her.

259. It does not depict from testimony of P.W.05 that accused Md. Moharaj Howlader @ Hatkata Moharaj too entered the dwelling hurt of Surabala. But his presence with the squad, sharing common intention rather demonstrates his culpable assistance, aid and substantial contribution to the commission of all the results of the entire attack and thus he too incurred equal liability for the crimes committed.

260. Surabala, the victim of sexual violence could not be adduced and examined. It stands unveiled from cross-examination of P.W.05 that the victim's family deported to India few years after independence achieved. Indubitably act of rape imprinted an unending and life-long horror that continues to attack victim's cerebral entity. Social ostracism eventually

compelled the victim to deport, we may safely infer. Although it appears that the IO (investigation officer) recorded her statement during investigation showing her address in Bangladesh as well as address in India.

261. It appears that the IO reduced statement of Surabala in writing on 10.10.2018 showing her presence in Bangladesh as well as stating her address in India. If it is so, there is no explanation on part of prosecution as to why she could not be examined in Tribunal despite the fact of recording her statement by the IO during investigation. Even prosecution has not urged to receive her statement made to IO into evidence under section 19(2) of the Act of 1973. Prosecution should have been attentive to this matter.

262. It appears that the IO has not been cross-examined by defence to get it clarified whether the statement of the victim has been recorded in Bangladesh or in victim's address in India. However, in absence of anything contrary it may be presumed that the IO recorded her statement as she was found available in Bangladesh at the relevant time and in such case Tribunal may receive her statement made to the IO into evidence under section 19(2) of the Act of 1973 on its own even if it is not urged on part of prosecution.

263. In view of above if the statement of the victim Surabala made to the IO is received into evidence as permitted under section 19(2) of the Act of 1973 it demonstrates too when and how the accused persons sexually ravished her. Narrative made in victim's statement made to the IO gets corroboration from unimpeached testimony of P.W.05, a neighbour of the victim.

264. Now, let us also see what we get if the statement of the victim Surabala made to the IO is not received into evidence. Already on rational appraisal of sworn testimony of P.W.5 and other witnesses it stands proved that unimpeached facts unveiled were explicitly chained to the attack launched at the dwelling shed of victim Surabala and the attack ended in committing sexual violence upon the victim.

265. In war time, a woman is violated with intent to dehumanize and defeat the morals of counterpart and such criminal act leaves the society the victim belongs with long-term anguish as well. The curse of rape as a weapon, affects not only the life of an individual, but the entire family and community in which she lives. It was indeed discriminatory and persecutory conduct which made one's private life gravely ostracized. The trauma and mental harm the rape victim sustained cannot be weighed in

any way. Presumably, due to social ostracism the victim Surabala eventually might have opted to deport to India.

266. In view of above, mere non-examination of victim Surabala does not make the criminal act of sexual invasion committed upon her untrue particularly when ocular testimony of neighbour P.W.05 in relation to some pertinent facts explicitly demonstrates that the accused persons as implicated by the P.W.05 entering inside the dwelling hut committed such sexual violence upon Surabala.

267. 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 his ocular testimony in relation to facts chained to the violent act of sexual invasion. In the case in hand it stands proved from P.W.05, one civilian was kept unlawfully detained in course of the attack conducted, adjacent to the dwelling shed of Surabala.

268. In view of above situation, mere non examination of victim does not render the event arraigned untrue. We do not find any reason to term what the P.W.05 stated in respect of the criminal

acts chained to the sexual invasion committed upon Surabala untrue.

269. We got it proved that description recounted by P.W.05 is based on his own observation. But P.W.06 Monoranjan Mistri and P.W.07 Dinesh Chandra Mistri are hearsay witnesses. They on the day the event happened heard the event from P.W.05 Amulla Ratan Howlader. Their testimony gets corroboration from the ocular narrative of P.W.05, a direct witness to the event.

270. The criminal acts of perpetrators in accomplishing sexual violence can be well inferred from ‘the facts, the concrete circumstances’ as testified by ocular witness P.W.05, a neighbour of the victim Surabala.

271. Prosecution witnesses including P.W.05, one survived victim of the attack watched the accused perpetrators entering inside the dwelling shed of the victim Surabala when he (P.W.05) was kept detained and guarded by Razakar at the site adjacent to dwelling shed of victim Surabala.

272. Next, P.W.05 heard screaming of Surabala after the accused perpetrators unlawfully entered inside her dwelling

shed. Why Surabala started screaming? Indubitably defenceless Surabala was then subjected to sexual torment that made her compelled to raise scream to save herself. Defence could not impeach it.

273. It is immaterial to say that there is no proof that the accused took part physically in committing the offence of rape arraigned. The crime like rape or sexual invasion happens in sly, not in front of any other person. It could be well determined from facts and circumstances related to the event. In the case in hand, facts unveiled in ocular testimony of P.W.05 were explicitly allied to the event of sexual invasion upon Surabala.

274. In order to prove an individual's liability in committing the offence of rape as crime against humanity, it is sufficient to show that the accused persons were knowingly part of the design of the group of offenders and they by their act and conduct consciously made them engaged in committing the actual offence.

275. It already stands proved that the accused persons indicted formed part of the criminal enterprise and thus they cannot evade liability of commission of the offence of rape. Based on facts unveiled in testimony of P.W.05 it is thus quite believable

that the accused persons substantially acted in committing such sexual violence, by invading the dwelling shed of the victim.

276. Sensing movement of the Razakars P.W.06 being scared went into hiding wherefrom he (P.W.06) at about 02:00 P.M. witnessed the movement of the group formed of accused persons and their cohort Razakars around the vicinity attacked. Obviously such movement of accused and their cohort Razakars was not for any virtuous purpose. Rather, it was an act forming part of systematic attack leading to the proved offences of confinement, torture, looting and **rape** as crimes against humanity (CAH).

277. Taking the context into account it may be deduced that the criminal act of sexual violence upon Surabala forming part of attack was intended to send a message of intimidation to the pro-liberation Bengali civilians and civilians belonging to Hindu community, to further policy of Pakistani occupation army, we deduce. Such prohibited violence to life and person was committed in violation of Article 3 of the Geneva Convention, 1949. It is now settled that just a single murder of a civilian is prosecuted as an offence of crime against humanity. Similarly

even a **‘single rape’** too committed in war time constituted an offence of crime against humanity.

278. It is evident from ocular narrative of P.W.05 that the gang of attackers was formed of four accused persons indicted. Of them one Md. Siddiqur Rahman @ Siddique Howlader @ Siddique Munshi died during trial. This decisive aspect materially related to the commission of the offence of sexual violence upon Surabala justifiably hints a lot about concern and participation of the accused (1) Abdul Mannan Howlader @ Abdul Mannan Delar @ Mannaf, (2) Ashraf Ali @ Assrab Ali Howlader and (3) Md. Moharaj Howlader @ Hatkata Moharaj even with the act of rape —the tragic part of the episode of the systematic attack.

279. Ocular testimony of P.W.05 Amullya Ratan Hawlader demonstrates that the accused Razakars and their armed cohort Razakars started conducting the attack by committing looting household and then the Razakars forcibly captured him and then taking him (P.W.05) away with them moved to the house of Surendra Howlader, north to their home and then the invaders committed looting at the house of Surendra Howlader. Thus, it stands proved that carrying out such unlawful and devastating act was followed by the attack at the house of Surabala.

280. P.W.06 and P.W.07 heard the above criminal acts forming part of attack from P.W.05. Their hearsay testimony gets consistent corroboration from P.W.05 who was unlawfully detained by the gang formed of accused persons indicted and their cohort Razakars, in course of the attack conducted. Such prohibited act of looting which rather refers to destruction of civilian's property was gravely detrimental to human right.

281. It is to be noted that destruction of civilians' property by committing looting household of civilans by launching attack indubitably impacted detrimental effect on protected civilans' fundamental right to maintain normal and smooth livelihood. Thus, such devastating activities caused enormous mental harm to the individuals, the protected civilians belonging to Hindu community.

282. Not only the act of looting household, the invaders accompanied by the accused persons caused torture P.W.05 by beating after he was unlawfully captured and detained. Testimony of P.W.05 in this regard remained unimpeached. Besides, we already got it proved too that the P.W.05 eventually got released in exchange of ransom money amounting to taka 300/= . Such intimidating and coercing act in extracting ransom money too indubitably caused mental harm to the P.W.05 and

his relatives which too constituted the offences of **‘torture’** and **‘other inhumane act’** as crimes against humanity.

283. The facts and circumstances unveiled in the case in hand amply signify accused persons’ joint-perpetration in the criminal mission. Based on facts and circumstances unveiled it may be thus justifiably viewed that the object of such destructive activities was to terrorize the civilians belonging to Hindu community of the vicinity attacked, which in the end constituted the offence of **‘other inhumane act’** as it substantially affected civilians’ fundamental right to property and personal safety.

284. The facts and circumstances unveiled lead to the irresistible conclusion that the accused persons belonging to para militia force had carried out the criminal acts forming part of systematic attack, sharing common purpose. Proved act of participation and culpable facilitation in effecting forcible capture of P.W.05, causing torture to him, committing looting and perpetrating the act of sexual invasion made the accused persons inevitably linked and concerned with all the phases of attack.

285. Pattern of the acts of accused persons in effecting forcible capture of P.W.05 , an unarmed Hindu civilian, causing torture

to him were well fitted into a group's plan. The term 'committing' encompasses also indirect participation, individually or jointly with others. It has been found proved that the accused persons, in exercise of their affiliation in locally formed infamous Razakar Bahini enthusiastically agreeing with the intent and purpose of the group participated and consciously provided substantial contribution in committing the crimes arraigned.

286. 'Participation' includes both direct participation and indirect participation. Liability accrues when it is found that the accused had conscious and intentional presence, sharing intent, at the site or sites where unlawful and prohibited acts were carried out.

287. The accused persons indicted being active members of the 'joint endeavor' incurred equal liability for all the criminal acts including the act of rape. The accused persons being part of the enterprise, by their act and contribution had culpably acted in unison to put into effect the goal of the criminal mission. The doctrine of JCE [Basic Form] corresponds to the statutory provision contemplated in **Section 4(1) of the Act of 1973** which reads as below:

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

288. In conclusion, based on evidence evaluated above we arrive at decision that the prosecution has been able to prove beyond reasonable doubt that the accused (1) Abdul Mannan Howlader @ Abdul Mannan Delar @ Mannaf, (2) Ashraf Ali @ Assrab Ali Howlader and (3) Md. Moharaj Howlader @ Hatkata Moharaj , by criminal acts forming part of systematic attack directing non-combatant civilians participated, facilitated, abetted, aided and substantially contributed to the commission of the offences of ‘abduction’, ‘confinement’, ‘torture’, ‘plundering’, ‘other inhumane act’ and ‘rape’ as crimes against humanity as enumerated in section 3(2)(a)(g)(h) read with section 4(1) of the Act of 1973 and thus they incurred criminal liability under section 4(1) of the Act of 1973.

Adjudication of Charge 03: [04 accused have been indicted: 01 died during trial]

[Event no.03 as narrated in the formal charge: page 33-36]

[Offences of ‘abduction’, ‘confinement’, ‘plundering’ and ‘torture’ of Chandra Kanta Mistri and Monoranjan Mistri by taking away on forcible capture from the village- Charkhali under Police Station- Bhandaria of District- Pirojpur].

289. Charge: That on 12.09.1971 (26 Bhadra 1378) at about 9:00 A.M. a group formed of the accused (1) Abdul Mannan Howlader @ Abdul Mannan Delar @ Mannaf, (2) Ashraf Ali @ Assrab Ali Howlader, (3) Md. Moharaj Howlader @ Hatkata Moharaj and (4) Md. Siddiquir Rahman @ Siddique Howlader @ Siddique Munshi (**died during trial**), Ajahar Ali Howlader @ Aju Munshi [**died on 29.07.2019**] and about 8/9 armed Razakar by launching attack at Village-Charkhali under police station-Bhandaria of District-Pirojpur unlawfully detained Monoranjan Mistri and his elder brother Chandra Kanta Mistri [now dead] from their house, inhumanly tortured them and plundered their houses. Thereafter, the accused persons made the detained victim Monoranjan Mistri and Chandra Kanta Mistri freed in exchange of ransom money of Taka 200/-.

Therefore, the accused (1) Abdul Mannan Howlader @ Abdul Mannan Delar @ Mannaf, (2) Ashraf Ali @ Assrab Ali Howlader, (3) Md. Moharaj Howlader @ Hatkata Moharaj and (4) Md. Siddiquir Rahman @ Siddique Howlader @ Siddique Munshi(**died during trial**), by such criminal acts forming part of systematic attack directing non-combatant civilian population, to further policy and plan of the Pakistani occupation army participated, facilitated, abetted, aided and

substantially contributed to the commission of the offences of ‘abduction’, ‘confinement’, ‘plunder’, ‘torture’ as crimes against humanity as enumerated in section 3(2)(a)(g)(h) read with section 4(1) of the International Crimes (Tribunals) Act, 1973 which are punishable under section 20(2) of the Act of 1973.

Evidence of Witnesses Examined

290. Prosecution relies upon testimony of three witnesses, namely P.W.05, P.W.06 and P.W.07 to substantiate the event arraigned in this count of charge. Of these three witnesses P.W.06 is a victim and P.W.07 is a direct witness. Before we assess, let us see what these witnesses described before Tribunal. It is to be noted that four accused (1) Abdul Mannan Howlader @ Abdul Mannan Delar @ Mannaf, (2) Ashraf Ali @ Assrab Ali Howlader, (3) Md. Moharaj Howlader @ Hatkata Moharaj and (4) Md. Siddiquir Rahman @ Siddique Howlader @ Siddique Munshi have been indicted in this count of charge. Of them one accused Md. Siddiquir Rahman @ Siddique Howlader @ Siddique Munshi died during trial.

291 P.W.05 Amulla Ratan Howlader [69] is a resident of village- Charkhali under police station Bhandaria of District (now) Pirojpur. In addition to the event arraigned in charge

no.02 P.W.05 narrated the event arraigned in charge no.03. He is a hearsay witness to the facts related to the event arraigned in this count of charge. P.W.05 joined the war of liberation after the event of attack arraigned in charge no.02.

292. P.W.05 stated that after the independence achieved he came back home and on the following day he heard from Monoranjan Mistri (P.W.06) and Chandra Kanta Mistri (elder brother of Monoranjan Mistri) of their village and also from their neighbours that on 12 September, 1971 at about 09:00 A.M. armed Razakars Mannan Howlader, Ashraf Ali Howlader, Moharaj Howlader, Siddique Munshi (died during trial), Fazlul Haque Howlader, Kader Mia and their 8/9 cohort Razakars by launching attack at the house of Monoranjan Mistri(P.W.06) committed looting household. The Razakars forcibly captured Monoranjan Mistri and Chandra Kanta Mistri and took them away toward the canal with beating intending to liquidate them by gunshot. At that time Jalal Ghorami, the husband of Ashraf Razakar's sister and peace committee chairman Moulavi Mokhlesur Rahman Mallik being convinced with the cry of mother of Monoranjan Mistri and Chandra Knata Mistri made them released in exchange of ransom money amounting to taka 200/=.

293. During cross-examination defence chiefly denied what the P.W.05 described in examination-in-chief. However, P.W.05 denied defence suggestions that the accused persons were not Razakars; that they were not involved with the event he testified; that he did not hear the event alleged; that being influenced by the counter part of the accused persons he testified falsely implicating them.

294. P.W.06 Monoranjan Mistri (69) is a resident of village-Charkhali under police station Bhandaria of District Pirojpur. He is one of victims of the event arraigned in this count of charge. It is to be noted that in addition to narrating the facts related to the event arraigned in charge no. 02 P.W.06 also described the event of attack leading to criminal acts arraigned in charge no.03.

295. P.W.06 stated that on 12th September in 1971 at about 09:00 A.M. he had been at home along with family inmates when the Razakars [as he named in describing the event arraigned in charge no.02 i.e. Razakars Abdul Mannan Howlader, Ashraf Howlader ,Moharaj Howlader, Siddique Munshi(died during trial), Ajahar Ali Howlader(now dead), Fazlul Haque Howlader (now dead) and their 8/9 cohorts] by

launching attack at their house forcibly apprehended him and his brother, tortured them by beating, looted household and then took them away to the canal south to their house with intent to kill them.

296. P.W.06 next stated that at that time Jalal Ghorami , the husband of Razakar Ashraf's sister and Shialkathi union peace committee chairman Mokhlesur Rahman Mollik arrived there when his (P.W.06) mother and they started lamenting and then they made them released in exchange of ransom money amounting taka 200/= . Finally, P.W.06 stated that he knew the Razakars he named as they were from their neighbouring locality.

297. In cross-examination defence plainly denied what the P.W.06 described in examination-in-chief. No effort seems to have been made to controvert the narrative made by the P.W.06. However, P.W.06 denied defence suggestions that the accused persons were not Razakars; that they were not involved with the event he testified; that the event he testified did not happen; that being influenced by the counter part of the accused persons he testified falsely implicating them.

298. P.W.07 Sree Dinesh Chandra Mistri (60) is a resident of village-Charkhali under police station Bhandaria of District Pirojpur. In 1971 he was 10/11 years old. He is the son of one victim Chandra Kanta Mistri. **He is a direct witness to the** attack leading to unlawful detention of his father and uncle (P.W.06). P.W.07 stated that their family was the follower of Awami League and used to work in support of war of liberation.

299. In describing the event arraigned P.W.07 next stated that on 12th September in 1971 at about 09:00 A.M. they had been at home when suddenly a group formed of Razakars Abdul Mannan Howlader, Ashraf Ali Howlader, Moharaj Howlader, Ajahar Ali Howlader (now dead), Siddiqur Rahman (died during trial), Fazlul Haque Howlader (now dead) and their 8/9 armed cohorts besieged their house. At that time Razakar Abdul Mannan Howlader forcibly apprehended his father and started beating him. Razakar Ashraf Ali Howlader forcibly captured his uncle Monoranjan Mistri and they looted household.

300. P.W.07 continued stating that his detained father and uncle were then had their hands tied behind their backs and the gang of Razakars he named took them away toward the bank of the

canal, south to their house. He, his mother and grand-mother then started following them with whimper.

301. P.W.07 next stated that on arriving on the bank of the canal they saw that the Razakars were attempting to kill his father and uncle by pointing gun to them. At that time Jalal Ghorami, the husband of Razakar Ashraf Howlader's sister and Shialkathi union peace committee chairman Moulavi Mokhlesur Rahman arrived on the bank of the canal when his (P.W.07) mother and grand-mother appealed them with cry to set his (P.W.07) father and uncle released and then the Razakars in exchange of ransom money amounting taka 200/= made his (P.W.07) father and uncle released. Finally, P.W.07 stated that he knew the accused persons he named beforehand as they were from their village and neighbouring locality.

302. On cross-examination P.W.07 stated in reply to defence question that after Bangladesh got liberated the accused persons were on the run and they were seen around the locality after assassination of Bangabandhu; that he did not initiate any case over the event arraigned. P.W.07 denied defence suggestions that he did not see and hear what he testified; that he did not

know the accused persons and that what he testified implicating the accused persons was untrue and out of rivalry.

Finding with Reasoning on Evaluation of Evidence

303. **Mr. Shahidur Rahman**, the learned prosecutor argued that two unarmed Hindu civilians having stance with the war of liberation were forcibly captured intending to wipe them out. Corroborative testimony of one victim P.W.06 and son of another victim P.W.07 proves it beyond reasonable doubt. The ocular account made by the victim P.W.06 demonstrates that the accused persons accompanying the gang tortured the detained victims by beating and looted household. Finally, on intervention of peace committee chairman in response to appeal the victims were made released in exchange of ransom money.

304. The learned prosecutor also contended that all the facts divulged collectively prove that the intent of the attack conducted was to kill the victims. However, the criminal acts conducted by the accused being part of the enterprise constituted the offences of abduction, confinement, torture as crime against humanity. Defence could not taint the criminal acts forming part of designed attack recounted by the P.W.06 and P.W.07.

305. Per contra **Mr. Gazi M.H. Tamim**, the learned defence counsel argued that the witnesses are not credible and the account they have made in Tribunal does not carry credence. The witnesses had no reason of knowing the accused persons. The alleged fact of making the victims released in exchange of ransom money is not believable. The victims would have been liquidated if really they were taken to the bank of the canal on forcible culture. The arraignment brought in this count of charge is not believable.

306. It transpires that P.W.06 Monoranjan Mistri is one of victims. P.W.07 Sree Dinesh Chandra Mistri is the son of another victim Chandra Kanta Mistri (brother of Monoranjan Mistri). They two are vital witnesses. Their sworn ocular testimony amply portrays how the event arraigned happened and how the unlawfully detained victims eventually got survived, even after taking them on the bank of the canal with intent to kill.

307. It stands proved from consistent and unimpeached testimony of P.W.06 and P.W.07 that the group of attackers was formed of accused persons indicted and their cohort Razakars who had launched attack at the House of Monoranjan Mistri on

the date and time arraigned. It remained unimpeached. The accused persons were from the neighbouring locality. Thus and for the reason of notoriety of accused persons they were naturally known to the witnesses beforehand.

308. Why did the group of invaders target the victims? It is manifested from testimony of P.W.07 that their family was the follower of Awami League and used to work in support of war of liberation. It thus can be inferred unhesitatingly that being imbued by extreme aggression the accused persons and their cohorts belonging to auxiliary force targeted the pro-liberation Hindu civilians, to further policy and plan of Pakistani occupation army. What was the policy of the Pakistani occupation army? Policy was to resist the pro-liberation Bangalee civilians and their engagement in war of liberation. It is now settled history.

309. What prohibited criminal activities were carried out in conjunction with the attack? It stands proved from uncontroverted narrative of P.W.06, one victim and P.W.07, the son of another victim that by launching attack the gang forcibly captured Monoranjan Mistri (P.W.06) and his brother Chandra Kanta Mistri(father of P.W.07). It is also manifested from their

testimony that the detained victims were subjected to torture by beating, in violation of laws of war and international humanitarian law. Such criminal acts caused physical harm and mental soreness as well.

310. Cruel treatment caused to the detained civilians was rather equivalent to the offence of ‘inhuman treatment’ committed in the grave breaches of provisions of the Geneva Conventions which constituted the offence of ‘**other inhumane act**’ as crime against humanity. Such intentional infliction of severe physical or mental pain or suffering was obviously for prohibited purposes.

311. Facts unveiled lead to the conclusion that the object of the systematic criminal mission was to terrorize the pro-liberation Hindu civilians. Taking away the two Hindu detainees toward the bank of the canal indicates it patently. However, the detainees eventually got released on intervention of peace committee chairman and in exchange of ransom money. It stands proved from facts divulged from unimpeached ocular testimony of one victim P.W.06. Taking away the detainees toward the bank of the canal indicates the ultimate intent of the gang which however could not be materialized.

312. P.W.07, the son of one victim too witnessed the accused Razakars attempting to kill his father and uncle by pointing gun to them when peace committee chairman and husband of accused Ashraf's sister arrived there and they in response to appeal of victims' relatives allowed the detainees to get released in exchange of ransom money. This crucial fact remained uncontroverted. The victims till their release of course had to experience untold trauma and horror. Deliberate and prohibited acts of the accused persons and their accomplices being active part of the criminal enterprise made them equally responsible for extending such horror, under the doctrine of JCE [Basic Form].

313. P.W.05 Amulla Ratan Howlader is a hearsay witness. He heard the event from P.W.06 [one victim]. Being a resident of the same vicinity it was quite natural of being aware of the event of the attack that targeted two civilans of Hindu community. Besides, his hearsay narrative gets corroboration from P.W.06 and P.W.07. We do not find any reason to term his hearsay version incredible.

314. The scenario of designed attack as has been depicted from testimony of P.W.06 and P.W.07 tells the truth that the gang

formed of accused persons and their cohorts did not remain abstained simply on getting two Hindu civilians apprehended. It stands proved from testimony of P.W.06 and P.W.07 that the gang, in conjunction with the attack committed looting household as well. Defence does not seem to have made any effort to refute this crucial prohibited act. Looting of private property creates devastation leading to untold horror and coercion.

315. It is to be noted that destruction of civilians' property by launching attack indubitably impacted detrimental effect on individuals' fundamental right to maintain normal and smooth livelihood. Thus, such devastating activities conducted in course of the attack caused enormous mental harm to the victims, the protected civilians, which in the end constituted the offence of **'other inhumane act'** as it substantially affected their fundamental right to property and safety.

316. What happened next to unlawful capture of two civilians and committing looting household? Intent cannot be proved by direct evidence. It may be well inferred from facts and circumstances. It stands proved from facts and circumstances divulged that the invaders accompanied by the accused persons took away the two detained victims Monoranjan Mistri and his

brother Chandra Knata Mistri to the bank of the canal, south to their house with intent to kill them.

317. Defence could not impeach the above pertinent fact in any manner. It may be justifiably inferred that taking the detained victims on the bank of canal was not for any pious or valid purpose. The detainees however eventually got released on intervention of peace committee chairman and in exchange of ransom money.

318. The fact that collective participation of the accused persons indicted and their cohort Razakars in the commission of crimes, by launching systematic attack itself establishes an unspoken understanding or arrangement amounting to an agreement formed between them to commit the criminal acts which constituted the offences of crimes against humanity.

319. The facts demonstrating criminal acts of accused persons lead to the conclusion that the gang formed of accused persons actively participated in unlawfully confining the victims, followers of Awami League and causing **torture** and severe **mental harm** to them till they were set freed in exchange of ransom money, on intervention of peace committee chairman.

320. All the four accused persons indicted are found to have had committed all the criminal acts being part of the joint criminal enterprise [JCE Basic Form] pursuant to designed plan to further policy of Pakistani occupation army. However, of four accused indicted one accused Md. Siddiqur Rahman @ Siddique Howlader @ Siddique Munshi died during trial and thus proceeding so far as it related to him stood abated.

321. The foregoing reasoned deliberation based on due evaluation of evidence presented we arrive at conclusion that the prosecution has been able to prove beyond reasonable doubt that the accused (1) Abdul Mannan Howlader @ Abdul Mannan Delar @ Mannaf, (2) Ashraf Ali @ Assrab Ali Howlader and (3) Md. Moharaj Howlader @ Hatkata Moharaj, by their criminal acts forming part of systematic attack directing non-combatant civilian population, to further policy and plan of the Pakistani occupation army participated, facilitated, abetted, aided and substantially contributed to the commission of the offences of **'confinement'**, **'abduction'**, **'torture'** and **'other inhumane act'** as crimes against humanity as enumerated in section 3(2)(a)(g)(h) read with section 4(1) of the International Crimes (Tribunals) Act, 1973 which are punishable under section 20(2) of the Act of 1973.

Adjudication of Charge 04: [06 accused have been indicted of whom 02 died during trial]

**[Event no.04 as narrated in the formal charge: page 37-44]
[Offences of ‘abduction’, ‘confinement’, ‘torture’, ‘plunder’, ‘arson’, and ‘murder’ of 18[eighteen] civilians or in the alternative ‘genocide’ by launching attack at villages-West Posharibunia, East Posharibunia and Hetalia under Police Station-Bhnadaria of District-Pirojpur].**

322. Charge: That on 27.10.1971 (09 Kartik 1378) at about 4:00/5:00 A.M. a group formed of about 45/50 armed Razakars being accompanied by the accused (1) Abdul Mannan Howlader @ Abdul Mannan Delar @ Mannaf, (2) Ashraf Ali @ Assrab Ali Howlader, (3) Md. Moharaj Howlader @ Hatkata Moharaj, (4) Md. Amir Hossain @ Hafez Md. Amir Hossain @ Amir Ali Howlader(**died during trial**) , (5) Md. Nurul Amin Howlader, (6) Md. Siddiqur Rahman @ Siddique Howlader @ Siddique Munshi(**did during trial**) , Md. Fazlul Haque Howlader (now dead) and Ajahar Ali Howlader @ Aju Munshi [died on 29.07.2019], by launching attack at Village-West Posharibunia under police station-Bhnadaria of District-Pirojpur abducted Satish Sikder, Sattaya Ranjan Halder, Chandra Kanto Halder, Bijoy Krishna Sikder, Kanok Prova Roy @ Rita Rani Kulu @ Biva Kulu, Protap Chandra Bepari and Upendra Nath Kulu and killed them by gunshot near to Raj Bihari Doctor Bari, injured Bimala Halder by gunshot, plundered and burnt down 20/25 houses. Thereafter, the accused persons committed plunder and

arson at the house of Shib Charan Mistri and killed his wife Gunmoni Mistri throwing her into the fire.

In conjunction with the attack, the accused persons and their accomplices also plundered and burnt down the houses of Hindu civilians of village East Posharibunia, abducted **Nirod Chandra Bala, Amulya Mistri**, Samullya Mistri, Ganga Charan Halder and killed them by gunshot near the house of Bonamali Roy Gacharu.

In continuation with the attack, the accused persons also abducted Debendra Sikder, Bholanath Mistri, Narod Halder and Sadhu Prokash Halder from the same village and killed them by gunshot, plundered and burnt down 80/90 houses of Hindu civilians of village- East Posharibunia, West Posharibunia, Dash Para Jagipara, Nath Para and Darul Huda.

On the same day at about 2.30 P.M. the accused Nurul Amin Howlader along with other accomplices killed Ananta Sikder on forcible capture while they were going to the house of Razakar Amir Hossain Howlader at village Hetalia. On the same day at about 4.30 P.M. the accused Nurul Amin Howlader with the help of accomplices confined Satindra Nath Mondal and killed him by gunshot and threw the dead body into the canal.

Therefore, the accused (1) Abdul Mannan Howlader @ Abdul Mannan Delar @ Mannaf, (2) Ashraf Ali @ Assrab Ali Howlader, (3) Md. Moharaj Howlader @ Hatkata Moharaj, (4) Md. Amir Hossain @ Hafez Md. Amir Hossain @ Amir Ali Howlader(**died during trial**) , (5) Md. Nurul Amin Howlader and (6) Md. Siddiquir Rahman @ Siddique Howlader @ Siddique Munshi(**died during trial**) by such criminal acts forming part of systematic attack directing non-combatant civilian population, to further policy and plan of the Pakistani occupation army participated, facilitated, abetted, aided and substantially contributed to the commission offences of **‘abduction’, ‘confinement’, ‘torture’, ‘plunder’, ‘arson’, and ‘murder’** as crimes against humanity as enumerated in section 3(2)(a)(g)(h) read with section 4(1) of the International Crimes (Tribunals) Act, 1973 **or in the alternative ‘Genocide’** as enumerated in section 3(2)(c)(g)(h) read with section 4(1) of the International Crimes (Tribunals) Act, 1973 which are punishable under section 20(2) of the Act of 1973.

Evidence of Witnesses Examined

323. This count of charge rests chiefly upon ocular narrative of direct witnesses. Most of witnesses are near ones of victims. The attack arraigned happened in phases on the same day by

launching attack at different vicinities of the same village. Prosecution relies upon P.W.01, P.W.02, P.W.03, P.W.08, P.W.09, P.W.11 and P.W.12 in support of this count of charge. P.W.01 is a survived victim. Now, let us first see what has been unveiled in sworn testimony of witnesses examined in Tribunal.

324. P.W.01 Bijoy Krishna Bala (78) is a resident of village Purba Posharibunia under police station Bhnadaria of District Pirojpur. In addition to the event arraigned in charge no.01 P.W.01 recounted what he experienced in course of the event of attack arraigned in charge no.04 involving brutal killing of numerous Hindu civilians that allegedly happened on the same day, by launching successive attacks.

325. P.W.01 is a freedom-fighter. P.W.01 stated that during the war of liberation on 8th day of Bangla month Kartik in 1971 he came to home to meet his family inmates. On the following day i.e. on 09th day of Bangla month Kartik at about 08:00/08:30 A.M. he had been at home along with his parents when Razakar Fazlul Haque (now dead), Razakar Nurul Amin Howlader, Razakar Abdul Mannan Howlader, Razakar Moharaj Howlader , their 4/5 cohort armed Razakars entered into their house and then Razakar Nurul Amin Howlader dragged him to courtyard

and then the Razakars took him and his father to the house of Rakhal Chandra Mistri, south to their house, tying them up. He found there Gangacharan Howlader, Rakhal Chandra Mistri, Amulya Mistri and Samullya Mistri detained. He found Razakars Amir Ali Howlader, Ashraf Ali Howlader and Azahar Ali Howlader (now dead) and 4/5 armed Razakars present there.

326. P.W.01 continued stating that then the Razakars were taking all the detainees toward the house of Bonamali Gacharu tying them up when detained Rakhal Chandra Mistri managed to flee. After arriving at the house of Bonamali Gacharu he (P.W.01) found his younger brother Ranjit Bala, his sister's husband Sukumar Mistri detained there and he (P.W.01) saw Razakar Khabir Uddin Howlader (now dead), Mannan Howlader and 5/7 armed Razakars present there. Then the Razakars tied them up, the detainees and took them away to the bank of the pond, south to the house of Bonamali Gacharu and made them stand in a line.

327. P.W.01 continued recounting that then Razakar Nurul Amin Howlader and other Razakars fired gun shots directing them and with this he (P.W.01) sustained bullet hit injury on left side of his chest. His (P.W.01) father Nirod Chandra Bala,

Gangacharan Howlader, Amulya Mistri and Samullya Mistri died on spot due to bullet hit. His (P.W.01) sister's husband and younger brother being injured due to bullet hit were screaming. After the Razakars moved back toward east they then with the assistance of locals received medical treatment from doctor Raj Bihari and eight (08) days later his sister's husband succumbed to injuries and few days later his brother Ranjit Bala deported to India and received medical treatment there.

328. P.W.01 also stated that later on he heard from people that on 09th day of Bangla month Kartik at about 05:00 A.M. the said Razakars (as already mentioned by P.W.01) by launching attack at the house of Dr. Raj Bihari of village-Paschim Posharibunia gunned down 7/8 Hindu civilians including Bijoy Krishna Shikder, Satish Shikder, Sattaya Ranjan Howlader and Narayan Chandra Howlader to death. He (P.W.01) also heard that the said gang of attackers by launching attack at the house of Gunmoni Mistri fired gunshot to her and caused her death by burning him on fire.

329. P.W.01 also stated that he also came to know that on the same day in evening said Razakars gunned down Ananta Shikder, Satindra Mondol and others to death taking them to the

site, south to Chohoria Canal Bridge. In this way said Razakars by launching attacks at village Purba Posharibunia, Paschim Posharibunia and Dakhkhin Posharibunia gunned down eighteen (18) Hindu civilians to death and committed looting at many houses and bunt down those by setting fire.

330. On cross-examination done on part of accused persons indicted P.W.01 stated in reply to defence question that the accused persons he named used to stay at their home, after independence of Bangladesh; that he joined the war of liberation as a freedom-fighter under command of Major Zia Uddin; and that he did not initiate any case against the accused persons over the event he testified.

331. P.W.01 denied defence suggestions that the accused persons were not Razakars and they were not involved with the event he narrated; that he did not know the accused persons in 1971 ; that the event he testified did not happen and that what he testified implicating the accused persons were untrue.

332. P.W.02 Anil Chandra Majumder (66) is a resident of village- Purba Posharibunia under police station Bhnadaria of District Pirojpur. After the war of liberation ensued P.W.02 used to enthuse the youths of the locality to join in war of liberation,

he stated. In addition to narrating the event arraigned in charge no.01 P.W.02 also recounted facts related to the event of attack arraigned in charge no.04. He is a direct witness. He first described the event arraigned in charge no.01 and then recounted the event alleged in this count of charge i.e. charge no.04.

333. P.W.02 stated that on 9th day of Bangla month Kartik in 1971 at about 08:00/08:30 A.M. he was listening radio news staying at the home of Fazlul Haque Howlader when he heard burst of gun firing from the west end and with this being scared he went into hiding inside bush crossing the Bharani canal, in front of Fazlul Haque Howlader's house. Remaining stayed inside the bush at about 09:00/10:00 A.M. he heard gun firing from south end. At 10:30 A.M. he also saw their neighbour Shanti Mondol (now dead) and her husband Narod Howlader entering into the house of Fazlul Haque Howlader.

334. P.W.02 continued stating that few times later he saw Razakar Amir Hossain Howlader(**died during trial**) , Razakar Fazlul Haque(now dead), Razakar Nurul Amin Howlader, Razakar Abdul Mannan Howlader, Razakar Ashraf Ali Howlader, Razakar Azahar Ali Howlader (now dead), Razakar

Siddique Munshi (**died during trial**), Razakar Moharaj Howlader and Kader Mia (now dead) being accompanied by 40/50 armed Razakars entering into the house of Fazlul Haque Howlader wherefrom they forcibly detained Debendra Sikder, Fazlul Haque Howlader, Bholanath Mistri, Shanti Mondol, Narod Howlader and they took them away on the bank of Bharani canal.

335. P.W.02 next stated that he (P.W.02) also saw Razakar Amir Hossain (died during trial) gunning down the detainee Debendra Sikder to death who was then thrown to the canal. He (P.W.02) also saw Razakar Abdul Mannan Howlader killing Bholanath Mistri by gunshot. Razakar Nurul Amin killed detainee Narod Howlader by gunshot and abandoned his dead body in the canal. Then the Razakars had left the site and he then coming out of the hiding place found dead bodies lying on the bank of the canal. Next, coming nearer to their house he found bullet hit dead body of Prokash Howlader lying in the Bharani canal.

336. P.W.02 also stated that on returning back home he heard from neighbours that on the same day in early hour of morning at about 04:00/05:00 A.M. the Razakars he named by launching

attack at the house of doctor Raj Bihari Howlader of village Paschim Posharibunia had killed Bijoy Sikder, Satish Chandra Sikder, Sattaya Ranjan Howlader, Chandra Kanta Howlader, Rita Kulu, Protap Chandra Bepari and Upendra Nath Kulu by gun shots and Bimala Howlader got injured due to bullet hit. He came to know too from people that said Razakars by launching attack at the house of Shibcharan Mistri burnt down his house and his wife Gunmoni Mistri was burnt down to death.

337. P.W.02 also stated that he heard from neighbours that said Razakars by launching attack also at village-Purba Posharibunia forcibly captured seven (07) civilians namely Nirod Chandra Bala, Amaullya Mistri, Samullya Mistri, and Gangacharan Howlader and making them stood in a line gunned down them to death and Bijoy Krishna Bala, Ranjit Bala and Sukumar Mistri got injured due to bullet hit.

338. P.W.02 finally stated that he came to know too from people that on the same day in evening at about 04:00 P.M. said Razakars had killed Ananta Sikder at the place near Chowbaria bazar and Satindra Nath Mondol too was gunned down to death in front of Amir Hossain's house. On that day Razakars he named by carrying out attacks at 80/90 houses of Hindu populace at different vicinities of their village committed

looting, burnt down houses and annihilated eighteen (18) Hindu civilians by gunshots. The Razakars he named were from their neighbouring and adjacent localities and thus he knew them beforehand.

339. On cross-examination done on part of accused persons indicted P.W.02 stated in reply to defence question that the accused persons he named used to stay at their home, after independence of Bangladesh; that he did not initiate any case over the event arraigned against the accused persons, but he heard that Anil Sikder the son of Bijoy Sikder initiated a case.

340. P.W.02 denied defence suggestions that the accused persons were not Razakars and they were not involved with the event he narrated; that he did not know the accused persons in 1971 ; that the event he testified did not happen and that what he testified implicating the accused persons was untrue.

341. P.W.03 Khitish Chandra Mondol (70) is a resident of village- Purba Posharibunia under police station Bhnadaria of District Pirojpur. In addition to narrating the event arraigned in charge no.01, P.W.03 also recounted facts chained to the event of attack arraigned in charge no.04. In 1971 he was 18/19 years old. He is a direct witness to the event arraigned.

342. P.W.03 in recounting the event of attack stated that on the 09th day of Bangla month Kartik in 1971 at about 08:00/08:30 A.M. he had been at home when he heard frequent gun firing. With this being sacred he, his sister Shanti Mondol and sister's husband Narod Howlader ran away toward north and he went into hiding inside a bush crossing the narrow pathway over Bharani canal. His sister Shanti Mondol and Narod Howlader got hidden at the house of Fazlul Haque. Remaining hidden inside the bush few times after, he heard frequent gun firing.

343. P.W.03 continued stating that at about 10:00/10:30 A.M. he saw the Razakars he named (in narrating the event arraigned in charge no./01) i.e. Razakar Amir Hossain, Razakar Fazlul Haque Howlader (now dead), Razakar Nurul Amin Howlader, Razakar Abdul Mannan Howlader, Razakar Ashraf Ali Howlader and Razakar Azahar Ali Howlader @ Aju Munshi entering the house of Fazlul Haque Howlader bringing his (P.W.03) sister Shanti Mondol, Narod Howlader, Bholanath, Debendra and Fazlul Haque Howlader on the bank of Bharani canal, on forcible capture. He (P.3) also saw Razakar Kader kicking his sister Shanti Mondol and Razakar Nurul Amin gunning down Narod Howlader to death there. Razakar Amir Hossain Howlader (died during trial) fired gunshot to Debendra

Shikder that resulted in his death and Razakar Abdul Mannan gunned down Bholanath to death, he saw it and detained Fazlul Haque Howlader strategically managed to escape.

344. P.W.03 next stated that after the Razakars had left the site he saw the people coming to the site and he then coming out of the hiding site found the dead bodies lying there including the dead body of Sadhu Prokash Howlader lying at a distance. He (P.W.03) came to know that said Razakars by launching attack at other houses gunned down seven (07) civilians including Amulya, Samullya, Gangacharan and Nirod Chandra Bala to death and carried out indiscriminate looting and burnt down houses by setting fire.

345. P.W.03 also stated that later on he (P.W.03) heard too that on the same day by launching attack at the house of Ananta Sikder, Satindra Nath Master, doctor Raj Bihari of village Paschim Posharibunia said Razakars gunned down seven(07) civilians including Bijoy Krishna Sikder and Satish Sikder. In this way on that day said Razakars had killed 17 Hindu civilians by gunshots and one (01) by setting fire. The Razakars he named were from their village and neighbouring locality and thus he knew them beforehand.

346. On cross-examination P.W.03 in reply to defence question put to him stated that he could not recollect the English date on which the event he testified happened; that the accused persons used to stay at their home after independence; that he did not initiate any prosecution against the accused over the event he testified. P.W.03 denied defence suggestions that the event he testified did not happen; that he did not see and hear the event alleged; that the accused persons were not engaged in the event arraigned; that they were not Razakars and that he testified implicating the accused persons out of rivalry.

347. P.W.08 Anil Chandra Sikder (67) is a resident of village-Purba Posharibunia under police station Bhnadaria of District Pirojpur. In 1971 he was a student of class IX. He, a direct witness is the son of martyred victim Bijoy Krishna Sikder. Before recounting the event arraigned he testified that since prior to the war of liberation ensued his father had acted as a follower of Awami League and during the war of liberation he used to provide assistance to the freedom-fighters in different manner and also made them sheltered at house.

348. P.W.08 also stated that the locality they used to reside was Hindu dominated and thus the Pakistani occupation army and Razakars used to cause torture and mistreatment directing

civilians around their locality. With this being scared his (P.W.08) father and uncle Satish Chandra Sikder along with family inmates moved toward Barguna District on 08 Kartik, 1971 at about 04:00 P.M. and on the way they got sheltered at the house of dwelling shed of his maternal uncle Sattaya Ranjan Howlader in the house of Rajbihari doctor of village-Paschim Posharibunia.

349. In recounting the event arraigned P.W.08 next stated that on the following day i.e. on 09 Kartik (in 1971) in the early morning at about 05:00 A.M. they got awakened on hearing burst of gun firing and screaming and being scared with this he went into hiding inside the paddy field adjacent to the house wherefrom he heard further gun firing and saw smoke of fire at the house of Rajbihari doctor.

350. P.W.08 continued stating that on the same day at about 02:00 P.M. he saw the Razakars returning back taking looted goods and then he (P.W.08) coming back his maternal uncle's house saw the bullet hit dead bodies of his father Bijoy Krishna Sikder, his uncle Satish Sikder, his maternal uncle Sattaya Ranjan Howlader, his maternal grand-father Chandra Kanta Howlader and two other males and one woman who took shelter at that house lying there. He (P.W.08) also found her maternal

auntie Bimala Howlader lying there receiving bullet hit severe injury on left of her chest.

351. P.W.08 stated that he heard from his cousin brother Ashutosh Sikder and neighbouring people that Razakars Ashraf Ali Howlader, Mannan Howlader, Moharaj Howlader, Siddique Munshi (died during trial) Amir Howlader (died during trial), Fazlul Haque Howlader (now dead), Abdul Kader Mira (now dead) and their 40/45 cohort armed Razakars by lurching attack at the house of Rajbihari doctor committed looting and arson and gunned down seven (07) including his (P.W.08) father and uncle to death. They then on having assistance of locals dumped the seven (07) dead bodies into ditches.

352. P.W.08 also stated that he heard too from the people of the locality that on the same day the group of Razakars accompanied by the accused Razakars he named by launching attack at Sikder Bari of village Purbo Posharibunia had killed 18 civilians including Debendra Nath Sikder, his two wives, Bholanath Mistri, Narod Howlader, Ananta Sikder by gunshots and committed looting at 80/90 houses and arson.

353. P.W.08 finally stated that after independence achieved he himself initiated a case with Bhandaria Police station being

number 01 dated 02.04.1972 over the event of killing his father, uncle and others against 19 including the Razakars he named and some Razakars were arrested too. But trial of that case was not concluded. The Razakars he named were from their localities and thus he knew them beforehand.

354. On cross-examination P.W.08 denied defence suggestions that the event he testified did not happen; that the accused persons were not involved with the event alleged; that he did not see any phase of alleged attack and that he did not know the accused persons.

355. P.W.09 Hashi Rani Samaddar (75) presently is a resident of village- Paschim Chitki under police station Kathalia of District Jhalakathi. She is the daughter of one victim martyred Upendra Nath Kulu. She is a direct witness to crucial facts having explicit nexus with the horrific event arraigned.

356. P.W.09 stated that in 1971 her father Upendra Nath Kulu was a teacher of Shoula Primary School under Mathbaria police station and he was a follower of Awami League and used to assist the freedom-fighters maintaining communication with them.

357. In recounting the event arraigned P.W.09 stated that in the month of Kartik in 1971, her father being scared with the activities of Razakars got sheltered at the house of Rajbihari doctor of Paschim Posharibunia along with them. On 09 Kartik in 1971 in early morning at about 05:00 A.M. they got awakened with burst of gun firings and screaming of people and she saw the people who got sheltered at that house running out. She (P.W.09) too coming out of the house went into hiding inside a bush adjacent to the house. The Razakars by launching attack at the house of Rajbihari gunned down numerous people to death and burnt down the houses.

358. P.W.09 continued stating that on the same day at about 02:00 P.M. coming out of the hiding place she moved to the house of Rajbihari where she found seven (07) bullet hit dead bodies including that of her father Upendra Nath Kulu, brother of her grand-father Protap Chandra Bepari, brother's wife Biva Rani Kulu, Bijoy Krishna Sikder, Sattaya Ranjan Halder lying there. She (P.W.09) also saw Bimala Rani Halder lying there receiving grave bullet hit injury of her chest.

359. P.W.09 next stated that she heard from people that the group formed of 50/60 armed Razakars including Razakars

Nurul Amin Howlader, Mannan Howlader, Ashraf Ali Howlader, Azahar Alim Howlader (now dead), Moharaj Howlader and Siddique Munshi (died during trial) committed the killings by launching attack. Later on she also heard from people that on the same day till evening the same Razakars had killed 18 Hindu civilians of neighbouring village by gunshots and they also committed looting and arson. Finally, P.W.09 stated that dead bodies of her father and others were made dumped. After the event she along with in-laws deported to India and after independence achieved she came back Bangladesh.

360. On cross-examination P.W.09 stated that she did not know any of accused of this case. P.W.09 denied defence suggestions that she testified implicating the accused persons, being tutored; that the accused were not Razakars and were not involved with the event she narrated.

361. P.W.11 Chittaranjan Roy @ Chittaranjan Gasaru (72) is a resident of village-Purbo Posharibunia under police station Bhandaria of District Pirojpur. He is a direct witness to the event of attack leading to killing numerous Hindu civilians. In 1971 he was 20/21 years old. In addition to the event arraigned

in charge no.01 P.W.11 also narrated what he experienced in course of the event of attack arraigned in charge no.04.

362. P.W.11 stated that on the 09th day of Bangla month Kartik in 1971 at about 08:00 A.M. he had been at home along with his maternal grand-mother Radha Laxmi, neighbour Ranjit Bala and his sister's husband Sukumar Mistri. He on moving toward the pond, west-south to their home saw 30/40 armed Razakars coming toward their home. Seeing this he then went into hiding inside a bush adjacent to their home wherefrom he saw Razakars Amir Hossain Howlader (now dead), Fazlul Haque Howlader (now dead), Razakar Nurul Amin Howlader, Mannan Howlader, Ashraf Ali Howlader, Azahar Ali Howlader (now dead), Hatkata Moharaj, Siddique Munshi (died during trial) and their cohorts entering inside their home and they forcibly captured Ranjit Bala and Sukumar Mistri and brought them in the courtyard tying them up with rope. Some Razakars moved toward Bijoy Krishna Bala's home, north to their home.

363. P.W.11 also recounted that few times after, said Razakars brought Bijoy Krishna Bala, his father Nirod Krishna Bala, Gangacharan Howlader and Amaullya Mistri, Samullya Mistri tying them up to their home and then taking them along with detained Ranjit Bala and Sukumar Mistri on the bank of pond

made them stood in a line and then the Razakars fired gunshots directing them.

364. P.W.11 finally stated that after the Razakars had left the site he came out of the hiding place and moved to the bank of the pond where he found bullet hit bodies of said detainees lying there. Of them bullet hit Bijoy Krishna Bala was taken to his home. Bullet hit Ranjit Bala and Sukumar Mistri were taken to neighbour Karam Ali's home. The rest four (04) bullet hit detainees died at the killing site. Seeing this event he (P.W.11) got sheltered at the house of Ashu Malkar (now dead). The Razakars he named were from their neighbouring village and locality and thus he knew them beforehand.

365. On cross-examination P.W.11 stated in reply to defence question that he could not say the name of parents of any of accused persons. P.W.11 denied defence suggestions that he did not see or hear the event alleged; that the event he testified did not happen; that the accused persons were not Razakars and were not involved with the event he testified and what he testified was untrue.

366. P.W.12 Md. Nazrul Islam Howlader (65) is a resident of village- Hetalia under police station Bhnadaria of District

Pirojpur. He is a direct witness to the phase of attack leading to killing Ananta Sikder as arraigned. In addition to it he is hearsay witness in respect of other phases of the attack conducted on the same day by the same group of attackers.

367. P.W.12 also stated that he saw 40/50 armed Razakars including Khabir Uddin Howlader (now dead) , Kader Mira(now dead), Amir Hossain Howlader(died during trial), Fazlul Haque Howlader, Nurul Amin Howlader, Mannan Howlader, Ashraf Ali Howlader, Azahar Munshi (now dead), Siddique Rahman (now dead) and Moharaj Howlader arriving in front of grocery shop of Shahjahan. Then Razakar Amir Hossain set the detained Amjad Hossain released after beating him. Two/three Razakars whose name he did not know took away the detained Ananta Sikder toward the bank of Darulhuda canal where Razakar Nurul Amin Howlader gunned him down to death and abandoned the dead body into the canal. The Razakars then moved back toward the house of Razakar Amir Hossain. He (P.W.12) then returned back home.

368. P.W.12 also stated that on that day (9th Kartik, 1971) at 04:00 P.M. on the way back to his home from the house of Amjad Hossain Howlader (released detainee) he saw that Razakar Amir Hossain (died during trial) had kept Satindra Nath

Mondol BSC unlawfully detained in front of Amir Hossain's house when Razakar Nurul Amin gunned down Satindra Nath Mondol BSC to death there and abandoned his dead body into the Darul Huda canal.

369. Next the P.W.12 stated what he heard in respect of the event arraigned. P.W.12 stated that on the following day he heard from the people of the locality that on 09 Kartik, 1971 in early morning the Razakars he named by launching attack at the house of Rajbihari of Paschim Posharibunia had killed seven (07) Hindu civilans by gunshots.

370. P.W.12 continued stating that he came to know too that the said Razakars burnt down Gunmoni Mistri of Paschim Posharibunia to death confining her inside the dwelling shed. He also heard that the said Razakars had killed Nirodbala, Gangacharan Howlader, Amaullya Mistri and Samullya Mistri of village Purbo Posharibunia by launching attack at the house of Bonamali Gacharu by gunshots after causing forcible capture.

371. P.W.12 also stated that he knew from the locals too that the said Razakars had killed Prokash Sadhu by gunshot in front of Sutar Bari of village Purbo Posharibunia and on the same day they had killed Debendra Sikder, Bholanath Mistri and Narod

Howlader by gunshots talking them on the bank of the canal. The Razakars he named, on the same day had carried out looting and arson at 80/90 houses of villages Purbo Posharibunia and localities of Paschim Posharibunia. The Razakars he named had annihilated eighteen (18) Hindu civilians by gunshots. He knew the accused Razakars beforehand as they were from their village Hetalia and neighbouring village Charkhali.

372. On cross-examination P.W.12 stated in reply to defence question put to him that he could not say the name of Bhandaria peace committee chairman and Razakar commander and that he did not initiate any case earlier over the event he narrated.

373. P.W.12 denied defence suggestions that the accused persons were not Razakars and were not involved with the event he testified; that the event he narrated did not happen and that what he testified implicating the accused persons was untrue and tutored.

Finding with Reasoning on Evaluation of Evidence

374. **Mr. Md. Shahidur Rahman**, the learned prosecutor drawing attention to the testimony of witnesses who experienced the horrendous atrocities submitted that it has been proved that the accused persons indicted and their cohort

Razakars forming a criminal gang had carried the massacre that resulted in annihilation of 18 civilians belonging to Hindu community of the localities attacked. The attack was intended to destroy the Hindu religious group, either whole or in part which constituted the offence of '**genocide**'.

375. It has been further argued that the gang accompanied by the accused persons carried out the attacks in a planned and designed way targeting the members of the Hindu community. Wanton destruction of civilians' property by committing arson and looting was also conducted, in conjunction with the attacks which continued for day long. Magnitude of the event was extremely horrendous. The accused persons knowing foreseeable consequence substantially acted, facilitated and aided in furtherance of purpose and 'specific intent' of the criminal mission and thus they all incurred liability. Relatives of victims experienced how their dear ones were extinguished by gunshots. Their ocular testimony could not be controverted by defence.

376. On contrary, **Mr. Gazi M.H. Tamim**, the learned defence counsel argued that the witnesses relied upon in support of this count of charge are not credible and that they had no reason of knowing the accused persons beforehand. There is no specific

evidence to prove participation of accused persons with the killings alleged. Testimony of witnesses in respect of alleged presence of accused persons suffers from inconsistency which creates reasonable doubt as to complicity of accused persons with the event arraigned.

377. It has been further contended by the learned defence counsel that admittedly no case was initiated over the event arraigned against the accused persons, after independence achieved and now such delay too creates doubt as to involvement of accused persons with the alleged event. Thus, now what the prosecution witnesses testified is untrue and out of rivalry.

378. Tribunal notes that this count of charge involves the offence of committing '**genocide**' as the gang of perpetrators accompanied by the accused persons indicted had carried out attacks around the Hindu dominated vicinities of village Paschim Posharibunia, Purbo Posharibunia and Hetalia, Dash Para Jagipara, Nath Para and Darul Huda that ended in brutal annihilation of 18 Hindu civilians by gunshots constituting the offence of '**genocide**'. The gang in conjunction with the attack had also carried out indiscriminate and wanton looting and arson of 80/90 houses, the charge framed arraigns.

379. In light of the event arraigned prosecution requires to prove that –

- (a) designed systematic attack was conducted in the vicinities which were Hindu dominated, on the day arraigned;
- (b) The attack continued till the end of day;
- (c) 18 Hindu civilans were liquidated brutally by gunshots;
- (d) The gang of attackers was formed of accused persons indicted and their cohort Razakars;
- (e) The accused persons indicted being part of the criminal enterprise and knowing consequence actively participated and substantially contributed in committing the killings and reckless devastating activities, sharing common purpose; and
- (f) The attack was targeted directing the Hindu community, a ‘protected group’ with ‘specific intent’ to destroy it, either whole or in part.

380. It appears that most of witnesses relied upon in support of this count of charge are direct witnesses and near relatives of victims. It stands proved from testimony of P.W.01 Bijoy Krishna Bala, one survived victim that on 09th day of Bangla month Kartik at about 08:00/08:30 A.M. accused Razakar Nurul Amin Howlader, Razakar Abdul Mannan Howlader, Razakar

Moharaj Howlader and their 4/5 cohort armed Razakars by launching attack at their house at village-Purbo Posharibunia forcibly captured P.W.01 and his father and took them away to the house of Rakhil Chandra Mistri, south to their house, tying them up. It could not be controverted. What the P.W.01 experienced there?

381. It transpires that P.W.01 found Gangacharan Howlader, Rakhil Chandra Mistri, Amulya Mistri and Samullya Mistri detained at the house of Rakhil Chandra Mistri. He found Razakars Amir Ali Howlader (died during trial), Ashraf Ali Howlader and Azahar Ali Howlader (now dead) and 4/5 armed Razakars present there. What happened next?

382. Testimony of P.W.01, a survived victim demonstrates that from the house of Rakhil Chandra Mistri, they all the detainees were then taken toward the house of Bonamali Gacharu, tying them up when detained Rakhil Chandra Mistri managed to flee. At the house of Bonamali Gacharu P.W.01 found his younger brother Ranjit Bala and his sister's husband Sukumar Mistri detained. Accused Mannan Howlader and 5/7 armed Razakars were seen present there. Defence could not taint this crucial version in any manner.

383. In view of above it may be deduced lawfully that all the accused persons indicted were culpably and actively engaged to execute the object of the criminal mission of annihilating the Hindu civilians of the vicinities attacked, with specific intent.

384. Ocular version of P.W.01, one survived detainee thus speaks of the tragic fate of above detainees. His ocular narrative depicts that the detainees were taken to the bank of the pond, south to the house of Bonamali Gacharu and the invaders made them stand in a line. Then accused Razakar Nurul Amin Howlader and other Razakars fired gun shots directing them and with **this** he (P.W.01) sustained bullet hit injury on left side of his chest and his father Nirod Chandra Bala, Gangacharan Howlader, Amulya Mistri and Samullya Mistri died on spot. In this way P.W.01 experienced the tragic event of deliberate killing his father and other civilians that took place within his sight. In no way it could be impeached by defence.

385. Unimpeached ocular testimony of P.W.01 demonstrates too that his (P.W.01) sister's husband and younger brother received bullet hit injuries and they received medical treatment from doctor Raj Bihari. But eight (08) days later his (P.W.01) sister's husband succumbed to injuries and few days later his brother Ranjit Bala deported to India. Deportation to India quitting own

home reflects the extent of horror and coercion sparked by the barbaric attack.

386. It also stand proved that killing of his (P.W.01) father Nirod Chandra Bala, Gangacharan Howlader, Amulya Mistri, and Samullya Mistri by gunshot happened within the spectacle of P.W.01. Razakar Nurul Amin Howlader and other Razakars fired gun shots directing them by making them stood on the bank of the pond, south to the house of Bonamali Gacharu. This part of the horrendous event of indiscriminate killing could not be shaken by defence in any manner. Obviously P.W.01 the son of one victim still has been carrying untold trauma.

387. The above uncontroverted facts unveiled in ocular testimony of P.W.01 demonstrate patently that the perpetrators being divided into groups had carried out the act of unlawful capture of Hindu civilians intending to liquidate them and all the accused persons indicted had played substantial role in effecting such unlawful and prohibited act leading to the diabolical murder of numerous Hindu civilians.

388. The above phase of attack at the village-Purbo Posharibunia leading to killing numerous Hindu civilians including his (P.W.01) father Nirod Chandra Bala was carried

out after the gang of invaders accompanied by the accused persons accomplished killing of numerous Hindu civilians by launching their first attack at Paschim Posharibunia, it stands proved.

389. In respect of annihilation of other Hindu civilians by conducting attacks one after one P.W.01 is a hearsay witness. All those killings were perpetrated on the same day and by the same criminal gang formed of accused persons and their cohort Razakars.

390. It depicts from hearsay testimony of P.W.01 that on the same day at about 05:00 A.M. the said Razakars (as already mentioned by P.W.01) by launching attack at the house of Dr. Raj Bihari of village-Paschim Posharibunia gunned down 7/8 Hindu civilians including Bijoy Krishna Shikder, Satish Shikder, Sattaya Ranjan Howlader and Narayan Chandra Howlader to death.

391. P.W.01 also heard that on the same day in evening the accused Razakars and their cohorts gunned down Ananta Shikder, Satindra Mondol and other to death taking them to the site, south to Chohoria Canal Bridge and the attackers by launching attack at the house of Gunmoni Mistri fired gunshot

to her and caused her death by burning her on fire. This part of the event remained unimpeached.

392. Defence does not seem to have been able to impeach what has been unveiled in ocular and hearsay version of P.W.01. We do not find any reason to consider the unfounded defence suggestions that no such horrific event as testified by P.W.01 happened. P.W.01 admitted in cross-examination that he did not initiate any case against the accused persons over the event he testified. But mere non initiation of any prosecution over the horrendous event committed in 1971 instantly after it happened does not make testimony of P.W.01 in relation to the event arraigned unbelievable in any manner.

393. Attacks arraigned were conducted at different sites, one after one, on the same day by the same group of perpetrators accompanied by the accused persons directing Hindu civilians of different vicinities namely, West Posharibunia, East Posharibunia, Hetalia, Dash Para Jagipara, Nath Para and Darul Huda. Starting from early morning on 09th Kartik in 1971 attacks continued till evening. Naturally, in such horrific situation none had opportunity of seeing all the criminal activities forming part of all attacks conducted that resulted in

barbaric killing of numerous Hindu civilians of the sites attacked.

394. Now, let us eye on another phase of the event of attack conducted by the same group of Razakars accompanied by the accused persons. It has been unveiled too from unimpeached ocular narrative of P.W.02 Anil Chandra Majumder, a resident of village-Purba Posharibunia that on 9th day of Bangla month Kartik in 1971 at about 08:00/08:30 A.M. he (P.W.02) had been staying at the home of Fazlul Haque Howlader when he heard burst of gun firing from the west end and with this being scared he went into hiding inside bush crossing the Bharani canal in front of Fazlul Haque Howlader's house.

395. What the P.W.02 experienced even by staying inside the bush? It has also been unfurled from unimpeached ocular version of P.W.02 that few times later the accused Razakars being accompanied by 40/50 cohort armed Razakars entering into the house of Fazlul Haque Howlader forcibly detained Debendra Sikder, Fazlul Haque Howlader, Bholanath Mistri, Shanti Mondol and Narod Howlader and they took them away on the bank of Bharani canal. Defence could not taint this crucial version in any manner.

396. Accused Amir Hossain Howlader (died during trial), Abdul Mannan Howlader and Nurul Amin Howlader physically participated in gunning down the detainees Debendra Sikder, Bholanath Mistri and Narod Howlader to death there and abandoned the dead bodies in the canal. Unimpeached ocular testimony of P.W.02 makes it obvious.

397. It is found that all the horrific atrocities carried out at this phase of attack was witnessed by the P.W.02 and he saw all these acts remaining in hiding inside the bush crossing the Bharani canal, in front of Fazlul Haque Howlader's house. Hiding site was nearer to the house of Fazlul Haque Howlader whereby the killings occurred. Thus, it is quite credible that the P.W.02 remaining stayed inside a nearer bush saw the perpetration of killings.

398. It also stands proved from testimony of P.W.02 that after the Razakars had left the site he then came out of the hiding place and found dead bodies lying on the bank of the canal. Next, coming nearer to their house he found bullet hit dead body of Prokash Howlader lying in the Bharani canal. Finding bullet hit dead bodies lying at the killing sites adds assurance as to the act of horrendous annihilation of unarmed Hindu civilians. This

unimpeached version proves the act of deliberate killing of numerous Hindu civilians.

399. It appears that the P.W.02 heard the diabolical killing of numerous Hindu civilians by launching attack first at village Paschim Posharibunia that resulted in liquidation of Bijoy Sikder, Satish Chandra Sikder, Sattaya Ranjan Howlader, Chandra Kanta Howlader, Rita Kulu, Protap Chandra Bepari and Upendra Nath Kulu by gun shots.

400. It was quite natural of hearing the horrific criminal activities carried out around the different localities on the same day and by the same gang of perpetrators. People of the vicinities attacked became aware of the horrendous atrocities filled with extreme aggression, brutality and notoriety of group of Razakars accompanied by the accused persons, we deduce it unerringly.

401. Hearsay narrative of P.W.02 also demonstrates that Bimala Howlader got injured due to bullet hit and the accused Razakars and their cohorts by launching attack at the house of Shibcharan Mistri burnt down his house and his wife Gunmoni Mistri was burnt down to death. What a brutality! The perpetrators had acted as a 'pack of wolves'. It is hard to believe that the accused

persons and their cohorts are human beings. We find no reason to keep the hearsay testimony in respect of this part of attack aside. Facts and circumstances lend corroboration to the hearsay evidence on these facts.

402. P.W.03 is the brother of victim Shanti Mondol. Forcible capture of Shanti Mondol and Narod Howlader who got hidden at the house of Fazlul Haque gets corroboration from P.W.02.

403. P.W.03 saw the act of gunning down detained Shanti Mondol and Narod Howlader to death. Remaining in hiding inside the bush P.W.03 also witnessed the brutal killing of Debendra Shikder and Bholanath. It depicts too from ocular testimony of P.W.03 that accused Nurul Amin, Amir Hossain Howlader (died during trial) and Abdul Mannan Howlader actively participated in gunning down these detained Hindu civilians. Defence does not seem to have made any effort to controvert all these crucial facts leading to the diabolical massacre.

404. Why was victim Bijoy Krishna Sikder targeted? According to uncontroverted testimony of P.W.08 that since prior to the war of liberation ensued Bijoy Krishna Sikder, the father of P.W.08 Anil Chandra Sikder was a follower of Awami League

and during the war of liberation he used to provide assistance to the freedom-fighters in different manner and also made them sheltered at house. It depicts from testimony of P.W.08 and it remained unshaken. Thus, monstrous act of the perpetrators was intended also to resist the pro-liberation civilian belonging to Hindu community.

405. It is evinced that the locality the victims used to reside was Hindu dominated and thus the Pakistani occupation army and Razakars used to cause torture and mistreatment around their locality. Unimpeached narrative of P.W.08 depicts that being scared with this his (P.W.08) father and uncle Satish Chandra Sikder along with family inmates moved toward Barguna District on 08 Kartik, 1971 at about 04:00 P.M. and on the way they got sheltered at the dwelling shed of his maternal uncle Sattaya Ranjan Howlader in the house of Rajbihari doctor of village Paschim Posharibunia.

406. Uncontroverted ocular narrative of P.W.08 demonstrates that during their staying there on 09 Kartik (in 1971), i.e. on the following day in the early morning at about 05:00 A.M. they got awakened on hearing burst of gun firing and screaming and being scared with this he (P.W.08) went into hiding inside the paddy field adjacent to the house wherefrom he heard further

burst of gun firing and saw smoke of fire at the house of Rajbihari doctor. This piece of uncontroverted ocular version demonstrates that the gang had conducted this phase of attack with grave horrendousness.

407. It has been unveiled from unimpeached testimony of P.W.08 that after the Razakars returned back taking looted goods he (P.W.08) coming back his maternal uncle's house saw the bullet hit dead bodies of his father Bijoy Krishna Sikder, his uncle Satish Sikder, his maternal uncle Sattaya Ranjan Howlader, his maternal grand-father Chandra Kanta Howlader and two other males and one woman who took shelter at that house lying there. He (P.W.08) also found her maternal auntie Bimala Howlader lying there receiving bullet hit severe injury on left of her chest. This pertinent version of P.W.08 proves that the gang had committed the killing of numerous Hindu civilians, by conducting this phase of attack.

408. It thus stands proved that the gang formed of accused persons and their 40/45 cohort armed Razakars by lunching attack at the house of Rajbihari doctor committed looting and arson and gunned down seven including his (P.W.08) father to death. On having assistance of locals the seven (07) dead bodies were then dumped into ditches. Defence could not impeach it in

any manner. It was chained to the horrendous event of killing phase. Defence simply denied it but could not taint the event of killing in any manner.

409. It appears that it has not been denied even that the P.W.08 and other got sheltered at the house of Rajbihari doctor, at the relevant time, being scared with the atrocities carried around the Hindu dominated vicinity. Simply the act of killing numerous Hindu civilians as testified by the P.W.08 has been denied in cross-examination. But facts chained to the event happened as testified by P.W.08 inspires credence.

410. P.W.09 Hashi Rani Samaddar is the daughter of one victim martyred Upendra Nath Kulu. She is a direct witness. Her father was a follower of Awami League and used to assist the freedom-fighters by maintaining communication with them.

411. Testimony of P.W.09 demonstrates that they got sheltered at the house of Rajbihari doctor of Paschim Posharibunia. In early morning, on the day the attack conducted they got awakened with burst of gun firings and screaming of people and she saw the people who got sheltered at that house running out. She (P.W.09) too coming out of the house went into hiding inside a bush adjacent to the house. The Razakars by launching

attack at the house of Rajbihari gunned down numerous people to death and burnt down the houses. In no way it could be controverted in cross-examination of P.W.09.

412. On cross-examination P.W.09 stated that she did not know any of accused of this case although she witnessed that facts chained to the upshot of the event. Afterward, she heard from people that the group formed of 50/60 armed Razakars including Razakars Nurul Amin Howlader, Abdul Mannan Howlader, Ashraf Ali Howlader, Azahar Aki Howlader (now dead), Moharaj Howlader and Siddique Munshi (died during trial) committed the killings by launching attack.

413. P.W.09 also heard from people that on the same day in evening the same Razakars had killed 18 Hindu civilans of neighbouring village by gunshots and they also committed looting and arson.

414. After the event happened P.W.09 along with in-laws deported to India and after independence achieved she came back Bangladesh. Indubitably the horrific and coercive situation forced them to deport quitting own homes. It was in prohibition of international humanitarian law and caused mental harm as well to the relieves of victims.

415. Defence does not seem to have made any effort even to deny the horrific event leading to indiscriminate killing of civilians belonging to Hindu community, protected group as testified by the P.W.09.

416. P.W.11 Chittaranjan Roy @ Chittaranjan Gasaru narrated what he experienced in course of the event of attack arraigned in charge no.04. Testimony of P.W.11 patently demonstrates that some Razakars moved toward Bijoy Krishna Bala's home, north to their home.

417. It also stands proved from unimpeached testimony of P.W.11 that few times after, said Razakars brought Bijoy Krishna Bala, his father Nirod Krishna Bala, Gangacharan Howlader, Amaullya Mistri and Samullya Mistri tying them up to their home and then taking them along with detained Ranjit Bala and Sukumar Mistri on the bank of pond made them stand in a line and then fired gunshots directing them.

418. The nature of horrific event naturally made the P.W.11 abstained from coming out of the bush till the gang had left the killing site. It stands proved that after the Razakars accompanied by accused persons had left the site P.W.11 came out of the hiding place and moving to the bank of the pond he found bullet

hit bodies of said detainees lying there. Of them bullet hit injured Bijoy Krishna Bala was taken to his home. Bullet hit Ranjit Bala and Sukumar Mistri were taken to neighbour Karam Ali's home. The rest four (04) bullet hit detainees died at the killing site. This phase of killing stands unimpeached.

419. The Razakars he (P.W.11) named were from their neighbouring village and locality and thus he knew them beforehand and thus it was fairly natural to recognize the accused persons with the gang of attackers as testified by the P.W.11. Defence has not questioned the capacity of P.W.s to recognize the accused persons accompanying the gang at the crime sites. On a combined reading of the narrative made by the direct witnesses, it is explicitly clear that the accused persons were with the gang sharing intent of materializing the goal of the criminal mission. Thus, presence of accused persons at the site with the squad proves their participation and culpable nexus in materializing the object of the criminal mission.

420. P.W.12 Md. Nazrul Islam Howlader is a direct witness to the phase of attack leading to killing Ananta Sikder as arraigned. He saw that Amjad Hossain Howlader (now dead) of village Hetalia and Ananta Sikder were kept guarded by 2/3 Razakars

tying them up. On 9th Kartik in 1971 in early morning on hearing burst of gun firing from the south end he and family inmates went into hiding inside the bushes adjacent to their house wherefrom he saw it. Defence does not seem to have made any effort to impeach it.

421. After the situation came cool he (P.W.12) came out of the bush and moved to Chowaria bazar adjacent to their house and staying in hiding P.W.12 saw the gang taking away the detained Ananta Sikder toward the Darulhuda canal where accused Razakar Nurul Amin Howlader gunned him down to death and abandoned the dead body into the canal. Thus, the act of unlawfully detaining one victim Ananta Sikder ended in his brutal liquidation by gunshot and accused Nurul Amin Howlader was its actual perpetrator. It stands proved.

422. P.W.12 also saw that Razakar Amir Hossain Howlader (died during trial) had kept Satindra Nath Mondol BSC unlawfully detained in front of Amir Hossain's house when Razakar Nurul Amin gunned down Satindra Nath Mondol BSC to death there and abandoned his dead body into the Darul Huda canal.

423. Thus, the act of unlawfully detaining two Hindu civilians Ananta Sikder and Satindra Nath Mondol BSC ended in their brutal liquidation by gunshot by accused Nurul Amin Howlader. It stands proved.

424. The above piece of ocular narrative of P.W.12 demonstrates that accused Nurul Amin Howlader physically participated in perpetrating killing of detained Hindu civilians and the other accused persons were with the gang at the killing sites and provided substantial facilitation and contribution in the commission of such barbaric crimes.

425. The P.W.12 naturally did not have occasion of witnessing the killing of many other Hindu civilians occurred at other sites on the same day. However, he heard from the people of the locality that on the same day in early morning the accused Razakars he named and their cohort Razakars by launching attack at the house of Rajbihari of Paschim Posharibunia had killed seven (07) Hindu civilians by gunshots. It gets consistent corroboration from other ocular witnesses.

426. Hearsay evidence of P.W.12 also manifests that the accused Razakars forming part of the criminal gang burnt down Gunmoni Mistri of Paschim Posharibunia to death confining her

inside the dwelling shed. It was indeed a beastly deed. Defence could not impeach it.

427. P.W.12 also heard that the said gang formed of accused Razakars and their cohorts had killed Nirodbala, Gangacharan Howlader, Amaullya Mistri and Samullya Mistri of village-Purbo Posharibunia by launching attack at the house of Bonamali Gacharu by gunshots by causing forcible capture.

428. Barbaric massacre committed has been reflected even in hearsay narrative of P.W.12. There is no reason of disbelieving this hearsay evidence. Naturally, the day long horrendous designed atrocities committed became known even to the residents who did not witness but heard it. Thus, hearsay evidence in this regard carries credence as it gets corroboration from other direct witnesses and facts unveiled.

429. It has been contended on part of defence that testimony of witnesses in respect of alleged presence and participation of accused persons with the events arraigned is inconsistent and thus creates reasonable doubt as to accused persons' alleged participation with the events arraigned.

430. Tribunal does not agree with the above defence contention. P.W.03 and P.W.08 recounted the event implicating three accused, true. But unimpeached ocular testimony of other P.W.s proves it that the four accused indicted [excluding two accused died during trial] were with the gang and participated in accomplishing the orchestrated criminal acts leading to killings and wanton and reckless devastating activities by committing looting and arson directing civilians' property.

431. Tribunal notes that the event of killings arraigned happened not at a single site. The diabolical atrocities were conducted at various sites by the same group of attackers and it continued day long. Naturally, the witnesses, the residents of sites attacked naturally might not have seen all the phases of the event leading to killing of numerous civilians belonging to Hindu community. Besides, due to lapse of long passage of time human memory may be faded and for the reason of such fallible memory there may be insignificant inconsistency between witnesses which does not corrode the prosecution case.

432. Corroborative and consistent ocular account made by the P.W.s demonstrates that the designed criminal mission started in early morning by launching attack first at village-West

Posharibunia and it continued till evening. Other phases of attack were conducted at villages- East Posharibunia, Hetalia, Dash Para Jagipara, Nath Para and Darul Huda. Naturally, none had space of witnessing all the attacks leading to killing of 18 Hindu civilians. But the evidence of witnesses collectively proves that the accused persons, in exercise of their affiliation with Razakar Bahini got culpably engaged in materializing the planned annihilation of directing Hindu religious group.

433. P.W.01 stated that accused Nurul Amin Howlader, Abdul Mannan Howlader, Moharaj Howlader and Ashraf Ali Howlader were with the gang. P.W.02 testified that Abdul Mannan Howlader and Nurul Amin Howlader participated in accomplishing killing by gunning down the detainees. The accused Razakars and their cohorts by launching attack at the house of Shibcharan Mistri burnt down his house and his wife Gunmoni Mistri was burnt down to death. P.W.03 stated that accused Nurul Amin Howlader, Amir Hossain Howlader and Abdul Mannan actively participated in gunning down these detainees.

434. Corroborated hearsay testimony of P.W.08 depicts that the group formed of accused Razakars Ashraf Ali Howlader, Abdul Mannan Howlader @ Abdul Mannan Delar @ Mannaf, Md.

Moharaj Howlader @ Hatkata Moharaj, Md. Siddiquir Rahman @ Siddique Howlader @ Siddique Munshi (died during trial) , Md. Amir Hossain @ Hafez Md. Amir Hossain @ Amir Ali Howlader (died during trial), Fazlul Haque Howlader (now dead), Abdul Kader Mira (now dead) and their 40/45 cohort armed Razakars by lurching attack at the house of Rajbihari doctor committed looting and arson and gunned down seven (07) including his (P.W.08) father to death.

435. P.W.09 is a credible witness and her narrative is truthful. She stated that she did not know any of accused of this case, although she witnessed the event. However, afterward she heard from people that the group formed of 50/60 armed Razakars including accused Razakars Nurul Amin Howlader, Abdul Mannan Howlader, Ashraf Ali Howlader, Moharaj Howlader and Siddique Munshi (died during trial) committed the killings by launching attack. This piece of unimpeached testimony of P.W.09 proves conscious participation of all the four accused (1) Abdul Mannan Howlader @ Abdul Mannan Delar @ Mannaf, (2) Ashraf Ali @ Assrab Ali Howlader, (3) Md. Moharaj Howlader @ Hatkata Moharaj and (4) Md. Nurul Amin Howlader with the commission of diabolical atrocities.

436. P.W.11 too saw Razakars Amir Hossain Howlader (now dead), Fazlul Haque Howlader (now dead), accused Razakars Nurul Amin Howlader, Abdul Mannan Howlader, Ashraf Ali Howlader, Azahar Ali Howlader (now dead), Md. Moharaj Howlader @ Hatkata Moharaj, Siddique Munshi (already died) and their cohort entering inside their home and they forcibly captured Ranjit Bala and Sukumar Mistri and brought them in the courtyard tying them up with rope.

437. P.W.11 is a competent and natural witness. The accused persons were from their neighbouring village and locality and thus he (P.W.11) naturally knew them beforehand. It remained unimpeached. Thus, and for the reason of notoriety the accused persons achieved by their unlawful and criminal activities around the localities they became known to the residents of the localities. Based on it we are of the view that what the P.W.11 and other witnesses stated as to presence of the accused persons with the criminal gang is believable.

438. On totality of evidence as discussed above it stands proved from ocular testimony of P.W.01, P.W.02, P.W.03, P.W.08, P.W.09, P.W.11 and P.W.12 that all the four accused (1) Abdul Mannan Howlader @ Abdul Mannan Delar @ Mannaf, (2)

Ashraf Ali @ Assrab Ali Howlader (3) Md. Moharaj Howlader @ Hatkata Moharaj and (4) Md. Nurul Amin Howlader [**absconding**] indicted being part of the criminal gang consciously facilitated and participated in materializing the goal, sharing intent. The evidence of witnesses collectively proves that the accused persons, in exercise of their affiliation with Razakar Bahini got culpably engaged in materializing the planned annihilation of directing Hindu religious group.

439. We are not agreed with defence contention that prosecution could not prove participation of accused persons with the alleged killings and there is no specific evidence as to which accused physically participated in accomplishing the killing of which victims.

440. In the case in hand, conscious conduct, act, and culpable presence of the accused persons at the crime sites are qualified to be the constituent of 'participation' to the actual accomplishment of the crimes as it substantially contributed to, or have had a substantial effect on the perpetration of the diabolical mass killing for which the accused persons have been charged with.

441. What will be the consequence if it is proved that the accused indicted was present at the site with the gang but did not have physical participation in committing the killing? In the case in hand, first it has been proved that the accused persons formed active part of the criminal enterprise and such act was not for any pious purpose. Second, there can be no room to deduce that the accused persons cannot be held responsible for the act done by other members of the gang. By accompanying the criminal gang the accused persons rather encouraged and instigated and substantially contributed in perpetrating the criminal activities and thus they cannot evade responsibility. In this regard we recall the observation of the **Appellate Division of Supreme Court of Bangladesh** which is as below:

“.....instigators and accomplices participating in the formulation or execution of a common plan or conspiracy to commit any of the crimes defined in the ICT Act are responsible for the act performed by any one of them in execution of such plan.”

[Ali Ahsan Muhammad Mujahid Criminal Appeal No.103 of 2013.Judgment, 16 June 2015]

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

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

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

443. The facts and circumstances unveiled in the case in hand amply signify accused persons’ joint-perpetration in the criminal mission which eventually ended in wiping out eighteen (18) civilians belonging to Hindu community, with specific intent.

444. In the case in hand we got it proved based on ocular evidence that the accused persons being part of the criminal

enterprise knowingly participated in materializing the object of the criminal mission, sharing intent and thus they incurred equal liability. In this regard it is now well settled jurisprudence that –

“.....a person who contributes substantially to the commission of a crime by another person and shares the criminal intent behind such commission is criminally responsible both as an aider and abettor and a co-perpetrator.”

445. The above settled proposition corresponds to the provision contemplated in section 4(1) of the Act of 1973 which reads as—

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

446. Since the act of indiscriminate killing 18 Hindu civilians was the outcome of 'collective criminality' all the accused persons being the members of the joint endeavor is held equally responsible as co-perpetrators, under the doctrine of JCE[Basic Form]. In this regard, we may recall the observation of the **ICTY Trial Chamber**, in the case of *Tadic* that-

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

[Prosecutor v. Tadic, ICTY Trial Chamber, Case No. IT- 94-1-T, Judgment 7 May, 1997, paragraph 692]

447. The evidence evaluated above together with the above settled jurisprudence reflects the unerring view leading to the only reasonable conclusion that the massacre directing Hindu civilians was foreseeable to the accused persons who formed part of the criminal squad and therefore they were responsible for the crimes committed in the sites attacked successively.

448. It is now well settled that “**committing**” genocide is not limited to direct and physical perpetration; other acts can constitute direct participation in the *actus reus* of the crime.

449. The Tribunal is therefore convinced beyond reasonable doubt that accused persons knew that their actions provided

substantial and practical assistance to the crimes of murder, inhumane acts and wanton destruction detrimental to civilians' rights and that they were aware of the essential elements of these crimes, including the mental state of the perpetrators forming part of the squad.

450. Thus, it is hard to believe that the accused remained stayed with the criminal enterprise at the time of launching attack at for any holy purpose and as mere spectators. Rather, the accused persons are found to have had active and physical participation, in accomplishing criminal acts conducted, in conjunction with all the phases of attack.

451. The notion of 'attack' embodies the notion of acting purposefully intending to detriment the rights and well being of a civilian population and the 'population' does not mean the entire population of the vicinity targeted . In the case in hand, it has been proved that the gang being accompanied by the accused persons and their cohorts had carried out attacks with extreme aggression directing Hindu religious group and the tedious criminal mission to destroy it continued till end of the day.

452. It stands proved that the accused persons were present at the site attacked being part of the criminal squad. Accompanying the gang of attackers itself is a crucial circumstance that irresistibly leads to the conclusion that the accused persons sharing the 'common purpose' had opted to accompany the criminal gang. The accused persons were from their neighboring localities and thus the witnesses knew them beforehand. In cross-examination defence simply denied it. But defence has not questioned the capacity of P.W.s to recognise the accused persons accompanying the gang at the crime sites.

453. It also stands proved that the gang being accompanied by the accused persons by launching the attacks gunned down the numerous defenceless Hindu civilans to death. These circumstances are sufficient to prove participation of the accused persons in committing the crimes. It is not required to show which accused had gunned down which victim. Cumulative effect of all the circumstances unveiled from the sworn account made by witnesses inevitably and exclusively points to the guilt of the accused persons indicted. On a combined reading of the narrative made by the direct witnesses, it is explicitly clear that the accused persons were with the gang sharing intent of materializing the goal of the criminal mission.

454. Tribunal also notes that it is not required to prove direct and physical participation of accused persons in accomplishing the killings. Already it has been found proved that the accused persons being part of the criminal enterprise had acted, aided and assisted at all phases of the event arraigned. **‘Participation’** includes both direct participation and indirect participation. In this regard we recall the observation rendered by the **ICTY Appeal Chamber** in the case of **Kvocka** that--

“It is, in general, not necessary to prove the substantial or significant nature of the contribution of an accused to the joint criminal enterprise to establish his responsibility as a co-perpetrator: it is sufficient for the accused to have committed an act or an omission which contributes to the common criminal purpose.”

[Kvocka: ICTY Appeals Chamber, February 28, 2005, para. 421]

455. It is now well settled that where a common design of a group of attackers exists and the group has carried out its purpose, then no distinction can be drawn between the ‘finger man’ and the ‘trigger man’. This view finds support from the observation made by the ICTY Appeal Chamber, in the case of **Tadic**, that

—

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

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

456. The facts and circumstances unveiled in the case in hand the above principles do not leave any doubt that all the members forming part of the group of perpetrators including the accused persons indicted had a common intention in commission of the brutal crime of indiscriminate killing of Hindu civilians. Thus, each one of them actually participated in committing the crimes -- facts and evidence presented lead to conclude it irresistibly. In light of the above principles the rational evaluation of facts and circumstances do not leave any doubt that all the members of the group of perpetrators had acted pursuant to common intention in committing this brutal crime.

457. In the case in hand it is evinced that the accused persons were manifestly related to the orchestrated scheme or system in achieving the criminal outcome. The evidence indisputably suggests that the accused persons consciously and being aware of the consequence of their acts and conducts aided, encouraged and provided moral supports and approval to the commission of crimes, the indiscriminate killing and devastation of civilians' property.

458. It is to be noted too that the acts of aiding and abetting need not be tangible, but may consist of moral support or encouragement of the principals in the commission of the crime. Obviously the accused persons knowing consequence of their act encouraged and substantially contributed and assisted in perpetrating the crimes, sharing '**specific intent**' to destroy the Hindu community, either whole or in part.

459. '**Genocide**' is a crime of crimes ulterior intent of which is the ultimate aim of the destruction of the group targeted. 'Intent to destroy' cannot be proved by tangible evidence. It may be well inferred from the totality of criminal activities conducted. The accused (1) Abdul Mannan Howlader @ Abdul Mannan Delar @ Mannaf, (2) Ashraf Ali @ Assrab Ali Howlader (3)

Md. Moharaj Howlader @ Hatkata Moharaj and (4) Md. Nurul Amin Howlader [**absconding**] being active part of the criminal enterprise participated and substantially facilitated and assisted the indiscriminate and arbitrary and wilful killing with the clear and specific intent to destroy the Hindu religious group of the localities attacked – facts, circumstances and scale of criminal activities jointly lead to deduce it. Pattern, severity and magnitude of attacks irresistibly suggest concluding that the ‘specific intent’ of the criminal gang was to destroy the Hindu religious group, either whole or in part.

460. Facts and circumstances proved from witnesses’ uncontroverted accounts lead to unerring conclusion that it was a large-scale massacre that resulted in numerous deaths of non combatant Hindu civilians, a ‘particular religious group’. The accused persons and their accomplices being fueled by the common intent to exterminate the Hindu religious group had acted as key instrumental in accomplishing the mission.

461. The atrocities for which the accused persons stood trial and are found criminally liable were not isolated from the policy and plan of the Pakistani occupation army who started its ‘mayhem’ since 25 March 1971. Objective of such mass killing was not

only to expel the victims, beyond the boundary of their lives by causing their death but it was orchestrated to cause deliberate destruction of the 'religious group' to which the victims belonged and also to detriment the livelihood of the Hindu community of the crime villages.

462. The scale of indiscriminate annihilation and wanton devastating activities jointly indicates that the 'specific intent' of the gang was designed prior to the commission of the criminal acts and it imbued the gang in accomplishing successive attacks targeting a protected group. Thus, intention of such orchestrated, deliberate and systematic attack was “**to destroy**” this protected group, it may be inferred unerringly based on facts and circumstances unveiled. It may be well inferred that sequences and pattern of the events of attacks indubitably suggest concluding that the perpetrators had acted to materialize the purpose of destroying the Hindu community, either whole or in part.

463. It is now well settled that “**to destroy**” means the physical and biological destruction of a protected group. However, there is no numeric threshold of victims necessary to establish the offence of 'genocide'. In the case in hand obviously 18 Hindu

civilians, the victims who formed a distinct part of the Hindu community of the vicinities attacked.

464. It is now well settled that to prove the ‘specific intent’ required constituting the offence of genocide, it is not necessary to establish the *de facto* destruction of the group targeted, in whole or in part. ‘Intent to destroy’ means a special or specific intent which, in essence, expresses the volitional element in its most intensive form and is purpose-based. Obviously the accused persons being part of the enterprise consciously desired the prohibited acts they committed to result in the ‘destruction’ of a protected group, we deduce.

465. In addition to annihilating numerous unarmed Hindu civilians the gang had carried out wanton destruction by committing looting and arson. It stands proved. Such prohibited reckless activities were gravely detrimental to human rights and normal livelihood of civilians. It also encompasses specific intent to destroy the Hindu community, either whole or in part.

466. The severity of designed crimes proved indisputably sparked grave fear and coercion among the Hindu community of the localities attacked which made many Hindu civilians to

deport to India. It stands proved from evidence of P.W.09. Tribunal assessed the seriousness of the crimes proved in the light of the facts and circumstances unveiled together with the context of war of liberation. The untold suffering and harm inflicted by causing such destructive devastation left long-term impact even on the survived members and the Hindu community.

467. Totality of facts and circumstances divulged leads to the conclusion that the victims were targeted specifically because they belonged to Hindu religious community, a protected group. The victims were deliberately and brutally singled out in barbaric manner not by reason of their individual identity, but rather on account of their being members of a religious community, a protected group.

468. The ulterior purpose of perpetrators was to destroy, in whole or in part, this protected group of which the victims were the members. **'Specific intent'** cannot be proved by direct evidence. It may be well established and inferred on the basis of facts and circumstances. In this regard observation of **ICTY Appeal Chamber** is pertinent which is as below:

“As to proof of **specific intent**, it may, in the absence of direct explicit evidence, be inferred from a number of facts and circumstances, such as the general context, the perpetration of other culpable acts systematically directed against the same group, the scale of atrocities committed, the systematic targeting of victims on account of their membership of a particular group, or the repetition of destructive and discriminatory acts.”

[ICTY Appeal Chamber: Goran Jelusic: Judgment : 05 July 2001: para-47]

469. Sequences and pattern of the events of attacks indubitably suggest concluding that the perpetrators had acted to materialize the purpose of destroying the Hindu community, either whole or in part. The accused persons being part of the enterprise consciously desired the prohibited acts they committed to result in the ‘destruction’ of a protected group.

470. Eyeing on settled jurisprudence Tribunal notes that mere number of victims belonging to a protected group killed brutally does not negate the existence of ‘specific intent’ of the perpetrators. “There is no numeric threshold of victims necessary to establish genocide.” **[Seromba, ICTR Trial Chamber: December 13, 2006, para- 319]**. In this regard we

also recall the observation of **ICTY Trial Chamber** made in the case of **Radislav Kristic** which is as below:

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

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

471. **The Appellate Division of Supreme Court of Bangladesh** in the appeal preferred by Ali Ahsan Muhammad Mujahid resolved this issue relying upon the observation made by the **ICTR** as below:

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

[Criminal Appeal No. 103 of 2013: Ali Ahsan Muhammad Mujahid Judgment:

**Appellate Division, Judgment dated
16.06.2015: page -153]**

472. Finally, based on facts divulged together with settled jurisprudence we conclude that prosecution has been able to prove beyond reasonable doubt that the accused (1) Abdul Mannan Howlader @ Abdul Mannan Delar @ Mannaf, (2) Ashraf Ali @ Assrab Ali Howlader, (3) Md. Moharaj Howlader @ Hatkata Moharaj and (4) Md. Nurul Amin Howlader **[absconding]** being part of the criminal enterprise and in exercise of their affiliation in an auxiliary force participated by providing active, substantial and practical assistance and aid in perpetration of wilful killing of numerous defenceless individuals belonging to Hindu religious group and mass destruction, with specific intent constituting the offence of **‘genocide’** as enumerated in section 3(2)(c)(g)(h) of the Act of 1973 which is punishable under section 20(2) read with section 3(1) of the Act for which the accused person has incurred liability under section 4(1) of the Act.

XI. Task of Investigation

473. It is significant to note that the task of investigation under the Act of 1973 is a quite unique and challenging job for the officer assigned with it. In holding investigation under the Act

of 1973 the Investigation Officer had to deal with the alleged offences of crimes against humanity and genocide occurred long more than five decades back, in violation of customary international law together with the matter of unearthing *prima facie* involvement and complicity of the accused persons therewith.

474. The learned state defence counsel Mr. Gazi M.H. Tamim asserted that the case is based on flawed investigation ; that defence has been prejudiced as the persons preparing the alleged documents relied upon by the prosecution have not been cited as witnesses which deprived defence to question the credibility of the documents.

475. In the case in hand, the IO [P.W.13] as it appears, submitted the report on closure of investigation on the basis of evidence he collected in relation to the atrocious events involving killing of numerous unarmed civilians belonging to Hindu community and grave criminal acts.

476. Tribunal notes that non citation of the person under whose signature the list of Razakars has been prepared and other documents collected does not create any flaw in investigation.

Copies of those documents were duly provided to defence at initial stage of trial as required under law and defence had fair opportunity questioning credibility thereof by cross-examining the IO. In absence of anything contrary those documents are found to be authoritative. Thus, the investigation cannot be termed flawed and it does not taint the prosecution case in any manner.

477. However, on total appraisal, we do not find anything flawed in the task of investigation so far as it relates to the events arraigned in charges framed. The Tribunal notes that the Investigation Officers [P.W.13] , in compliance with the norms and provisions contemplated in the Act of 1973 and the ROP, carried out the task of investigation on completion of which the IO duly submitted 'report' before the Chief Prosecutor. Accordingly, the contention advanced on part of defence terming the task of investigation flawed does not carry any merit, we conclude.

XII. Conclusion

478. Despite lapse of long five decades time the testimony of P.W.s of whom some being relatives of victims had fair and natural occasion of experiencing the dreadful acts and conducts of accused persons in accomplishing horrendous system crimes

directing pro-liberation civilans and civilans belonging to Hindu community of the localities under police station Bhnadaria of District Pirojpur.

479. It has been found proved that deliberate horrific activities carried out by the accused (1) Abdul Mannan Howlader @ Abdul Mannan Delar @ Mannaf, (2) Ashraf Ali @ Assrab Ali Howlader, (3) Md. Moharaj Howlader @ Hatkata Moharaj and (4) Md. Nurul Amin Howlader [**absconding**] directing Hindu religious group in the localities under police station Bhnadaria of District Pirojpur.

480. Substantial facts relevant and material to the event of atrocities proved and culpability of the accused persons therewith do not appear to have been suffered from any material infirmity. Defence could not crash the credibility what the witnesses recounted in Tribunal in respect of the horrific events proved.

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

We have already resolved in our foregoing deliberations that ‘Razakar Bahini’ was an ‘auxiliary force’.

482. The accused persons having culpable affiliation in said auxiliary force got consciously engaged in conducting the horrendous crimes including wilful mass killing, rape and grave devastating activities causing severe mental harm and torture around the localities under police station Bhandaria of District Pirojpur. We have found it proved, on sue and rational assessment of evidence presented.

483. C.L. Sulzberger wrote in the **New York Times, June 16, 1971** describing the horrific nature and untold extent of atrocities committed in the territory of Bangladesh. It shakes the conscious of mankind. It imprints colossal pains to the Bangalee nation. **C.L. Sulzberger** wrote that-

“Hiroshima and Nagasaki are vividly remembered by the mind’s eye primarily because of the novel means that brought holocaust to those cities. Statistically comparable disasters in Hamburg and Dresden are more easily forgotten; they were produced by what we already then conceived of as “conventional” methods. Against this background one must view the appalling catastrophe of East Pakistan whose scale is so

immense No one can hope to count the dead, wounded, missing, homeless or stricken whose number grows each day. “

[Source: Bangladesh Documents: Volume, page 442: Ministry of External Affairs, New Delhi]

484. It is now settled history that tragic scale and dreadful nature of atrocities were carried out throughout the nine months’ war of liberation in 1971 in the territory of Bangladesh. The offences for which the accused persons have been found responsible are the fragmented depiction of such untold diabolical atrocities committed in context of the war of liberation 1971.

485. In the case in hand, the evidence led on part of the prosecution demonstrates explicitly that the group of perpetrators formed of accused persons and their cohort Razakars and the accused persons are found to have had knowingly participated, aided, abetted and substantially and recklessly contributed, by their culpable act and conduct, to the commission of the crimes proved.

486. The testimony of many of P.W.s depicts that they had fair occasion of seeing and experiencing the actual commission of criminal events arraigned including the acts and conducts of

accused persons, and the prohibited activities carried out in conjunction with the attack.

487. Some of P.Ws also testified on substantial facts relevant and material to the event of atrocities and culpability of the accused persons and their testimony does not appear to have been suffered from any material infirmity. Besides, trend of cross-examination could not smash credibility of P.W.s who described their traumatic experience before Tribunal and their testimony does not suffer from any significant inconsistencies.

488. In adjudicating all the four counts of charges we are convinced on due appraisal of evidence, oral and circumstantial, led by the prosecution that the accused persons, at the relevant time had acted as notorious collaborators of Pakistani occupation army in accomplishing atrocious activities in 'systematic manner', in the name of resisting the war of liberation.

489. Their conscious and culpable act and conduct, as have been found proved--- point to their unerring guilt which is well consistent with their 'participation' in the commission of the crimes proved. As a result, we are convinced to conclude that

the accused persons being members of Razakar Bahini, an ‘associate organization’ of the Pakistani occupation army incurred liability for the commission of the dreadful offences as arraigned in **charge nos. 1, 2, 3 and 4** for which they have been indicted.

XIII. Verdict on Conviction

490. In view of reasoned deliberation made in determining the arraignments brought in the charges framed it appears patently that the standard of the settled norm that burden of establishing the guilt or responsibility of the persons accused of crimes arraigned which squarely lies upon the prosecution has been found to be rationally met as all the four (04) accused are found to have incurred liability for the horrendous atrocious crimes which have been proved beyond reasonable doubt.

491. In light of reasoned finding on determination of each count of charge rendered based on cautious and due judicial appraisal of all the evidences presented before us and argument advanced by both parties together with related jurisprudence evolved, the Tribunal [ICT-1] **UNANIMOUSLY** finds the accused-

Four (04) accused (1) Abdul Mannan Howlader @ Abdul Mannan Delar @ Mannaf, (2) Ashraf Ali @ Assrab Ali Howlader, (3) Md. Moharaj Howlader @ Hatkata Moharaj and (4) Md. Nurul Amin Howlader (absconding)

Charge No.01: GUILTY of aiding, abetting , assisting and participating in committing ‘**genocide**’ as enumerated in section 3(2)(c) (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;

Three (03) accused (1) Abdul Mannan Howlader @ Abdul Mannan Delar @ Mannaf, (2) Ashraf Ali @ Assrab Ali Howlader and (3) Md. Moharaj Howlader @ Hatkata Moharaj

Charge No.02: GUILTY of aiding, abetting , assisting and participating in committing ‘**abduction**’, ‘**confinement**’, ‘**torture**’, ‘**plundering**’ and ‘**rape**’ as **crime against humanity**’ as enumerated in section 3(2)(a)(g)(h) read with section 4(1) of the International Crimes (Tribunals) Act, 1973 and they be convicted and sentenced under section 20(2) of the said Act;

Three (03) accused (1) Abdul Mannan Howlader @ Abdul Mannan Delar @ Mannaf, (2) Ashraf Ali @ Assrab Ali Howlader and (3) Md. Moharaj Howlader @ Hatkata Moharaj

Charge No.03: GUILTY of aiding, abetting , assisting and participating in committing ‘**abduction**’, ‘**confinement**’, ‘**plunder**’,

‘torture’ as crime against humanity’ as enumerated in section 3(2)(a)(g)(h) read with section 4(1) of the International Crimes (Tribunals) Act, 1973 and they be convicted and sentenced under section 20(2) of the said Act;

AND

Four (04) accused (1) Abdul Mannan Howlader @ Abdul Mannan Delar @ Mannaf, (2) Ashraf Ali @ Assrab Ali Howlader, (3) Md. Moharaj Howlader @ Hatkata Moharaj and (4) Md. Nurul Amin Howlader (absconding)

Charge No.04: GUILTY of aiding, abetting , assisting and participating in committing **genocide’** as enumerated in section 3(2)(c)(g)(h) of the Act of 1973 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.

XIV. Verdict on Sentencing

492. Mr. Shahidur Rahman, the learned prosecutor at the end of placing summing up asserted jurisprudential justification on awarding highest punishment. It has been submitted that the punishment to be awarded should be commensurate to the level of gravity and magnitude of crimes proved and mode of

participation of convicted accused persons therewith. The accused persons have been found guilty for the extremely barbaric crimes including wilful murder of numerous civilians belonging to Hindu religion and the accused persons being part of criminal enterprise had carried out such unlawful and horrific acts knowingly, in exercise of their nexus and association in local Razakar Bahini .

493. The learned prosecutor further submitted that the accused persons had shown intense barbarity by participating in perpetration of all the crimes arraigned proved. Scale, pattern and magnitude of the crimes proved together deserve to be taken into account as aggravating factor in awarding just and highest punishment although it will not be enough to lessen the soreness and untold trauma of victims and relatives of victims.

494. On contrary, **Mr. Gazi M.H. Tamim**, the learned engaged and state defence counsel chiefly submitted that since the prosecution could not prove the arraignments brought by credible evidence and the accused persons have been prosecuted simply out of rivalry they deserves acquittal.

495. The learned defence counsel **Mr. Gazi M.H. Tamim** however also urged to take the advanced age of the accused

persons into account as mitigating factor, if they are found guilty. It has also been submitted that testimony of most of witnesses does not implicate the accused Md. Moharaj Howlader as a direct perpetrators of the offences arraigned.

496. Mode of participation of accused Md. Moharaj Howlader @ Hatkata Moharaj and other accused has already been resolved in determining the events arraigned and they are found to have had culpable participation in committing the crimes arraigned, by their conscious and culpable act. Thus, it now cannot be considered as a mitigating factor.

497. What matters to be kept in mind in awarding punishment? In this regard **the Appellate Division of Supreme Court of Bangladesh in Criminal Appeal being no. 62 of 2013** observed that—

“In Abdul Quader Mollah, this Division while awarding the death sentence observed that ‘while considering the punishment to be given to an accused person, the court should be alive not only to the right of the perpetrator but also rights of victims of the crime and society’s reasonable expectation from the court for the proportionate deterrent punishment conforming to the gravity of the offence and

consistent with the public abhorrence for the heinous crime committed by the accused person’.

[Appeal preferred by **Muhammad Kamaruzzaman: Criminal Appeal being no. 62 of 2013: Judgment 03.11.2014: page 185]**

498. The learned defence counsel urged to take into consideration "age" of the accused persons if they are found guilty. Age of the offender may in some cases be considered as mitigating factor in awarding punishment, but not in all cases. It is the discretion of court of law to take it into account as a mitigating factor, considering the intrinsic gravity of the crimes proved.

499. Age alone cannot be considered as mitigating factor particularly when it is proved that the accused persons were deliberately engaged in perpetrating barbaric criminal acts constituting the offences of ‘crimes against humanity’ and ‘**genocide**’.

500. In the case in hand the convicted accused persons have been prosecuted and tried for their acts forming part of systematic attack in 1971, during the war of liberation. Thus, mitigation of sentence to be awarded, merely taking their age into account shall not be compatible with the scale and pattern

of diabolical crimes proved and the trauma sustained by the victims and relatives of victims.

501. Mitigating circumstances, we think, chiefly includes the admission of guilt or a guilty plea; the expression of sincere remorse; sympathy, compassion, or sorrow for the victims of the crimes. But none of accused convicted expressed remorse, at any stage of trial for the criminal acts they had committed in 1971. Besides, submission advanced on part of defence urging to take old age of the accused in awarding sentence rather strengthens their guilt as already proved.

502. Thus, their age alone does not deserve to be considered as decisive criteria for the purpose of awarding punishment, particularly when it has been proved that the crimes they committed exceeded limit of brutality. The victims who deserve that their tormenters are held accountable; the passage of time doesn't diminish the guilt.

503. Tribunal reiterates that the key object of awarding punishment is to guard the society and to extend a message that the letters of law cannot remain mum in awarding appropriate sentence, considering the gravity of offences proved. This

judicial thought is now well settled. Awarding lesser punishment, keeping the gravity of offences aside from consideration, rather shall have impact on society and humanity.

504. We also keep the view of the **Appellate Division of Supreme Court of Bangladesh** in mind which has been rendered in the case of **Matiur Rahman Nijami** that –

“It is the solemn duty of the courts to award proper sentence commensurate with the gravity of the crimes. Inappropriate lesser sentence causes injustice not only to the victims of crimes but sometimes to the whole society.”

[Criminal Appeal No. 143 of 2014, Judgment: 06 January 2016, page-152]

505. In the case in hand, all the crimes proved reflect intense brutality. Act and conduct that the convicted accused persons had in launching systematic attacks prove that they remained consciously and culpably engaged in conducting criminal mission directing civilian population which was indeed encumbered with extreme antagonistic mindset and to materialize the object of the designed criminal mission.

506. In the case in hand, Tribunal rendered its finding based on evidence about the mode of convicted accused persons' participation which obviously aggravates their liability.

507. The civilians annihilated by launching attacks as arraigned in **charge nos.01, 02, 03 and 04** were the members of Hindu religious group. Relatives and residents of the crime sites had occasion of experiencing the indiscriminate criminal activities carried out by the convicted accused persons who formed part of the criminal enterprise.

508. Participation of the convicted accused persons in accomplishing annihilation of seven (07) Hindu civilians and destructive activities [**as listed in charge no.01**] was rather explicit and deliberate. The willful murder of numerous civilians was the outcome of designed plan of which the convicted accused (1) Abdul Mannan Howlader @ Abdul Mannan Delar @ Mannaf, (2) Ashraf Ali @ Assrab Ali Howlader, (3) Md. Moharaj Howlader @ Hatkata Moharaj and (4) Md. Nurul Amin Howlader (absconding) were active part.

509. It has been proved that the convicted three (03) accused (1) Abdul Mannan Howlader @ Abdul Mannan Delar @ Mannaf,

(2) Ashraf Ali @ Assrab Ali Howlader and (3) Md. Moharaj Howlader @ Hatkata Moharaj even did not remain abstained from participating and facilitating the commission of sexual violence upon one Hindu woman Surabala [**as listed in charge no.02**]. Such violent criminal act was used as a weapon intending to terrorize the Hindu community of the vicinity attacked, we deduced it based on circumstances and pattern of attack.

510. The wounds of rape never heal, and they leave enduring scar on victim, her family, communities, nation and even the humanity too. Victim of devilish act of sexual violence suffers unspeakable mental blight till the rest of her life.

511. In the name of furthering policy and plan of Pakistani occupation army the convicted accused persons participated in committing abduction, confinement of two Hindu civilians who eventually got released in exchange of ransom money [**as listed in charge no.03**]. In conjunction with the attack plunder and torture as crimes against humanity were also committed. Gravity of offences was rather lesser. But it impacted adversely amongst the normal livelihood of local Hindu community.

512. It has been proved that the offence of ‘genocide’ was committed around localities directing civilians on account of membership in Hindu religious group which ended in annihilation of 18 Hindu **civilians [as listed in charge no.04]**. The offence of ‘**genocide**’ was perpetrated with the active and culpable assistance and participation of all the four(04) convicted accused (1) Abdul Mannan Howlader @ Abdul Mannan Delar @ Mannaf, (2) Ashraf Ali @ Assrab Ali Howlader, (3) Md. Moharaj Howlader @ Hatkata Moharaj and (4) Md. Nurul Amin Howlader (absconding). The criminal mission directing Hindu religious group was kept continued for day long.

513. ‘**Genocide**’ is a denial of the right of existence of human group and such denial shocks the conscience of humankind. Awarding just punishment for the crime of ‘genocide’ is thus now indispensably the matter of the nations’ concern.

514. It is hard to believe indeed that the accused persons were the human being of least humankind and compassion. Any degree of punishment would not be sufficient to heal the wounds of the survived relatives of victims of the event of mass killing together with intensive devastation.

515. Tribunal retells that the trial of grotesque and diabolical crimes like ‘**genocide**’ as enumerated in the Act of 1973 even long more than five decades after those occurred not only ensures lawful space of coming out from the culture of impunity but also creates space of knowing the truth – the truth that horrific ‘genocide’ was committed by the Pakistani occupation army and their notorious local collaborators in the territory of Bangladesh in 1971, during the nine-month war of liberation.

516. Pattern and scale of the deliberate violence and aggression conducted, as found proved [**as narrated in charge nos. 01, 02 and 04**] indisputably make the issue of awarding just punishment extremely imperative. Thus, Tribunal, a court of law reiterates that letters of law cannot remain non responsive to the victims and relatives of martyrs and the nation too who have been still carrying colossal and unspeakable trauma.

517. The punishment to be awarded must fit the crimes proved. Genocide is a crime against entire humankind and its harm being felt not only by the group targeted for destruction, but by all of humanity. The crime of genocide is universally viewed as a grievous and reprehensible violation of international humanitarian law.

518. The tragic reminiscence shall never erase the trauma the relatives of victims sustained. In awarding sentence Tribunal must eye on the untold trauma and harm sustained by the victims and their relatives. Right of victims and sufferers must be considered. On the question of sentence the **Appellate Division of Supreme Court of Bangladesh in Criminal Review Petition being no.42 of 2016** observed that—

“All these crimes were extremely cruel and horrendous in nature. Not only the near and dear ones of the victims of these crimes were shocked but also the whole society was terribly shocked by the commission of these crimes. The whole society has been waiting for the proper punishment of the perpetrators of these crimes for a long period. The commission of these crimes – even the slightest complicity in these most cruel, gruesome and barbarous crimes warrants death sentence only. There is no mitigating circumstance to reduce the death sentences, rather there are aggravating circumstances.”

[Motiur Rahman Nizami: Judgment: 5th, May, 2016 : page-16-17]

519. In awarding sentence the court of law must consider the facts and circumstances of each case, the gravity of the crime,

manner and nature of the offence and all other attendant circumstances. In **State of Madhya Pradesh Vs. Surendra Singh**, (AIR 2015 SC 3980, based on the theory of proportionality, it is laid down by Hon'ble Apex Court that,

“Undue sympathy to impose inadequate sentence would do more harm to the justice system to undermine the public confidence in the efficacy of law. It is the duty of every court to award proper sentence having regard to the nature of the offence and the manner in which it was executed or committed.”

520. It is to be noted that statutory provision contemplated in section 20(2) of the Act of 1973 provides the ‘sentence of death’ or such other punishment proportionate to the gravity of the crime. The **Appellate Division** of Supreme Court of Bangladesh in the **Criminal Appeal nos. 24-25 OF 2013, Abdul Quader Molla** has observed that --

“A plain reading of sub-section (2) shows that if the tribunal finds any person guilty of any of the offences described in subsection (2) of section 3, awarding a death sentence is the rule and any other sentence of imprisonment proportionate to the gravity of the offence is an exception.....In awarding the appropriate sentence, the tribunal must

respond to the society's cry for justice against perpetrators of Crimes against Humanity.”

[Criminal Appeal Nos. 24-25 of 2013, Abdul Quader Molla Judgment, page 247]

521. In view of reasoned deliberation as made above and considering the intrinsic terrible gravity of the appalling offences proved and also keeping the factors together with settled jurisprudence as focused above into account we are of the **UNANIMOUS** view that justice would be met if the convicted accused (1) Abdul Mannan Howlader @ Abdul Mannan Delar @ Mannaf, (2) Ashraf Ali @ Assrab Ali Howlader (3) Md. Moharaj Howlader @ Hatkata Moharaj and (4) Md. Nurul Amin Howlader [**absconding**] who have been found guilty beyond reasonable doubt for the horrendous crimes proved are condemned and sentenced as below, under the provision of section 20(2) of the Act of 1973:

**Hence, it is
ORDERED**

That four (04) accused --

(1) Abdul Mannan Howlader @ Abdul Mannan Delar @ Mannaf , son of late Hashem Ali Howlader and late Amena

Khatun of village-Hetalia, Police Station-Bhandaria, District-Pirojpur.

(2) Ashraf Ali @ Assrab Ali Howlader, son of late Najar Ali Howlader and Hajera Begum Nesa of Village-Hetalia, Police Station-Bhandaria, District-Pirojpur;

(3) Md. Moharaj Howlader @ Hatkata Moharaj, son of late Mohabbat Ali Howlader and Sometto Banu of Village-Charkhali, Police Station-Bhandaria, District-Pirojpur **AND**

(4) Md. Nurul Amin Howlader (absconding), son of late Shamsul Haque Howlader and Most. Setara Begum of village-Hetalia, Police Station-Bhandaria, District-Pirojpur--

are found UNANIMOUSLY guilty of the offence of **'genocide'** as enumerated in section 3(2)(c)(g)(h) of the International Crimes (Tribunals) Act, 1973 as arraigned in **CHARGE NO.01**. Accordingly, they be **UNANIMOUSLY** convicted and condemned to the **sentence as below for this charge**, under section 20(2) of the Act of 1973:

'Sentence of death' for the crimes as listed in **CHARGE NO.1** and they be hanged by the neck till they are dead, under section 20(2) of

the International Crimes (Tribunals) Act,
1973;

Three (03) accused --

(1) Abdul Mannan Howlader @ Abdul Mannan Delar @ Mannaf, (2) Ashraf Ali @ Assrab Ali Howlader and (3) Md. Moharaj Howlader @ Hatkata Moharaj

are found **UNANIMOUSLY** guilty of the offences of ‘abduction’, ‘confinement’, ‘torture’, ‘plundering’ and ‘rape’ as ‘crimes against humanity’ as arraigned in **CHARGE NO.02** AND ‘abduction’, ‘confinement, ‘plunder’, ‘torture as crimes against humanity as arraigned in **CHARGE NO.03** as enumerated in section 3(2)(a)(g)(h). Accordingly, they be **UNANIMOUSLY** convicted and condemned to the **sentence as below for these two charges**, under section 20(2) of the Act of 1973:

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

‘Sentence of imprisonment for five (05) years’ for the crimes as listed in **CHARGE**

NO. 3 under section 20(2) of the International Crimes (Tribunals) Act, 1973;

Four (04) accused

(1) Abdul Mannan Howlader @ Abdul Mannan Delar @ Mannaf , (2) Ashraf Ali @ Assrab Ali Howlader (3) Md. Moharaj Howlader @ Hatkata Moharaj and (4) Md. Nurul Amin Howlader (absconding)

are found **UNANIMOUSLY guilty** of the offences of **‘Genocide’** as enumerated in section 3(2)(c)(g)(h) of the Act of 1973 as arraigned in **CHARGE NO. 04**. Accordingly, they be **UNANIMOUSLY** convicted and condemned to the **sentence as below for this charge**, under section 20(2) of the Act of 1973:

‘Sentence of death’ for the crimes as listed in **CHARGE NO.04** and they be hanged by the neck till they are dead, under section 20(2) of the International Crimes (Tribunals) Act, 1973;

The **‘sentences of death’** as awarded above to the convicted accused persons shall get merged.

However, as the convicted accused (1) Abdul Mannan Howlader @ Abdul Mannan Delar @ Mannaf , (2) Ashraf Ali @ Assrab Ali Howlader and (3) Md. Moharaj Howlader @ Hatkata

Moharaj have been condemned to **'sentences of death'**, as above, the **'sentences of imprisonment for life till natural death'** and **sentence of imprisonment for five (05) years** awarded to them in respect of charge **nos.2 and 3** respectively shall get merged into the **'sentences of death'** as awarded to them in respect of charge **nos.01 and 04**. This sentence shall be carried out under section 20(3) of the Act of 1973.

Since the convicted accused Md. Nurul Amin Howlader has been **absconding** the **'sentence of death'** as awarded above **[in respect of charge nos.01 and 04]** to him shall be executed after causing his arrest or when he surrenders before the Tribunal, whichever is earlier.

The **'sentence of death'** as awarded above to convicted accused (1) Abdul Mannan Howlader @ Abdul Mannan Delar @ Mannaf, (2) Ashraf Ali @ Assrab Ali Howlader (3) Md. Moharaj Howlader @ Hatkata Moharaj and (4) Md. Nurul Amin Howlader[**absconding**] under section 20(2) of the International Crimes (Tribunals) Act , 1973 [The Act No.XIX of 1973] shall be carried out and executed in accordance with the order of the government as required under section 20(3) of the said Act.

Three (03) convicted accused (1) Abdul Mannan Howlader @ Abdul Mannan Delar @ Mannaf , (2) Ashraf Ali @ Assrab Ali Howlader and (3) Md. Moharaj Howlader @ Hatkata Moharaj [present on dock as have been brought from prison] be sent to prison together with conviction warrant.

Let a copy of the Judgment be transmitted together with the conviction warrant to **the Senior Jail Super, Dhaka Central Jail**, Keraniganj, Dhaka for information and necessary action and compliance.

Let a copy of the Judgment also be transmitted together with the conviction warrant against convicted **absconding accused Md. Nurul Amin Howlader** to (1) The Secretary, Ministry of Home Affairs and (2) The Inspector General of Police[IGP], Bangladesh Police, Police Head Quarters, Dhaka for information and due 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 **convicted absconding accused Md. Nurul Amin Howlader.**

Let copy of the Judgment also be transmitted to the District Magistrate, Dhaka together with conviction warrant for information and necessary compliance.

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

The convicted accused (1) Abdul Mannan Howlader @ Abdul Mannan Delar @ Mannaf (2) Ashraf Ali @ Assrab Ali Howlader and (3) Md. Moharaj Howlader @ Hatkata Moharaj shall have right to prefer appeal before the Appellate Division of the Supreme Court of Bangladesh within the time stipulated in law. Thus, let certified copy of the judgment be furnished to these three convicted accused at once, free of cost, for preferring appeal.

If the convicted accused **Md. Nurul Amin Howlader [absconding]** is arrested or surrenders within 30(thirty) days of the date of the order of conviction and sentence he will be provided with certified copy of this judgment free of cost.

Justice Md. Shahinur Islam, Chairman

Justice Md. Abu Ahmed Jamadar, Member

Justice K.M. Hafizul Alam, Member