

International Crimes Tribunal-1 [ICT-1]

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

Old High Court Building, Dhaka, Bangladesh

ICT-BD [ICT-1] Case No. 11 of 2018

[Arising out of ICT-BD Misc. Case No. 08 of 2017]

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

Present

Justice Md. Shahinur Islam, Chairman

Justice Md. Abu Ahmed Jamadar, Member

Justice K.M. Hafizul Alam, Member

The Chief Prosecutor

Vs.

(1) Md. Amzad Hossain Mollah (2) Md. Ohab Mollah [absconding] (3) Md. Mahatab Biswas [absconding] and (4) Md. Fasiar Rahman Mollah [absconding]

For the Prosecution:

Mr. Golam Arief Tipoo, Chief Prosecutor

Mr. Syed Haider Ali, Prosecutor

Mr. Mokhlesur Rahman, Prosecutor

Mr. Sultan Mahmud, Prosecutor

Rezia Sultana Begum, Prosecutor

Ms. Sabina Yesmin Khan, Prosecutor

Mr. Tapas Kanti Baul, Prosecutor

Mr. Mushfiqur Rahman, Prosecutor

Engaged counsel for the accused detained in prison and as state defence counsel for 02 absconding accused:

Mr. Gazi M. H. Tamim, Advocate, Supreme Court of Bangladesh

State defence counsel for 01 absconding accused:

Mr. Abdus Sattar Palwan, Advocate, Supreme Court of Bangladesh

Date of delivery of Judgment: 25 June, 2023

JUDGMENT

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

I. Introductory Words

1. The case in which today the Tribunal is going to render judgment involves arraignments of barbaric atrocious criminal activities carried out in systematic manner in 1971 in the territory of Bangladesh during the war of liberation directing the non combatant pro-liberation civilians constituting the offences as ‘crimes against humanity’ as enumerated in Section 3(2) of the International Crimes (Tribunals) Act, 1973.

2. Trial of the case commenced on framing four counts of charges against five (05) accused namely (1) Md. Amzad Hossain Mollah [**detained in prison**] (2) Md. Ohab Mollah [**absconding**] (3) Md. Mahatab Biswas [**absconding**] (4) Md. Fasiar Rahman Mollah [**absconding**] and (5) Md. Nowsher Biswas [**absconding**]. Of them one accused Md. Nowsher Biswas died on 09.10.2022, after commencement of trial and thus proceeding so far as it related to him stood abated. In this way trial eventually concluded against four accused of whom only one accused Md. Amzad Hossain Mollah has been detained in prison.

3. The accused persons have been indicted for the atrocious criminal activities constituting the offences of ‘abduction’, ‘confinement, ‘murder’ and ‘other inhumane acts’ as crimes against humanity committed in the localities under Police Station Bagharpara of District Jashore in 1971, during the war of liberation of Bangladesh.

4. Prosecution alleges that the accused persons got themselves affiliated in locally formed Razakar Bahini, an ‘auxiliary force’ formed to collaborate with the Pakistani occupation armed force

in carrying out its activities aiming to wipe out the pro-liberation Bengali civilians, in furtherance of policy and plan.

5. Of four accused persons three (1) Md. Ohab Mollah (2) Md. Mahatab Biswas and (3) Md. Fasiar Rahman Mollah have been tried in absentia, in compliance with the provisions contained in the Act of 1973 and the ROP as they could not be arrested in execution of warrant of arrest issued by this Tribunal nor they surrendered to stand trial. Only the accused Md. Amzad Hossain Mollah has been in detention. Pursuant to issuance of production warrant the prison authority has produced this accused today before this Tribunal [ICT-1].

6. In course of trial, both the prosecution and the defence provided efficient assistance to go on with the proceeding in accordance with law by ensuring recognised rights of defence. We appreciate their efforts.

II. Formation and Jurisdiction of the Tribunal

7. We consider it indispensable to reiterate that the Act No. XIX enacted in 1973 is destined to prosecute crimes against humanity, genocide and system crimes as enumerated in the Act committed in violation of customary international law.

8. Prosecuting, trying and punishing not only the ‘armed forces’ but also the perpetrator[s] who belonged to ‘auxiliary forces’, or who culpably participated in committing the offence enumerated in the Act of 1973 as an ‘individual’ or a ‘group of individuals’ or ‘organisation’ under the Act of 1973, an *ex post facto* legislation is fairly permitted. In the case in hand, the accused persons have been arraigned for committing the alleged offences in exercise of their membership in and potential affiliation with the ‘auxiliary force’-- the locally formed Razakar Bahini.

9. The offences for which the accused persons stood trial were ‘system crimes’ and not isolated crimes as those were perpetrated in context of ‘war of liberation’. It is patently manifested from section 3(1) of the Act of 1973 that even any person (individual), if he is *prima facie* found accountable either under section 4(1) or 4(2) of the Act of 1973 for the perpetration of offence(s), can be brought to justice under the Act.

10. The Tribunal is governed by its guiding legislation ‘The International Crimes (Tribunals) Act of 1973[Act No. XIX of 1973]’ and by the Rules of Procedure [ROP] 2010 formulated by the Tribunal [ICT-1] under the power conferred in section 22 of the principal Statute.

11. Pursuant to the Act of 1973, the Tribunal [ICT-1] has the authority and jurisdiction to prosecute persons responsible for the offences enumerated in section 3(2) of the Act committed in violations of international humanitarian law in the territory of Bangladesh in 1971, during the war of liberation. Jurisdiction of Tribunal [ICT-BD] may be viewed as a commitment of Bangladesh to discharge its *erga omnes* obligation.

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

13. Having jurisdiction under section 10(1) (j), section 20(1) and section 20(2) of the International Crimes (Tribunals) Act, 1973[Act No.XIX of 1973] this ‘Tribunal’ known as

International Crimes Tribunal-1 [ICT-1] hereby renders and pronounces the following judgment.

III. Brief Historical Background

14. In drawing the historical background, in brief, that ensued the war of liberation of the Bangalee nation in 1971 we reiterate 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 it was named West Pakistan and the eastern zone was named East Pakistan, which is now Bangladesh. Since partition in 1947 the Bengali nation started suffering from patent disparity and deprivation in all spheres of lives.

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

16. 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 deliberately defying the democratic norms Pakistan Government did not care to respect this overwhelming majority. As a result, movement started in the territory of this part of Pakistan and Bangabandhu Sheikh Mujibur Rahman, the father of the nation in his historic speech of 7th March, 1971, called on the Bangalee nation to start struggle for independence. It is to be noted with immense pride that the historic March 7 glowing speech of Bangabandhu Sheikh Mujibur Rahman, the Father of Nation has been recognised by the UNESCO as a world documentary heritage.

17. The 7 March blazing speech of Bangabandhu calling on the freedom-loving Bangalees indispensably mobilized and inspired the whole nation, excepting a few pro-Pakistan people to get prepared for the war of liberation. In the early hour of 26th March, 1971 following the onslaught of “Operation Search Light” by the Pakistani Military on 25th March, 1971 Bangabandhu Sheikh Mujibur Rahman declared Bangladesh independent immediately before he was arrested by the Pakistani authorities.

18. In the War of Liberation that ensued in 1971, all people of the then East Pakistan unreservedly supported and participated

in the call to make their motherland Bangladesh free but a small number of Bangalees, Biharis, other pro-Pakistanis, as well as members of a number of different religion-based political parties, particularly Jamat E Islami (JEI) and its student wing Islami Chatra Sangha (ICS), Muslim League, Convention Muslim League joined and/or collaborated with the Pakistan occupation army to aggressively resist the conception of independent Bangladesh and most of them committed and facilitated as well the commission of systematic and widespread appalling atrocities directing civilian population in the territory of Bangladesh, in 1971, to further their policy and plan of annihilating the dream of self determination of Bengali nation. 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 Pakistani occupation army's terrible brutality directing civilian population of Bangladesh was planned and in furtherance of policy-- the policy to wipe out the pro-liberation Bengali civilians. The Appellate Division, in the case of *Abdul Quader Molla* has observed that –

“The way the Pakistani Army had acted, surpasses anything that could pass for legitimate use of force. It had resorted to wanton murder of civilians, including women and children in a deliberate plan to

achieve submission by stark terror. [**Appellate Division, Abdul Quader Molla Judgment, 17 September 2013 page 39**]

20. The alleged atrocities for which the accused persons stood trial were not isolated from the policy and plan of the Pakistani occupation army who started its 'mayhem' since 25 March 1971 intending to wipe out the pro-liberation Bengali civilians, to resist their aspiration of self determination.

21. The nation fought for the cause of independence and self determination and finally achieved independence on 16 December, 1971. History testifies that enormously grave and recurrent horrific atrocities directing the Bengali civilians in the territory of Bangladesh starting since 25 March, 1971 did not thrive to foil the highest sacrifice of the nation. The nation always pays tribute and homage to the blood of millions of patriotic martyrs and innocent defenceless people.

22. In 1971, the Pakistani occupation army had no friends in Bangladesh— except a few traitors who took stance against the war of liberation and they belonged to the ideology of pro-Pakistan political parties, e.g. Muslim League, the Convention Muslim League, the Jamaat-e- Islami [JEI] and the Nizam-i-

Islami. Tribunal-2 has already observed in the case of Muhammad Kamaruzzaman and Ali Ahsan Muhammad Mujahid that JEI culpably and actively assisted and facilitated the Pakistani occupation army by forming Razakar, Al-Badr—Para militia forces, intending to collaborate with them.

23. It is now settled history that Jamat E Islami [JEI] with intent to provide support and assistance to the Pakistani occupation army by forming peace committee, armed Razakar and Al-Badr force obtained government's recognition for those *para militia* forces. JEI started acting antagonistically since the beginning of the war of liberation and it ended in killing of intellectuals. It is found from a report published in **The Daily Sangram 17 April 1971** that a delegation team comprising of members of Central Peace Committee including Professor Ghulam Azam [also the then Amir of Jamat E Islami] in a meeting with the Governor of East Pakistan Lt. General Tikka Khan expressed solidarity and their adherence to the armed forces.

24. Prosecution avers that accused persons did not keep them distanced from the strategy of JEI to further the policy and plan of the Pakistani occupation army in carrying out barbaric atrocities against the non combatant pro-liberation civilians that

resulted in commission of diabolical offences enumerated in the Act of 1973. Victims of their target of designed criminal acts in grave breach of Geneva Convention were the pro-liberation civilians in occupied territory of Bangladesh. It is now a settled history

25. The settled history also speaks that the ‘aggression’ that resulted in untold violation of civilians’ rights and their indiscriminate killings in the territory of Bangladesh started with launching the ‘operation searchlight’ was in grave breaches of Geneva Convention 1949. After the ‘operation search light’ on the night of 25th March 1971 ten millions of Bengali civilians were compelled to deport to India under the horrors of dreadful aggression and brutality spread over the territory of Bangladesh.

26. It is true that the perpetrators of horrific atrocious activities accomplished in 1971 in the territory of Bangladesh are being prosecuted long more than four decades later. But delay in prosecuting the crimes enumerated in the Act of 1973 cannot be a clog at all.

27. There have been examples of prosecutions of persons allegedly responsible for crimes against humanity even many

decades after the prohibited acts committed. Tribunal notes that in the late 1990' French court convicted Maurice Papon for atrocities committed in occupied France, during World War II. Papon was almost ninety years old at that time, but he was found guilty and sentenced to a term of imprisonment.

[[http://www.enotes.com/crimes-against-humanity reference/crimes against- humanity](http://www.enotes.com/crimes-against-humanity/reference/crimes-against-humanity)]

28. Finally, the untold atrocious resistance on part of thousands of local collaborators could not impede the nation's valiant journey to freedom. Undeniably the ways to self-determination for the Bangalee nation was strenuous, swabbed with enormous blood, struggle and immense sacrifices. In the present-day world history, conceivably no nation paid as extremely as the Bangalee nation did for its self-determination and independence. 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 Persons

29. Before we move to adjudicate the arraignments brought it is essentially needed to focus on brief account and ideology the accused persons had in 1971 as it is indispensably chained to

the arraignments brought. The brief account of the accused persons as have been depicted in the formal charge is as below:

(i) Md. Amzad Hossain Mollah

Accused Md. Amzad Hossain Mollah is the son of late Sobhan Mollah and late Baru Bibi of village-Premchara, Police Station-Bagharpara, District-Jashore. He was born on 04.02.1940 [as per voter list]. He passed S.S.C examination from Shimakhali High School, Bagharpara, District Jashore in 1967. He was an active supporter of Muslim League, a pro-Pakistan political party. In 1971, he was the commander of the Razakar Camp set up at Premchara Primary School. His name appeared in the list of Bagharpara Police Station Razakar Bahini, in serial No. 17. He actively participated and collaborated with the Pakistani occupation army in accomplishing heinous crimes including crimes against humanity, in the localities of Bagharpara Police Station, District- Jashore and localities under police station-Shalikha of District- Magura, prosecution alleges.

(ii) Md. Ohab Mollah [absconding]

Accused Md. Ohab Mollah is the son of late Budoï Mollah and Most. Moyna Begum of village-Premchara under police station Bagharpara of District Jashore. In 1971, he was an active

worker of Muslim League. In 1971, during the War of Liberation he joined in the Razakar Bahini formed in Bagharpara Police Station, Jashore. He actively participated and collaborated with the Pakistani occupation army in committing heinous atrocious activities constituting the offences of crimes against humanity, around the localities under police station- Bagharpara, District- Jashore and localities under police station- Shalikha of District-Magura, prosecution alleges.

(iii) Md. Mahatab Biswas [absconding]

Accused Md. Mahatab Biswas is the son of late Ebadat Biswas and late Johora Begum of village-Bara Khudra, Police Station Bagharpara, District-Jashore. At present: Upasahar Nowapara, Police Station-Kotwali Model Thana, District Jashore. In 1971, he was an active worker of Muslim League and joined in the Razakar Bahini formed in Bagharpara Police Station. He actively participated and collaborated with the Pakistani occupation army to commit heinous crimes, in the localities under Bagharpara Police Station, District- Jashore and localities under police station- Shalikha of District-Magura, prosecution alleges.

(iv) Md. Fasiar Rahman Mollah [absconding]

Accused Md. Fasiar Rahman Mollah is the son of late Monsur Mollah and late Rupshi Begum of village-Choto Khudra, Police Station-Bagharpara, District-Jashore. In 1971, he was an active worker of Muslim League and joined in the locally formed Razakar Bahini and his name finds place in serial No. 05 of the Razakar list of Bagharpara Police Station, Jashore. He actively participated and collaborated with the Pakistani occupation army in perpetrating heinous crimes, in the localities under Bagharpara Police Station, District-Jashore, prosecution alleges.

V. Procedural History**Commencement of Investigation**

30. The record goes to depict that the Investigation Agency formed under The Act of 1973 started investigation pursuant to compliant register serial no. 81 dated 25.04.2017, in respect of commission of offences enumerated in section 3(2) of the Act of 1973 allegedly perpetrated by the accused persons, being part of the enterprise formed of armed Razakars.

Arrest of one Accused

31. During investigation, the IO by filing an application prayed, through the chief prosecutor seeking shown arrest of accused Md. Amzad Hossain Mollah who was in jail in connection with

Bagharpara police station case no. 08 dated 08.08.2014 under section 15(3)/16(3) of the Special Powers Act, 1974 along with section 3/4/6 of The Explosive Substance Act, 1908. Tribunal on hearing the matter by its order dated 17.05.2017 issued production warrant and accordingly this accused was produced before the Tribunal on 22.05.2017 when he was sent to prison, showing arrested in connection with this case, for the purpose of effective investigation.

Interrogation of Accused

32. Tribunal, by its order dated 30.05.2017 permitted the investigation officer (IO) allowing prayer agitated through the Chief Prosecutor to interrogate the accused Md. Amzad Hossain Mollah detained in prison and accordingly this accused was interrogated on 04.06.2017, in compliance with necessary provision.

Submission of Investigation report

33. On conclusion of investigation, the IO submitted its report together with documents and materials collected and statement of witnesses, before the Chief Prosecutor on 16.04.2018 recommending prosecution of one accused, already detained. But on scrutiny of the report, prosecution returned it back to the

investigation agency for re-submitting report on holding further investigation.

34. The investigation officer entrusted with the task of investigation eventually re-submitted the extended report on 18.09.2018 recommending prosecution of in all five [05] accused persons of whom only Md. Amzad Hossain Mollah could be arrested till submission of the report.

Submission of Formal Charge

35. Chief Prosecutor, on the basis of the report and documents submitted therewith by the Investigation Agency, placed the **'Formal Charge'** on 03.10.2018 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 five (05) accused had committed the offences enumerated in section 3(2) of the Act of 1973 and also for their complicity in committing such crimes narrated in the formal charge, during the period of War of Liberation in 1971, around the localities under police station-Bagharpara, District-Jashore and localities under police station-Shalikha of District-Magura.

Taking Cognizance of Offences

36. 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 **04.11.2018**, by application its judicial mind to the Formal Charge and materials and documents submitted therewith.

Publication of Notification in respect of absconding accused

37. Out of five accused four 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 four accused namely Md. Ohab Mollah, Md. Mahatab Biswas, Md. Fasiar Rahman Mollah and Md. Nowsher Biswas(died during trial) Tribunal ordered publication of notice in two national daily news papers, for the purpose of holding proceeding in absentia against them, in compliance with the provision.

Appointing state defence counsel for absconding Accused

38. But none of those four accused turned up in response to such notification and as such treating them absconded Tribunal by its order dated **14.02.2019** appointed **Mr. Gazi M.H Tamim**, Advocate, Supreme Court of Bangladesh as state defence counsel for two absconding accused Md. Ohab Mollah and Md.

Mahatab Biswas and Tribunal also appointed **Mr. Abdus Sattar Palwan**, Advocate, Supreme Court of Bangladesh as state defence counsel for two other absconding accused Md. Fasiar Rahman Mollah and Md. Nowsher Biswas(died during trial), at the cost of government and fixed the date of hearing on charge framing matter which took place on **07.04.2019** and **17.06.2019**.

Charge Framing Hearing and Order

39. On closure of hearing on charge framing matter Tribunal eventually rendered order on charge framing matter on **29th day of July 2019**. In this way trial commenced.

One Accused died during Trial

40. In course of trial one absconding accused Md. Nowsher Biswas died on 09.10.2022 and thus on having considered necessary papers submitted on part of prosecution Tribunal passed necessary order in this regard and accordingly proceeding so far as it related to accused Md. Nowsher Biswas stood abated.

Opening Statement and Examination of Witnesses

41. After placing opening statement drawing initial attention to the Formal Charge and materials collected prosecution adduced

and examined in all eight (08) witnesses including the IO (Investigation Officer). Defence duly cross-examined them.

Examination of Defence Witness

42. On closure of prosecution evidence defence adduced and examined one witness who testified as D.W.01, defending the accused Md. Amzad Hossain Mollah. Defence submitted some papers at belated stage with prayer to take the same into account. Those have been kept with the record.

Summing Up

43. On closure of examination of witnesses of both sides first prosecution placed its summing up. Next, defence placed its respective summing up. In course of summing up both sides placed argument drawing attention to evidence adduced and it concluded on **11.5.2022** and thus the case was kept in CAV i.e. for delivery and pronouncement of judgment and Tribunal ordered to send the accused Md. Amzad Hossain Mollah to prison with direction to produce him before Tribunal, **on call**. Accordingly today he has been produced before Tribunal.

VI. Applicable laws

44. Since the crimes arraigned tried in Tribunal are not isolated crimes we deem it necessary to focus on applicability of laws in

determining the crimes enumerated in the Act of 1973 which are known as 'system crimes' or 'group crimes'. The judicial proceedings in relation to such crimes before the Tribunal are guided by the International Crimes (Tribunals) Act, 1973, the Rules of Procedure 2010[ROP] formulated by the Tribunal-1 under the powers conferred in section 22 of the Act.

45. Section 23 of the Act of 1973 contemplates prohibition as to applicability of the Code of Criminal Procedure, 1898 and the Evidence Act, 1872. Tribunal is authorized to take judicial notice of any fact of common knowledge which is not needed to be proved by adducing evidence [Section 19(4) of the Act]. 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]. The Tribunal shall have discretion to consider hearsay evidence by weighing its probative value [Rule 56(2)].

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

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

47. Further, 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 does have jurisdiction to consider unreasonable [Section 19(2) of the Act]. Tribunal is not barred in taking into consideration the jurisprudence evolved in *ad hoc* Tribunals in resolving legal and factual aspects before it.

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

VII. Summing up [Argument]

Summing up by the Prosecution

49. **Rezia Sultana Begum**, the learned prosecutor in placing summing up submitted that all the accused persons indicted in exercise of their culpable affiliation in locally formed Razakar

Bahini made them consciously engaged in committing atrocious activities leading to killings of unarmed pro-liberation civilians around the localities under police station Bagharpara of District Jashore. The atrocities were committed in context of the war of liberation and thus were systematic in nature. The crimes of which the accused persons have been tried were ‘system crimes’ or ‘group crimes’, committed in violation of international humanitarian law.

50. The learned prosecutor continued placing submission that the witnesses examined also consistently testified as to the nexus of accused persons with Razakar Bahini and its camp set up at Premchara primary school. It was quite practicable for the witnesses of knowing the identity of the accused persons for the reason of their notoriety which became anecdote around the localities, the learned prosecutor added.

51. The learned prosecutor then placed argument in respect of charges brought and factual aspects related to the events arraigned, drawing attention to the sworn testimony of witnesses examined and other materials submitted. The learned prosecutor submits that prosecution has been able to prove beyond reasonable doubt participation and complicity of all the four

accused with the commission of the offences for which they have been indicted. It appears that prosecution relied upon 07 witnesses examined to substantiate the four counts of charges framed. In addition to it the IO has been examined as P.W.08. It would be expedient to address the submission advanced in relation to arraignments brought at the time of adjudicating the charges.

Summing up by the Defence

52. **Mr. Gazi M.H. Tamim**, learned counsel defending the accused (1) Md. Amzad Hossain Mollah, and also defending two absconding accused Md. Ohab Mollah and (3) Md. Mahatab Biswas as state defence counsel submitted that these accused did not belong to Razakar Bahini and prosecution could not prove it by any authoritative document of 1971; that the alleged list of Razakars which states name of only two accused is not an authoritative and it has been created for the purpose of this case. Name of other accused does not find place in the alleged list. The witnesses had no reason of knowing the accused persons beforehand.

53. Questioning credibility of testimony tendered by the prosecution witnesses the learned defence counsel submitted

that involvement and complicity of these accused could not be proved on the basis of their inconsistent testimony. Argument as advanced by him in relation to charges may be well focused at the time of adjudicating the charges.

54. Mr. Abdus Sattar Palwan, the learned state defence counsel defending the absconding accused Md. Fasiar Rahman Mollah echoing the submission advanced on part of other accused submitted that this accused who has been indicted in three counts of charges was not a Razakar; that the alleged list of Razakars itself does not prove his affiliation in locally formed Razakar Bahini as this document is not an authoritative one.

55. In placing argument on factual aspects related to the charges the learned defence counsel **Mr. Abdus Sattar Palwan** chiefly questioning credibility of testimony of witnesses emphatically argued that involvement of this accused with events alleged could not be proved at all. However, the argument placed shall be focused at the time of adjudicating the charges.

VIII. General Considerations Regarding the Evaluation of Evidence in a case involving the offences of Crimes against Humanity as enumerated in the Act of 1973

56. The task of determination of accountability of an individual accused of offences enumerated in section 3(2) of the Act of 1973 involves a quite different jurisprudence. Proof of all forms of criminal responsibility, through participation in any manner can be given by direct or hearsay or circumstantial evidence. It is now well settled jurisprudence.

57. Onus squarely lies upon the prosecution to establish the commission of the events arraigned and accused person's presence, acts and conducts forming part of attack that resulted in commission of the offences of 'crimes against humanity' as enumerated in section 3(2) of the Act of 1973 for which the accused persons have been arraigned.

58. The Tribunal keeps it in mind that the context of committing such 'system crimes' and totality of its horrific contour prevailing in war time situation naturally left little room for the people to witness all the criminal acts forming part of attack.

59. Besides, due to lapse of long passage of time it may not always be reasonable to expect the witness to recall and recount every detail with precision. The evolved jurisprudence does not permit to keep this reality aside while adjudicating the arraignments brought under the Act of 1973.

60. It is to be noted that the testimony of even a single witness on a material fact does not, as a matter of law, require corroboration. The established jurisprudence makes it clear that corroboration is not a rule of requirement for a finding to be rendered.

61. The evolved international criminal jurisprudence suggests keeping it in mind too that an insignificant discrepancy or inconsistency which may naturally occur between witnesses' testimony does not diminish either witness's testimony in its entirety. Core of witness's testimony is to be considered and weighed.

62. It is now internationally settled jurisprudence 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, ICTR Appeal Chamber, May 21, 2007, para. 58**].

63. The Tribunal, however, is not obliged to address all insignificant inconsistencies, even if occur in witnesses' testimony. We require separating the grains of acceptable truth from the chaff of exaggerations and improbabilities which

cannot be safely or prudently accepted and acted upon, in determining accused's accountability.

64. We are to see how the accused's act or conduct or prohibited act formed part of 'systematic attack' directed against the civilian population and how it resulted in perpetration of crimes as enumerated in section 3(2) of the Act of 1973. Prosecution even is not required to identify the actual perpetrator. This has been now a settled and recognised legal proposition.

65. It is now well settled too that even hearsay evidence is not inadmissible *per se*. However, mere admission of hearsay evidence does not render it carrying probative value. Such hearsay evidence is to be weighed and assessed in the context of its credibility, relevance, and circumstances and also together with other evidence tendered.

IX. Razakar Bahini: It's Objective in 1971 and whether the accused persons belonged to the locally formed Razakar Bahini

66. The learned prosecutor **Rezia Sultana Begum** argued that from documentary evidence together with uncontroverted oral evidence it has been proved that the accused persons were notorious Razakars in the locality and accused Md. Amzad Hossain Mollah had potential dominance over the Razakar camp

formed at Premchara primary school. Prosecution avers that the accused persons got engaged in committing the crimes narrated in the charges framed in exercise of their membership in locally formed Razakar Bahini, an armed auxiliary force as defined in section 2(a) of the Act of 1973.

67. On contrary the learned defence counsel **Mr. Gazi M.H. Tamim** argued that prosecution failed to prove that the accused persons were Razakars. Such alleged affiliation of accused persons could not be proved by authoritative and sufficient documents. Rather, the judgment rendered in a case initiated against the accused Md. Amzad Hossain Mollah and others under the Collaborators Order 1972 goes to show that the accused Md. Amzad Hossain Mollah was not a Razakar. Photocopy of the said judgment has been submitted for consideration.

68. Tribunal notes that it is not imperative to prove accused persons' formal membership in Razakar Bahini by providing more and more documents for determining their nexus with it. First, let us see what has been unveiled in this regard in testimony of witnesses. Testimony of P.W.01 B. M. Ruhul Amin demonstrates explicitly when and how the Razakar camp

was formed in 1971 at village Premchara under police station Bagharpara of District Jashore.

69. It is evinced from unimpeached testimony of P.W.01 that in the mid of May in 1971, after the war of liberation ensued a Razakar camp was set up at the house of Mojahar Biswas of village- Premchara. Razakar Bahini was formed of Md. Amzad Hossain Mollah, the son-in-law of Mojahar Biswas, Keramat Molla (now dead), Md. Mahatab Biswas, Md. Fasiar Rahman Mollah, Md. Ohab Mollah and other individuals. Due to move up of quantity of Razakars the camp was then shifted to Premchara Primary School and accused Md. Amjad Hossain Mollah was made its commander.

70. Being a resident of the same locality P.W.01 naturally knew the formation of Razakar camp and affiliation of persons including the accused persons therewith. In 1971 during the war of liberation prohibited atrocious activities made them notorious and it became anecdote in the locality.

71. Besides, it appears that the above version does not seem to have been denied even in cross-examination of P.W.01 There is no reason to disbelieve what the P.W.01 stated in respect of

formation of Razakar camp and culpable nexus of the accused persons therewith.

72. Uncontroverted testimony of P.W.02 Md. Abdul Haye, P.W.03 Akter Ali , P.W.05 Md. Alauddin Biswas also demonstrates that in the mid of May in 1971 a Razakar camp was set up at the house of father-in-law of Razakar commander Md. Amzad Hossain Mollah and afterward due to increase of quantity of Razakar the camp was shifted to Premchara primary school. It too remained undisputed in cross-examination. This pertinent version gets corroboration also from P.W.07 Md. Haider Ali. Defence does not seem to have made any effort even to deny this crucial version .

73. Undisputed ocular testimony of P.W.01,P.W.02, P.W.03, P.W.05 and P.W.07 cumulatively proves that the accused Md. Amzad Hossain Mollah was the person who had dominance in forming Razakar camp and the other accused had explicit nexus with this camp.

74. What has been unveiled in testimony of defence witness ? It transpires from the statement of D.W.01 Md. Anwar Hossain, the son of accused Md. Amzad Hossain Mollah that he knew from his father that after independence achieved 07 cases were

initiated against him in 1972 and he got acquittal in one case and rest 06 cases were withdrawn. Depending on it defence contented that this accused was not a Razakar.

75. We are not agreed with above contention. The fate of those cases itself does not prove that now this accused has been indicted in the case in hand falsely and he was not a Razakar. Presumably, due to lack of evidence this accused got acquittal in the said case. Finding made in that judgment does not have any binding effect to resolve the questions involved in the case before this Tribunal.

76. Next, mere withdrawal of those cases itself does not indicate that the accused Md. Amzad Hossain Mollah did not belong to auxiliary force. Rather, initiation of series of cases against him under the Collaborators Order, 1972 lends significant assurance that this accused was a dominant person having nexus with locally formed Razakar Bahini.

77. Acquittal in said one case under the Collaborators Order, 1972 and finding given therein are not binding upon Tribunal in arriving at decision as to his liability for the crimes arraigned. The offence for which the accused Md. Amzad Hossain Mollah and others were tried and acquitted does not appear to be 'same

offence' arraigned in the case in hand. Fate of that case does not impact in any way in determining arraignments brought in the case in hand.

78. The learned defence counsel drawing attention to cross-examination of the IO (P.W.08) contended that now the accused Md. Amzad Hossain Mollah is involved with Awami League politics and thus it cannot be believed that he was a Razakar and was engaged in committing the crimes arraigned in 1971, taking stance against the war of liberation.

79. Yes, it transpires from cross-examination of P.W.08 (IO) that he admits that the accused Md. Amzad Hossain Mollah is now involved in Awami League politics. But Tribunal cannot concede with the contention agitated by defence. It is not required to see the present status and act of the accused in resolving his liability. It is to be seen what status and ideology the accused had at the relevant time i.e. in 1971 during the war of liberation and whether he was allegedly affiliated in accomplishing the crimes arraigned.

80. Tribunal also notes that act and status subsequent to the offences committed cannot make an accused absolved of liability if it is proved that he was engaged in perpetrating the

crimes arraigned. Also it may be presumed that the accused Md. Amzad Hossain Mollah to keep him unscathed from being prosecuted for the crimes arraigned might have opted to make him engaged with politics of Awami League.

81. Now, let us eye on documentary evidence relied upon by the prosecution to show affiliation of accused persons with auxiliary force. Although the provision contemplated in the Act of 1973 permits to prosecute and try even an 'individual' if he is alleged to have committed the crimes enumerated in the Act of 1973. In the case in hand prosecution relies upon the list of Razakars prepared on **03.01.2011** under signature of the Upazila Nirbahi Officer, Bagharpara, Jashore which has been proved and marked as **Exhibit-I series [Prosecution Documents Volume page 11-16]**.

82. The learned defence counsel Mr. Gazi M.H. Tamim argued that the alleged list of Razakars has been created for the purpose of this case and the alleged list does not contain the name of two other accused Md. Ohab Mollah and Md. Mahtab Biswas. Evidence of P.W.s in this regard is thus not credible to establish their affiliation in Razakar Bahini.

83. The list **Exhibit-1 series** demonstrates that name of accused Md. Amzad Hossain Mollah and accused Md. Fasiar Rahman Mollah finds place in **serial nos. 17 and 05** respectively of the list as Razakars. It is thus evinced from information contemplated in the list **Exhibit-I Series** together with unimpeached oral evidence of P.W.s, the locals of the vicinities attacked that the accused Md. Amzad Hossain Mollah and Md. Fasiar Rahman Mollah were notorious Razakars of the locality under police station Bagharpara of District Jashore.

84. Tribunal notes that the Investigation Agency formed under The Act of 1973 started investigation pursuant to compliant register serial no. 81 dated 25.04.2017, in respect of commission of offences enumerated in section 3(2) of the Act of 1973 allegedly perpetrated by the accused persons, being part of the murderous enterprise formed of armed Razakars. The list of Razakars **Exhibit-I Series** appears to have been signed by the Upazila Nirbahi Officer, Bagharpara on 03.01.2011 i.e. long six (06) years prior to commencement of investigation pursuant to compliant register serial no. 81 dated 25.04.2017. Be that as it may, we are not ready to deduce agreeing with the learned defence counsel that the list **Exhibit-I Series** has been created for the purpose of this case. Rather, it carries evidentiary value.

85. What about two other accused Md. Ohab Mollah and Md. Mahtab Biswas? The list **Exhibit-I Series** does not state the name of these two accused Md. Ohab Mollah and Md. Mahtab Biswas and there is no other document to show their affiliation with the auxiliary force. But already it has been evinced from corroborative and uncontroverted ocular testimony of prosecution witnesses that these two accused too were close associates of accused Md. Amzad Hossain Mollah who had dominance over the Razakar camp set up at Premchara primary school. It irresistibly suggests the conclusion that these two accused too were affiliated with locally formed Razakar Bahini and its camp.

86. It has been argued on part of defence that prosecution failed to prove these accused persons' membership in locally formed Razakar Bahini by presenting authoritative and sufficient documents. But the Tribunal notes that it is not imperative to prove these accused persons' formal membership in Razakar Bahini by providing more and more documents for determining their nexus with it.

87. It is indeed a challenging task of collecting documentary evidence particularly for the reason of lapse of long passage of time. For various reasons including the reason of regime change

documentary evidence might have been destroyed. In this regard it has been observed by the **Appellate Division of Supreme Court of Bangladesh** that--

“It has already been observed earlier that the alleged incidents of this case took place long 42 years before. With the passage of this long 42 years many of the documentary evidence might have been destroyed. In an old case like the present one the prosecution faces great challenges in producing necessary evidence, both oral and documentary.”

[**Motiur Rahman Nizami vs. The Government of Bangladesh, represented by the Chief Prosecutor, International Crimes Tribunal, Dhaka, Bangladesh, (2017) 2 Law Messenger (AD) 446 at paragraph 224**]

88. Besides, Tribunal reiterates that after the brutal assassination of the Father of the Nation Bangabandhu Sheikh Mujibur Rahman on 15 August 1975 the pro-Pakistani quarter who took culpable stance against the war of liberation started destroying evidence of their complicity with the perpetration of atrocities committed in 1971, during the war of liberation. In this regard the **Appellate Division of Supreme Court of Bangladesh** has observed in the **Criminal Appeal No.144 OF 2014** that-

“It was held by this Court in earlier cases that due to lapse of time, evidence collection and use of old evidence in atrocity cases is also complicated by the

instability of post-atrocity environments, which results in much evidence being lost or inadequately preserved.”

[Criminal Appeal No.144 OF 2014: Mir Quasem Ali vs. The Chief Prosecutor, International Crimes Tribunal Judgment: 8th March, 2016. page 162]

89. In view of above, we need to concentrate on weighing the ocular testimony tendered with respect to the fact as to the accused persons’ affiliation with an auxiliary force. Bearing in mind the inevitable reality we are constrained to conclude that mere absence of any documentary evidence uncontroverted ocular testimony of prosecution witnesses in this regard cannot be discarded.

90. The Tribunal reiterates that in 1971, when a resident of own or neighbouring locality got enrolled in Razakar Bahini, an infamous armed *para militia* force it could not be kept hidden. Notoriety of this armed *para militia* force made its members commonly known to the residents of the locality. In the case in hand, the witnesses have consistently testified the above pertinent fact. It remained unshaken in their cross-examination.

91. In the instant case, the accused persons are being tried long after 5 decades of the atrocities committed. In such case,

documentary evidence may not be available. Therefore, uncontroverted ocular testimony can be safely acted upon in arriving at decision in respect of nexus and affiliation of two other accused Md. Ohab Mollah and Md. Mahtab Biswas with the locally formed Razakar Bahini and its camp, without any documentary evidence.

92. The information as has been depicted in **Exhibit-I Series** together with uncontroverted oral evidence as discussed above amply proves membership of all the four accused in locally formed Razakar Bahini.

93. In view of cumulative evaluation of oral and documentary evidence as discussed above we come to the unerring conclusion that in 1971 during the war of liberation being enthused by the policy and plan of Pakistani occupation army all the four accused were affiliated in locally formed Razakar Bahini and had close nexus with the Razakar camp set up at Premchara primary school at Bagharpara of District Jashore.

X. Adjudication of Charges

Adjudication of Charge 01: [01 accused indicted]

[Offences of ‘abduction’, ‘confinement’, ‘torture’ and ‘murder’ of Dr. Nowfel Uddin Biswas on forcible capture

**from the village- North Chandpur under police station-
Bagharpara of District- Jashore]**

94. Charge: That on 21.07.1971 at about 12:00 P.M the accused Md. Amzad Hossain Mollah, Karamot Ali Mollah [now dead] along with their 10/12 cohort Razakars forming a group by launching attack at Khajura Bazar forcibly captured unarmed pro-liberation civilian, a doctor of freedom fighters Dr. Nowfel Uddin Biswas and he was subjected to brutal torture keeping him confined at the Premchara Razakar camp. Thereafter, on 22.07.1971 at about 05.00 A.M. the accused Md. Amzad Hossain Mollah gunned down the detained Dr. Nowfel Uddin Biswas to death taking him in the field of Mohiram village under police station Bagharpara of Jashore District.

Therefore, the accused **Md. Amzad Hossain Mollah** by such criminal acts forming part of systematic attack directing noncombatant 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’ 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

95. In order to prove the arraignment brought in this count of charge involving killing one unarmed pro-liberation civilian by conducting designed and systematic attack prosecution relies upon four witnesses who have been examined as P.W.01 (son of victim), P.W.02, P.W.03 and P.W.05 of whom P.W.01 is a vital witness and the rest are hearsay witnesses. Now, before we weigh the evidence presented let us see what they have testified in Tribunal on oath.

96. P.W.01 B M Ruhul Amin (73) is a resident of village-North Chandpur under Bagharpara police station of District Jashore. In 1971 he was a student of class X. He testified facts related to the event arraigned in this count of charge. He is the son of martyred victim Nowfel Uddin Biswas. In relation to some facts crucially related to the event he is a direct witness. P.W.01 also testified in respect of the events arraigned in charge nos.03 and 04 as well.

97. Before narrating the event arraigned P.W.01 stated when and how the Razakar camp was formed in 1971 at village

Premchara. P.W.01 stated that in the mid of May in 1971, after the war of liberation ensued a Razakar camp was set up at the house of Mojahar Biswas of village- Premchara. Razakar Bahini was formed of Md. Amzad Hossain Mollah, the son-in-law of Mojahar Biswas, Keramat Molla (now dead), Md. Mahatab Biswas, Md. Fasiar Rahman Mollah, Md. Ohab Mollah and others. Due to raise of quantity of Razakars the camp was then shifted to Premchara Primary School and Md. Amjad Hossain Mollah was made its commander.

98. In respect of the event arraigned P.W.01 stated that his father (victim) was a village doctor and used to provide treatment to sick and injured freedom-fighters. Razakars got information about it. On 21.07.1971 at about 01:00 P.M his father was on the way to Jashore town to purchase medicine for freedom-fighters and when he arrived at Khajura Bazar Razakar commander Md. Amzad Hossain Mollah, his brother Keramat Hossain Mollah (now dead), Razakar Md. Fasiar Rahman Mollah, Razakar Md. Mahtab Biswas, Razakar Md. Ohab Mollah and their 10/12 cohort armed Razakars took away his father toward Razakar camp at Premchara Primary school on forcible capture. On being informed it on the same day at 03:00 P.M. he (P.W.01) along with his younger brother Farid

Ahammed moved to have trace of his father and on arriving at place nearer to Pulerhat Bazar he saw the Razakars taking away his father toward Premchara primary school camp tying him up. On seeing it they being scared came back home.

99. P.W.01 continued stating that on 22.07.1971 in early morning at 05:00 A.M Surman Biswas (now dead), his grandfather by relation coming to their house informed that in the preceding night his (P.W.01) father was taken to Bagharpara Razakar camp from Premchara Razakar camp. On getting this information he (P.W.01) being accompanied by his cousin brother Abdul Gani Munshi and neighbour Anwar Hossain Mondol moved to the house of Abdul Khalek Biswas (now dead), the secretary of Bagharpara peace committee and requested him to get back his father released. But Abdul Khalek rebuking them told that Razakar commander Md. Amzad Hossain Mollah of Premchara primary school Razakar camp and his cohorts had gunned down his father to death taking him in the field of village-Mahiram, at about 05:00 A.M. on 22.07.1971.

100. P.W.01 next stated that on hearing it they then moved to the field of Mahiram village where they found 17/18 bullet hit dead bodies lying there and they detected his(P.W.01) father's

bullet hit dead body (at this phase of deposition the P.W.01 burst into tears). The dead body of his father was dumped there and they came back. After the independence achieved his father's grave has been built there.

101. Defence simply denied what the P.W.01 testified in respect of the event arraigned in charge no.01. On cross-examination done on part of accused Md. Amzad Hossain Mollah P.W.01 stated in reply to defence question that they did not initiate any case over the event of killing his father; that they did not get any privilege in recognition of his father's martyrdom; that they did not have any document in support of his father's martyrdom.

102. P.W.01 denied defence suggestions that the accused Md. Amzad Hossain Mollah was not a Razakar; that the event he testified implicating this accused was false, untrue and tutored and that this accused was not involved with the alleged event.

103. P.W.02 Md. Abdul Haye (60) is a resident of village-Gaidghat (at present village- Sekendarpur) under police station Bagharpara of District Jashore. He chiefly testified what he witnessed in respect of the attack arraigned in charge no.04. In addition to it he is a hearsay witness in respect of the event arraigned in charge no.01.

104. P.W.02 stated that in the mid of May in 1971, after the war of liberation ensued Amzad Hossain Mollah set up the Razakar camp at the house of his father-in-law Mojahar Biswas and Bazlur Rahman @ Bazlu Biswas at the village Premchara and Razakar Bahini was formed of Amzad Hossain Mollah, Kayem Ali Biswas, Fasiar Rahman, Mahatab Biswas, Keramat Ali (now dead), Ohab Ali, Nowsher Ali Biswas (died during trial), Abdul Majid. Due to raise of quantity of Razakar the camp was then shifted to Premchara Primary School and Razakar Amzad Hossain Mollah was made its commander.

105. At the end of his examination-in-chief P.W.02 simply stated that B M Ruhul Amin (P.W.01) disclosed that the Razakars gunned down his father Nowfel Uddin Biswas to death taking him in the field of Mahiram under police station Bagharpara.

106. On cross-examination P.W.02 stated in reply to defence question that he is a Madrasa teacher and joined in service on 21.06.1998. In cross-examination defence simply denied what the P.W.02 heard in respect of the event alleged. P.W.02 denied defence suggestion that his date of birth is 10.12.1967 and that what he testified was untrue.

107. P.W.03 Akter Ali (66) is a resident of village-Gaidghat under police station Bagharpara of District Jashore. He chiefly testified the event arraigned in charge no.04. In addition to it he stated what he heard in relation to the event arraigned in charge no.01.

108. Before stating what he heard in respect of the event arraigned P.W.03 stated that he and his family used to provide assistance to the freedom-fighters in various manner. In the mid of May in 1971 a Razakar camp was set up at the house of father-in-law of Razakar commander Md. Amzad Hossain Mollah. Due to increase of quantity of Razakar the camp was shifted to Premchara primary school.

109. Next, P.W.03 stated that after independence achieved B M Ruhul Amin (P.W.01) returned back home and then he (P.W.03) heard from him that the Razakars he named (Md. Amzad Hossain Mollah, Md. Fasiar Rahman Mollah, Md. Ohab Mollah, Md. Mahatab Biswas, Nowsher Ali Biswas (died during trial) had killed his father Dr. Nowfel Uddin Biswas by gunshot taking him in the field of village-Mahiram.

110. The above hearsay version of P.W.03 does not seem to have been denied even in cross-examination. However, P.W.03

stated in reply to defence question that there had been no activities of Al Badr and peace committee in their locality in 1971 and that the accused Md. Ohab Mollah and Md. Mahatab Biswas continued staying at village after independence achieved.

111. On cross-examination P.W.03 denied defence suggestion that according to the register of education board his date of birth is 15.10.1966 and that in 1971 he was 5 years old.

112. P.W.05 Md. Alauddin Biswas (75) is a resident of village-Uttar Chandpur under police station- Bagharpara of District Jashore. He too is a hearsay witness in respect of the event arraigned in charge no.01.

113. Before narrating the event arraigned P.W.05 stated that in the mid of May in 1971 after the war of liberation ensued Razakar Bahini was formed of Md. Amzad Hossain Mollah, Md. Fasiar Rahman Mollah, Md. Mahatab Biswas, Kayem Ali Biswas (now dead), Nowsher Biswas (died during trial), Md. Ohab Mollah and one Razakar camp was set up too at the house of Mojam Biswas and Bazlur Rhaman Biswas. But later on the camp was shifted to Premchara primary school and Md. Amjad Hossain Mollah was made its commander.

114. In respect of the event arraigned P.W.05 stated that on the 4th day of Bangla month Sravan in 1971 he was on the way toward village Lebutola and when he arrived at Khajura hat he heard from people that Razakar commander Md. Amzad Hossain Mollah, Razakars Md. Ohab Mollah, Keramat, Md. Fasiar Rahman Mollah, Nowsher (died during trial) apprehended his (P.W.05) Fufa (father's sister's husband) Nowfel doctor and made him seated in front of Khajura Tahshil office. He (P.W.05) then moved there where he found his Fufa detained. Seeing it he coming back home disclosed it to his cousin brother. Then his cousin brother B.M. Ruhul Amin (P.W.01) along with his brother moved to Khajura Tahshil office. Later on he (P.W.05) heard from B.M. Ruhul Amin that the Razakars had kept his father confined at Premchara Razakar camp.

115. P.W.05 next stated that on the following day he heard from B.M. Ruhul Amin that Amzad Razakar (accused) and his cohorts had killed his (P.W.01) father by gunshot taking him in the field of Mahiram village.

116. On cross-examination P.W.05 stated in reply to defence question put to him that the accused Md. Amzad Hossain

Mollah used to stay in their locality even after the independence achieved. P.W.05 denied defence suggestions that he did not see and hear what he testified; that the accused was not Razakar and was not involved with the event alleged and that what he testified was untrue and out of rivalry.

Finding with Reasoning on Evaluation of Evidence

117. This count of charge involves brutal killing of Dr. Nowfel Uddin Biswas, a significant organizer of war of liberation. Accused Md. Amzad Hossain Mollah being accompanied by his 10/12 cohort Razakars forming a criminal enterprise forcibly captured Dr. Nowfel Uddin and the event ended in his brutal annihilation. Accused Md. Amzad Hossain Mollah alone has been indicted in this count of charge.

118. **Rezia Sultan Begum**, the learned prosecutor argued drawing attention to the evidence adduced that defence could not impeach the event arraigned and participation of the accused indicted in committing the criminal acts leading to ‘abduction’ confinement’, ‘torture’ and ‘murder’ of an unarmed civilian constituting the offences as crimes against humanity. P.W.01 is the son of victim who witnessed the acts forming part of systematic and designed attack leading to killing his father.

Testimony of P.W.01 and the other P.W.s relied upon could not be controverted in cross-examination.

119. The learned prosecutor also submitted that it has been proved from unimpeached testimony of witnesses that a Razakar camp was set up at Premchara primary school and accused Md. Amzad Hossain Mollah was made its commander. It could not be denied even in cross-examination. It lends assurance to the fact that the accused Md. Amzad Hossain Mollah in exercise of his culpable nexus with local Razakar Bahini committed the crimes, to further policy and plan of Pakistani occupation army.

120. The learned prosecutor further argued that exaggeration itself cannot be a ground to discard entire testimony of witness. P.W.01 the son of the victim stated that first he heard that Razakar commander Amzad Hossain Mollah, his brother Keramat Hossain Molla (now dead), Razakar Md. Fasiar Rahman Mollah, Razakar Md. Mahtab Biswas, Razakar Md. Ohab Mollah and their 10/12 cohort armed Razakars took away his father on forcible capture. Stating name of other accused persons who have not been indicted in this count of charge is mere exaggeration, true. But this exaggerated version of P.W.01 does not taint his ocular testimony in respect of next phases of attack which he witnessed. P.W.01 testified the next phases of

attack leading to the killing implicating only the accused indicted.

121. On contrary, **Mr. Gazi M.H. Tamim** the learned defence counsel defending the accused Md. Amzad Hossain Mollah argued that the prosecution witnesses including the P.W.01 are not credible. Exaggeration occurred in their testimony makes them untrustworthy and thus based on their narrative the accused cannot be held guilty of the offences arraigned. The learned defence counsel also submitted that P.W.02 relied upon by the prosecution was minor in 1971 and thus it was not practicable to treat him as competent witnesses of the event arraigned.

122. The learned defence counsel also argued that the accused could have been prosecuted instantly after independence achieved if really he was engaged in committing the crimes arraigned. But admittedly it was not done. Delay in bringing instant prosecution thus naturally creates doubt the benefit of which goes in favour of accused. Besides, it shall reveal from the copy of judgment of a case submitted on part of defence that in one case initiated against the accused Md. Amzad Hossain Mollah under the Collaborators Order, 1972 he was acquitted after trial and it was observed in the judgment that this accused

was not a Razakar. All these together create reasonable doubt as to alleged participation and concern of this accused with the crimes arraigned in this count of charge.

123. At the outset Tribunal notes that burden lies upon prosecution to prove that—

- (a) The victim was forcibly captured by conducting designed and systematic attack;
- (b) The squad of attackers was formed of accused Md. Amzad Hossain Mollah and his cohort armed Razakars;
- (c) The event ended in barbaric annihilation of the detained victim;
- (d) The accused indicted had acted physically in accomplishing the killing of victim.

124. The event arraigned happened not in normalcy. Thus, no one had ample space of seeing all the phases of the event the upshot of which was the killing detained civilian. We require seeing how far the facts and circumstances divulged in evidence of witnesses cumulatively prove the commission of crimes arraigned and how the accused indicted had played his role in perpetrating the principal crime. Now, let us weigh the evidence presented.

125. On going through the testimony of P.W.05 it appears that he heard from people that Razakar commander Md. Amzad Hossain Mollah, Razakars Md. Ohab Mollah, Keramat, Md.

Fasiar Rahman Mollah, Nowsher(died during trial) and his cohorts apprehended his Fufa (father's sister's husband) Nowfel doctor and then on moving to Khajura Tahshil office he (P.W.05) found him detained there. Unlawful detention of the victim thus stands proved.

126. The above piece of hearsay evidence suffers from exaggeration as P.W.05 stated what he heard about the act of forcible capture of victim Nowfel Uddin implicating also the three other accused persons who have not been indicted in this count of charge. But mere such exaggeration does not taint testimony of P.W.05 in its entirety.

127. Testimony of P.W.05 demonstrates that on moving to Khajura Tahshil office he found his Fufa (victim) detained in front of Tahshil Office. Seeing it he coming back home disclosed it to his cousin brother B.M. Ruhul Amin (P.W.01) who then along with his brother moved to Khajura Tahshil office. That is to say, P.W.01 heard the act of forcible capture of his father from P.W.05. What happened next?

128. It stands proved from uncontroverted ocular testimony of P.W.01 that on being informed of his father's forcible capture

he on the same day at 03:00 P.M. along with his younger brother Farid Ahammed moved to have trace of his detained father and on arriving at place nearer to Pulerhat Bazar he saw the Razakars taking away his father toward Premchara primary school camp tying him up. On seeing it they being scared came back home.

129. It thus stands proved from above piece of unimpeached ocular testimony of P.W.01 that the victim was taking away toward Premchara primary school camp tying him up. Naturally, being scared the P.W.01 returned back home.

130. Next, P.W.01 heard from Surman Biswas (now dead), his grand-father by relation that in the preceding night his (P.W.01) father was taken away to Bagharpara Razakar camp from Premchara Razakar camp. This piece of heresy version seems to be credible. Because, P.W.01 on hearing it being accompanied by his cousin brother Abdul Gani Munshi and neighbour Anwar Hossain Mondol moved to the house of Abdul Khalek Biswas (now dead), the secretary of Bagharpara peace committee and appealed him to set his father released. Defence does not seem to have made any effort to controvert this crucial fact chained to the act of keeping the victim confined at Bagharpara Razakar camp.

131. How Abdul Khalek Biswas responded to such appeal seeking release of the victim? Ocular testimony of P.W.01 unambiguously demonstrates that Abdul Khalek instead of responding to such appeal rather castigating them told that Razakar commander Md. Amzad Hossain Mollah of Premchara primary school Razakar camp and his cohorts had gunned down his detained father to death taking him in the field of village-Mahiram. The event thus ended in brutal annihilation, it stands proved.

132. The above unshaken version indubitably proves participation of accused Md. Amzad Hossain Mollah in committing the killing arraigned. Tribunal notes that hearsay evidence is admissible and it can be acted upon if it inspires credence and carries probative value. Totality of facts unveiled indisputably leads to the conclusion that the accused Md. Amzad Hossain Mollah having potential nexus with Razakar camp actively participated in accomplishing the annihilation of the detained victim.

133. P.W.01 or any other relative of the detained victim naturally had no opportunity of seeing the perpetration of killing. The context prevailing together with facts unveiled naturally did not leave any such opportunity. Defence could not

refute act of killing the detained victim Dr. Nowfel Uddin. Rather, the killing the upshot of the attack arraigned gets corroboration from the uncontroverted ocular version of P.W.01 in respect of some crucial facts.

134. It stands proved from unshaken ocular version of P.W.01 that on hearing the act of killing his father he (P.W.01) and other relatives then moved to the field of Mahiram village, the killing site where they found 17/18 bullet hit dead bodies lying and they detected his father's bullet hit dead body too. At the time of narrating it in Tribunal the P.W.01 burst into tears. It was quite natural. Such natural demeanor filled with trauma makes what he testified true and credible. Extent of trauma the P.W.01 sustained has been reflected in such likely demeanor.

135. The bullet hit dead body of his (P.W.01) father was made buried at the killing site. It remained undisputed. After the independence achieved his father's grave has been built there. P.W.01 stated it. Defence could not impeach this crucial version related to the act of annihilation of victim along with numerous civilians. This part of unimpeached testimony too is crucially related to the ending phase of the event.

136. We got it proved from ocular version of P.W.01 that on arriving at place nearer to Pulerhat Bazar he saw the Razakars taking away his father toward Premchara primary school camp tying him up. This fact was chained to what the P.W.01 heard from Abdul Khalek in respect of his father's killing and participation of accused Md. Amzad Hossain Mollah therewith and finding his father's bullet hit dead body along with numerous bullet hit dead bodies lying at the killing site together lead to the unerring conclusion that the accused Md. Amzad Hossain Mollah and his cohort Razakars were concerned and actively participated in accomplishing the killing of numerous civilians.

137. P.W.02, P.W.03 and P.W.05 are hearsay witnesses in respect of the killing the victim. They consistently stated that victim Nowfel Uddin Biswas was gunned down to death taking him in the field of village Mahiram under police station Bagharpara. P.W.02, P.W.03 and P.W.05 heard it from P.W.01 the son of the victim. Their hearsay testimony in this regard gets consistent corroboration from P.W.01

138. It stands proved that the group formed of accused Md. Amzad Hossain Mollah and his 10/12 cohort Razakars by launching attack forcibly captured the father of P.W.01 and it

could not be controverted in any manner. Defence simply denied the criminal acts of the gang as testified by the P.W.01. But mere denial is not sufficient to corrode ocular testimony of a witness.

139. On having considered hearsay testimony of P.W.02 it appears that in 1971 he was 10/11 years old and it was quite practicable of seeing the horrific criminal activities in getting his father and another relative unlawfully apprehended. Mere tender age of a witness cannot be a ground to discard one's testimony if the same appears to be natural and gets corroboration from other evidence.

140. It has been argued on part of defence that P.W.05 admitted in cross-examination that the accused persons used to stay in the locality even after independence achieved and no case was initiated against them. It lends indication of their non-involvement with the alleged events.

141. We are not agreed with the above contention. It is true that perpetrators of horrendous crimes committed directing pro-liberation civilans were supposed to go into hiding to evade responsibility. But it appears from testimony of some witnesses that the accused person used to stay at their home in the locality.

142. Such act was rather an act subsequent to the event happened. Such act alone cannot make him absolved of liability if it is found proved that he was involved with the perpetration of horrendous crimes. We have got it proved from uncontroverted testimony of P.W.01 that the accused Md. Amzad Hossain Mollah actively and substantially participated in perpetrating the crimes directing pro-liberation civilians.

143. Thus, mere act of staying of accused person in the locality even after independence achieved does not negate his liability and does not create any degree of doubt as to their culpable and active nexus with the commission of the crimes proved. At the same time, in reply to above defence question what the P.W.01 stated rather affirms that he knew the accused persons beforehand.

144. The IO (P.W.08) admits in cross-examination that it has been found in investigation that the accused Md. Amzad Hossain Mollah is now engaged with politics of Awami League. But does this subsequent status makes him relieved from liability? Tribunal notes that the accused Md. Amzad Hossain Mollah has been facing trial for his criminal activities committed in 1971. His present political affiliation is of no consequence in adjudicating the charges and his alleged

culpability. A person accused of an offence cannot be relieved by his subsequent act, and position or status.

145. Next, it has been contended on part of defence that the testimony of P.W.s suffers from exaggeration and thus it is untrue and cannot be acted upon in arriving at decision as to liability of the accused. It is true that the P.W.s testified the first phase of the event implicating also three other accused who have not been indicted in this count of charge. But it already stands proved that the father of the P.W.01 was brutally killed by gunshot on his forcible capture.

146. It appears that uncontroverted testimony of P.W.01 in respect of some crucially related facts demonstrates that the accused Md. Amzad Hossain Mollah was the key perpetrator of the crimes arraigned and he did it being part of the gang formed of his cohort Razakars.

147. It is to be noted that The Chief Prosecutor submitted formal charges under section 9(1) of the Act on the basis of investigation report of the Investigation Agency. On perusal of formal charge, statement of witnesses and documents submitted by the Prosecution, the Tribunal framed charges. Tribunal notes that only one accused Md. Amzad Hossain Mollah has been

indicted in charge no.01 involving the offence of killing Nowfel Uddin Biswas.

148. In the case in hand due evaluation of evidence indubitably suggests to conclude that defence could not taint the event of abduction, confinement and killing of victim in any manner. It simply denied the event happened and involvement of the accused indicted therewith. In such circumstances merely on ground of exaggeration the evidence of witnesses cannot be discarded in its entirety. It is to be scrutinised whether the testimony carries credence as to the commission of the crimes arraigned and participation of accused Md. Amzad Hossain Mollah therewith.

149. Tribunal notes that Cambridge Dictionary defines “exaggeration” as “the fact of making something larger, more important, better or worse than it really is”. Genesis of an ‘exaggerated statement’ lies in a true fact, to which fictitious addition is made so as to make it more penetrative. Every exaggeration thus has the ingredients of truth. An exaggerated statement contains both truth and falsity. In the case in hand we require seeing what truth has been unveiled particularly in testimony of P.W.01, keeping the exaggeration occurred aside from consideration.

150. True that P.W.01 in testifying what he heard in respect of his father's abduction implicated three other accused who have not been indicted in this count of charge. It is a mere exaggeration. Undeniably failure of witness to recall exact precision of an event including the acts of perpetrators facilitating the commission of the crimes that took place long couple of decades ago usually happens due to fallibility of human memory.

151. It is now well settled that in a criminal trial the court of law merely sees that no innocent man is found liable for the offence arraigned. It must require seeing too that a guilty man does not escape. One is as important as the other. Both are public duties which the Judge has to perform.

152. It appears that P.W.01 heard that accused Md. Amzad Hossain Mollah and his cohorts including the three other Razakars accused of another charges unlawfully captured his father. But it appears that on the same day, two hours later i.e. at 03:00 P.M. P.W.01 and his brother saw the accused Md. Amzad Hossain Mollah and his cohort Razakars taking his father away toward Razakar camp at Premchara Primary School tying him up.

153. P.W.01 does not state that he also saw the three other accused accompanying the gang when it took away his father toward the Razakar camp. It thus appears that P.W.01 exaggerated by stating presence of these three accused at the phase of accomplishing forcible capture of the victim which he heard. Such exaggeration does not corrode the testimony of P.W.01 as it remained unimpeached.

154. That is to say, P.W.01 witnessed the accused Md. Amzad Hossain Mollah and his cohort Razakars in accomplishing the act of taking away the detained victim toward Premchara primary school camp. In narrating this phase of attack P.W.01 has not implicated three other accused. Thus, just what the P.W.01 heard in respect of accomplishing his father's forcible capture suffers from exaggeration. But it alone cannot derogate his testimony on other crucial aspects which indubitably prove accused's involvement and complicity with the event arraigned.

155. In the case in hand, those three accused have been indicted in other charges and it has been arraigned that they were active accomplices of the accused Md. Amzad Hossain Mollah. However, since these three accused have not been indicted in this count of charge of course they cannot be held liable. But

since P.W. 01 and other witnesses testified implicating the accused Md. Amzad Hossain Mollah indicted affirming his active involvement and participation with the event such exaggeration cannot crumble their testimony terming incredible in its entirety.

156. On the matter of exaggeration in witness's testimony it has been held in the case of **Ugar Ahir v. State of Bihar**[AIR 1965 SC 277] that-

" . The maxim *falsus in uno, falsu in omnibus* (false in one thing, false in everything) is neither a sound rule of law nor a rule of practice. Hardly one comes across a witness whose evidence does not contain a grain of untruth or at any rate exaggerations, embroideries or embellishments. It is, therefore, the duty of the court to scrutinise the evidence carefully and, in terms of the felicitous metaphor, separate the grain from the chaff. But, it cannot obviously disbelieve the substratum of the prosecution case or the material parts of the evidence and reconstruct a story of its own out of the rest."

157. On this matter Tribunal also recalls the observation of Appellate Division of Supreme Court of Bangladesh made in the **Criminal Review Petition nos. 17-18 of 2013** [Abdul Quader Mollah: Petitioner. (In both the cases) Versus The Chief

Prosecutor, International Crimes Tribunal: **order dated 17.9.2013: page 36]** which is as below:

“In every case it is seen, a witness mixes a certain amount of untruth in his evidence even when he gives to substantiate a correct account. Part of this admixture of falsehood may be the result of inadvertence and may be the very natural vagaries of observation and memory. Obviously they should not affect the credibility of a witness at something by way of exaggeration, but even an exaggeration that is intentional could be discouraged without impairing the acceptability of the rest of the evidence provided that these super additions did not go to the root of the matter.”

158. In view of above proposition propounded ‘exaggeration’ *per se* does not render the evidence brittle. Thus, exaggeration on a trivial matter which does not affect the core of the prosecution case should not be made a ground on which the evidence can be rejected in its entirety.

159. Tribunal reiterates that in the process of adjudicating the offences as crimes against humanity concentration is to be given chiefly to the core essence of testimony tendered. That is to say, in the case in hand, we require seeing how far prosecution has

been able to prove conducting attack leading to confinement, torture and murder of victim, an unarmed civilian and how the accused indicted participated in accomplishing the criminal acts.

160. Based on facts unveiled in testimony of witnesses it depicts that till causing annihilation the detained victim was subjected to immense mental harm and horror. The proved act of taking away the victim on forcible capture by tying him up and keeping him confined at the camp indeed caused grave mental harm and such prohibited act constituted the offence of '**torture**'. Such prohibited acts also caused immense anguish and trauma to victim's relatives.

161. Facts unveiled and pattern of attack suggest concluding unerringly that the group of perpetrators including the accused Md. Amzad Hossain Mollah having significant dominance over the Premchara Razakar camp conducted the systematic attack directing an unarmed pro-liberation civilian to effect his forcible capture. It rather inflicted grave mental harm to the victim. The gang then took him away and kept him confined in captivity.

162. Such unlawful act of forcible capture of an unarmed civilian and keeping him detained in captivity were committed in violation of international humanitarian law and laws of war. It

was not an isolated crime. Indubitably the gang led by the accused Md. Amzad Hossain Mollah did such deliberate criminal acts to further policy of Pakistani occupation army. All these together demonstrate that the event happened in context of the war of liberation. Thus, the attack was designed and ‘systematic’.

163. The crimes committed during the period of war of liberation in 1971 were the end result of part of a ‘‘systematic’ attack directed against the unarmed Bangalee civilian population. This ‘context’ itself prompts even a person of common prudence that the offences of ‘crimes against humanity’ as mentioned in section 3(2)(a) were inevitably the upshot of ‘systematic attack’.

164. Prohibited act of unlawful capture of victim ended in barbaric killing that took place pursuant to a systematic attack launched directing civilian population. It is to be noted here that the offence of ‘murder’ as crime against humanity is not needed to be carried out against a multiplicity of victims. In this regard **the Appeal Chamber of ICTR** has observed in the case of *Nahimana, Barayagwiza and Ngeze*, that-

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

[The appeal Chamber of ICTR, *Nahimana, Barayagwiza and Ngeze*, November 28, 2007, para. 924]

165. Therefore, and in view of settled jurisprudence we are convinced to conclude that although Dr. Nowfel Uddin Biswas alone was the victim of the event of systematic attack arraigned leading to his killing, the related criminal acts facilitated in causing his deliberate death constituted the offence of '**murder**' as crime against humanity.

166. Why the perpetrators designed the systematic mission in getting the victim forcibly captured? It transpires from testimony of P.W.01 the son of victim that his father was a village doctor and used to provide treatment to sick and injured freedom-fighters and his father was forcibly captured from Kahjura Bazar when he was on the way to Jashore town to purchase medicine for freedom-fighters. Thus, it is clear that the stance and attachment of the victim in carrying out the task of

assisting the sick and injured freedom-fighters was the reason of being targeted by the perpetrators, we deduce it.

167. Defence does not seem to have shaken the above pertinent fact. It may be indubitably inferred that the accused and his cohorts in exercise of their affiliation with local Razakar Bahini and nexus with Razakar camp had planned to get the victim captured, to further policy of Pakistani occupation army. Policy was to resist the war of liberation and civilians having stance therewith.

168. Based on fact and circumstances unveiled in testimony of witnesses it depicts that the group formed of members of Razakar Bahini led by accused Md. Amzad Hossain Mollah had knowingly carried out all criminal activities intending to terrorize the civilians staying at the vicinities by annihilating an unarmed civilian.

169. On appraisal of testimony of P.W.01 it depicts from the narration stored in his episodic memory that he has reliably portrayed the event of abduction, confinement and killing of his father Dr. Nowfel Uddin Biswas and accused Md. Amzad Hossain Mollah's physical participation, facilitation and culpable complicity therewith.

170. On cumulative evaluation of evidence presented before us, we conclude that it has been proved beyond reasonable doubt that by launching systematic and premeditated attack first the group formed of accused Md. Amzad Hossain Mollah and his cohort Razakars unlawfully apprehended the victim, an unarmed pro-liberation civilian.

171. It also stands proved from the facts and circumstances divulged from evidence presented that accused Md. Amzad Hossain Mollah being conscious and potential part of the 'common plan' accomplished the act of abduction of pro-liberation civilian and in keeping him confined at the Razakar camp and finally the killing the detained victim by gunshot. All the culpable acts of the accused Md. Amzad Hossain Mollah in getting the object of the designed attack materialized by perpetrating killing of victim tantamount to his conscious and physical 'participation'.

172. Prosecution has been able to prove beyond reasonable doubt that the accused Md. Amzad Hossain Mollah participated and substantially facilitated to the actual perpetration of killing the detainee Dr. Nowfel Uddin, by his exceedingly notorious act and conduct. It has been proved that accused Md. Amzad Hossain Mollah consciously participated in all the phases of the

event that ended in horrendous killing of victim Dr. Nowfel Uddin. In this way, the accused Md. Amzad Hossain Mollah participated and substantially contributed to the accomplishment of killing one unarmed pro-liberation civilian the outcome of ‘systematic attack’ constituting the offences of ‘ **abduction**’, ‘**confinement**’. ‘**torture**’ and ‘**murder**’ as crimes against humanity as enumerated in section 3(2)(a)(g)(h) of the Act of 1973 which is punishable under section 20(2) read with section 3(1) of the Act and thus the accused person incurred liability under section 4(1) of the Act for the above offences.

Adjudication of Charge 02: [03 accused indicted]

[Offences of ‘abduction’, ‘confinement’ and ‘murder’ of Rajab Ali Biswas on forcible capture from the village-Simakhali under police station-Shalikha of District-Magura].

173 Charge: That on 15.08.1971 at about 11:00 A.M. the accused (1) Md. Amzad Hossain Mollah, (2) Md. Ohab Mollah, (3) Md. Fasiar Rahman Mollah and Karamot Ali Mollah [now dead] along with 8/10 cohort Razakars by launching attack forcibly captured unarmed pro-liberation civilians and organizers of freedom fighters **Rajab Ali Biswas** and **his two sons Abul Hossen Biswas and Md. Khalilur Rahman Biswas @ Khokon Biswas** from the front of their house and took them away, at about 01.00 P.M, to a ‘mango tree garden’ at

Chinarashi Para at village-Premchara under police station-Bagharpara of Jashore District where the detainee **Rajab Ali Biswas was slaughtered to death.**

Therefore, the accused (1) **Md. Amzad Hossain Mollah**, (2) **Md. Ohab Mollah** and (3) **Md. Fasiar Rahman Mollah** by such criminal acts forming part of systematic attack directing noncombatant 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' 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

174 This count of charge involves barbaric killing of an unarmed civilian Rajab Ali Biswas who used to assist the refugees and freedom-fighters to cross the river Chitra by boat. The event of attack leading to killing him was allegedly witnessed by his two detained sons who eventually got survived. Prosecution relies upon testimony of two witnesses who have been examined as P.W.04 and P.W.06. Of them P.W.04 is the

son of the victim Rajab Ali Biswas. Now, let us see what the witnesses recounted in Tribunal.

175. P.W.04 Md. Khalilur @ Khokon Biswas (65) is a resident of village-Aruakandi under police station Shalikha of District Magura. He is the son of the victim. He too was unlawfully detained and the event of brutal killing happened within his sight, the charge framed arraigns.

176. Before narrating the event arraigned P.W.04 stated some pre-event facts. P.W.04 stated that in 1971 he used to stay with his parents at village- Simakhali under police station Shalikha. After the war of liberation ensued his father used to assist the refugees and freedom-fighters to cross the river Chitra by boat. Being aware of it in the first part of August (in 1971) Razakar commander Md. Amzad Hossain Mollah of Premchara Razakar camp being accompanied by Razakars Md. Fasiar Rahman Mollah, Md. Ohab Mollah, Keramat (now dead) and 8/10 cohort Razakars coming to Simakhali Bazar threatened to kill his (P.W.04) father if he continued helping the freedom-fighters in crossing the river.

177. P.W.04 next stated that his father despite such grave threat continued helping the freedom-fighters in crossing the river and

thus on 15 August in 1971 at about 11:00 A.M. Razakar commander Md. Amzad Hossain Mollah, Razakar Keramat (now dead), Razakar Md. Fasiar Rahman Mollah, Razakar Md. Ohab Mollah and their 10/12 cohort Razakars coming to Simakhali mango garden forcibly captured his father and took him away to Simakhali bazar. At that time he (P.W.04) and his brother Abul Hossain Biswas were standing with their father and they started following his father up to Simakhali bazar where then they too were made tied up and Razakar Md. Amzad Hossain Mollah started beating his father with rifle.

178. P.W.04 continued stating that on the same day at about 01:00 P.M. Razakar Md. Amzad Hossain Mollah was taking away his (P.W.04) detained farther to Premchara Chinarashi mango garden and then they too followed them. Razakars Md. Amzad Hossain Mollah., Md. Fasiar Rahman Mollah and Md. Ohab Mollah then tied up him (P.W.04) and his brother. Next, he saw Razakar Md. Amzad Hossain Mollah inflicting knife blow to his father's belly and thus his father then fell down. Next, Razakars Fasiar Rahman, Keramat (now dead) and Ohab Mollah made his father lying on ground and Razakar Md. Amzad Hossain Mollah then slaughtered his father to death (**at this stage the P.W.04 burst into tears**). Then the Razakars

returned back Razakar camp chanting slogan 'Pakistan Zindabad'. Then he (P.W.04) and his brother making them free from fastening moved back home with cry. Later, bringing bullock cart from home they took away the dead body of his father.

179. In respect of reason of knowing the accused persons P.W.04 stated that the accused persons very often used to cross river by boat of his father and thus he knew them beforehand.

180. On cross-examination done on part of accused Md. Amzad Hossain Mollah P.W.04 stated in reply to defence question that he or his brother did not initiate any case over the event earlier as they did not have any occasion; that his father's name has not been enlisted in the list of martyrs; that he could not say the date of his birth. In cross-examination P.W.04 denied defence suggestions that his father was not killed ; that the event he narrated did not happen; that this accused was not involved with the event he testified; that this accused was not a Razakar and that what he testified implicating this accused was untrue and out of rivalry.

181. On cross-examination done on part of two other accused Md. Fasiar Rahman Mollah and Md. Ohab Mollah indicted in

this charge P.W.04 stated that he saw these accused staying in the locality even after the independence achieved. P.W.04 also stated in reply to question put to him by Tribunal that in 1971 their home was at village-Simakhali under police station Shalikhha of District Magura and it was about 1/1.5 kilometer far from Premchara and that village-Simakhali is adjacent to village Aruakandi.

182. P.W.04 denied defence suggestions that the event he narrated did not happen; that he did not know these accused; that these accused were not Razakars and what he testified implicating these accused was untrue.

183. P.W.06 Md. Isahak Molla (78) is a resident of village-Dakhkhin Chandpur under police station Bagharpara of District Jashore. He is a hearsay witness in respect of the event arraigned. However he claims to have witnessed the dead body of the victim lying at the killing site.

184. P.W.06 stated that on 15 August in 1971 at about 1:30/02:00 P.M. he was on move to Simakhali bazar when Nayeb Ali (now dead) and Tajul Mia (now dead) disclosed that Razakars Amzad, Keramat Ali (now dead), Ohab Ali, Fasiar and their 8/10 cohort Razakars slaughtered Rajab Ali Biswas, the

boatman of Simakhali Ghat to death taking him at Chinarashi mango garden on forcible capture. On hearing it he along with Tajul Molla and Nayeb Ali moved to Chinarashi mango garden where they found slaughtered dead body of Rajab Ali Biswas lying. The two sons of Rajab Ali Biswas were present there who told that the Razakars he named bringing their father on forcible capture had slaughtered him to death. They told too that their father used to help freedom-fighters to cross river by boat and thus the Razakars had killed him.

185. On cross-examination done on part of accused Md. Amzad Hossain Mollah P.W.06 stated that his father was the owner of Chinarashi mango garden and he did not see when and who perpetrated the killing of Rajab Ali Biswas. P.W.06 denied defence suggestions that he did not see the dead body of Rajab Ali Biswas; that this accused was not Razakar and that he did not hear the event from sons of Rajab Ali Biswas.

186. On cross-examination done on part of two other accused P.W.06 denied defence suggestions that the event alleged did not happen; that he did not hear the alleged event and what he testified was untrue and tutored.

Finding with Reasoning on Evaluation of Evidence

187. The learned prosecutor **Rezia Sultana Begum** drawing attention chiefly to the ocular testimony of P.W.04 argued that the accused persons deliberately by launching attack unlawfully apprehended the victim, the father of P.W.04 and took him away to Simakhali bazar. P.W.04 witnessed it. Not only that P.W.04 and his brother too were kept detained by tying them up and the horrific killing of his father happened within their sight. Defence could not refute ocular version of P.W.04 that accused Md. Amzad Hossain Mollah physically participated in slaughtering the victim to death.

188. It has been also argued that the two other accused persons indicted being part of the criminal squad also knowingly and substantially contributed in effecting the death of the victim by slaughtering him, in exercise of their affiliation with local Razakar Bahini. Uncontroverted ocular testimony of P.W.04 is sufficient to prove the arraignment and active involvement of the accused persons therewith. The event of killing the victim by slaughtering was extremely horrendous and it was physically perpetrated by the accused Md. Amzad Hossain Mollah. P.W.04 being the son of victim witnessed it. Defence could not controvert it by cross-examining him and there is no reason to

disbelieve him. P.W.06 Md. Isahak Molla does not claim to have seen the killing. But he on hearing the event moved to Chinarashi mango garden, the killing site where he found the slaughtered dead body of the victim lying and he also found the P.W.04 and his brother present there. Defence could not impeach it in any manner.

189. Mr. Gazi M.H. Tamim, the learned counsel defending the accused Md. Amzad Hossain Mollah and also as state defence counsel defending the absconding accused Md. Ohab Mollah argued that the P.W.04 had no reason of knowing the accused persons. What the P.W.04 testified remains uncorroborated. The other witness P.W.06 is a hearsay witness and he does not claim to have seen who annihilated the victim.

190. Mr. Abdus Sattar Palwan, the learned state defence counsel for absconding accused Md. Fasiar Rahman Mollah submitted that prosecution failed to present evidence as to how this accused had acted; that there is no reliable and corroborative evidence to show his presence at the site attacked and also with the alleged act of killing. P.W.04 admits that this accused continued staying in the locality even after the independence achieved. It indicates his non-involvement with the alleged event.

191. The prosecution, in the light of the arraignments brought in this count of charge, is burdened to prove-(i) commission of the crimes alleged (ii) mode of participation of the accused persons indicted in committing crimes alleged (iii) how the accused persons acted in aiding or facilitated to the commission of alleged crimes (iv) context of committing the alleged crimes (v) liability of the accused persons indicted.

192. Of two witnesses relied upon in support of this count of charge P.W.04 is a direct witness. He is the son of victim. He and his bother witnessed how his detained father **Rajab Ali Biswas** was slaughtered to death. It stands proved from ocular testimony of P.W.04, the son of victim that threatening the victim Rajab Ali Biswas to kill him if he continued helping the freedom-fighters in crossing the river happened prior to the event of attack arraigned.

193. It is evinced from unimpeached testimony of P.W.04 that a group formed of accused Md. Amzad Hossain Mollah, Md. Fasiar Rahman Mollah, Md. Ohab Mollah and their cohorts extended such horrific threat to the victim with grave aggression. This piece of pre-event pertinent fact chained to the event of attack could not be refuted by defence in any manner.

194. What the victim continued doing despite such threat? Testimony of P.W.04 demonstrates that his father despite such threat rather continued helping the freedom-fighters in crossing the river. Victim was a brave and real patriot. It may be inferred unerringly that for the reason such bravery of victim the notorious accused persons indicted had conducted the designed attack intending to annihilate him.

195. It has been unveiled from unimpeached ocular testimony of P.W.04 that on 15 August in 1971 at about 11:00 A.M. Razakar commander Md. Amzad Hossain Mollah, Razakar Keramat Ali (now dead), Razakar Md. Fasiar Rahman Mollah, Razakar Md. Ohab Mollah and their 08/10 cohort Razakars coming to Simakhali mango garden forcibly captured his father by conducting systematic attack and took him away to Simakhali bazar.

196. The above prohibited act of effecting unlawful capture of pro-liberation civilian as testified by P.W.04 remained uncontroverted. Such criminal act was done in violation of international humanitarian law which protects the civilians in war time situation. It stands proved too that all the three accused indicted actively participated in accomplishing the act of

unlawful detention of the victim, a pro-liberation civilian who continued providing assistance to freedom-fighters.

197. It has been divulged from testimony of P.W.04 that at the time of getting his father forcibly captured by launching attack he (P.W.04) and his brother Abul Hossain Biswas were standing with their father and they started following the gang when it was taking away their detained father to Simakhali bazar. It was quite natural. Being sons they naturally with extreme anguish took the risk of knowing the fate of their detained father. Defence does not seem to have made any effort to taint this piece of version. What happened next to their arrival at Simakhali bazar?

198. Uncontroverted ocular narrative of P.W.04 demonstrates that he and his brother too then were kept tied up there and then they saw Razakar Md. Amzad Hossain Mollah started beating his father with rifle. Such brutality happened within the sight of P.W.04 and his brother. Such brutality indubitably caused immense trauma also to P.W.04 and his brother who witnessed their father being brutally tortured. The extreme aggressive act of accused Md. Amzad Hossain Mollah was indeed directed not only to detained civilian but to entire humanity.

199. What happened next? The gang accompanied by the accused persons indicted then took away his (P.W.04) detained father to Premchara Chinarashi mango garden and then P.W.04 and his brother again took the risk of following them despite they were kept tied up. Premchara Chinarashi mango garden was the killing site. P.W.04 and his brother despite being tied up witnessed what eventually happened to their detained father, the victim.

200. It stands proved from uncontroverted ocular testimony of P.W.04 that accused Razakar Md. Amzad Hossain Mollah inflicted knife blow to his father's belly and his father then fell down. Next, accused Razakars Md. Fasiar Rahman Mollah, Keramat Ali (now dead), Md. Ohab Mollah made his father lying on ground and accused Md. Amzad Hossain Mollah slaughtered his father to death there in beastly manner.

201. Principles of the humanitarian law include the principle of humanity, the principle of distinction between civilians and combatant. These principles are internationally recognized. But in the instant case the victim was a non-combatant civilian. We got it evinced from testimony of P.W.04 that his father the victim used to assist freedom-fighters in crossing river by boat.

Presumably, this was the reason of targeting him. Criminal acts leading to his gruesome killing obviously were committed in violation of International humanitarian law.

202. The barbaric event of slaughtering a defenceless civilian to death happened within the sight of P.W.04 and his brother, two sons of victim. Annihilation happened in extremely brutal manner. In describing this barbaric phase of the event in Tribunal P.W.04 could not keep himself cool and he just burst into tears. Such demeanor of P.W.04 rather adds assurance to credibility of what has been described by him. The accused persons being led by accused Md. Amzad Hossain Mollah rather had acted as '**pack of wolves**', to further policy and plan of Pakistani occupation army.

203. The event of slaughtering the victim to death indeed reflects intense aggression to pro-liberation civilians and the Bangalee nation as well. After causing annihilation the group formed of accused persons and their cohort Razakars returned back Razakar camp by chanting slogan 'Pakistan Zindabad'. Ocular testimony of P.W.04 demonstrates it. It may be inferred that by executing the annihilation of a pro-liberation civilian the invaders perceived that they achieved something great in

protecting Pakistan and thus they chanted such slogan. It reflects their stance to further policy and plan of Pakistani occupation army.

204. For the crime of torture to be established, as a crime against humanity, there must be an act or omission inflicting severe pain or suffering, whether physical or mental. The victim was beaten by the accused Md. Amzad Hossain Mollah. It transpires from testimony of P.W.04. That is to say, before slaughtering the victim to death he was subjected to torture as well. In the case in hand, we got it proved that the act of horrendous slaughter of victim happened within the sight of P.W.04 and his brother, two sons of victim. Obviously they sustained untold mental harm and trauma which constituted the offence of **'torture'** as crime against humanity.

205. It is evinced from ocular version of P.W.04 that he and his brother making them freed from fastening moved back home with cry and later bringing bullock cart from home took away the dead body of his father. It could not be impeached. Bringing back dead body of victim from the killing site adds assurance as to killing the victim there.

206. What wrong the victim committed by keeping him engaged in assisting the freedom-fighters to cross river by boat? The victim was rather a brave patriot as he did not keep him abstained from continuing providing such assistance to freedom-fighters.

207. P.W.06 Md. Isahak Molla heard the event of attack leading to unlawful detention and killing of victim, the boatman of Simakhali Ghat. His hearsay evidence gets corroboration from P.W.04, a direct witness. Besides, for the sake of argument if this hearsay evidence is not considered even then the event arraigned and participation of accused persons therewith stand proved from testimony of sole witness i.e. P.W.04 who is a direct witness. However, Tribunal does not consider it necessary to keep hearsay testimony of P.W.06 aside from consideration as it gets corroboration from P.W.04.

208. Apart from hearing the event of killing what more the P.W.06 testified? It transpires that on hearing the event of killing he (P.W.06) along with Tajul Molla and Nayeb Ali moved to Chinarashi mango garden, the killing site where they found slaughtered dead body of victim Rajab Ali Biswas lying. They also found the two sons of Rajab Ali Biswas present there who disclosed how and who slaughtered the victim to death.

209. Thus, it stands proved that the P.W.06 and others too found the slaughtered dead body of the victim at the killing site i.e. Chinarashi mango garden. Testimony of P.W.06 on this crucial fact is patently corroborative to what the P.W.04 stated in this regard. In no way it could be controverted by defence.

210. Object of cross-examining witness is to test truthfulness of evidence of a witness, to expose weaknesses to undermine the account the witness has made. But it appears that defence simply denied all the pertinent facts chained to the killing the upshot of the attack. But mere denial is not sufficient to question credibility what is stated in examination-in-chief.

211. The learned defence counsel argued that the P.W.04 did not know the accused persons and thus his description implicating the accused persons is not true and carries no value.

212. We are disagreed with above assertion. It transpires that in respect of reason of knowing the accused persons P.W.04 stated that the accused persons very often used to cross the river by boat of his father (victim) and thus he knew them beforehand. It remained unshaken. Besides, reason stated in this version is quite natural. It together with notoriety of accused persons

having notorious nexus with Razakar camp made them known to the locals.

213. The learned defence counsel contended that it has been admitted in cross-examination of P.W.04 that his father's name has not been enlisted in the list of martyrs and thus alleged killing of victim is doubted.

214. Tribunal disagrees with the above defence submission. Merely for the reason that victim's name has not been enlisted as a martyred cannot negate the barbaric killing of the victim. The above submission is devoid of reality and questioning one's martyrdom is rather derogatory to martyrs who sacrificed their lives for the cause of independence.

215. It appears that on cross-examination done on part of accused Md. Amzad Hossain Mollah P.W.04 stated in reply to defence question that he or his brother did not initiate any case over the event earlier as they did not have any occasion.

216. Based on above version the learned defence counsel argued that non initiation of prosecution instantly after the alleged event happened creates doubt as to the arraignment brought. Unexplained inordinate delay occurred in prosecuting the

accused persons create reasonable doubt as to their involvement with the alleged event.

217. Tribunal is not at all agreed with such assertion agitated on part of defence. We consider it expedient to reiterate our earlier deliberation and finding, on the issue, in brief. Tribunal notes that from the point of morality and sound legal dogma, time bar should not apply to the prosecution of human rights crimes. Neither the Genocide Convention of 1948, nor the Geneva Conventions of 1949 contain any provisions on statutory limitation to prosecute the offences of war crimes and crimes against humanity.

218. Tribunal reiterates too that crimes against humanity and genocide, the gravest crime never get old and that the perpetrators who are treated as the enemies of mankind will face justice. We should not forget it that the millions of victims who deserve that their tormenters are held accountable. The passage of time does not lessen the culpability of perpetrators. We are disinclined to agree with the argument that merely for the reason that since the accused persons were not brought to justice after the event happened now they are immune from being prosecuted under the Act of 1973, the legislation enacted to prosecute try

and punish the offenders for the crimes known as ‘system crimes’.

219. Therefore, delayed prosecution or non initiation of prosecution instantly after the event happened does not rest as a clog in prosecuting and trying the accused persons and creates no mystification about the atrocities committed in 1971.

220. The learned defence counsel drawing attention to version of P.W.04 made in cross-examination on part of accused Md. Ohab Mollah and Md. Fasiar Rahman Mollah that he saw these accused staying in the locality even after the independence achieved. This fact negates their alleged participation with the event alleged. These accused would not opt to continue staying in locality if really they had participation with the offences arraigned.

221. We are not agreed with such argument which is devoid of reality. There might have various reasons and space of remaining stayed in locality even for a person who was engaged in committing atrocities in 1971. Presumably, by using local might they used to continue staying in locality. This fact itself does not make them innocent and negates their liability for the crimes of which they have been charged, particularly when it

stands proved from unimpeached ocular description of P.W.04 and hearsay witness P.W.06 that these two accused too accompanied the gang sharing common intent actively participated and facilitated in accomplishing the act of slaughtering the detained victim to death.

222. The liability mode contained in section 4(1) of the Act of 1973 refers to 'common plan of collective criminality' which corresponds to JCE [Basic Form]. It is now well settled that the expression 'common purpose', 'awareness of foreseeable consequence' of act or conduct, 'intent' are the key factors involved with the notion of JCE liability. In the case in hand, proved act of accompanying the gang at the crime site itself indicates accused persons' conscious decision to actively participate in committing the killing, sharing common intent, we conclude.

223. Rational evaluation of evidence presented indubitably suggests to the conclusion that it has been proved beyond reasonable doubt that the accused Md. Amzad Hossain Mollah was the key perpetrator who had acted as a butcher and two other accused Md. Fasiar Rahman Mollah and Md. Ohab Mollah actively contributed in causing death of detained victim by slaughtering him. Defence could not bring anything in cross-

examination of P.W.04, the direct witness that may lead to disbelieve what he has testified on oath.

224. In view of deliberation based on evidence and settled legal proposition we arrive at decision that the prosecution has been able to prove beyond reasonable doubt that the accused (1) Md. Amzad Hossain Mollah (2) Md. Ohab Mollah [**absconding**] and (3) Md. Fasiar Rahman Mollah [**absconding**] participated and contributed to the commission of killing a non-combatant pro-liberation civilian on abduction by launching systematic attack and therefore they are found criminally liable under section 4(1) of the Act of 1973 for participating, abetting, assisting, substantially contributing, by their act and conduct forming part of systematic attack, to the accomplishment of commission of the offences of ‘**abduction**’, ‘**confinement**’, ‘**torture**’ 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.

Adjudication of Charge 03: [04 accused indicted]

[Offences of Abduction, Confinement, ‘torture’, ‘other inhumane acts’ and ‘murder’ of Md. Moyenuddin @ Moyna on forcible capture from the village-North Chandpur under Police Station-Bagharpara of District-Jashore].

225. Charge: That on 20.08.1971 at about 11:00/11.30 A.M. the accused (1) Md. Amzad Hossain Mollah, (2) Md. Ohab Mollah, (3) Md. Mahatab Biswas, (4) Md. Fasiar Rahman Mollah and Mojid Biswas [now dead], Keramat Ali [now dead] being accompanied by 10/12 cohort Razakars by launching attack forcibly **captured organizer of freedom-fighters Md. Moyenuddin @ Moyna and his associate Abdul Jalil** when they were waiting near the house of Moyenuddin @ Moyna and took them away to Premchara Razakar camp where they were subjected to severe torture.

Thereafter, at about 4.00 P.M. on the same day, the accused Md. Fasiar Rahman and Razakar Keramat Ali [now dead] taking the detainees Md. Moyenuddin @ Moyna and Abdul Jalil to the bank of the river Chitra where the accused Md. Amzad Hossain Mollah gunned down the detainee Md. Moyenuddin @ Moyna to death and threw his dead body to the Chitra river. Another detainee Abdul Jalil was tortured mercilessly and was left unconscious on the bank of the river Chitra.

Therefore, the accused **(1) Md. Amzad Hossain Mollah, (2) Md. Ohab Mollah, (3) Md. Mahatab Biswas and (4) Md. Fasiar Rahman Mollah** 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**’, ‘**murder**’ and ‘**other inhumane acts**’ 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

226. All the four (04) accused have been indicted in this charge under adjudication. Prosecution adduced and examined three (03) witnesses intending to substantiate the arraignment brought in this count of charge involving the offences of ‘abduction’, ‘confinement’, ‘torture’ and ‘murder’ of a pro-liberation civilian. Of them P.W.05 (brother of victim) and P.W.07 recounted the criminal acts done by the gang of perpetrators in accomplishing the object of the criminal design. P.W.01 is a hearsay witness. First, let us see what the witnesses testified.

227. P.W.01 B. M. Ruhul Amin (73) is a resident of village-North Chandpur under Bagharpara police station of District

Jashore. In addition to narrative made in respect of the events arraigned in two other charges he is a hearsay witness in relation to the event arraigned in this count of charge i.e. charge no.03. The victim of this event is cousin brother of P.W.01.

228. P.W.01 stated that he learnt from his cousin brother Alauddin (P.W.05) that on 20.08.1971 at about 11:00 A.M. a group formed of Razakar commander Amzad Hossain Mollah, Razakar Mahtab Biswas, Razakar Fasiar Rahman, Razakar Abdul Ohab Mollah and their 10/12 cohort armed Razakars took away his (P.W.01) cousin brother Moyen Uddin @ Moyna who used to assist freedom-fighters, to Premchara Razakar camp on forcible capture from the Kushkhali road and on the same day at about 04:00 P.M. Razakar commander Amzad Hossain Mollah gunned him down to death taking on the bank of river Chitra and threw the dead body into river.

229. In cross-examination defence simply denied what the P.W.01 testified in respect of the event arraigned in charge no.03 implicating the accused persons with the event of killing alleged. P.W.01 denied defence suggestions that the accused persons were not Razakars; that the event he testified implicating the accused persons did not happen and what he

testified was false, untrue and tutored and that these accused were not involved with the alleged event.

230. P.W.05 Alauddin Biswas (75) is a resident of village-Uttar Chandpur under police station- Bagharpara of District Jashore. In addition to the narrative he made in respect of the events arraigned in charge nos.01 and 04 P.W.05 testified what he witnessed and heard in relation to the event arraigned in this count of charge i.e. charge no.03. P.W.05 is the brother of victim

231. P.W.05 stated that on 3rd day of Bangla month Bhadra in 1971 at about 08:00/08:30 A.M. he and his cousin brother Rakib Uddin @ Ratan Biswas moved to field to bring paddy by bullock cart. At about 11:00 A.M. he heard gun firing and being scared with this he was returning back home when Sayed Ali Biswas of their village told that Razakar commander Amzad Hossain Mollah, Razakar Fasiar, Razakar Ohab Mollah, Razakar Mahtab and their cohort Razakars were taking away his (P.W.05) brother Md. Moyenuddin @ Moyna on forcible capture.

232. P.W.05 next stated that then he moved to the road of village-Barakhuda when he saw the Razakars he named taking

away his brother Moyen Uddin @ Moyna and Abdul Jalil tying them up. He then started following them when Razakars made him scared and then they went into hiding inside adjacent bush. Remaining in hiding he saw the Razakars making his brother Moyen Uddin Moyna @ Moyna and Abdul Jalil stood on the bank of the river Chitra and then Razakar Amzad Hossain Mollah gunned down his brother to death and his dead body was made floated in the river. Tied up another detainee Abdul Jalil was left abandoned there. Seeing this event they came back home.

233. In cross-examination defence simply denied what the P.W.05 stated in relation to the event arraigned. On cross-examination P.W.05 stated in reply to defence question put to him that the accused Amzad Hossain Mollah used to stay in their locality even after the independence achieved. P.W.05 denied defence suggestions that he did not see and hear what he testified; that the accused persons were not Razakars and were not involved with the event alleged and that what he testified was untrue and out of rivalry.

234. P.W.07 Md. Haider Ali (69) is a resident of village- Uttar Chandpur under police station Bagharpara of District Jashore. In

1968 he was a student of class VIII and Md. Amzad Hossain Mollah was a teacher of that school. He is an eye witness to the facts chained to the event arraigned in this count of charge.

235. P.W.07 stated that in the mid of May, 1971 a Razakar camp was set up at the house of Mojahar Biswas and Bazlur Rahman Biswas. Razakar Bahini was formed of Md. Amzad Hossain Mollah, the son-in-law of Mojahar Biswas, Keramat Ali (now dead), Kayem Ali Biswas, Nowsher Biswas (died during trial), Idris Biswas (now dead), Gafur, Matiar and others and Amzad Hossain Mollah was made its commander. He further stated that due to raise of quantity of Razakars the camp was then shifted to Premchara Primary School.

236. P.W.07 stated that on 20 August in 1971 at about 12:00/12:30 P.M. he was engaged in catching fish at village-Kachugaria, south to their village when he heard gun firing from the end of their village and then he witnessed the Razakars moving toward Premchara coming out of their village. Seeing it he (P.W.07) being scared went into hiding inside jute field wherefrom he witnessed Razakar commander Md. Amzad Hossain Mollah, Razakar Md. Fasiar Rahman, Razakar Md. Ohab, Majid Biswas (now dead) and their 8/10 cohort armed

Razakars taking away their neighbour Moyen Uddin @ Moyna and Abdul Jalil tying them up toward Premchara.

237. P.W.07 also stated that few times after he saw Moyen Uddin @ Moyna's elder brother Alauddin Biswas (P.W.05) and his cousin brother Rakib Uddin @ Ratan following the Razakars who were on move toward Premchara. Then he (P.W.07) being scared came back home. On the same day at about 06:00 P.M. on hearing screaming and cry from the house of Alauddin Biswas (P.W.05) he moved there and heard that at about 04:00 P.M. Razakar commander Amzad Hossain Mollah gunned down detained Moyen Uddin @ Moyna to death taking him on the bank of the river Chitra and Razakar Fasiar Rahman and Ohab Mollah made the dead body floated in the river Chitra. The Razakars had left another detainee Abdul Jalil abandoned on the bank of the river after causing torture to him and later his relatives brought him back home. The Razakars he named were the residents of their neighbouring village and thus he knew them beforehand.

238. In cross-examination defence simply denied what the P.W.07 stated in respect of the facts chained to the event he witnessed and heard. On cross-examination P.W.07 stated in

reply to defence question that after the independence achieved accused Ohab Molla used to continue staying at his home and he could not say whether any case was initiated against this accused over the event he testified.

239. P.W.07 denied defence suggestions that he did not see and hear what he narrated; that the accused persons were not Razakars and were not involved with the event alleged and what he testified implicating them was untrue and tutored

Finding with Reasoning on Evaluation of Evidence

240. **Rezia Sultana Begum**, the learned prosecutor in advancing argument drew attention to the testimony of P.W.05 and P.W.07. It has been submitted that P.W.05 is the brother of victim and he witnessed the act of killing at the site where he was taken on forcible capture. Defence could not impeach it. Corroborative evidence of P.W.05 and P.W.07 proves it beyond reasonable doubt that the accused persons being part of the criminal enterprise and sharing common intent had carried out the attack that ended in brutal killing of the victim Md. Moyenuddin @ Moyna.

241. The learned prosecutor also argued that it has been proved too that another civilian Abdul Jalil, an associate of Md.

Moyenuddin @ Moyna was unlawfully detained and finally he was left abandoned at the killing site. Hearsay testimony of P.W.01 is admissible as it gets corroboration from P.W.05 and P.W.07. Defence could not taint the testimony by cross-examining the witnesses. All these together prove that the gang accompanied by the accused persons and being led by accused Md. Amzad Hossain Mollah had acted in violation of international humanitarian law directing non-combatant civilians to further policy of Pakistani occupation army.

242. Mr. Gazi M.H Tamim, the learned defence counsel and also as state defence counsel argued that the prosecution witnesses are not credible; that they had no reason of knowing the accused persons. Admittedly, the accused Md. Amzad Hossain Mollah used to continue staying in the locality even after independence achieved and it indicates his non involvement with any atrocious activities alleged. No case was initiated over the event alleged instantly after independence achieved and thus it creates doubt as to complicity of the accused with the event alleged.

243. Mr. Abdus Sattar Palwan, the learned state defence counsel for absconding accused Md. Fasiar Rahman Mollah

submitted that it could not be proved by credible evidence that this accused participated in committing the crimes including the act of killing alleged. This accused could have been prosecuted for the alleged event after the independence achieved, if really he was so engaged with the event arraigned. Admittedly, it was not done. It creates reasonable doubt about alleged participation of this accused with the event arraigned.

244. This count of charge involves the offences of unlawful abduction and confinement of two pro-liberation civilians of whom one was eventually liquidated and another detainee was left abandoned at the killing site. Prosecution relies upon three (03) witnesses [P.W.01, P.W.05 and P.W.07] in support of this count of charge. The event happened in day time.

245. In view of arraignment brought in the charge framed prosecution requires proving that--

- (a) The gang formed of accused persons and their cohort Razakars got the victims unlawfully apprehended by launching systematic attack.
- (b) The act of taking away the detainees to the killing site on forcible capture.

(c) Finally, one detainee was liquidated by gunshot and another detainee was left abandoned at the killing site.

(d) That the accused persons forming part of the criminal squad had acted aided and facilitated to the commission of those prohibited acts including the killing.

246. In respect of forcible capture of unarmed civilians **P.W.05 Alauddin Biswas**, the brother of victim Moyen Uddin @ Moyna is a hearsay witness. His hearsay evidence is not anonymous. It is well settled that hearsay evidence is admissible even if it is anonymous. Testimony of P.W.05 demonstrates that he learnt it from one Sayed Ali Biswas, a resident of their village. It could not be impeached by defence in cross-examination.

247. What did the P.W.05 state in respect of his brother's forcible capture? It is evinced from unshaken testimony of P.W.05 that on 3rd day of Bangla month Bhadra in 1971 at about 11:00 A.M. he (P.W.05), the brother of victim Moyen Uddin being scared **on** hearing gun firing returned back home from paddy field when Sayed Ali Biswas of their village disclosed that Razakar commander Md. Amzad Hossain Mollah, Razakar

Md. Fasiar Rahman Mollah, Razakar Md. Ohab Mollah, Razakar Md. Mahtab Biswas and their cohort Razakars were taking away his (P.W.05) brother Moyen Uddin @ Moyna on forcible capture.

248. The above fact unveiled from hearsay testimony of P.W.05 is chained to the upshot of the event arraigned leading to killing the detained victim. Now, let us see what happened next to taking away the victim on forcible capture. In respect of the ending phase of the event P.W.05 is a direct witness.

249. It is evinced from uncontroverted ocular narrative of P.W.05 that on hearing the act of taking away his brother (victim) on unlawful capture he moved to the road of village-Barakhuda when he saw the Razakars he named taking away his brother Moyen Uddin @ Moyna and Abdul Jalil tying them up.

250. The above piece of ocular testimony indubitably proves that the accused persons and their cohort Razakars were engaged in getting the victims forcibly captured and were actively concerned in such unlawful acts that eventually resulted in annihilation of one detained victim by gunshot. Forcible capture of victims gets explicit corroboration from the version of P.W.07 who witnessed it.

251. It is evinced too that P.W.05 then started following the Razakars when they made him scared and with this he then went into hiding inside an adjacent bush. Ocular testimony of P.W.05 demonstrates too that remaining in hiding he witnessed the accused Razakars making his brother Moyen Uddin @ Moyna and Abdul Jalil stood on the bank of the river Chitra and then Razakar Md. Amzad Hossain Mollah gunned down his brother to death and his dead body was made floated in the river and tied up another detainee Abdul Jalil was left abandoned there. Seeing this event they came back home. Thus, it stands proved that the accused Md. Amzad Hossain Mollah was the actual perpetrator of the principal crime, the killing.

252. The Act of 1973 does not define 'other inhumane acts'. However, the phrase itself signifies that it is of such kind of 'treatment' which is detrimental to physical or mental wellbeing of an individual who is predominantly an unarmed civilian. 'Other inhumane acts' reasonably and logically encompasses the 'coercive acts' which are injurious for one's physical or mental wellbeing. The victim till his annihilation and the P.W.05 who witnessed the brutality obviously sustained grave mental harm caused by 'coercive acts'. Another survived victim too was subjected to grave coercive acts and torture.

253. In view of ocular narrative of P.W.05 above it depicts that relatives of victim did not have trace of the dead body of the victim as it was made floated in the river. P.W.05 the brother of the victim witnessed this inhumane act and obviously P.W.05 and his relative by experiencing the horrendous phase of the event sustained untold mental harm that tantamount to the offence of '**other inhumane act**' as crime against humanity.

254. Unlawfully confining the victim himself caused horror and harm to him which constituted the offence of '**torture**'. Such act was committed in violation of principle of international humanitarian law. Indisputably, till execution of death by gunshot taking at the killing site the victim too naturally had been suffering from such immense '**torture**'.

255. The above crucial ocular testimony of P.W.05 proves it patently that the detained victim Moyen Uddin @ Moyna was gunned down to death and accused Md. Amzad Hossain Mollah had acted as an active and key player in accomplishing the principal crime, the upshot of the attack and the other accused indicted substantially facilitated and culpably aided and assisted in accomplishing the horrific killing. Naturally, the P.W.05 became throttled with such brutality done to his detained brother the victim and being gravely scared he returned back home after

witnessing the accomplishment of his brother's killing. The dead body could not be recovered as it was made floated in the river.

256. Tribunal notes that in addition to uncontroverted ocular testimony of P.W.05 it is evinced also from testimony of P.W.07 that on the day the attack conducted at about 12:00/12:30 P.M. he (P.W.07) heard gun firing from the end of their village when he was engaged in catching fish at village Kachugaria, south to their village and then he witnessed the gang formed of accused Razakars and their cohorts moving toward Premchara coming out of their village.

257. Crucial fact of taking away two detained civilians also stands proved from evidence of P.W.07. It reveals that on hearing gun firing P.W.07 being scared went into hiding inside jute field wherefrom he witnessed Razakar commander Md. Amzad Hossain Mollah, Razakar Md. Fasiar Rahman Mollah, Razakar Md. Ohab Mollah, Majid Biswas (now dead) and their 8/10 cohort armed Razakars taking away their neighbour Moyen Uddin @ Moyna and Abdul Jalil tying them up toward Premchara. Defence does not seem to have been able to refute this crucial culpable part of the event arraigned in any manner.

258. It is evinced too that few times after then gun firing he heard P.W.07 saw Moyen Uddin @ Moyna's elder brother Alauddin Biswas (P.W.05) and his cousin brother Rakib Uddin @ Ratan following the accused Razakars who were on move toward Premchara taking the detained victim with them.

259. The above uncontroverted fact unveiled in evidence of P.W.05 was chained to the fact of seeing the accused Razakars making his brother Moyen Uddin @ Moyna and Abdul Jalil stood on the bank of the river Chitra and also to the fact that Razakar Md. Amjad Hossain Mollah gunned down his brother to death, as testified by the P.W.05.

260. The above pertinent facts as found proved from ocular testimony of P.W.07 were indubitably linked to the upshot of the event, the killing. First, movement of the murderous squad formed of accused persons and second, taking away the detained civilans by the gang as testified by P.W.07 lends significant corroboration to the act of accomplishing the act of killing which was witnessed by P.W.05.

261. Is it essential to show recovery of dead body of the victim to prove the killing arraigned? In this regard we reiterate that

there can be no room to argue that in absence of burial of the dead body on recovery it cannot be said that the killing of victim did not happen. Tribunal notes that recovery of dead body is not required to prove the killing of victim. The event of killing happened in context of war of liberation. Existing situation might not have always left space to have the dead body recovered. In this regard it has been observed by the **ICTY Trial Chamber** in the case of **Tadic** that--

“.....Since these were not times of normalcy, it is inappropriate to apply rules of some national systems that require the production of a body as proof to death.

[Prosecutor vs. Tadic, Case No. IT-94-1: ICTY Trial Chamber, May 7, 1997, para. 240:

262. The horrendous event happened not in times of normalcy and thus it is inappropriate to apply rules of national criminal justice system that requires the production of a body as proof to death. Killing of a civilian happened in context of war time situation and it can be inferred from evidence presented in Tribunal. **ICTY Trial Chamber** in this regard has observed as below:

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

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

263. It is now well settled that evidence tendered must be weighed and not counted. It is to be tested whether the evidence even of a single direct witness carries a ring of truth and credible. It is quality of evidence not quantity which matters for proving a case. It is not required to insist upon plurality of witnesses to prove the atrocious activities constituting the ‘system crimes’ committed in context of the war of liberation. It shall not be necessary for proof or disproof of a fact, to call any particular number of witnesses. General rule is that even a single witness’s testimony may be acted to arrive at decision if it is found to be credible.

264. However, in the case in hand in order to substantiate the event arraigned in this count of charge prosecution relies upon two other witnesses namely P.W.01 and P.W.07. P.W.07 claims

to have witnessed some facts related to the event arraigned. It has been argued by the learned defence counsel that P.W.05 the alleged direct witness is not reliable and his testimony could not be corroborated by any other direct witness and testimony of two other witnesses too is not credible.

265. We are not agreed with above defence contention. Tribunal reiterates that in a case involving the offences as crimes against humanity as enumerated in the Act of 1973 the Tribunal may arrive at decision even on the basis of single testimony and ‘corroboration’ is simply one of factors to be considered in assessing witness’s credibility. It has been held by the **ICTR Trial Chamber** that-

"There is no requirement that convictions be made only on evidence of two or more witnesses.Corroboration is simply one of potential factors in the Chamber’s assessment of a witness’ credibility. If the Chamber finds a witness credible, that witness’ testimony may be accepted even if not corroborated."

[The Chief Prosecutor vs. Pauline Nyiramasuhuko and others, Case No. ICTR-98- 42-T, Judgment 24 June 2011, para-174

266. General rule is that even a single witness's testimony may be acted upon to arrive at decision if it is found to be credible. It is now well settled that evidence tendered must be weighed and not counted. However, it is to be tested whether the evidence of P.W.05 and P.W.07 carries a ring of truth and credible.

267. In adjudicating the arraignment brought we chiefly require seeing what the two P.W.s namely P.W.01 and P.W.07 testified and its credibility. The victim of this event is cousin brother of P.W.01 B M Ruhul Amin. P.W.01 learnt the event from his other cousin brother P.W.05 Alauddin Biswas. Hearsay version of P.W.01 is not anonymous. He (P.W.01) heard the event from P.W.05 who witnessed the event of killing. It was fairly likely. Hearsay evidence of P.W.01 thus gets corroboration from P.W.05 and P.W.07.

268. We are not agreed with defence contention that the admitted fact that the accused persons used to continue their staying in the locality even after independence achieved creates doubt as to their alleged involvement with the event arraigned. For various factors perpetrators of atrocious activities committed in 1971 might have enjoyed opportunity of staying in the locality even after independence achieved. Such act does not

enjoin innocence, particularly when the accused is found have had culpable and active participation to the commission of horrendous crimes directing civilian population.

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

270. Cumulative evaluation of ocular testimony of P.W.05 and P.W.07 on some pertinent facts demonstrates explicitly that those were crucially chained to the ending phase of the event. These facts could not be tainted in any manner. Rather, it stands proved that the accused Md. Amzad Hossain Mollah himself gunned down the victim to death and the other accused persons substantially facilitated to the commission of the killing. They being loyal associates of the accused Md. Amzad Hossain Mollah had acted in such culpable manner, sharing common purpose. It has been proved too that they had culpable involvement with all the phases of the event of systematic attack. Thus, they too incurred equal liability.

271. On the same day at about 06:00 P.M. P.W.07 on hearing screaming and cry from the house of Alauddin Biswas (P.W.05) moved there and heard that at about 04:00 P.M. Razakar commander Md. Amzad Hossain Mollah gunned down detained Moyen Uddin @ Moyna to death taking him on the bank of the river Chitra and Razakar Md. Fasiar Rahman Mollah and Md. Ohab Mollah made the dead body floated in the river Chitra. It proves their approving attitude to the commission of the killing. This piece of hearsay evidence lends corroboration to the fact of killing as witnessed by P.W.05, the brother of victim Moyen Uddin @ Moyna and participation of accused persons therewith.

272. From the trend of cross-examination of P.Ws it appears that defence could not bring any inconsistency as to the event leading to killing and accused persons' participation therewith. Thus, in absence of anything contrary, it stands proved, based on evidence that an 'attack' was launched by the criminal enterprise formed of accused persons and their cohort Razakars directing pro-liberation civilians on the date and time as unveiled in ocular testimony of witnesses.

273. The context prevailing in 1971 itself is sufficient to prove that the offences of crimes against humanity as specified in

section 3(2)(a) of the Act of 1973 were the predictable effect of part of ‘systematic attack’ committed against ‘civilian population’, to further policy of the Pakistani occupation army.

274. In the case in hand, we convincingly conclude that the murderous squad was formed of accused (1) Md. Amzad Hossain Mollah (2) Md. Ohab Mollah [**absconding**] (3) Md. Mahatab Biswas [**absconding**] (4) Md. Fasiar Rahman Mollah [**absconding**] and their cohort Razakars. Intention of the accused persons forming part of the gang in forcibly taking away the victim was not at all guiltless as they eventually actively participated, in exercise of their nexus with the local Razakar Bahini in accomplishing the killing of one detained civilian by gunshot.

275. Nexus of the accused persons with Razakar Bahini suggests to the conclusion that such atrocity was aimed to further policy and plan of resisting the war of liberation by annihilating the pro-liberation Bengali civilians.

276. On totality of evidence as discussed above we finally arrive at decision that prosecution has been able to prove beyond reasonable doubt that (1) Md. Amzad Hossain Mollah (2) Md. Ohab Mollah [**absconding**] (3) Md. Mahatab Biswas

[**absconding**] and (4) Md. Fasiar Rahman Mollah [**absconding**] participated in the commission of killing of one unarmed pro-liberation civilian by their culpable deliberate acts forming part of systematic attack and thus they are held equally liable for the offences of '**abduction, 'confinement', 'torture', 'other inhumane act' and 'murder'** as 'crimes against humanity' as enumerated in section 3(2)(a)(g)(h) of the Act of 1973 and thus the accused persons incur criminal liability under section 4(1) of the Act of 1973.

Adjudication of Charge 04: [05 accused indicted of whom 01 died during trial]

[Offences of 'abduction', 'confinement', 'torture', 'other inhumane acts' and 'murder' of 03 [three] civilians on forcible capture from the village-Gaidghat and North Chandpur under police station-Bagharpara of District-Jashore].

277. Charge: That on 20.09.1971 at about 08:00/09.00 A.M. the accused (1) **Md. Amjad Hossain Mollah**, (2) **Md. Ohab Mollah**, (3) **Md. Mahatab Biswas**, (4) **Md. Fasiar Rahman Mollah**, (5) **Md. Nowsher Biswas(died during trial)** , Razakar Keramat Ali Mollah [now dead], Razakar Mojid Biswas [now dead] along with 10/12 cohort Razakars forming a group forcibly captured **Surat Ali Biswas and Muktar Biswas** by launching attack at their house at village- Gaidghat under police

station Bagharpara of Jashore District and took them away to Premchara Razakar Camp where they were kept confined.

In conjunction with the event, on the same day i.e. on 20.09.1971 at about 2.00/2.30 P.M. the accused (1) Md. Amzad Hossain Mollah, (2) Md. Ohab Mollah, (3) Md. Fasiar Rahman Mollah and Razakar Keramat Mollah [now dead], Razakar Mojid Biswas [now dead] being accompanied by 08/10 Razakars **abducted Md. B.M Ruhul Amin and Ainuddin @ Ayna** by launching attack at their house at village-North Chandpur under police station-Bagharpara of Jashore District and took them away to the Premchara Razakar camp where they were subjected to torture in captivity.

Thereafter, on 23.09.1971 at about 2.00 P.M. all the said detainees were sent towards the Debdaru Bagan of Bijoy Das at village-Boro Khudra by a boat and on the way detainee **B.M. Ruhul Amin could survive** by jumping from the boat but **03 other detainees** were eventually taken to the Debdaru Bagan of Bijoy Das where the accused Amzad Hossain Mollah slaughtered them to death, one by one by the side of a well and the accused Md. Ohab Mollah, Md. Fasiar Rahman Mollah, Md. Nowsher Biswas(died during trial) and Razakar Keramat Ali

[now dead] and Razakar Mojid Biswas [now dead] dumped the dead bodies into the well.

Therefore, the accused **(1) Md. Amzad Hossain Mollah, (2) Md. Ohab Mollah, (3) Md. Mahatab Biswas, (4) Md. Fasiar Rahman Mollah and (5) Md. Nowsher Biswas (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’, ‘torture’, ‘other inhumane acts’ and ‘murder’** as crimes against humanity as enumerated in section 3(2)(a)(g)(h) read with section 4(1) of the International Crimes (Tribunals) Act, 1973 which are punishable under section 20(2) of the Act of 1973.

Evidence of Witnesses Examined

278. In order to substantiate the arraignment brought in this count of charge prosecution relies upon four (04) witnesses who have been examined as **P.W.01, P.W.02, P.W.03 and P.W.05**. Of them P.W.01 is a survived victim. P.W.02 is the son of one victim Martyred Surat Ali Biswas. He is a direct witness to the

facts related to the event. P.W.03 is the brother of another victim Muktar Biswas. He too is a direct witness to facts crucially chained to the event. Now first let us see what the P.W.s testified in Tribunal.

279. P.W.01 B M Ruhul Amin (73) is a resident of village-North Chandpur under Bagharpara police station of District Jashore. In addition to the event arraigned charge nos.01 and 03 he testified in support this charge as well. It is to be noted too the P.W.01 is the son of martyred Dr. Nowfel Uddin Biswas, the victim of the event arraigned in charge no.01. He (P.W.01) also testified what he experienced in course of the event arraigned in charge no.04. He is a survived victim of this event.

280. P.W.01 stated that after the Razakars had killed his father (victim of the event arraigned in charge no.01) he (P.W.01) started providing assistance to freedom-fighters in different ways. Being aware of it on 20.09.1971 at about 02:00 P.M. Razakar commander Amzad Hossain Mollah, Razakar Fasiar Rahman, Razakar Abdul Ohab, Razakar Mahtab Hossain and their 10/12 cohort armed Razakars by launching attack at their house forcibly captured him and took him away to house of Ayen Uddin @ Ayna who used to assist freedom-fighters and

also forcibly captured him(Ayen Uddin @ Ayna) and then tying them up the invaders took them away to Premchara Razakar camp where he saw Surat Ali and Mukta of village Gadaighat detained too.

281. P.W.01 continued stating that they the four detainees were subjected to torture in captivity at the Premchara primary school Razakar camp. On 23.09.1971 at about 11:00 A.M. the Razakars he named started taking them the four (04) detainees toward Debbaru garden of Bijoy Das of village-Khudra by crossing Chitra River on boat. On the way he (P.W.01) strategically jumped into the river and managed to flee crossing the river and went to the house of his younger sister in Jhenaidah town.

282. Finally, P.W.01 stated that 7/8 days after independence achieved he came back home and learnt from his cousin brother Alauddin (P.W05) that the Razakars he named slaughtered the three civilians detained to death taking them beside a draw well (pat kua) in Debbaru garden of Bijoy Das and dumped the dead bodies into the draw well. The Razakars he named were from their locality and thus he knew them beforehand.

283. In cross-examination defence does not seem to have denied the event testified by the P.W.01 in specific manner. On cross-examination P.W.01 denied defence suggestions that the accused persons were not Razakars; that what he testified implicating the accused persons was untrue and out of local political rivalry and that the event he testified did not happen.

284. P.W.02 Md. Abdul Haye (60) is a resident of village-Gaidghat (at present village- Sekendarpur) under police station Bagharpara of District Jashore. He chiefly testified what he witnessed in respect of the event of attack leading to annihilation of his father as arraigned in this charge no.04. He is the son of one victim Surat Ali Biswas.

285. Before narrating the event arraigned P.W.02 stated how the Razakar Bahini got formed in their locality. He stated that their family was affiliated with Awami League politics. In the mid of May in 1971 after the war of liberation ensued Razakar Amzad Hossain Mollah formed a Razakar camp at the house of his father-in-law Md. Mojahar Hossain @ Mojam Biswas and Bazlur Rahman @ Bazlu Biswas to which Kayem Ali Biswas, Fasiar Rahman, Mahtab Biswas, Keramat Ali (now dead), Ohab Ali, Nowsher Ali Biswas (died during trial), Abdul Majid were

associated. Due to increase of quantity of Razakars this camp was shifted to Premchara primary school and Razakar Amzad Hossain Mollah was made its commander.

286. In respect of the event arraigned P.W.02 stated that his father and cousin brother Moktar Ali used to make arrangement for the refugees of localities to deport to India and also used to provide assistance to freedom-fighters by preserving their arms and in diverse ways. On getting it leaked on 20th September in 1971 at about 08:00/09:00 A.M. Razakar commander Amzad Hossain Mollah being accompanied by Razakars Nowsher Ali Biswas(died during trial), Fasiar Rahman, Abdul Ohab, Keramat Ali (now dead), Majid Biswas (now dead), Mahtab Biswas and 10/12 cohort armed Razakars besieged their house. With this he (P.W.02) being scared made him hidden at a corner of the dwelling shed wherefrom he saw the Razakars he named detaining his father and his cousin brother Moktar Ali and tying them up.

287. P.W.02 continued stating that next the Razakars took away his detained father and cousin brother to Premchara Razakar camp where they were kept confined. Next, he along with his uncle Alam Biswas (now dead), Nowab Ali Biswas (now dead), cousin brother Akter Ali, uncle Isahak Ali and some neighbours

moved to the house of Mojahar Hossain Biswas, the father-in-law of Razakar commander Amzad Hossain Mollah, crossing the river Chitra and finding the Razakar commander Amzad Hossain Mollah available their they appealed to him for setting his father and cousin brother Moktar Ali released. But he (Md. Amzad Hossain Mollah) told that his (P.W.02) father and cousin brother would be released on condition of bringing out the fire arms of freedom-fighters which they had kept. On hearing it they came back home.

288. P.W.02 next stated that two days later on 22nd September above inmates of their family again moved to nearer Premchara Razakar camp and attempted to have trace of his father and cousin brother but on failure of getting information they came back home.

289. P.W.02 continued narrating that on 23rd September at about 08:00/09:00 A.M. he along with his uncle, cousin brother again moved to the Premchara Razakar camp and staying hidden nearer the camp they attempted to know the location of his father and cousin brother (at this stage of deposition the P.W.02 burst into tears). Remaining in hiding there at about 11:00 A.M. they saw the Razakars he named (indicted) taking away his father, cousin brother Moktar Ali, Ayen Uddin @ Ayna and Dr.

B M Ruhul Amin (P.W.01) toward Khudra village by boat that was kept anchored in Chitra River. Seeing this they (P.W.02 and others) started following them by moving through the bank of the river.

290. P.W.02 continued recalling the next phase and stated that few time after he saw Dr. B M Ruhul Amin (P.W.01) jumping into the river. The Razakars then made the boat anchored near the Debbaru garden of Bijoy Das of village-Khudra and took his father, cousin brother Moktar Ali and Ayen Uddin @ Ayna near a draw well inside the Debbaru garden.

291. P.W.02 also stated that he then remaining in hiding saw Razakar commander Amzad Hossain Mollah slaughtering his farther, cousin brother and Ayen Uddin @ Ayna to death (**at this stage of his deposition too the P.W.02 again burst into tears**) and the dead bodies were dumped inside the draw well. Seeing this they being scared returned back home.

292. Finally P.W.02 stated that 7/8 days after independence achieved he along with family inmates going to the said draw well (killing site) found skeleton and scalp lying inside it. Later on they moved to the house of Dr. B M Ruhul Amin (P.W.01 and one survived victim) who narrated the event and how he

got survived by jumping into the river. The Razakars he named were the residents of their nearer locality and used to move around the locality and thus he knew them beforehand.

293. In cross-examination defence simply denied what the P.W.02 testified in relation to the event arraigned leading to killing three detainees. On cross-examination P.W.02 stated in reply to defence question that they did not initiate any case over the event and they did not take step in getting recognition of martyred family. P.W.02 denied defence suggestions that his date of birth is 10.12.1967; that he did not see and hear what he testified; that the accused persons were not Razakars and were not concerned with the alleged event; that the event he narrated implicating the accused Amzad Hossain Mollah was untrue and tutored.

294. P.W.03 Akter Ali (66) is a resident of village-Gaidghat under police station Bagharpara of District Jashore. He chiefly testified the event arraigned in charge no.04. In addition to it he stated what he witnessed and heard in relation to facts chained to the event arraigned in charge no.01. He is the brother of one victim Moktar Ali and victim Surat Ali Biswas was his uncle.

295. P.W.03 stated that on 20th September in 1971 at about 07:00/08:00 A.M. he had been at home when a group formed of Razakar commander Amzad Hossain Mollah, Razakar Fasiar Rahman, Razakar Nowsher Ali Biswas (died during trial), Razakar Mahtab Biswas, Razakar Ohab Mollah and their cohort armed Razakars forcibly captured his uncle Surat Ali Biswas and his (P.W.03) brother Moktar Ali by besieging their house and took them away toward west, tying them up.

296. P.W.03 next stated that they came to know that his uncle and brother were kept confined at Premchara Razakar camp. Then few times after he along with his uncle Alam Biswas (now dead), cousin brother Abdul Haye and his uncle Isahak moved to the house of Razakar Mojam Biswas where they finding Amzad Hossain Mollah appealed to him to set his detained uncle and brother released. But Razakar commander told that they would be set released on condition of surrendering the fire arms of freedom-fighters which they had kept with them. Hearing it they came back home.

297. P.W.03 continued stating that on 23rd September, 1971 at about 09:00/09:30 A.M. he (P.W.03) and his cousin brother Abdul Haye moved to nearer the Premchara Razakar camp to

have whereabouts of his detained uncle and brother. On the same day at about 11:00 A.M. he saw Razakar commander Amzad Hossain Mollah, Nowsher Ali (died during trial), Fasiar Rahman, Mahtab Biswas, Ohab Mollah and their 10/12 cohort Razakars taking away his detained brother, uncle, BM Ruhul Amin (P.W.01) and Ayen Uddin @ Ayna toward west by boat through the river Chitra. Then they started following them secretly by moving through the bank of the river.

298. P.W.03 stated that at a stage he saw B M Ruhul Amin (P.W.01) jumping into the river. The boat was then got anchored beside the Debbaru garden of Bijoy Das of village-Barakhudra and taking the three detainees near a draw well of Debbaru garden where they were slaughtered to death and their dead bodies were made dumped inside the draw well. Seeing this they being scared came back home.

299. On cross-examination P.W.03 stated in reply to defence questions that their village is on the south bank of river Chitra and Premchara village is on the north bank and that village Khudra is about 2 miles north to their house; that in 1971 there had been no activities of Al Badr and peace committee in their locality in 1971; that the accused Md. Ohab Mollah and Md.

Mahtab Biswas used to stay at their village even after the independence achieved.

300. In cross-examination, it appears that defence has not made any effort even to deny the facts crucially related to the event that ended in annihilation of three detainees, as testified by P.W.03.

301. On cross-examination P.W.03 denied defence suggestion that according to the register of education board his date of birth is 15.10.1966 and that in 1971 he was 5 years old; that the accused persons were not Razakars and were not involved with the event alleged and that what he testified implicating the accused persons was untrue and out of rivalry.

302. P.W.05 Md. Alauddin Biswas (75) is a resident of village-Uttar Chandpur under police station- Bagharpara of District Jashore. In addition to events arraigned in charge nos. 01 and 03 he testified some facts what he heard and witnessed in respect of the event arraigned in charge no.04.

303. P.W.05 Md. Alauddin Biswas is the brother of one victim Ayen Uddin Biswas. He claims to have witnessed the act of

forcible capture of one survived victim B.M. Ruhul Amin (P.W.01) and his brother Ayen Uddin Biswas, one victim.

304. P.W.05 in recounting the event arraigned stated that on the 03rd day of Bangla month Aswin in 1971 at about 02:30/03:00 P.M. Razakar commander Amzad Hossain Mollah, Razakar Fasiar, Razakar Abdul Ohab, Razakar Keramat (now dead) and their 7/8 cohorts detaining his cousin brother Dr. B M Ruhul Amin (P.W.01) brought him to their (P.W.05) house. Being scared he then remained in hiding inside banana garden, north to their house.

305. P.W.05 next stated that remaining in hiding he saw the Razakars taking away his detained brother Ayen Uddin Biswas @ Ayna toward Premchara Razakar camp.

306. What did the P.W.05 next hear? P.W.05 stated that on 06th day of Aswin at about 04:00 P.M. Akter Ali (P.W.03) coming to their home informed that the Razakars Amzad Hossain Mollah, Nowsher (died during trial) , Fasiar, Abdul Ohab and Mahtab taking away his (P.W.05) brother Ayen Uddin Biswas @ Ayna, his (P.W.03) brother Moktar and Surat Ali of village-Barakhudra to Debbaru garden of Bijoy Das of village-Barakhudra slaughtered them to death there and their dead

bodies were dumped inside a draw well. Later on, he (P.W.05) on moving to the said Debdaru garden discovered the dead bodies (**at this stage of deposition P.W.05 burst into tears**).

307. In cross-examination defence simply denied what has been testified by the P.W.05. No attempt appears to have been made to impeach it. On cross-examination P.W.05 stated in reply to defence question put to him that the accused Amzad Hossain Mollah used to stay in the locality even after the independence achieved. P.W.05 denied defence suggestions that he did not see and hear what he testified; that the accused was not Razakar and was not involved with the event alleged and that what he testified was untrue and out of rivalry.

Finding with Reasoning on Evaluation of Evidence

308. **Rezia Sultana Begum**, the learned prosecutor drawing attention to the evidence of P.W.s relied upon submitted that most of witnesses are relatives of victims and P.W.01 is a survived victim who witnessed the event till he managed to escape strategically by jumping in the river. The group formed of infamous Razakars including the accused persons indicted had carried out the criminal activities in systematic manner to

further policy of Pakistani occupation army. It has been proved from totality of unimpeached ocular evidence of P.W.s.

309. It has been further argued that uncontroverted testimony of witnesses proves that the gang formed of accused persons and their cohort Razakars had conducted the criminal mission sharing common intent of annihilating potential and active devotees of the war of liberation. P.W.02 the son of one victim Surat Ali Biswas witnessed the vicious act of slaughtering the detainees to death at the killing site and accused Md. Amzad Hossain Mollah being accompanied by other accused persons and cohort Razakars perpetrated such dreadful killing of three pro-liberation civilians.

310. Conversely, the learned defence counsel **Mr. Gazi M.H. Tamim** has argued that the prosecution witnesses who claim to have witnessed the alleged event of attack that resulted in alleged abduction of victims is impracticable. The prosecution witnesses have made contradictory statement as to the attack allegedly launched and has failed to provide evidence to prove who killed which victim. The witnesses did not have reason of knowing the accused persons

311. Mr. Abdus Sattar Palwan, the learned state defence counsel defending the absconding accused Md. Fasiar Rahman Mollah echoing the submission agitated by Mr. Gazi M.H. Tamim submitted that this accused was not Razakar and did not have involvement with the event alleged and that prosecution failed to prove his participation to the commission of the alleged crimes.

312. Five accused have been indicted in this count of charge. But one accused Md. Nowsher Biswas died during trial. The phases of the event arraigned happened one after another. The prosecution witnesses, the near relatives of victims had natural occasion of witnessing the phases and they testified it in Tribunal. Criminal activities carried out in all the phases were linked to each other.

313. Evidence of witnesses demonstrates that the preparatory phase of the designed attack was to get the four unarmed pro-liberation civilians unlawfully apprehended. Next phase was the act of keeping the four civilians confined at the Premchara primary school Razakar camp for three days when the detainees were subjected to torture. Three days later the detainees were taken to the killing site by crossing river Chitra by boat when one detainee P.W.01 managed to escape by jumping in the river.

Ultimate phase occurred in slaughtering the three detainees to death taking them at Debbaru garden of Bijoy Das of village-Khudra, the killing site.

314. Ocular version of P.W.01 demonstrates patently how and when the P.W.01 and another victim Ayen Uddin @ Ayna were unlawfully detained to further the object of attack. It is evinced from ocular testimony of P.W.01 B M Ruhul Amin one survived victim that on 20.09.1971 at about 02:00 P.M. the group formed of accused Razakar commander Md. Amzad Hossain Mollah, Razakars Md. Fasiar Rahman Mollah, Razakars Md. Ohab Mollah, Razakar Mahtab Biswas and their 10/12 cohort armed Razakars by launching attack at the house of P.W.01 forcibly captured him and took him away to house of Ayen Uddin @ Ayna wherefrom Ayen Uddin @ Ayna too was forcibly captured and then tying them up took away to Premchara primary school Razakar camp.

315. Ocular narrative made by P.W.05, the brother of one victim Ayen Uddin Biswas demonstrates that he too saw the act of forcible capture of one survived victim B M Ruhul Amin (P.W.01) and his (P.W.05) brother Ayen Uddin Biswas. Ocular

testimony of P.W.05 on this crucial part of the attack remained uncontroverted.

316. It is evinced too that the P.W.01 saw Surat Ali and Mukta (Moktar Ali) of village-Gaidghat detained too and the four detainees including P.W.01 were subjected to torture in captivity for three days. It remained uncontroverted. Defence simply denied it but could not question what the P.W.01 stated in examination-in-chief. Keeping unlawfully confined unarmed civilians in activity was derogatory to International humanitarian law and the laws of war. Such prohibited act constituted the offence of ‘**confinement**’ and ‘**torture**’ as crimes against humanity.

317. How and when were the two other victims Surat Ali Biswas and his cousin brother Moktar Ali apprehended and by whom? It has been divulged from unimpeached testimony of **P.W.02 Md. Abdul Haye**, the son of one victim Surat Ali Biswas and brother of victim Moktar Ali that on the same day i.e. on 20th September in 1971 at about 08:00/09:00 A.M. the same gang formed of accused persons and their cohort Razakars besieging their house unlawfully detained his father Surat Ali Biswas and Moktar Ali and tied them up. Sensing the attack

P.W.02 being scared got hidden at a corner of the dwelling shed wherefrom he saw such criminal acts in carrying out unlawful capture of those two victims. Defence does not appear to have made effort to refute it.

318. P.W.03 Akter Ali is another brother of victim Moktar Ali and victim Surat Ali Biswas was his uncle. He (P.W.03) too witnessed how and when did by launching attack at their house the group formed of accused persons and their cohort Razakars take away his brother and uncle on forcible capture.

319. It transpires from corroborative and unimpeached testimony of P.W.02 and P.W.03 that the attack at the house of P.W.02 was conducted few hours before the attack carried out at the house of P.W.01 and Ayen Uddin @ Ayna and presumably first on getting Surat Ali Biswas and Moktar Ali apprehended the gang took them away to Razakar camp and kept them in captivity. Be that as it may, it is quite credible that the P.W.01 after taking him and victim Ayen Uddin @ Ayna to the Razakar camp on forcible capture found those two civilians too detained there.

320. Uncontroverted and corroborative evidence of P.W.01, P.W.02 and P.W.03 proves it beyond reasonable doubt that the

accused persons forming part of the criminal squad, in exercise of their culpable nexus with the Razakar camp set up at Premchara primary school had carried out the criminal activities directing civilian population. Thus and since the accused persons indicted are found to have had active participation in accomplishing forcible capture of victims as found proved from corroborative evidence of P.W.01, P.W.02 and P.W.03 they are liable also for causing torture to the victims keeping them in protracted captivity at Razakar camp .

321. Defence argued that in 1971 P.W.02 and P.W.03 were tender aged boy and thus it is not credible what they claim to have witnessed. Their testimony is not credible. It was not practicable of allegedly seeing the event by such a minor boys.

322. It appears that on cross-examination P.W.03 denied defence suggestion that according to the register of education board his date of birth is 15.10.1966 and that in 1971 he was 5 years old. Any such document has not been formally submitted and proved by defence. Practice of showing lesser age in any such document is frequently experienced in our society. Thus, information contained in any such document is not conclusive proof one's actual age.

323. However, it depicts from testimony of P.W.02 and P.W.03 that in 1971 they were young aged boys. But it does not make them incompetent witnesses. A witness may be any person having ability to perceive and know a fact relating the arraignment brought. Where there is nothing in the law that prevents a witness from appearing in court of law as a witness to testify, in such situation a witness is deemed to be competent.

324. Mere young age cannot be a ground to discard one's testimony if the same appears to be natural and The Appellate Division of the Supreme Court of Bangladesh in rendering observation in this regard relied upon the decision of the **ICTR** Appeal Chamber in the case of *Gacumbitsi* which runs as below:

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

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

325. What happened next? Unshaken ocular narrative of P.W.01, a survived victim demonstrates crucial fact chained to the ending phase of the attack. It is evinced from his testimony

that on 23.09.1971 at about 11:00 A.M. i.e. three days after the accused Razakars started taking them the four (04) detainees toward Debbaru garden of Bijoy Das of village-Khudra by crossing Chitra River on boat and on the way he (P.W.01) strategically jumped into the river and managed to flee crossing the river and got sheltered at the house of his younger sister in Jhenaidah town. Defence does not seem to have made any effort to refute this crucial fact by cross-examining the P.W.01.

326. The above piece of ocular version of one survived detainee (P.W.01) unequivocally suggests concluding that intending to accomplish the object of the criminal design the accused persons being part of the gang were taking away the detainees toward the killing site. It stands proved that P.W.01, a survived victim witnessed the criminal activities till this phase of the event which were chained to the ending phase, the killing of three detained victims. In cross-examination defence does not seem to have denied the phases of the event testified by the P.W.01 in specific manner.

327. Testimony of P.W.02 demonstrates that he along with his uncle, cousin brother on 23rd September at about 08:00/09:00 A.M. moved to the Premchara Razakar camp and staying hidden

nearer the camp tried to know the location of his detained father and cousin brother and remaining in hiding there at about 11:00 A.M. they saw the accused Razakars taking away his father, cousin brother Moktar Ali, Ayen Uddin @ Ayna and Dr. B M Ruhul Amin (P.W.01) toward Khudra village by boat.

328. It depicts too from uncontroverted testimony of P.W.02 that in course of following the invaders by moving through the bank of the river few times after P.W.02 saw detainee Dr. B M Ruhul Amin (P.W.01) jumping into the river. It gets fair corroboration from ocular testimony of survived victim P.W.01 Dr. B M Ruhul Amin. In this way three detainees eventually remained under capture of the accused persons and their cohorts, till their annihilation.

329. It transpires from version made by P.W.01 that after independence achieved he (P.W.01) learnt from his cousin brother Alauddin (P.W.05) that the Razakars he named slaughtered the three civilians detained to death taking them beside a draw well (pat kua) in Debdaru garden of Bijoy Das and dumped the dead bodies inside the draw well.

330. It is evinced that P.W. 02 remaining in hiding saw the accused Razakar commander Md. Amzad Hossain Mollah slaughtering his father, cousin brother and Ayen Uddin @ Ayna to death. In describing this ocular narrative in Tribunal P.W.02 burst into tears. It indicates truthfulness of the description he made. Such demeanor filled with untold torment obviously makes the humanity and humankind shocked. It also depicts from uncontroverted ocular narrative of P.W.02 that dead bodies of victims were made dumped inside the draw well.

331. P.W.03 Akter Ali is the cousin brother of P.W.02. It has been unveiled from their consistently corroborative evidence that they together witnessed when and how the accused persons and their cohort Razakars were taking away the detainees toward Debdaru garden of Bijoy Das of village-Khudra by crossing Chitra River on boat. In no manner it could be impeached by defence.

332. Uncontroverted ocular narrative of P.W.03 is corroborative to other witnesses. It has been unveiled that P.W.03, brother of victim Surat Ali too along with his cousin brother P.W.02 was following the gang by moving through the bank of the river

when it was taking away the detainees by boat. At a stage, he saw B M Ruhul Amin (P.W.01) jumping into the river.

333. What happened next? It stands proved from ocular description of P.W.03 that the boat was then got anchored beside the Debbaru garden of Bijoy Das of village Barakhudra and taking the three detainees near a draw well of Debbaru garden where they were slaughtered to death and their dead bodies were made dumped inside the draw well. Seeing this they being scared came back home. It gets consistent corroboration from other direct witness P.W.02.

334. Testimony of P.W.05, the brother of one victim Ayen Uddin @ Ayna demonstrates that on hearing the ending phase, the killing of detainees from P.W.03 he moved to the Debbaru garden (killing site) where he discovered the dead bodies of detainees. In stating it in Tribunal P.W.05 burst into tears. It reflects what trauma still he has been carrying. This piece of version adds corroboration to other witnesses who too discovered the dead bodies dumped inside the draw well at the killing site.

335. It cannot be said the non burial of dead bodies of victims by bringing back at home creates doubt as to their atrocious killing. Readily it was not at all practicable for P.W.02 to get the dead bodies of victims shifted by making those out of the draw well. Thus, experiencing horrific brutality P.W.02 then being gravely feeble and scared naturally returned back home.

336. Defence suggested that the event of abduction and killing did not happen in the manner as has been described. P.W.05 has denied it. But no specific defence case could have been extracted as to how and in which manner it happened. However, the defence does not appear to have been able to dislodge the event of abduction followed by brutal killing of three detained civilians.

337. Defence argued that the prosecution witnesses did not have reason of knowing the accused persons beforehand and thus what they stated implicating the accused persons suffers from credibility.

338. We disagree with the above contention. It is to be noted that a person may be well known to others by virtue of his fame or notoriety he achieved by his activities, deeds, movement, occupation etc. he carried out around the locality. Already in

determining the three other charges it has been found proved that culpable affiliation of the accused persons and nexus with its camp their notoriety became anecdote around the locality.

339. Presence at the first phase of attack causing torture coupled with the act of forcible capture of victim, as found proved suggests that the accused **(1)** Md. Amzad Hossain Mollah **(2)** Md. Ohab Mollah **(3)** Md. Mahatab Biswas **and** **(4)** Md. Fasiar Rahman Mollah had explicit and conscious approval and endorsement to further the criminal acts of causing torture to victim in protracted captivity and finally materializing the act of killing detained civilians and the accused Md. Amzad Hossain Mollah had played the leading and actual role in materializing the object of the criminal design of annihilating pro-liberation civilians.

340. Accused persons' act of culpable presence at the crime site by accompanying the criminal gang forming part of attack was rather an act of 'abetment' which is liable to be punished as there had been a 'causal connection' between such act of 'abetment' and the act of taking away the victims on forcible capture and also to the act of annihilation of the detained victims.

341. The evidence as discussed above indisputably suggests that the three other accused Md. Ohab Mollah, Md. Mahatab Biswas and Md. Fasiar Rahman Mollah consciously and being aware of the consequence of their acts and conducts aided, encouraged, provided moral supports, substantial contribution and approval to the commission of principal crimes, the act of slaughtering three detainees to death.

342. It is now well settled that the individual criminal liability of an accused under JCE emanates from his 'knowing and voluntary participation in a group acting with a common purpose or plan. JCE is an agreement or understanding to execute a 'common criminal plan'. As to Joint Criminal Enterprise (JCE), it is uncontroversial that all participants in a JCE-I must 'share' the specific intent of the respective offence.

343. In the case in hand, it is justifiably perceived from facts and circumstances divulged that these three accused too had acted having 'awareness' coupled with their conscious decision to accompany the gang to the crime site intending to liquidation of three detainees. These three accused thus had acted as 'co-perpetrators'. In this regard we recall the observation made by

ICTR Trial Chamber in the case of **Prosecutor vs. Joseph Mpambara** which is as below:

“ 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.”

[Prosecutor vs. Joseph Mpambara: ICT-01-65: Judgment-11 September, 2006, para 17]

344. Why the victims were targeted of the attack of the invaders formed of accused persons and their cohort Razakars? P.W.01 used to provide assistance to freedom-fighters in different ways. It depicts from his testimony. Unimpeached version of P.W.01 also leads to show that his father Dr. Nowfel Uddin (victim of the event arraigned in charge no.01) and cousin brother Moktar Ali (one victim of the event arraigned in charge no.04) used to make arrangement for the refugees of localities to deport to India and also used to provide assistance to freedom-fighters by caring their arms preserved and in diverse ways.

345. P.W.03 is the brother of one victim **Moktar Ali** and victim **Surat Ali Biswas** was his uncle. Ocular vision of P.W.03 demonstrates that defying appeal to set these two detainees

released accused Md. Amzad Hossain Mollah told that they would be set released on condition of surrendering the fire arms of freedom-fighters which they had kept with them. Defence could not impeach it. Thus, this fact irresistibly indicates that victim Moktar Ali and victim Surat Ali Biswas were potentially engaged in providing assistance to freedom-fighters.

346. In view of above it stands proved that all the victims including survived victim P.W.01 used to act bravely in providing assistance to the freedom-fighters and the civilians intending to deport to India, by taking stance in favour of war of liberation. Such stance the victims had made the accused persons belonging to Razakar Bahini enthused in designing attack directing the victims, we deduce.

347. The designed criminal plan was intended to terrorize the pro-liberation civilians, to further policy of Pakistani occupation army. On totality of evidence it depicts that the attack was 'systematic' and was directed against protected unarmed civilians who took stance in favour of the war of liberation. It stands proved that the victims were targeted in such a way that indisputably demonstrates that the attack was in fact directed against a civilian "population".

348. Keeping eye to the settled history we are persuaded to infer that in 1971 during the war of liberation objective of creating the Razakar Bahini was not to guard lives and properties of civilians who took stance in favour of the war of liberation. Rather, the persons having nexus with this para militia auxiliary force had acted in furtherance of policy and plan of Pakistani occupation army. In so doing even the squad formed solely of Razakars and their cohort armed Razakars were engaged in committing atrocities in a systematic manner directing the unarmed pro-liberation Bangalee civilians in 1971 during the war of liberation.

349. Fragmented depiction of this history has been explicitly reflected in the case in hand. All the events of attacks arraigned in the case in hand were conducted by the group formed solely of Razakars being accompanied by the accused persons. They did not keep them distanced from being involved with atrocious activities pursuant to the designed plan of their own. Pattern of attacks as found proved suggests concluding that the accused persons indicted being imbued by the policy of Pakistani occupation army carried out systematic attack directing civilians by forming murderous enterprise of which the accused persons were active part.

350. 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 above reasoned deliberation based on due appraisal of evidence tendered Tribunal arrives at decision that the prosecution has been able to prove beyond reasonable doubt that accused (1) Md. Amzad Hossain Mollah [**detained in prison**] (2) Md. Ohab Mollah [**absconding**] (3) Md. Mahatab Biswas [**absconding**] and (4) Md. Fasiar Rahman Mollah [**absconding**] being part of the designed criminal enterprise participated and culpably facilitated to the actual perpetration of abduction of four civilians that ended in killing three civilians. The accused persons thus by their notorious act and conduct forming part of systematic attack accomplished the horrific killings. Therefore, the accused (1) Md. Amzad Hossain Mollah (2) Md. Ohab Mollah [**absconding**] (3) Md. Mahatab Biswas [**absconding**] and (4) Md. Fasiar Rahman Mollah [**absconding**] are found criminally liable under section 4(1) of the International Crimes (Tribunals) Actm,1973 for the offences of **abduction**, **confinement**, **torture**, **other inhumane acts** and **murder** as crimes against humanity as enumerated in section 3(2)(a)(g)(h) of the Act of 1973 which is punishable under section 20(2) read with section 3(1) of the Act of 1973.

XI. Conclusion

351. Section 3(1) of the Act of 1973 provides jurisdiction of trying and punishing even any ‘individual’ or ‘group of individuals’ including any ‘member of auxiliary force’ who commits or has committed, in the territory of Bangladesh any of crimes enumerated in section 3(2) of the Act, apart from member of armed or defence forces. In the case in hand it is found well proved that the accused persons had explicit and culpable nexus and affiliation with local Razakar Bahini and its camp. In the case in hand, the accused persons indicted are found criminally liable for the offences proved.

352. Despite lapse of couple of decades the testimony of P.W.s of whom some are near relatives of victims had fair occasion of experiencing the acts and conducts of the accused persons indicted in the case in hand, including the atrocities carried out by them at Premchara primary school Razakar camp of Bagharpara. The witnesses have proved substantial facts relevant and material to the events which ended in killing numerous civilians. No significant inconsistencies between their testimonies made before the Tribunal could be found that may crash their credibility.

353. In the case in hand it has been proved that pro-liberation civilians particularly who were engaged in providing assistance to the freedom-fighters were made target of atrocious attacks. All the event of systematic attacks were conducted by the group formed solely of Razakars and led by accused Md. Amzad Hossain Mollah who had dominant nexus with the Razakar camp set up at Premchara primary school of Bagharpara.

354. Accused persons' conscious, deliberate and culpable conduct--- as have been found---all point to their guilt and are well consistent with their 'participation' and 'complicity' in the commission of the horrendous 'system crimes' proved. As a result, we convinced to conclude that the accused persons participated to the commission of the offences of which they have been indicted.

355. It does not appear that the accused persons and their accomplice Razakars on visible direction of the Pakistani occupation army had conducted such systematic attacks arraigned. Rather, it stands proved that accused persons and members of Razakar Bahini had carried out all criminal activities not on army's explicit direction and participation, but on designed plan of their own.

356. It stands proved that the murderous squad formed solely of accused persons and their cohort Razakars had carried out horrific atrocities proved intending to terrorize the civilians and to resist the war of liberation, to further policy of Pakistani occupation army. Policy was to target the self-determined Bangalee civilian population and Razakar Bahini an auxiliary force was established in aiding the implementation of the policy.

357. It has been proved that the accused persons in exercise of their nexus with Razakar Bahini made them culpably engaged in all kinds of criminal activities proved on the plan of their own. We have found it proved in the case in hand, in adjudicating the charges.

358. The events arraigned in all the four counts of charges arraign that the gang formed solely of accused persons and their cohort Razakars had carried out criminal activities. It demonstrates extreme extent of notoriety the accused persons had in committing crimes directing pro-liberation civilian population, in exercise of their nexus with locally formed Razakar Bahini and its infamous camp set up at Premchara primary school at Bagharpara which was engaged in carrying out atrocities led by accused Md. Amzad Hossain Mollah.

359. It has been proved that the accused Md. Amzad Hossain Mollah being at the 'leadership level' forming group of other accused persons and cohort Razakars actively and in designed way selected the unarmed non-combatant pro-liberation Bangalee civilians conducted the attacks that resulted in killing of numerous civilians as arraigned in charges framed.

360. In view of reasoned finding rendered in adjudicating all the charges it has been found proved that target of the gang of perpetrators accompanied by the accused persons was the pro-liberation civilians. The accused persons are found to have had culpable and physical participation to the commission of barbaric killing of numerous civilians which indisputably shock the humanity.

361. Untold brutalities were carried out within sight of near and dear ones of victims. The accused persons knowingly and being part of the criminal enterprise, sharing common intent and purpose accomplished such appalling atrocities, it has been found proved.

XII. Verdict on Conviction

362. Burden of establishing the guilt or responsibility of the accused persons squarely lies upon the prosecution. In the case

in hand, in proving each count of four charges brought against the accused persons, the standard has been found to be reasonably met as the accused (1) Md. Amzad Hossain Mollah [detained in prison] (2) Md. Ohab Mollah [absconding] (3) Md. Mahatab Biswas [absconding] and (4) Md. Fasiar Rahman Mollah [absconding] are found to have incurred liability for the horrendous crimes which are found to have been proved beyond reasonable doubt.

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

One (01) Accused Md. Amzad Hossain Mollah

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

Three (03) accused (1) Md. Amzad Hossain Mollah (2) Md. Ohab Mollah [absconding] and (3) Md. Fasiar Rahman Mollah [absconding]

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

Four (04) accused (1) Md. Amzad Hossain Mollah, (2) Md. Ohab Mollah[absconding], (3) Md. Mahatab Biswas [absconding] and (4) Md. Fasiar Rahman Mollah [absconding]

Charge No.03: GUILTY of participating, assisting, and substantially contributing in committing ‘**abduction**, ‘**confinement**’, ‘**torture**’, ‘**other inhumane act**’ and ‘**murder**’ constituting the offence of **crimes against humanity** as enumerated in section 3(2)(a)(g)(h) read with section 4(1) of the International Crimes (Tribunals) Act, 1973 and they be convicted and sentenced under section 20(2) of the said Act.

Four (04) accused (1) Md. Amzad Hossain Mollah, (2) Md. Ohab Mollah[absconding], (3) Md. Mahatab Biswas [absconding] and (4) Md. Fasiar Rahman Mollah [absconding]

Charge No.04: GUILTY of participating, assisting, and substantially contributing in

committing **abduction**', **'confinement**', **'torture**', **'other inhumane acts**' and **'murder**' constituting the offence of **crimes against humanity** as enumerated in section 3(2)(a)(g)(h) read with section 4(1) of the International Crimes (Tribunals) Act, 1973 and they be convicted and sentenced under section 20(2) of the said Act.

XIII. Verdict on Sentencing

364. Rezia Sultana Begum, the learned prosecutor concluded summing up by placing justification on awarding highest punishment to the accused persons as it has been proved that they committed exceedingly barbaric acts in perpetrating the offences of murder of numerous pro-liberation civilians constituting the offences as crimes against humanity.

365. The learned prosecutor drew attention to the barbarity the accused persons had shown by their physical participation to the commission of all the crimes proved. The events of deliberate attacks were carried out in day time and the planned and deliberate killings were perpetrated within sight of victims' relatives.

366. All these deserve to be taken as aggravating factors in awarding just and highest punishment although it is not enough to lessen the pain and trauma of relatives of victims, the learned prosecutor urged.

367. On the other hand, on part of defence it has not been opted to portray any mitigating factor, if any in determining the quantum of punishment. Simply it has been submitted that since the prosecution could not prove the arraignments brought by credible evidence the accused persons deserve acquittal.

368. The legislation known as the International Crimes (Tribunals) Act, 1973 was enacted in our sovereign parliament to prosecute and try the offenders who carried out such horrific crimes. But the Act of 1973 was kept halted as no initiation was taken to form judicial forum under this Act after the brutal assassination of Bangabandhu Sheikh Mujibur Rahman the Farther of the Nation.

369. The nation started suffering the culture of impunity for decades together. Right of victims and sufferers also kept dumped. However, couple of decades after enacting the Act of 1973 the judicial forum the 'International Crimes Tribunal' has

been formed to come out from the culture of impunity by bringing the perpetrators to justice.

370. The Tribunal notes that the gravity of the offences proved, one of the key sentencing factors is to be considered as the starting point for determining an appropriate sentence. At the same time the sentence to be awarded should reflect the totality of criminal conduct of the convicted accused persons.

371. At the same time the untold extent of trauma and harm caused to victims is to be kept in mind. It should not be forgotten that the grave harm caused by horrendous killings is not subject to compensation, in any manner. It also significantly deserves to be considered.

372. Awarding appropriate punishment is the manner in which a court of law responds to society's cry for justice. Imposition of punishment proportionate to the gravity and extent of the crimes reflect public abhorrence of the crimes. Pattern and nature of crimes and mode of participation of accused therewith are relevant factor to decide the quantum of punishment to be awarded.

373. In the case in hand, it has been found proved that the accused Md. Amzad Hossain Mollah being part of the designed

criminal enterprise physically participated in committing killing of unarmed pro-liberation civilian by gunshot (**as listed in charge no.01**). The gang formed of Razakars led by accused Md. Amzad Hossain Mollah conducted the attack in getting the victim apprehended, keeping him confined at the Razakar camp till the victim was gunned down to death. Mode of participation in accomplishing the crimes (**as listed in charge no.01**) was indeed gravely aggravating.

374. It has been found proved that convicted accused (1) Md. Amzad Hossain Mollah, (2) Md. Ohab Mollah and (3) Md. Fasiar Rahman Mollah being part of the group of attackers first forcibly captured an organizer of freedom fighters **Rajab Ali Biswas** and his two sons (**as listed in charge no.02**). Eventually, accused Md. Amjad Hossain Mollah on having active and dominant assistance and participation of two other accused had slaughtered down the detained victim **Rajab Ali Biswas** to death taking him at Premchara Chinarashi mango garden (**as listed in charge no.02**). Mode of participation of all the three convicted accused was indeed extremely momentous which aggravates their liability. The accused persons rather had acted being part of the '**pack of wolves**'.

375. All the four accused (1) Md. Amzad Hossain Mollah, (2) Md. Ohab Mollah, (3) Md. Mahatab Biswas and (4) Md. Fasiar Rahman Mollah are found to have culpably acted being part of the criminal enterprise in apprehended an organizer of freedom-fighters Md. Moyenuddin @ Moyna. Finally, the accused Md. Amzad Hossain Mollah gunned down him to death taking him on the bank of river Chitra. It stands proved that the other accused persons substantially contributed in perpetrating the principal crime of killing (**as listed in charge no.03**). The pattern of designed criminal actions was indeed calculated to accomplish horrendous killing of an unarmed civilian by carrying out launching daunting attack. Totality of the event discloses patent aggravating factor.

376. It also stands proved that four convicted accused by conducting designed plan liquidated three pro-liberation civilians. Accused Md. Amzad Hossain Mollah on having culpable and active assistance of three other accused slaughtered the victims to death (**as listed in charge no.04**). What a beastly brutality! The slaughtered dead bodies were made dumped inside a draw well. Mode of participation of accused persons was indubitably extremely barbaric which perceptibly needs to be considered as a significant aggravating factor.

377. All the victims of the events arraigned in all the four counts of charges were the followers of the war of liberation and used to provide patronage and assistance to the freedom-fighters, it stands proved. All the events happened in day time and as such naturally relatives and residents of the crime sites had fair occasion of watching the deliberate criminal activities carried out by the accused persons, in accomplishing the object of the killing mission.

378. It is evinced that the convicted accused persons being imbued by extreme aggression got consciously and actively engaged in criminal enterprise and perpetrated the selective killings, with intent to cripple the pro-liberation civilians. The convicted accused persons were concerned with such shocking and horrendous offences as crimes against humanity and thus they may be termed as the enemies of the mankind.

379. The victims of the brutality as found proved in this case form part of three millions martyrs. They laid their lives for the cause of our long cherished independence and independent motherland—**Bangladesh**. The nation pays tribute and salute to them and they always deserve due recognition and honour.

380. Awarding sentence to convicted accused chiefly depends upon the intrinsic gravity and magnitude of the crimes proved **(as listed in all the four counts of charges)** together with the role the convicted accused persons had played in perpetrating the same. The horrendous crimes committed thus must be punished appropriately.

381. The convicted accused persons in exercise of their culpable affiliation with the Razakar Bahini remained consciously and culpably engaged in conducting designed criminal mission **(as listed in all the four counts of charges)** directing civilian population which was indeed loaded of extreme antagonistic mindset to the pro-liberation civilians and they did it being imbued by the policy of Pakistani occupation army.

382. We reiterate that inappropriate lesser sentence causes injustice not only to the victims of crimes but sometimes to the whole society and the nation as well. Thus, Letters of law cannot remain non responsive to the victims and relatives of martyrs and the nation too who have been still carrying colossal and unspeakable trauma. Long-term impact of the barbaric atrocities left to the surviving family members of victims too deserves to be considered as an aggravating circumstance.

383. The Tribunal as the Trier of fact is thus quite aware of its solemn duty in awarding just and just sentence commensurate with the gravity of the crimes proved. We also keep the view of the **Appellate Division of Supreme Court of Bangladesh** in mind which has been rendered in the case of **Matiur Rahman Nijami** observed that –

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

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

384. All the factors together, as stated above obviously aggravate the liability of the convicted accused persons and accordingly they deserve just and just punishment which is appropriate and inevitable to respond the cry of victims, relatives of victims and the nation as well.

385. In view of deliberation as made above and considering the intrinsic gravity of the offences proved and also keeping the factors as focused herein above into account we are of the **UNANIMOUS** view that justice would be met if the convicted accused persons 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**

Accused (1) Md. Amzad Hossain Mollah son of late Sobhan Mollah and late Baru Bibi of village-Premchara, Police Station-Bagharpara, District-Jashore is found **UNANIMOUSLY guilty** of the offences of ‘abduction’, ‘confinement’, ‘torture’, ‘other inhumane acts’, ‘murder’, as ‘**crimes against humanity**’ as enumerated in section 3(2) of the International Crimes (Tribunals) Act, 1973 in respect of **all the four (04) counts of charges;**

Accused (2) Md. Ohab Mollah [absconding] , son of late Budoï Mollah and Most. Moyna Begum of village-Premchara under police station- Bagharpara, District-Jashore and **(3) Md. Fasiar Rahman Mollah** son of late Monsur Mollah and late Rupshi Begum of village-Choto Khudra, Police Station-Bagharpara, District-Jashore are found **UNANIMOUSLY guilty** of the offences of ‘abduction’, ‘confinement’, ‘torture’, ‘other inhumane acts’, ‘murder’, as ‘**crimes against humanity**’

as enumerated in section 3(2) of the International Crimes (Tribunals) Act, 1973 in respect of three **(03) counts of charges i.e. charge nos. 2,3 and 4;**

AND

(4) Md. Mahatab Biswas son of late Ebadat Biswas and late Johora Begum of village-Bara Khudra, Police Station Bagharpara, District-Jashore. At present: Upasahar Nowapara, Police Station-Kotwali Model Thana, District-Jashore is found **UNANIMOUSLY guilty** of the offences of ‘abduction’, ‘confinement’, ‘torture’, ‘other inhumane acts’, ‘murder’, as ‘**crimes against humanity**’ as enumerated in section 3(2) of the International Crimes (Tribunals) Act, 1973 in respect of two **(02) counts of charges i.e. charge nos. 3 and 4.**

Thus, accordingly--

(1) Md. Amzad Hossain Mollah be **UNANIMOUSLY** convicted and condemned to the sentence as below **for charge no.01**, under section 20(2) of the Act of 1973:

‘Sentence of death’ for the crimes as listed in **charge no.01** and he be hanged by the neck till he is dead, under section 20(2) of the International Crimes (Tribunals) Act, 1973;

(1) Md. Amzad Hossain Mollah (2) Md. Ohab Mollah [absconding] and (3) Md. Fasiar Rahman Mollah [absconding] be **UNANIMOUSLY** convicted and condemned to the **sentence as below for charge no.02**, under section 20(2) of the Act of 1973:

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

(1) Md. Amzad Hossain Mollah (2) Md. Ohab Mollah [absconding] , (3) Md. Fasiar Rahman Mollah [absconding] and (4) Md. Mahatab Biswas[absconding] be **UNANIMOUSLY** convicted and condemned to the **sentence as below for charge nos.03 and 04**, under section 20(2) of the Act of 1973:

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

AND

‘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.

Since the convicted three accused (1) Md. Ohab Mollah (2) Md. Fasiar Rahman Mollah and (03) Md. Mahatab Biswas have been **absconding** the '**sentence of death**' as awarded above to them shall be executed after causing their arrest or when they surrender before the Tribunal, whichever is earlier.

The '**sentence of death**' awarded as above under section 20(2) of the International Crimes (Tribunals) Act , 1973 [The Act No.XIX of 1973] shall be carried out and executed in accordance with the order of the government as required under section 20(3) of the said Act.

The convict accused **Md. Amzad Hossain Mollah** is at liberty to prefer appeal before the Appellate Division of the Supreme Court of Bangladesh against his conviction and sentence within 30 [thirty] days of the date of order of conviction and sentence as per provisions of section 21 of the International Crimes (Tribunals) Act, 1973.

The convicted accused Md. Amzad Hossain Mollah [present on dock as brought from prison] be now sent to the prison together

with conviction warrant accordingly. Let certified copy of the judgment be furnished to this convicted accused, free of cost.

Let certified copy of the judgment also be furnished to the prosecution, free of cost, at once.

Let conviction warrant be issued accordingly against the absconding convicted accused (1) Md. Ohab Mollah (2) Md. Mahatab Biswas and (3) Md. Fasiar Rahman Mollah.

Let copy of the Judgment be transmitted together with the conviction warrant to (1) the Secretary, Ministry of Home Affairs **and** (2) the Inspector General of Police, Bangladesh Police, Police Head Quarters, Dhaka for information and necessary action and compliance.

The secretary, Ministry of Home Affairs and the Inspector General of Police [IGP], Bangladesh Police are hereby directed to initiate effective and appropriate measure for ensuring arrest of the convicted absconding accused persons.

If the absconding convicted accused persons (1) Md. Ohab Mollah (2) Md. Mahatab Biswas and (3) Md. Fasiar Rahman Mollah are arrested or surrender within 30[thirty] days of the

date of order of conviction and sentence they will be provided with certified copy of this judgment free of cost.

Let a copy of this judgment together with the conviction warrant of the convicted accused **Md. Amzad Hossain Mollah** be sent to the District Magistrate, Dhaka for information and necessary action.

Justice Md. Shahinur Islam, Chairman

Justice Md. Abu Ahmed Jamadar, Member

Justice K.M. Hafizul Alam, Member