

International Crimes Tribunal-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.07 of 2018

[Arising out of ICT-BD Misc Case No.05 of 2017]

[Charges: crimes against Humanity as enumerated 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. Mokhlesur Rahman Mukul [**absconding**] (2) Md. Saidur Rahman Ratan [**absconding**] (3) Shamsul Haque Fakir [**absconding**] (4) Nurul Haque Fakir [**absconding**] (5) Md. Sultan Mahmud Fakir [**absconding**] and (6) Nakib Hossain Adil Sarker [**absconding**]

For Prosecution

Mr. Golam Arief Tipoo, Chief Prosecutor

Mr. Syed Haider Ali, Prosecutor

Mr. Rana Das Gupta, Prosecutor

Mr. Mokhlesur Rahman Badal, Prosecutor

Mr. Md. Sultan Mahmud, Prosecutor

Ms. Rezia Sultana Begum, Prosecutor

Mrs. Sabina Yesmin Khan, Prosecutor

Mr. Tapas Kanti Baul, Prosecutor

For defence

Mr. Gazi M.H. Tamim, Advocate, Supreme Court of Bangladesh: **State defence Counsel:** For all the six accused [Absconding]

Date of delivery of Judgment: 23 January, 2023

JUDGMENT

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

I. Opening words

On wrapping up of trial today we are going to deliver the judgment in this case. This will be the 50th judgment. It is to be noted that trial commenced against nine (09) accused (1) Md. Anisur Rahman Manik [absconding] (2) Md. Mokhlesur Rahman Mukul [absconding] (3) Md. Saidur Rahman Ratan[absconding] (4) Md. Shamsul Haque Bachchu (5) Shamsul Haque Fakir[absconding] (6) Nurul Haque Fakir [absconding] (7) Md. Sultan Mahmud Fakir[absconding] (8) Abul Basar Md. Mofazzal Hossain @ Moulavi Mofazzal and (9) Nakib Hossain Adil Sarker[absconding].

But in course of trial three (03) accused (1) Md. Anisur Rahman Manik [absconding], (2) Md. Shamsul Haque Bachchu and (3) Abul Basar Md. Mofazzal Hossain @ Moulavi Mofazzal died

on different dates. Accordingly proceeding so far as it related to them stood abated. Tribunal passed necessary orders in this regard.

The accused persons have been prosecuted and tried in this case which involves the ‘system crimes’, the offences enumerated in the International Crimes (Tribunals) Act, 1973 allegedly committed in the localities under police station Trishal of District Mymensingh in 1971 during the war of liberation.

Trial of the case eventually concluded against six (06) accused who have been absconding and trial against them took place in absentia after due compliance of legal formalities as required in the Act of 1973.

At the beginning we extend our appreciation for the worthy and proficient effort made on part of the learned prosecutors and the learned state defence counsel during trial, in resolving pertinent factual and legal aspects involved in the case.

We reiterate that the accused persons indicted in all counts of charges have been tried not for any isolated crime but for committing internationally recognized crimes i.e. crimes against

humanity which are among the most egregious harms to human dignity and rights perpetrated in 1971 in the territory of Bangladesh, during the War of Liberation, under the International Crimes (Tribunals) Act, 1973.

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

II. Introductory Words

1. The Tribunal [ICT-1] has been set up on 25 March 2010. The notion of fairness and due process have been contemplated in the Act of 1973 and the Rules of Procedure, 2010 (ROP) formulated by the Tribunal [ICT-1] under the powers conferred in section 22 of the principal Act.

2. Object of establishing this judicial forum under the Act of 1973 is to be viewed with reference to the national call for coming out from the culture of impunity and to ensure justice to the victims of the atrocities committed during war of liberation

1971. This object goes on with the internationally recognized norms and jurisprudence evolved.

3. The Act XIX enacted in 1973 by our sovereign parliament is meant to prosecute and try the crimes against humanity, genocide and system crimes committed directing civilian population, in violation of customary international law and the Act of 1973 is *ex-post facto* legislation. It is fairly permitted.

4. It is to be noted that the ICTY, ICTR and SCSL the adhoc Tribunals backed by the United Nations (UN) have been constituted under their respective retrospective Statute. Only the International Criminal Court (ICC) is founded on prospective Statute [Rome Statute].

5. Therefore, the 1973 Act of Bangladesh has the merit and means of ensuring the standard of safeguards recognized universally to be provided to the person accused of crimes against humanity.

III. Jurisdiction of the Tribunal

6. The Act of 1973 contemplates provision to prosecute, try and punish not only the armed forces but also the perpetrators who belonged to ‘auxiliary forces’, or who committed the offences as

an ‘individual’ or a member of ‘group of individuals’ or ‘organisation’ [as amended with effect from 14.7.2009].

7. 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.

8. We reiterate that the Tribunal set up under the Act of 1973 is absolutely a domestic judicial forum but meant to try internationally recognized crimes or system crimes as enumerated in section 3(2) of the Act of 1973 committed in violation of international humanitarian law in 1971 during the war of liberation in the territory of Bangladesh.

IV. Brief Historical Background

9. It is now settled history that horrendous atrocities constituting the offences of genocide and crimes against humanity were perpetrated in 1971 during the nine-month-long war of liberation in the territory of Bangladesh. Pakistani occupation army and their local collaborators including the members of auxiliary forces formed were engaged committing unlawful

criminal acts directed against the unarmed civilian population and protected groups. Finally, in exchange of incalculable sacrifice the nation achieved its independence and the motherland of the Bengali nation-- **Bangladesh.**

10. In portraying the historical background, in succinct, that ensued the war of liberation of the Bangalee nation in 1971 we consider it imperative to reiterate that in August, 1947 partition of British India based on two-nation theory gave birth to two new states, one a secular state named India and the other the Islamic Republic of Pakistan. The western zone was named West Pakistan and the eastern zone was named East Pakistan, which is now Bangladesh.

11. 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. With this the Bangalee 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.

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

13. The history testifies that Pakistani occupation army started its grotesque 'mayhem' in the early hour of 26th March, 1971 in grave breaches of Geneva Convention 1949. Following the onslaught of "Operation Search Light" by the Pakistani Military, Bangabandhu declared Bangladesh independent immediately before he was arrested by the Pakistani authorities.

14. The 'operation' was designed to resist, disarm and liquidate Bangalee policemen, soldiers and military officers, to arrest and kill nationalist Bangalee politicians, soldiers and military officers, to arrest and kill and round up professionals,

intellectuals, civilians belonging to Hindu community and students.

15. Afterwards, designed and systematic criminal actions conducted in concert with its local collaborator militias, Razakar, Al-Badr and the key pro-Pakistan political organisation Jamat E Islami (JEI) intending to stamp out the pro-liberation Bangalee civilians and protected groups and to squash the national feelings and aspirations of the Bangalee nation. Jamat E Islami (JEI) in fact had acted as a criminal organisation in orchestrating deliberate attacks directing pro-liberation Bangalee civilian population and the civilians belonging to Hindu religion. Indisputably we take this settled history into judicial notice.

16. The Pakistan government and the military formed Peace Committee as an 'associate organization' and number of auxiliary forces such as the Razakars, the Al-Badr, the Al-Shams etc, essentially to act as a team with the Pakistani occupation army in identifying and eliminating all those who were perceived to be pro-liberation, individuals belonging to minority religious groups especially the Hindus, political groups

belonging to Awami League and Bangalee intellectuals and unarmed civilian population of Bangladesh.

17. Incontrovertibly the ways to self-determination for the Bangalee nation was strenuous, swabbed with enormous blood, strive and sacrifices. In the present-day world history, conceivably no nation paid as extremely as the Bangalee nation did for its self-determination.

18. After the nation achieved its independence in exchange of huge sacrifice the government of Bangladesh enacted the International Crimes (Tribunals) Act, 1973 for investigation, prosecution and punishment of the perpetrators of the crimes committed in 1971. But no judicial forum under the said Act could be formed due to military coup followed by the killing of the Father of the Nation. Inaction on part of the military rulers who captured state power rather added endorsement to the culture of impunity. Presumably, the accused persons too taking advantage of such unconstitutional endorsement remained untouched for years together.

19. Despite enacting the statute in sovereign parliament the perpetrators of the heinous crimes could not be brought to book, and this left a deep scratch on the country's political awareness

and the whole nation. The impunity the potential perpetrators enjoyed held back political stability, saw the rise of militancy, and destroyed the nation's Constitution.

20. We must keep it in mind that incontrovertibly the ways to self-determination for the Bangalee nation was arduous, swabbed with enormous blood, strive and 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 is indebted to their unprecedented and heroic sacrifices.

21. We deem it expedient to note ardently that the verdicts of the Tribunal, a court of law in cases under the Act of 1973 is not only meant to render its decision on the arraignments brought. The truth and the context behind the commission of horrendous atrocities carried out in 1971 directing the Bangalee civilian population have been painted in its verdicts based on evidence adduced and relevant jurisprudence.

22. We reiterate that the truth unveiled in each verdict of the Tribunal shall create youth quake to walk forward with the spirit of the war of liberation and it also makes space to them and the

global community as well of knowing what extent of diabolical mass atrocities constituting the offences of crimes against humanity and genocide were committed directed against the Bangalee civilians in 1971, we believe firmly.

V. Brief Account of Accused Persons

23. It is essentially needed to focus on brief account of the status and profile the accused persons had in 1971 which is indubitably chained to the criminal activities constituting the offences arraigned. Out of nine accused indicted already three died during trial and thus now let us focus on brief account of rest six accused persons as has been described in the formal charge which is being stated as below:

Md. Mokhlesur Rahman Mukul

Accused Md. Mokhlesur Rahman Mukul, son of late Abdul Khaleque Sarker and Most. Sufia Khatun of village-Dewpara under Police Station-Trishal, District-Mymensingh was born on 10.11.1956(as per his NID). His father Abdul Khaleque Sarkar, a local leader of Muslim League along with other activists and supporters of anti-liberation political parties locally formed a Peace Committee at Trishal Police Station. Accused Md. Mokhlesur Rahman Mukul along with others after taking a short

training conducted by Pakistani Occupation Army in Mymensingh Sadar formed Razakar Bahini at Trishal police station locality. He actively participated in committing heinous atrocious activities constituting the offences of crimes against humanity during the war of liberation, prosecution alleges.

Md. Saidur Rahman Ratan

Accused Md. Saidur Rahman Ratan is the son of late Abdul Khaleque Sarkar and late Most. Sufia Khatun of village-Dewpara under police station Trishal, District-Mymensingh. Presently he is 66 years old, as has been found in investigation. His father Abdul Khaleque Sarkar, a local leader of Muslim League along with other activists and supporters of anti-liberation political parties locally formed a Peace Committee at Trishal Police Station. He, in exercise of his affiliation with Razakar Bahini, actively participated in committing atrocious activities directing civilian population constituting the offences of crimes against humanity during the war of liberation, prosecution alleges.

Shamsul Haque Fakir

Accused Shamsul Haque Fakir is the son of late Achhmat Ali Fakir and late Most. Achhia Khatun of village-Biarta under police station-Trishal, District-Mymensingh (Now lives in Canada). Presently, he

is 75 years old, as has been found in investigation. Accused Shamsul Haque Fakir contributed in forming local Razakar Bahini. He actively participated in committing offences as crimes against humanity, during the war of liberation in 1971, prosecution alleges.

Nurul Haque Fakir

Accused Nurul Haque Fakir is the son of late Achhmat Ali Fakir and late Most. Achhia Khatun, of village-Biarta under Police Station-Trishal, District-Mymensingh (now lives in America). Presently, he is 70 years old as has been found in investigation. Accused Nurul Haque Fakir was affiliated with the locally formed Razakar Bahini under the command of Abdul Khaleque Sarkar at Trishal police station locality. He actively participated in committing atrocious activities directing civilians constituting the offences as crimes against humanity during the war of liberation, as arraigned.

Md. Sultan Mahmud Fakir

Accused Md. Sultan Mahmud Fakir is the son of late Achhmat Ali Fakir and late Most. Achhia Khatun, of village Biarta, Police Station-Trishal, District-Mymensingh. Presently he is 66 years old as has been found in investigation. He was affiliated with the locally formed Razakar Bahini under the command of Abdul Khaleque Sarkar at Trishal police station locality. He actively participated in committing atrocious activities directing civilians constituting the

offences as crimes against humanity during the war of liberation, prosecution alleges.

Nakib Hossain Adil Sarker

Accused Nakib Hossain Adil Sarker is the son of late Mahatab Uddin Sarker alias Gedu Chairman and late Fazilatunnesa, of village-Hadder Bhita, Police Station-Trishal, District-Mymensingh, at present- Darirampur, Ward No. 8, Trishal Pourashava, Police Station- Trishal, District-Mymensingh. He was born on 04-04-1954 as per his NID and as has been unveiled in investigation. Accused Nakib Hossain Adil Sarker after having short training in Mymensingh conducted by Pakistani Occupation Army contributed in forming local Razakar Bahini under the command of Abdul Khaleque Sarker at Trishal police station locality. He actively participated in accomplishing heinous crimes as crimes against humanity during the war of liberation, prosecution alleges.

VI. Procedural History

Starting Investigation

24. The Investigation Agency of the Tribunal constituted under the Act of 1973 started investigation pursuant to complaint register serial no. 77 dated 26.01.2017, in respect of offences enumerated in section 3(2) of the Act of 1973 allegedly perpetrated by (1) Md. Anisur Rahman Manik(died during trial)

(2) Md. Mokhlesur Rahman Mukul (3) Md. Saidur Rahman Ratan (4) Md. Shamsul Haque Bachchu(died during trial) (5) Shamsul Haque Fakir (6) Nurul Haque Fakir (7) Md. Sultan Mahmud Fakir (8) Abul Basar Md. Mofazzal Hossain @ Moulavi Mofazzal (died during trial) and (9) Nakib Hossain Adil Sarker.

Arrest of two accused

25. In course of investigation i.e. at pre-trial stage two accused (1) Md. Shamsul Haque Bachchu and (2) Abul Basar Md. Mofazzal Hossain @ Moulavi Mofazzal could be detained in prison vide Tribunal's order dated 15.02.2017 and 10.12.2017, as prayed by the Investigation Officer through the Chief Prosecutor, for the purpose of going on with effective and unimpeded investigation .

Submission of Investigation Report

26. The Investigation Officer [IO] submitted its report together with materials collected and statement of witnesses, on wrapping up of investigation before the Chief Prosecutor on 31.05.2018 against in all 09 accused persons of whom 07[seven] could not be arrested.

Submission of Formal Charge & taking cognizance of offences

27. The Chief Prosecutor, on the basis of the report and documents submitted therewith by the Investigation Agency, after completion of investigation, submitted the 'Formal Charge' on 12.07.2018 on perusal of which Tribunal, under Rule 29(1) of the Rules of Procedure, 2010 took cognizance of offences on 28.08.2018 under section 3(2) read with section 4(1) of the Act of 1973, allegedly committed in 1971 around the localities under police station- Trishal, District Mymensingh.

Publication of Notification

28. After having the report in execution of warrant of arrest issued against seven [07] accused who could not be arrested the Tribunal, for the purpose of holding proceedings in absentia against them, by its order dated 28.08.2018 directed publication of notification in two national daily news papers.

29. But none of those seven (07) accused turned up to the process of justice despite such notification published in daily news papers and as such treating them absconded the Tribunal by its order dated 24.09.2018 fixed 23.10.2018 for hearing the charge framing matter by appointing Mr. Gazi M.H. Tamim as state defence counsel, at the cost of Government, to defend the absconding seven (07) accused persons.

Hearing on charge framing matter

30. Then on 23.10.2018 hearing on charge framing matter took place when both sides placed their respective submission. On hearing both sides Tribunal fixed 05.12.2018 for order on charge framing matter.

Order on charge framing

31. By an order dated 05.12.2018 Tribunal framed six counts of charges involving the offences as crimes against humanity. The charges so framed were read over and explained to two(02) accused (1) Md. Shamsul Haque Bachchu(died during trial) and (2) Abul Basar Md. Mofazzal Hossain @ Moulavi Mofazzal (died during trial), present in Tribunal as brought from prison and they pleaded not guilty and claimed to be tried according to law. In this way trial commenced.

Placing opening statement and examining witnesses

32. Prosecution after placing opening statement started adducing and examining witnesses on 18.02.2019. The phase of examining prosecution witnesses ended on 05.01.2020 by examining the I.O as P.W.19.

Three accused died during trial

33. In course of trial two (02) accused (1) Shamsul Haque Bachchu and (2) Abul Basar Md. Mofazzal Hossain @ Moulavi

Mofazzal who were facing trial being detained in prison died on 08.12.2018 and 03.04.2019 respectively. As a result, proceeding so far as it related to them stood abated and Tribunal passed necessary order in this regard on 22.01.2019 and on 09.04.2019 respectively.

34. In addition to those two accused who died being detained in prison another absconding accused Md. Anisur Rahman Manik too died on 26.09.2021, during trial. On appraisal of relevant papers Tribunal passed necessary order on 14.11.2021 and accordingly proceeding so far as it related to this accused too stood abated.

Conclusion of Trial

35. In this way trial eventually concluded against six (06) accused who have been absconding till conclusion of trial. Both sides placed respective summing up. On closure of summing up on 05.12.2022 Tribunal kept the case in CAV i.e. delivery and pronouncement of judgment.

VII. Summing up

Summing up [Argument]: By the Prosecution

36. Mr. Tapas Kanti Baul, the learned prosecutor in course of advancing argument submitted that all the six counts of charges

have been proved beyond reasonable doubt from the unimpeached evidence of witnesses some of whom are victims. Defence could not refute their testimony on pertinent facts chained to complicity and culpable participation of the accused persons to the commission of offences for which they have been charged. The accused persons had affiliation with the Razakar camp set up at Ahmedabad High School which indisputably proves their membership in local Razakar Bahini, although no relevant documentary proof could be collected due to lapse of long passage of time.

37. The learned prosecutor further argued that the testimony of witnesses demonstrates that instantly after independence the accused persons quitted the locality and they remained away till 1975. It indicates their culpable concern with the crimes arraigned.

38. It has been argued too that it is not necessary to show how each accused had acted in accomplishing the crimes. Drawing attention to evidence of witnesses it has been submitted that all the six accused participated by their conscious act or conduct to further the object of the group of perpetrators with knowledge of foreseeable consequence of their act or conduct. Therefore, all

the accused incurred liability under the doctrine of JCE which is covered by section 4(1) of the Act of 1973.

39. The learned prosecutor continued arguing that all the accused persons had acted being part of the criminal enterprise and therefore, all the accused incurred liability under the doctrine of JCE which is covered by section 4(1) of the Act of 1973. They all being member of it incurred liability for the horrendous criminal acts that resulted in killing unarmed civilians, unarmed freedom-fighters and the abduction, confinement, torture to defenceless civilians, to further policy of Pakistani occupation army. However, argument placed in respect of arraignment brought in each count of charge shall be better addressed in adjudication of the charges.

Summing up [Argument]: By the Defence

40. **Mr. Gazi M.H. Tamim**, the learned state defence counsel defending all the six absconding accused argued that none of the accused persons was prosecuted, tried and convicted for the offences arraigned instantly after independence under the Collaborators Order, 1972 and thus now they cannot be prosecuted for the alleged criminal acts constituting the offences under the Act of 1973. The accused persons have been

prosecuted out of local rivalry. Certified copy and photocopy of some documents filed on part of defence shall make it credible.

41. The learned defence counsel submitted too that the accused persons did not belong to Razakar Bahini. Prosecution could not prove it by any relevant documentary evidence. They were not involved with the commission of offences alleged in any manner. The victims have narrated contradictory statement in respect of participation of accused persons with the commission of alleged crimes. Many of prosecution witnesses are hearsay witness and it could not be proved that the accused persons physically participated to the actual commission of the crimes including the alleged killings.

42. The learned defence counsel drawing attention to the NID Card submits that the accused Md. Sultan Mahmud Fakir was a minor boy in 1971 and thus testimony implicating this accused with the events arraigned is incredible. We consider it proper to address the argument placed drawing attention to testimony of prosecution witnesses when each charge will be adjudicated.

VIII. Defence submission based on certified copy and photocopy of documents submitted in defence of the fugitive accused

43. In course of placing summing up, Mr. Gazi M.H. Tamim, the learned state defence counsel drawing attention to certified copy and photocopy of some documents submits that there was a conflict between the witness and the accused and thus testimony of witness carries no credibility.

44. In reply, prosecution argued that a fugitive does not have right of submitting any such document and since contents of the documents have not been proved these cannot be taken into consideration.

45. It appears that the learned state defence counsel defending all the six absconding accused, in course of ending phase of trial submitted certified copy of some documents with prayer to receive the same into evidence intending to show alleged rivalry between witness and the accused persons. The learned state defence counsel also submitted photocopies of some papers. Tribunal simply ordered to keep the documents with the record. Tribunal however did not order to receive the said documents into evidence in favour of absconding accused who avoided prosecution for the serious atrocious crimes arraigned.

46. Based on the alleged certified copy of documents and also photo copies of some papers the learned state defence counsel

placed argument defending all the six absconding accused. But prosecution emphatically opposes to take the documents into evidence, without proving its contents. It is also submitted on part of prosecution that any such documents cannot be produced in Tribunal in favour of fugitive accused.

47. It is not understood how and from which source said certified copy of alleged documents have been collected by the learned state defence counsel. These are public documents, true. But merely for this reason without proving contents stated in these certified copy it cannot be taken into consideration in favour of any fugitive accused.

48. A public document still does not stand proved by the mere fact of its production. It must be proved in the normal manner of proof particularly when an objection to it is taken. We are of the view that remaining in absconsion the accused deliberately abandoned his right to adduce any document for receiving the same into evidence.

49. Tribunal notes that the term “fugitive from justice” is defined as “any person who has fled to avoid prosecution for a felony or an offence”. But the learned state defence counsel defending the fugitive accused persons argued and drew

attention to the said documents. The certified copies of criminal and civil cases and other documents filed on 07.11.2019 and 02.02.2020 i.e. long after the commencement of trial, defying the obligatory provision.

50. In addressing the matter pressed on part of fugitive accused we recall the cardinal principle enunciated by the **Appellate Division of the Supreme Court of Bangladesh** that --

“.....Enunciating the age-old maxim that a man who seeks justice from the Court of law must come before the Court to agitate his grievance and must surrender first to the process of justice, otherwise he remains to be fugitive from justice and could not seek aid or assistance of the process of justice in order to claim right of audience against the process of the Court issued against him”

[**Anti-Corruption Commission vs. Mahmud Hossain and others, reported in 61 DLR (AD), page – 17]**

51. In view of above, the fugitive accused does not have right of agitating any claim or grievance without coming before the Tribunal. But the accused without being obedient to the process of the Court of law cannot have right to submit any document even through the learned state defence counsel. It has been

observed too by the **Appellate Division** in the case cited above that-

“This has become very much a practice and procedure in our Criminal Jurisprudence that a person in obedience to a process of the Court must surrender before the Court and challenge the alleged action against him. In the instant case, the petitioner having not surrendered to the process of the Court could not file any application or put his grievance before a Court of law, far less before the Appellate Division of the Supreme Court of Bangladesh. Thus, in absence of any surrender before the process of law, the Court of law is incompetent to issue any order or stay any process at its behest and if done so that would be illegal and without jurisdiction.”

52. Thus, we see that without submitting to the due process of the Court of law and without surrendering to the jurisdiction of the Court, there is no lawful space of rendering any finding or any order based on alleged certified copy of documents and photocopies of the papers.

53. In the case of Anti-Corruption Commission vs. ATM Nazimullah Chowdhury and others, reported in **62 DLR (AD), page -225** it has been held that-

“The petitioner is a fugitive from justice when he moved the petition and obtained the Rule Nisi. This Court repeatedly argued that a fugitive from justice is not entitled to obtain a judicial order defying the process of the Court. When a person wants to seek remedy from a Court of law, he is required to submit to the due process of the Court and unless he surrenders to the jurisdiction of the Court, the Court will not pass any order in his aid.”

54. That is to say, remaining to be fugitive from justice accused cannot seek aid or remedy or assistance of the process of justice, in the name of ‘defence right’ in a trial involving the serious offences of crimes against humanity arraigned in respect of which we have rendered our decision on intrinsic assessment of evidence presented.

55. Thus, and in view of above cardinal principle of the criminal jurisprudence we are not convinced to receive the certified copy of the alleged documents and photocopies of the papers which the learned state defence counsel agitated to receive into evidence on part of accused who without submitting to the process of justice have been remaining fugitive.

IX. Role and status the accused persons had in 1971 and whether they had affiliation in local Razakar Bahini

56. The learned prosecutor **Mr. Tapas Kanti Baul** submits that no documentary evidence could be collected during investigation to show the matter of affiliation of accused persons with local Razakar Bahini and Razakar camp. It chiefly rests upon ocular version of the witnesses, the residents of the locality. The Razakar camp at Ahmedabad High School was formed of accused persons and some other pro-Pakistan people. Four of accused are the sons of local peace committee leader Abdul Khalek Sarker who had played key role in forming the camp. The nature and pattern of atrocities committed itself prove that perpetrators of such crimes were the individuals having affiliation and culpable attachment with the local Razakar Bahini and its camp.

57. On contrary, then learned state defence counsel **Mr. Gazi M.H. Tamim** argued that the accused persons were not Razakars and there is no documentary proof in support of it. By falsely implicating the accused persons with the alleged events now they are being termed as Razakars.

58. We feel it indispensable to focus on this issue as the accused persons are alleged to have had affiliation with local Razakar Bahini in 1971. In assessing the charges brought against them

and their alleged culpability and also the alleged motivation of their being associated with the local Razakar camp we must have a clear portrayal about the accused persons and the activities they had carried out in 1971 in the locality under police station Trishal of District Mymensingh.

59. Tribunal notes that collecting documentary evidence particularly long more than four decades after the events happened is indeed a challenging task. There is thus no documentary evidence to prove culpable association of accused persons with the local Razakar Bahini. But merely for this reason it cannot be readily deduced that the accused persons were not Razakars or were not involved with commission of alleged crimes, being part of the criminal system scheme of the Razakar camp.

60. The pattern of crimes committed combined with the context it may be reasonably deduced that none but the people having affiliation with the auxiliary force got engaged in perpetrating crimes arraigned directing civilian population. It is to be noted that infamous Razakar Bahini was an **‘auxiliary force’** as defined in section 2 of the Act of 1973 as it had acted maintaining **‘static relation’** with the armed force for **‘operational’** purpose.

61. The vital role of Jamat E Islami [JEI] in creating the Razakar force is also reflected from the narrative of the book titled **‘Sunset at Midday’** which articulates as below:

“To face the situation Razakar Force, consisting of Pro- Pakistani elements was formed. This was the first experiment in East Pakistan, which was a successful experiment. Following this strategy Razakar Force was being organized throughout East Pakistan.”

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

62. In view of above, the object of forming Razakar Bahini is quite clear. Besides, it is now settled history. The criminal acts constituting the crimes arraigned tend to show that the accused persons being imbued by the policy of Pakistani occupation army got involved with the system criminal scheme of the Razakar camp. It suggests to the conclusive finding that the accused persons had acted as members of the locally formed Razakar Bahini.

63. Presence of the accused persons with the group of attackers, as testified by the victims and witnesses is strong indicia about their affiliation in locally formed infamous Razakar Bahini. The witnesses knew these accused before hand as they were from the neighbouring localities.

64. It is also the settled history that such culpable act and conduct symbolize the pro-liberation Bangalee people as their '*enemies*' and '*miscreants*'. Besides, not only a person belonging to an auxiliary force but also an individual or group of individuals shall be prosecuted, tried under the Act of 1973, if it is found that they had committed the crimes enumerated in the Act of 1973. From this point of view we may go on to adjudicate whether the accused persons even as individuals were involved with the commission of alleged systematic events arraigned constituting the '*group crimes*'.

65. In the case in hand, it transpires patently from uncontroverted testimony of P.W.01 that during the war of liberation in 1971 Muslim League leader Abdul Khalek Sarker (now dead) formed Razakar camp at Ahmedabad High School and Razakars accused (1) Md. Anisur Rahman Manik (died during trial) (2) Md. Mokhlesur Rahman Mukul (3) Md. Saidur

Rahman Ratan (4) Md. Shamsul Haque Bachchu(died during trial) (5) Shamsul Haque Fakir (6) Nurul Haque Fakir (7) Md. Sultan Mahmud Fakir (8) Abul Basar Md. Mofazzal Hossain @ Moulavi Mofazzal (died during trial) and (9) Nakib Hossain Adil Sarker and others used to cause torture to followers of war of liberation taking them at this camp.

66. Defence could not impeach this crucial fact in any manner. Rather, it gets corroboration from two other witnesses P.W.17 and P.W.18, two victims of the event arraigned in charge no.05. In absence of anything contrary we may thus arrive at finding that the accused persons made them consciously engaged in local Razakar Bahini, despite absence of any documentary proof in this regard.

67. The above fact unveiled unerringly proves that the accused persons belonged to locally formed Razakar Bahini and had culpable attachment to the Razakar camp which was used to design and operate the attacks directing civilian population of the locality constituting unspeakable atrocities, in the name of preserving Pakistan.

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

68 We consider it imperative to restate the matters to be considered essential for the purpose of adjudicating the arraignments brought by evaluating evidence presented. The accused persons have been indicted for the offences enumerated in section 3(2) of the Act of 1973. The offences for which the accused persons have been indicted were ‘system crimes’ committed in violation of international humanitarian law, in the territory of Bangladesh in 1971, during the war of liberation. Those are not isolated crimes.

69. The accused persons indicted have been brought to justice about five decades after the horrendous crimes happened in 1971 during the war of liberation directing defenceless civilians, in violation of international humanitarian law. Sometimes it is experienced that due to the nature of ‘international crimes’, their chaotic circumstances, and post-conflict unsteadiness, these crimes usually may not be well-documented by post-conflict authorities. Thus, the case in hand so far as it relates to the criminal acts constituting the alleged offences is predominantly founded on ocular evidence presented by the prosecution.

70. In the case in hand, mostly the victims and witnesses who allegedly experienced the horrific and traumatic facts

substantially related to the principal events came on dock to testify. Together with the circumstances to be divulged in their testimony it would be expedient to have a look to the facts of common knowledge of which Tribunal has jurisdiction to take into its judicial notice [Section 19(3) of the Act of 1973], for the purpose of unearthing the truth. Inevitably, determination of the related legal issues based on settled jurisprudence will be of assistance in arriving at decision on facts in issues.

71. In adjudicating the atrocious events arraigned and participation of the accused persons therewith we require to keep the ‘context’ in mind in the process of assessment of evidence adduced. The reason is that the term ‘**context**’ refers to the events, organizational structure of the group of perpetrators, *para militia* forces, policies that furthered the perpetration of alleged crimes in 1971 during the war of liberation.

72. It is to be noteworthy too that testimony even of a single witness on a material fact does not, as a matter of law, require corroboration for a finding to be made. This jurisprudence as propounded by our own jurisdiction shall seem attuned to the principle enunciated by *ad hoc* Tribunal [ICTR] wherein it has been observed that --“*Corroboration of evidence is not*

necessarily required and a Chamber may rely on a single witness' testimony as proof of a material fact. As such, a sole witness' testimony could suffice to justify a conviction if the Chamber is convinced beyond all reasonable doubt."

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

73. It has already been settled by this Tribunal in earlier cases that hearsay evidence is not readily inadmissible *per se* but it is to be evaluated in light of probability based on corroboration by 'other evidence'.

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

75. Diabolical atrocities as arraigned in the charges framed were committed in wartime situation. Tribunal notes that in adjudicating liability of the persons accused for criminal acts,

context and situation prevailing at the relevant time i.e. the period of war of liberation in 1971 [March 25 to December 16 1971] is to be considered.

76. Tribunal has kept due concentration to the universally recognised jurisprudence and the provisions as contained in the ROP that onus squarely lies upon the prosecution to establish accused persons' liability, acts or conducts forming part of attack that resulted in actual commission of the offences arraigned. Therefore, until and unless the accused is found guilty beyond reasonable doubt they shall be presumed innocent. Keeping this universally recognised principle in mind Tribunal proceeded with the task of evaluation of evidence provided.

XI. Way of Adjudication of Charges

77. Nine accused (1) Md. Anisur Rahman Manik (died during trial) (2) Md. Mokhlesur Rahman Mukul (3) Md. Saidur Rahman Ratan (4) Md. Shamsul Haque Bachchu (died during trial) (5) Shamsul Haque Fakir (6) Nurul Haque fakir (7) Md. Sultan Mahmud Fakir (8) Abul Basar Md. Mofazzal Hossain @ Moulavi Mofazzal (died during trial) and (9) Nakib Hossain Adil Sarker have been indicted in this case. Tribunal notes that

in course of trial three accused Md. Anisur Rahman Manik, Md. Shamsul Haque Bachchu and Abul Basar Md. Mofazzal Hossain @ Moulavi Mofazzal died on different dates and as a result proceeding so far as it related to them stood abated. Tribunal passed necessary orders in this regard.

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

79. Under this circumstance we require adjudication of ‘guilt’ and ‘participation’ of only six other accused who have been absconding. Role and status these accused persons had during the war of liberation in 1971 undeniably needed to be kept in mind in determining their liability for the offences with which they have been charged.

Adjudication of Charge No.01

**[09 indicted of them 03 died during trial)
[Abduction, confinement, torture and murder of a non
combatant freedom fighter Abdul Hamid @ Hamon]**

80. Charge: That on 22.08.1971 at about 11:00 A.M a group formed of armed Razakars including the accused (1) Md. Anisur Rahman Manik(died during trial) (2) Md. Mokhlesur Rahman Mukul (3) Md. Saidur Rahman Ratan (4) Md. Shamsul Haque Bachchu(died during trial) (5) Shamsul Haque Fakir (6) Nurul Haque Fakir (7) Md. Sultan Mahmud Fakir (8) Abul Basar Md. Mofazzal Hossain @ Moulavi Mofazzal (died during trial) and (9) Nakib Hossain Adil Sarker by launching attack at the house of Rustom Ali of village- Kanihari under police station Trishal of District Mymensingh forcibly captured unarmed freedom-fighter Abdul Hamid @ Hamon when he attempted to go into hiding sensing their presence and then took him away to the Razakar camp set up at Ahmadabad High School under police station Trishal , District Mymensingh where he was subjected to torture.

Keeping the victim in captivity an amount of ransom money was demanded which was paid to Razakar commander to secure victim's release. But nevertheless the victim was not set freed. On 23.08.1971 at about 09:00 P.M the detained victim was taken out to the culvert adjacent to the Razakar camp where he was shot to death by the accused persons. Later on, dead body was recovered and brought to his house and his relatives buried

it. With this the accused persons plundered the house of the victim freedom-fighter.

Therefore, the accused (1) Md. Anisur Rahman Manik (2) Md. Mokhlesur Rahman Mukul (3) Md. Saidur Rahman Ratan (4) Md. Shamsul Haque Bachchu (5) Shamsul Haque Fakir (6) Nurul Haque Fakir (7) Md. Sultan Mahmud Fakir (8) Abul Basar Md. Mofazzal Hossain @ Moulavi Mofazzal and (9) Nakib Hossain Adil Sarker by their act forming part of attack jointly participated, facilitated, abetted and substantially contributed to the commission of the offences of **‘abduction’**, **‘confinement’**, **‘torture’** and **‘murder’** as crimes against humanity as specified in section 3(2)(a)(g)(h) read with section 4(1) of the International Crimes (Tribunals) Act, 1973 which are punishable under section 20(2) of the Act.

Evidence of witnesses Examined

81. In all, seven (07) witnesses have been adduced in support of this count of charge. Of them P.W.02 and P.W.11 have been tendered. The rest five witnesses most of whom are relatives of victim have been examined to substantiate the arraignment brought in this count of charge. First, let us see what the witnesses have narrated in Tribunal.

82. P.W.01 Md. Azizur Rahman (69) is a resident of village-Biarta Kanihari under police station Trishal of District Mymensingh. He is a victim of the event arraigned in charge no.02. In addition to this event he narrated too what he experienced during his confinement at the Ahmedabad High School Razakar camp.

83. Before recounting the facts related to the event arraigned P.W.01 stated that during the war of liberation in 1971 Muslim League leader Abdul Khalek Sarker (now dead) formed Razakar camp at Ahmedabad High School and Razakars Anisur Rahman (died during trial), Bachchu (died during trial) , Mukul, Ratan, Shamsul Haque, Nurul Haque, Sultan, Mofazzal Moulavi(died during trial), Adil and others used to cause torture to followers of war of liberation taking them at that camp.

84. In respect of the crucial fact related to the event arraigned in charge no.01 P.W.01 stated that on 22 August, 1971 in early morning a group formed of Razakars Sultan Fakir, Nurul Fakir Shamsul Haque, Anisur Rahman (died during trial), Ratan, Adil, Mofazzal (died during trial) , Bachchu(died during trial) and their cohorts besieging their house forcibly captured him, his brother Abdul Matin (P.W.02) and uncle Neamat Ali (now

dead) and tying them up with rope and took them away to Ahmedabad High School Razakar camp where he saw freedom-fighter Abdul Hamid detained at the camp and they all were subjected to torture in captivity.

85. P.W.01 next stated that on the following day at about 08:00/09:00 P.M. the said Razakars took the detainee freedom-fighter Abdul Hamid to down stair of the Razakar camp and then moved toward Bazar. One hour later he (P.W.01) heard gun firing from the end of Bazar.

86. P.W.01 continued stating that three days after his captivity at the camp his (P.W.01) father got him and two others released by providing ransom money of Taka 1,100 through Razakar Asmat Ali, the father of Razakar Sultan Fakir, on condition of maintaining daily attendance at the camp. According to such condition he used to secure his attendance at Razakar camp for one week. Afterward, he fled to maternal uncle's home at Balipara. Later on, he heard that dead body of freedom fighter Abdul Hamid @ Hamon was buried on its recovery.

87. In respect of reason of knowing the accused persons P.W.01 stated that the accused persons were the residents of their neighbouring localities and thus he knew them beforehand.

88. In cross-examination done on part of accused Mofazzal Hossain(died during trial) in reply to defence question put to him P.W.01 stated that Ahmedabad High School camp was about one and half mile far from their home; that in 1971 this Razakar camp was established in July, 1971; that prior to establishing the camp Pakistani army had conducted operations around their neighbouring localities; that the school remained closed after the Razakar camp was formed there; that persons involved with local peace committee were Razakars; that 40/50 Razakars were attached to Ahmedabad School Razakar camp; that he did not know all those Razakars; that brother of Razakar Mofazzal used to study with him in Ahmedabad High School.

89. P.W.01 also stated in reply to defence question that they were kept confined on first floor of Ahmedabad High School Razakar camp; that he could see taking the detainee Abdul Hamid @ Haman toward Bazar from camp as till then he was kept confined with them in a room.

90. P.W.01 also stated in reply to defence question that he could recognise the accused persons when they were taking away on forcible capture from their house; that he knew the detained

freedom-fighter Abdul Hamid @ Haman since boyhood as he used to live at the house adjacent to the camp, nearer to Bazar.

91. In cross-examination on part of rest accused persons P.W.01 stated in reply to defence question that he could not say whether the freedom-fighter Abdul Hamid had any brother or any son or daughter in 1971; that after independence the accused persons did not stay in the locality till 1975; that he could not say whether any case was initiated against these accused over any offence committed in 1971.

92. P.W.01 denied defence suggestions that he did not know the accused persons; that they were not concerned with the event alleged; that they were not Razakars; that there was no Razakar camp at Ahmedabad High School and that what he testified was untrue, tutored and out of rivalry.

93. P.W.02 Abdul Matin (67) is a resident of village-Biarta Kanihari under police station Trishal of District Mymensingh. He is the brother of P.W.01 who already narrated how he and his brother Abdul Matin (P.W.02) were forcibly captured and kept confined at Ahmedabad Razakar camp. Prosecution tendered P.W.02 with P.W.01.

94. On part of accused Mofazzal Hossain cross-examining the P.W.02 has been declined.

95. In cross-examination done on part of rest accused persons P.W.02 stated in reply to defence question that there is no litigation between him and the accused persons; that he or any of his family did not initiate any case against these accused. P.W.02 denied defence suggestions that the accused persons were not Razakars or that they were not associated with the crimes alleged and that out of family conflict he testified falsely.

96. P.W.3 Most. Amena Khatun (70/72) is a resident of village-Biarta Kanihari under police station Trishal of District Mymensingh. She is the wife of martyr freedom-fighter Abdul Hamid @ Hamon, the victim of the event arraigned. She is a hearsay witness to the first phase of the event alleged. She however also testified some crucial fact that she experienced on visit of the Razakar camp.

97. P.W.03 stated that her husband was a freedom-fighter. On the first Sunday of Bangla month Bhadra in 1971 at 09:00 A.M. her husband had been talking with Kashem Ali at the home of Rusmat Ali when Razakar Manik(died during trial), the son of Khalek chairman, Razakars Bachchu(died during trial, Mukul,

Ratan, Shamsul Fakir, Nurul Haque Fakir, Adil and their armed cohorts were on move toward their house to get her husband captured. Seeing them Kashem Ali ran away and her husband too attempted to flee but the said Razakars forcibly captured him and took him at the house of Rusmat Ali where he was subjected to torture and then her husband was taken away to Ahmedabad School Razakar camp.

98. P.W.03 next stated that on hearing the above event she along with her mother-in-law Rupjan (now dead) and her daughter Mariam moved to the Razakar camp and appealed for release of her husband. But Khalek chairman the commander of the camp demanded money. With this they provided taka 1,000 as ransom but her husband was not set at liberty.

99. P.W.03 also stated that two days later at about 09:00 A.M. on being informed from people they moved to the bridge nearer to Ahmedabad Bazar where they found her husband's dead body lying and they brought the dead body at home. At that time the Razakars followed them and arriving at their home they committed looting at their house. Later on they buried her husband's dead body. They found three bullet hit injuries on her husband's dead body (at this stage P.W.03 burst into tears). P.W.03 finally stated that the Razakars she named were from

their neighbouring localities and thus she knew them beforehand.

100. In cross-examination P.W.03 denied defence suggestions that she did not know any of accused persons; that the accused persons were not involved with the event she testified; that she did not hear the event; and that the event she narrated did not happen.

101. P.W.04 MdMuslem Uddin (78) is a resident of village-Beer Rampur Bhatipara under police station Trishal of District Mymensingh. He is a direct witness to crucial facts chained to the event arraigned.

102. P.W.04 stated that in 1971 during the war of liberation he used to work at the house of freedom-fighter Abdul Hamid @ Haman (husband of P.W.03). On Sunday morning, in the first week of Bangla month Bhadra in 1971 at about 09:00/10:00 A.M. he was engaged in working in the field. At that time he heard the people running saying Razakars had captured freedom-fighter Abdul Hamid. Then he secretly on moving near the house of Rusmat Ali saw Razakars Anisur Rahman (died during trial), Bachchu(died during trial), Mukul, Sultan Fakir, Shamsul Fakir, Nurul Haque Fakir, Mofazzal

Moulana(died during trial), Adil Sarker and their cohorts beating freedom-fighter Abdul Hamid tying him up. Then the Razakars took away detained unarmed freedom-fighter Abdul Hamid to Razakar camp set up in Ahmedabad School. He(P.W.04) then coming back home disclosed the event to Amena Khatun and her mother-in-law and then they moved to Razakar camp and appealed for release of Abdul Hamid. But Razakars demanded ransom money. They then returning back home managed Taka 1,000 and moving to Razakar camp provided it to Razakars. Razakars told that on the following day Abdul Hamid would be released. Afterward, in night they heard gun firings from the end of Razakar camp.

103. P.W.04 next stated that on the following day at about 08:30/09:00 A.M. they on moving toward Ahmedabad Bazar discovered dead body of Abdul Hamid lying under the bridge, west to Ahmadabad Bazar. They found bullet hit injuries on dead body of Abdul Hamid. They were then bringing the dead body there from but on their way the Razakars started following them and committed looting at the house of Abdul Hamid. Later on, they buried the dead body of Abdul Hamid. P.W.04 finally stated that the Razakars he named were from their neighbouring localities and thus he knew them beforehand.

104. In cross-examination, P.W.04 stated in reply to defence questions that the accused persons fled away after independence and came back to their own home after assassination of Bangabandhu in 1975; that he could not say whether any case was initiated over the event arraigned, after independence.

105. P.W.04 denied defence suggestions that he did not see the event alleged; that the accused were not involved with the event he narrated; that the accused were not Razakars and that what he testified was untrue and tutored.

106. P.W. 11 Mst. Mariom Begum (58) is resident of village Kanihari under police station Trishal of District-Mymensingh. P.W.11 is the daughter of martyr Abdul Hamid alias Hamon. P.W. 11 has been tendered with P.W.03 (wife of victim) by the prosecution and defense declined to cross-examine her.

107. P.W.13 Jalal Uddin (63/64) is a resident of village-Kanihari under police station Trishal of District Mymensingh. He is an eye witness to the facts related to the first phase of attack. In 1971 he was 14/15 years old, he stated.

108. In recounting the event of attack arraigned in charge no.01 P.W.13 stated that on Sunday in the first week of Bangla month

Bhadra in 1971 at about 09:00/10:00 A.M. he was engaged in planting paddy in the field nearer to the house of Rusmat Ali. His Fufa (husband of father's sister) freedom-fighter Abdul Hamid @ Hamon was sitting at the house of Rusmat Ali. At that time he saw Razakars Anisur Rahman Manik (died during trial), Bachchu(died during trial), Mokhlesur Rahman Mukul, Ratan, Shamsul Fakir, Nurul Haque Fakir, Sultan Fakir, Adil Sarker and Mofazzal Moulana(died during trial) being armed moving when his Fufa started running away and then the Razakars on chasing forcibly captured his Fufa and started beating him taking at Rusmat Ali's house and then took him away to Ahmedabad Razakar camp. He (P.W.13) witnessed this phase of the event.

109. P.W.13 also stated that later on, he heard that detained Abdul Hamid was eventually killed two days after his captivity. He (P.W.13) knew the Razakars he named as they were from their locality.

110. In cross-examination, in reply to defence question P.W.13 stated that after independence no case was initiated over the event he testified; that the accused persons fled away quitting locality after independence and they never returned back; that he

could not say as to where the accused persons used to live in the locality after independence.

111. P.W.13 denied defence suggestions that he did not know the accused persons; that he testified falsely implicating the accused persons; that the accused were not Razakars and were not involved with the event alleged and that what he testified was untrue and out of local political rivalry.

112. P.W.14 Dwin Mohammad (62/63) is a resident of village-Kanihari under police station Trishal of District Mymensingh. He testified the crucial fact related to the event arraigned.

113. P.W.14 stated that on Sunday in the first week of Bangla month Bhadra in 1971 he had been at Ahmedabad government primary school when he saw Razakars Bachchu (died during trial), Manik(died during trial), Ratan, Mukul, Shamsul Fakir, Nurul Haque Fakir, Mofazzal Moulana (died during trial), Adil Sarker and their cohorts taking detained freedom fighter Abdul Hamid to Ahmadabad Razakar camp and they continued beating him.

114. P.W.14 next stated that two days later he heard that Razakars gunned down Abdul Hamid to death taking him under

the bridge nearer to Bazar. He (P.W.14) knew the Razakars he named as they were from their locality.

115. In cross-examination, P.W.14 stated in reply to defence question that on the day the event happened he came to school at about 09:00 A.M; that on that day their school session came to cessation at about 02:30 P.M; that Ahmedabad high school was adjacent to Ahmedabad primary school; that on that day there was no student in Ahmadabad high school and that the accused persons he named went into hiding quitting the locality, after independence.

116. P.W.14 denied defence suggestions that he did not know the accused persons; that they were not involved with the alleged event he narrated; that he did not see what he narrated and that what he testified implicating the accused was untrue and tutored.

117. P.W.17 Mahatab Uddin (82/83) is a resident of village-Kanihari under police station Trishal of District Mymensingh. He being the victim of the event arraigned in charge nos. 05 and 06 testified in Tribunal. Additionally, he stated what he heard in respect of the event arraigned in charge no.01.

118. P.W.17 stated that he heard that 2/3 months prior to detain them the Razakars he named i.e. Anisur Rahman Manik (died during trial), Mokhlesur Rahman Mukul, Saidur Rahman Ratan, Shamsul Haque Bachchu (died during trial), Shamsul Haque Fakir, Sultan Mahmud Fakir, Nurul Haque Fakir, Nakib Hossain Adil, Mofazzal Hossain (died during trial)] forcibly captured Abdul Hamid @ Hamon and took him away to Ahmedabad Razakar camp where he was subjected to torture in captivity for two days and afterward he was gunned down to death and his dead body was left abandoned near the bridge, west to Bazar.

119. In cross-examination, defence denied the above hearsay version made by the P.W.17. P.W.17 denied defence suggestions that the accused he named were not Razakars and that they were not involved with the event alleged.

Findings with Reasoning on Evaluation of Evidence

120. Mr. Tapas Kanti Baul, the learned prosecutor drawing attention to the evidence presented argued that the accused persons indicted had carried out designed attack in getting captured of an unarmed freedom-fighter, in exercise of their culpable affiliation with locally formed Razakar Bahini. Out of seven witnesses P.W.13 and P.W.14 are key direct witnesses.

P.W.01, one victim of the event arraigned in charge no.02 claims to have witnessed the victim an unarmed freedom-fighter Abdul Hamid @ Hamon confined and tortured in captivity at Razakar camp where he (P.W.01) too was kept confined. P.W.03 and P.W. 17 are hearsay witnesses and their version gets corroboration from ocular testimony of other witnesses. Two other witnesses i.e. P.W.02 and P.W.11 have been tendered.

121. The learned prosecutor also submits that the fact of keeping the detained victim confined at Ahmedabad Razakar camp finally ended in his brutal annihilation which could not be impeached. Post killing facts and circumstances chained to the event have assured it too.

122. It has been also argued that participation of accused persons indicted having culpable affiliation with Razakar Bahini and its camp at Ahmedabad High School made them concerned even with the act of killing the victim and also with the post killing devastating activities conducted at the house of the victim. Defence failed to negate the tragic fate of the detained victim. The proved acts of abduction, confinement, torture and murder of a defenceless victim and devastating activities constituted the offences of crimes against humanity for which

the accused persons having involvement with the camp are criminally liable.

123. Conversely, questioning the credibility of witnesses **Mr. Gazi M.H. Tamim**, the learned state defence counsel in placing his argument chiefly stressed that the accused persons were not Razakars and there is no evidence of the alleged act of killing. The witnesses, relied upon by the prosecution testified implicating the accused persons out of rivalry and thus they are not trustworthy.

124. It has been argued too by the learned state defence counsel that P.W.13 was a minor boy in 1971 and thus his testimony does not carry value. P.W.03, the wife of victim and P.W.14 who claims to be a direct witness have not implicated the accused Md. Sultan Mahmud Fakir with any phase of the alleged event of attack and thus testimony of other witnesses implicating this accused deserves to be discarded being untrue. Accused Md. Sultan Mahmud Fakir was a minor boy in 1971 and thus it was not practicable of being involved with the event of attack alleged.

125. Tribunal notes that this count of charge involves the offences of abduction, confinement, torture and murder of an

unarmed freedom-fighter Abdul Hamid @ Hamon and devastating activities carried out at victim's house. In all nine (09) accused were indicted in this count of charge for the offences arraigned. But of them three(03) accused Md. Anisur Rahman Manik, Md. Shamsul Haque Bachchu and Abul Basar Md. Mofazzal Hossain @ Moulavi Mofazzal died during trial on different dates and thus proceeding so far as it related to them stood abated.

126. In view of above, trial eventually concluded against rest six (06) accused (1) Md. Mokhlesur Rahman Mukul (2) Md. Saidur Rahman Ratan (3) Shamsul Haque Fakir (4) Nurul Haque Fakir (5) Md. Sultan Mahmud Fakir and (6) Nakib Hossain Adil Sarker. All these six accused have been absconding. Trial concluded in their absentia, by appointing state defence counsel to defend them, as required under law. Thus, we need to evaluate as to how far prosecution has been able to prove beyond reasonable doubt that these six accused by their act forming part of systematic attack jointly participated, facilitated, abetted and substantially contributed to the commission of the offences arraigned.

127. In adjudicating this count of charge involving the offences of abduction, confinement, torture and murder of an unarmed

defenceless freedom-fighter who was a 'protected person', we are to settle that --

- (i) the victim, an unarmed freedom-fighter Abdul Hamid @ Hamon was taken away to Razakar camp set up at Ahmedabad High School on forcible capture;
- (ii) The victim was kept confined at the camp where he was subjected to torture;
- (iii) The victim was eventually annihilated;
- (iv) The accused persons indicted being part of the criminal enterprise participated in committing the offences of abduction, confinement, torture and murder of the victim, to further the object of the collective criminality;

128. First, let us determine how and when the gang formed of accused persons activated the act of forcible capture of the victim an unarmed freedom-fighter Abdul Hamid @ Hamon. Charge framed arraigns that this phase of the attack happened in day time. Some witnesses who were staying nearer the site wherefrom the victim Abdul Hamid @ Hamon was unlawfully picked up narrated this phase of event.

129. It appears that P.W.01 is the victim of the event arraigned in charge no.02. It stands proved that P.W.01 was kept confined at the Ahmedabad High School Razakar camp and few days later he got released in exchange of ransom money provided

through Asmat Ali, the father of Razakar Sultan Mahmud Fakir, on condition of maintaining daily attendance at the camp. Defence does not seem to have denied this fact. Keeping P.W.01, his brother and uncle detained in Ahmedabad High School Razakar camp seems to have been affirmed too in cross-examination.

130. The above piece of uncontroverted fact leads to conclude that P.W.01 had fair opportunity of seeing the activities carried out at the Razakar camp. It stands proved from his ocular testimony that during his confinement at the camp he saw the victim Abdul Hamid @ Hamon detained at the same Razakar camp.

131. It depicts from testimony of P.W.01 that the group of attackers formed of Razakars Sultan Fakir (Md. Sultan Mahmud Fakir), Shamsul Haque (Md. Shamsul Haque Bachchu, died during trial), Anisur Rahman (died during trial), Ratan(Md. Saidur Rahman Ratan), Adil (Nakib Hossain Adil Sarker), and Mofazzal (died during trial), and their cohorts by launching attack forcibly captured them and took away to Razakar camp. Defence does not seem to have made any effort to impeach this fact.

132. Of above six accused as have been implicated with the event arraigned in charge no.02 by P.W.01 three died during trial and it stands proved that three other accused Md. Sultan Mahmud Fakir, Md. Saidur Rahman Ratan, Nakib Hossain Adil Sarker participated in conducting the attack leading to keeping the P.W.01 and two others confined at the Razakar camp as arraigned in charge no.02.

133. P.W.01 appeared trustworthy and credible as to the fact of keeping the victim Abdul Hamid @ Hamon unlawfully confined at the Razakar camp as P.W.01 as a victim of the militia violence was also kept detained at the same camp and thus naturally he had space of seeing the activities carried out there and recognizing the accused persons present at the camp, whom he already knew.

134. Therefore, it may be indubitably assumed that the accused Razakars as mentioned by the P.W.01 were concerned with all the criminal activities done at Razakar camp, being part of JCE (Form II) including the unlawful detention, confinement of Abdul Hamid @ Hamon and causing torture to him in captivity.

135. P.W.3 Most. Amena Khatun is the wife of martyr Abdul Hamid @ Hamon, the victim of the event arraigned. She is a

hearsay witness to the first phase of the event alleged. Her hearsay testimony depicts that the group formed of Razakars Manik(died during trial) , Bachchu(died during trial), Mukul, Ratan, Shamsul Fakir, Nurul Haque Fakir, Adil and their armed cohorts unlawfully captured the victim Abdul Hamid @ Hamon by launching attack at the house of Rusmat Ali where the victim had been staying.

136. The above heresy evidence made by P.W.03, the wife of victim carries probative value and credence from other fact as testified by P.W.03. Ocular testimony of P.W.03 demonstrates that on hearing the attack leading to act of taking away her husband on forcible capture she (P.W.03), her mother-in-law Rupjan (now dead) and her daughter Mariam moved to the Razakar camp and appealed for release of her husband. Such appeal made on part of victim's relatives ended in obtaining taka 1,000 as ransom. But despite it the victim was not set at liberty.

137. The above piece of ocular version of P.W.03, the wife of victim proves it indubitably that the victim was kept confined at Ahmedabad High School Razakar camp. Besides, the hearsay evidence of P.W.03 gets consistent corroboration from P.W.13 and P.W.14, two other key direct witnesses.

138. It appears that P.W.3 Most. Amena Khatun the wife of martyr Abdul Hamid @ Hamon, the victim heard the first phase of the event leading to abduction of her husband. She however does not implicate the accused Sultan Mahmud Fakir with the event arraigned.

139. But what we find in testimony of P.W.04? It depicts that at the relevant time P.W.04 MdMuslem Uddin was engaged in working in the field when he on moving toward the house of Rusmat Ali saw Razakars Anisur Rahman (died during trial), Bachchu, Mukul, Sultan Fakir, Shamsul Fakir, Nurul Haque Fakir, Mofazzal Moulana, Adil Sarker and their cohorts beating freedom-fighter Abdul Hamid tying him up. P.W.04 also saw the gang of those Razakars taking away detained unarmed freedom-fighter Abdul Hamid to Razakar camp set up in Ahmedabad High School. Defence does not seem to have made any effort to impeach this pertinent fact. This version made by P.W.04 gets consistent corroboration from narrative made by P.W.13, one key direct witness.

140. Unimpeached ocular testimony of P.W.13 Jalal Uddin, a key direct witness also demonstrates that at the relevant time an armed group formed of Anisur Rahman Manik (died during trial), Bachchu (died during trial) . Mukhlesur Rahman Mukul,

Ratan, Shamsul Fakir, Nurul Haque Fakir, Sultan Fakir, Adil Sarker and Mofazzal Moulana(died during trial) on chasing his(P.W.13) Fufa, the victim forcibly captured him and took him away to Ahmedabad Razakar camp with beating. This ocular version relating to first phase of attack gets consistent corroboration from other witnesses.

141. It is thus evinced from testimony of prosecution witnesses that they knew the Razakars they named as they were from their locality. There is nothing before us that the accused persons were the residents of locality far from the crime sites. Besides, defence failed to show, by cross-examining the prosecution witnesses, that the accused persons were the residents of the localities distanced from the crime sites. Rather, it stands proved that the Razakar camp was formed of accused persons and their cohorts at Ahmedabad High School. In fact this camp was a 'concentration camp' which was operated by the accused persons and their cohorts.

142. It appears that the crime site was not far from the camp and thus the surrounding people including the witnesses naturally had opportunity of knowing the accused persons associated with the Razakar camp and criminal activities carried out by them

being affiliated with the Razakar Bahini, an auxiliary force. Therefore, we do not find reason to discard testimony of prosecution witnesses.

143. Out of nine accused indicted in this count of charge three accused Md. Anisur Rahman Manik, Md. Shamsul Haque Bachchu and Abul Basar Md. Mofazzal Hossain @ Moulavi Mofazzal died during trial and accordingly proceeding so far as it related to them stood abated. Therefore, we consider it proper to assess evidence only in respect of involvement and participation of six other accused indicted for the offences arraigned.

144. Let us see what is evinced from evidence of witnesses about participation of these six accused with the event which ended in brutal liquidation of the victim, an unarmed freedom-fighter Abdul Hamid @ Hamon. The event arraigned consists of phases. First, the victim, an unarmed freedom-fighter was forcibly captured. Next, he was taken away to Ahmedabad High School Razakar camp where he was kept confined and was subjected to severe torture. Finally, the event ended in victim's brutal killing. Thus, facts related to each phase were chained to the upshot of the event.

145. P.W.13 and P.W.14 are two key direct witnesses. Uncontroverted ocular testimony of P.W.13 demonstrates that all the six accused Mukhlesur Rahman Mukul, Ratan, Shamsul Fakir, Nurul Haque Fakir, Sultan Mahmud Fakir, Adil Sarker were with the gang when it carried out attack to actuate forcible capture of the victim Abdul Hamid @ Hamon. However, P.W.14 in narrating the event implicates five accused, excepting accused Md. Sultan Mahmud Fakir.

146. P.W.01 victim of charge no. 02 saw the victim detained at the camp. How he was kept detained there? From narrative made by P.W.01 in respect of the event arraigned in charge no.2 it depicts that accused Sultan Mahmud Fakir was with the gang and on getting him(P.W.01), his brother and uncle apprehended and the gang took them away to Razakar camp. It irresistibly shows that accused Md. Sultan Mahmud Fakir had explicit and notorious affiliation with the Razakar camp and criminal activities operated systematically by it.

147. P.W.03 the wife of martyr Abdul Hamid @ Hamon, the victim heard that five accused, excepting accused Md. Sultan Mahmud Fakir accompanying the gang had carried out the attack in getting her husband forcibly captured. Another direct

witness P.W.04 too does not disclose the name of accused Md. Sultan Mahmud Fakir as one of members forming the criminal gang.

148. But P.W.04 is another direct witness who has implicated five accused including the accused Md. Sultan Mahmud Fakir with the event of attack leading to unlawful abduction of Abdul Hamid @ Hamon.

149. On cumulative and rational evaluation of testimony of P.W.01, P.W.03 P.W.04, P.W.13 and P.W.14 it has been found proved beyond reasonable doubt that all the six accused being active part of the criminal gang had carried out the attack and also had carried out act of keeping the victim in unlawful captivity at the Razakar camp. Thus, it may be irresistibly concluded that all the six accused persons being part of systematic criminality knowingly facilitated the act of causing torture to victim detained at the camp and his killing as well.

150. We are not agreed with defence argument that since the P.W. 03 the wife of victim does not implicate the accused Md. Sultan Mahmud Fakir testimony of other witnesses implicating him is not reliable. We require arriving at decision not solely on

the narrative of P.W.03. The charge with which the accused persons are being prosecuted does not rest solely upon testimony of P.W.03. Mere non disclosure of name of accused Md. Sultan Mahmud Fakir by P.W.03 does not diminish the truth unveiled from ocular consistent testimony of P.W.13 and P.W.04 and it cannot be said that the accused Md. Sultan Mahmud Fakir had no manner of participation at any phase of the event arraigned.

151. P.W.13 and P.W.01, two key direct witnesses' uncontroverted and corroborative ocular testimony on crucial facts cumulatively prove it sufficiently that the gang formed of all the six accused and their cohorts conducted the attack in getting the victim Abdul Hamid @ Hamon forcibly captured and they took him away to Ahmedabad Razakar camp.

152. P.W.03 is a hearsay witness. Due to lapse of long passage of time she may not be expected to recall what she heard in respect of the name of perpetrators forming part of the criminal gang in committing forcible capture of her husband. Thus, and in view of cumulative evaluation of evidence of key witness P.W.01, P.W.04 and P.W.13 merely for the reason of non disclosure of name of accused Md. Sultan Mahmud Fakir by

P.W.03, the wife of victim and P.W.14 it cannot be said that the accused Md. Sultan Mahmud Fakir had no manner of participation at any phase of the event arraigned.

153. In the case in hand, unimpeached ocular testimony of P.W.13 patently proves participation of all the six accused in conducting the designed systematic attack. Besides, it has been unveiled also from ocular testimony of P.W.04 that accused Md. Sultan Mahmud Fakir was active part of the criminal enterprise in accomplishing the attack.

154. It has been argued on part of defence that in 1971 PW.13 was a minor boy of 14/15 years old and thus he cannot be expected to recall the event even if he actually witnessed it. Thus his testimony is not believable.

155. We are not agreed with above argument. First, the arraignment brought in this count of charge is not rested solely upon P.W.13. We have already considered ocular testimony of other prosecution witnesses, particularly of P.W.14 who consistently narrated how the event happened and how the accused persons had acted in accomplishing the object of designed attack. Next, mere alleged tender age, at the time of

the event arraigned does not diminish one's testimony if it inspires credence.

156. 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. Tribunal also considers it remarkable to note that in the case of *Ali Ahsan Muhammad Mujahid* the Appellate Division of the Supreme Court of Bangladesh, on this aspect, observed that –

“There is no rule requiring the Court to reject per se the testimony of a witness who was child at the events in question. The probative value to be attached to testimony is determined to its credibility and reliability.”

[Criminal Appeal no.103 of 2013, Ali Ahsan Muhammad Mujahid, Judgment, 16-06-2015, page 167]

157. The Appellate Division in rendering above observation relied upon the decision of the ICTR in the case of *Gacumbitsi* which runs as below:

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

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

158. Unimpeached version of P.W.13 made in cross-examination in reply to defence question goes to show that after liberation the accused persons fled from the locality. This affirmed fact rather mirrors participation of accused persons in committing atrocious crimes in 1971 around the localities.

159. It appears that intending to negate credibility of P.W.02 it has been questioned to P.W.02 in cross-examination as to whether there is litigation between him and the accused persons. P.W.02 denied it blatantly. Besides, there is no proof of this defence. This unfounded plea is rather a futile attempt to make the fugitive accused persons absolved of liability.

160. Finally, P.W.13 and P.W.14, two key direct witnesses' uncontroverted and corroborative ocular testimony on crucial facts proves it sufficiently that the gang formed of all the six accused and their cohorts conducted the attack in getting the victim Abdul Hamid @ Hamon forcibly captured and they took him away to Ahmedabad Razakar camp.

161. Now, let us eye on facts related to the killing of the victim who was kept confined at the Razakar camp. It depicts from

testimony of P.W.03 that two days later at about 09:00 A.M on being informed from people they moved to the bridge nearer to Ahmedabad Bazar where they found her husband's dead body lying and they brought the dead body at home. At that time the Razakars followed them and arriving at their home they committed looting at their house. Later on they buried her husband's dead body.

162. It is quite impracticable to think that the stranger even had chance to witness the killing of the detained victim. It appears that prosecution chiefly depends upon some of detainee witnesses who testified some crucial and relevant facts which may justifiably lead in drawing lawful presumption on the key fact, the killing, the ending phase of the event.

163. It is now settled that even a single act or conduct of accused persons, before, during or after the commission of the principal crime, makes them criminally liable for the whole series of criminal acts and chained system cruelties committed at the Razakar camp and even at the killing site.

164. It transpires also from testimony of P.W.04 that dead body of victim Abdul Hamid was discovered from the place under the

bridge, west to Ahmadabad Bazar. They found bullet hit injuries on dead body of Abdul Hamid. They were then bringing the dead body there from but on their way the Razakars started following them and committed looting at the house of Abdul Hamid. Later on, they buried the dead body of Abdul Hamid. All these horrific post event facts remained undisputed.

165. Wilful killing or murder if takes place in context of war it may not be possible to have trace of the dead body of victim. Therefore, to prove the fact of killing recovery of dead body is not required. But in the case in hand, it stands proved from uncontroverted evidence of P.W.03 and P.W.04 that bullet hit dead body of victim unarmed freedom-fighter Abdul Hamid @ Hamon was recovered from the killing site adjacent to the Razakar camp. Defence does not seem to have been able to controvert the fact of recovery of bullet hit dead body of the victim. This fact is sufficient to prove that at a stage of keeping the victim in unlawful confinement he was eventually gunned down to death.

166. Annihilation of the detained victim was the principal object of the designed attack, we deduce. Be that as it may, we may safely conclude that the accused persons who participated in accomplishing unlawful confinement of victim at the camp on

forcible capture were knowingly concerned event in accomplishing the act of killing the victim.

167. It also stands proved from unimpeached testimony of P.W.03 and P.W.04 that devastating activities by looting household of the victim were carried out even after recovery of the dead body of the victim. Indisputably the accused persons engaged in unlawfully confining the victim and later killing him brutally had carried out such grave appropriation of civilians property by looting.

168. Such post killing deliberate prohibited act is fair indicia of extreme aggression of the accused persons against the pro-liberation civilian population. Such post killing criminal act was detrimental to livelihood of civilians and it added further mental harm and intimidation to the relatives of the victim constituting the offence of 'torture' as crime against humanity.

169. It has been argued on part of defence that in 1971 accused Md. Sultan Mahmud Fakir was a minor boy and his NID card shows it and thus he was not a Razakar and it is not believable that being a minor boy he too participated in accomplishing the alleged attack. Besides, one direct witness P.W.14 does not

implicate him with the event arraigned and thus testimony made by P.W.13 in this regard implicating this accused is not believable.

170. In reply to such defence contention prosecution argued that the NID card cannot be treated as the conclusive proof of this accused's age. Defence could not refute testimony of P.W.13 who in narrating the event categorically stated complicity and presence of this accused at the crime site with the gang of attackers. Other witness P.W.14 might have failed in recalling the name of the accused Md. Sultan Mahmud Fakir while he testified the event he experienced.

171. It appears that P.W.13 and P.W.14 are the key direct witnesses to the attack leading to act of unlawful abduction of the victim who was forcibly taken away to Ahmedabad High School Razakar camp. P.W.17 is a hearsay witness in this regard. On cumulative evaluation of their evidence it stands proved that the victim was forcibly captured and taken away to Razakar camp by the gang formed of Razakars.

172. Uncontroverted ocular testimony of P.W.13 demonstrates that all the six accused formed part of the gang. Although it

appears from testimony of P.W.14, another direct witness that five accused formed part of the gang. He does not implicate the accused Md. Sultan Mahmud Fakir. But merely for such omission in naming the accused Md. Sultan Mahmud Fakir with the event does not taint his testimony in its entirety and testimony of P.W.13 in this regard cannot be said to have any degree of incredibility.

173. It will be relevant to note that it is not expected that human memory faculty shall act with all accuracies. Due to lapse of long passage of time detail precision may not be reserved in human memory. Tribunal notes that there appears inaccuracy between the versions of P.W.13 and P.W.14 in relation to participation of accused Md. Sultan Mahmud Fakir in launching the attack arraigned.

174. In all criminal cases, normal discrepancies and omissions are bound to occur in the depositions of witnesses due to normal errors of observation, namely, errors of memory due to lapse of time or due to mental disposition such as shock and horror at the time of occurrence. Such inaccuracy may happen due to fallibility of memory due to lapse of long passage of time. Memory over time naturally degenerates and

thus, it would be wrong and unjust to treat such forgetfulness as being synonymous with giving untrue testimony.

175. Considerable lapse of time might have affected the ability of P.W.14 to recall the name of one accused present with the gang. Such absence in relation to peripheral details is in general not regarded as discrediting evidence of P.W.14 in its entirety. Testimony in relation to horrific event happened decades back is based mainly on memory and sight. Thus, naturally testimony of P.W.13 and P.W.14 on a particular fact may not be found mechanically exact and same, although they experienced the horrific event.

176. Besides, such omission in testimony of P.W.14 does not provide any benefit to him particularly when it stands proved from ocular testimony of one direct witness P.W.13 that accused Md. Sultan Mahmud Fakir too was with the gang when it carried out the systematic attack in effecting the victim's forcible capture. Hearsay version of P.W.17 also implicates six accused including the accused Md. Sultan Mahmud Fakir with the event arraigned. It could not be controverted. His heresy version gets corroboration from P.W.13, a direct witness.

177. Tribunal notes that where a significant period of time has elapsed between the acts charged in the indictments and the trial, it is not always reasonable to expect the witness to recall every detail with precision. ICTR Trial Chamber in judgment in the case of **Siméon Nchamihigo** observed that--

“The jurisprudence on the recollection of details is also well formulated. The events about which the witnesses testified occurred more than a decade before the trial. Discrepancies attributable to the lapse of time or the absence of record keeping, or other satisfactory explanation, do not necessarily affect the credibility or reliability of the witnesses..... The Chamber will compare the testimony of each witness with the testimony of other witnesses and with the surrounding circumstances.”

[International Criminal Tribunal for Rwanda, The Prosecutor v. Siméon Nchamihigo, ICTR-01-63-T, Judgment, 12 November 2008, para. 15.]

178. In view of above, merely for the reason of non disclosure of name of accused Md. Sultan Mahmud Fakir by P.W.14 and P.W.03, the wife of victim it cannot be said that this accused had no manner of participation at any phase of the event arraigned.

179. Testimony of even a single witness if it inspires credence can be safely acted upon in arriving decision. We already got it proved from evidence of P.W.13 and P.W.17 that the accused Md. Sultan Mahmud Fakir too was present at the crime site with the gang, presumably being a follower of Razakar Bahini. Defence does not seem to have been able to controvert this crucial fact unveiled in ocular testimony of P.W.13.

180. “Presence” of accused (1) Md. Mokhlesur Rahman Mukul (2) Md. Saidur Rahman Ratan (3) Shamsul Haque Fakir (4) Nurul Haque Fakir (5) Md. Sultan Mahmud Fakir and (6) Nakib Hossain Adil Sarker and their cohorts three other accused who died during trial at the crime sites with the criminal enterprise rather constituted assistance (the actus reus of the offence) in the form of moral support and that as ‘approving spectators’ they the six accused are held liable for the criminal acts committed to materialize the object of the criminal mission.

181. Based on facts and circumstances unveiled it is perceived that knowing the foreseeable consequence of the attack the accused Md. Sultan Mahmud Fakir too consciously opted to act of accompanying the gang. His reckless presence with the group of attackers indubitably encouraged morally and substantially even

in accomplishing the post abduction criminal acts namely confinement, torture and killing, we deduce. In this regard we recall the observation of **ICTR Trial Chamber** in the case of **Kamuhanda** which runs as below:

“The presence of the accused at the crime site, however, may be perceived as a significant indicium of his or her encouragement or support.”

[*Kamuhanda*, (Trial Chamber), January 22, 2004, para. 600]

182. Every one forming the group was a party to an offence who does anything for the purpose of aiding the group in committing the offence. There is nothing to conclude that presence of the accused Md. Sultan Mahmud Fakir was as a mere bystander or for any pious purpose. The crimes are perpetrated by accused persons acting in group.

183. Crimes against humanity are among the gravest crimes in international law. They are considered so grim that there is no period of limitation to prosecute such crimes - which means that those who commit them can be prosecuted and punished no matter how much time has elapsed since the crimes were committed. Therefore, we are not agreed with the assertion advanced by the learned state defence counsel that no case was

initiated instantly after independence over the event alleged and as such delay creates doubt as to involvement of the accused with the alleged event. It is to be borne in mind that delay itself does not create any clog to prosecute the offenders of horrendous system crimes committed in context of war time situation.

184. Now, let us address defence contention as to age of accused Sultan Mahmud Fakir. Information contained in the NID of this is not the conclusive proof of his actual age. It is experienced that in our society as a matter of practice lesser age is shown in such document and NID. Thus, information as to his date of birth contained therein does not negate that he too participated in accomplishing the attack, by his encouraging and culpable conduct and act. His culpable presence with the gang at the crime site itself speaks a lot.

185. Since it stands proved that this accused remained actively and knowingly present at the crime site with the gang formed of Razakars it may be deduced unerringly that accused Md. Sultan Mahmud Fakir too in exercise of his affiliation with the Razakar camp and being a follower of Razakars participated in effecting the object of the attack. Act of aiding and abetting may not be

tangible. But such act consists of moral support and encouragement. In this regard we recall the observation propounded by the **ICTY Trial Chamber** in the case of **Simic, Tadic, and Zaric** that--

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

[Simic, Tadic, and Zaric, ICTY Trial Chamber, October 17, 2003, para. 162:]

186. It appears that accused Md. Sultan Mahmud Fakir and his two brothers and one step brother along with other accused have been indicted in this count of charge and it is found proved that they actively participated in conducting the attack. Presumably, not only in exercise of his affiliation with Razakar camp but also being a brother of a number of accused participants he actively intended to provide substantial assistance to them in accomplishing the attack. It reflects his explicit *mens rea* and *actus rea*. Therefore, this accused Md. Sultan Mahmud Fakir too is held responsible for all that naturally results from the commission of the event of attack question.

187. In absence of any earthly reason the Tribunal, based on facts and circumstances, is satisfied beyond reasonable doubt

from the evidence presented that the six accused (1) Md. Mokhlesur Rahman Mukul (2) Md. Saidur Rahman Ratan (3) Shamsul Haque Fakir (4) Nurul Haque Fakir (5) Md. Sultan Mahmud Fakir and (6) Nakib Hossain Adil Sarker and their cohorts three other accused who already died during trial used to consciously facilitate in causing physical and mental assault to the detainees at the camp and also used to take vigorous part in that assault by act of encouragement and providing support and also to annihilate detained pro-liberation civilian, in furtherance of common design and purpose.

188. The pattern of phases of attack, the nature of the crimes committed in its course and the status of the accused persons indicted and their culpable attachment with the militia force and the Razakar camp, as unveiled are sufficient to conclude unerringly that the attack was **‘directed against civilian population’**. It is to be noted that the notion ‘civilian populating’ does not mean a large segment of population. Criminal and prohibited act directing even a single defenceless civilian denotes ‘civilian population’.

189. It is not required to show killing of numerous civilians to constitute the offence of ‘murder’ as crime against humanity.

Tribunal notes that killing even of a single civilian on discriminatory grounds occurred in war time context thus constitutes the offence of crime against humanity. It is now well settled proposition. ICTR Trial Chamber in the case of **Seromba observed that –**

“A single murder may constitute a crime against humanity if it is perpetrated within the context of a widespread or systematic attack.”

[Seromba, (Trial Chamber), December 13, 2006, para. 357:

190. In view of above settled legal proposition evolved in adhoc Tribunals and since the killing arraigned happened in context of the war of liberation, in systematic manner we are forced to conclude that the barbaric murder of an unarmed civilian who was apprehended by launching systematic attack constituted the offence of crime against humanity.

191. ‘Confinement’ of unarmed freedom-fighter Abdul Hamid @ Hamon itself speaks a lot about his forcible capture. For without the act of abduction or forcible capture, act of his confinement at Razakar camp would not have occurred. Thus, it has been proved beyond reasonable doubt that Abdul Hamid @ Hamon was kept in prolonged captivity at the Razakar camp at Ahmedabad High School and later on he was killed.

192. Bringing protected civilians including the victim Abdul Hamid @ Hamon, violating the international humanitarian law at the Razakar camp, on unlawful capture and causing reckless torture to them in captivity was of course in execution of common design and plan, we deduce. Such prohibited act was conducted in agreement of common purpose of the accused persons who were systematically engaged in operating activities of the Razakar camp, to further the common object that ended in victim's killing.

193. It transpires that accused persons indicted having dominance and systematic attachment over the camp formed part of the common purpose and design in carrying out criminal activities at the Razakar camp as the evidence of witnesses including the victimized detainee of other event demonstrates that the accused (1) Md. Mokhlesur Rahman Mukul (2) Md. Saidur Rahman Ratan (3) Shamsul Haque Fakir (4) Nurul Haque Fakir (5) Md. Sultan Mahmud Fakir and (6) Nakib Hossain Adil Sarker having pertinent link in Razakar camp were in position to organize the course of events of 'system cruelties', knowingly and consciously.

194. In the case in hand, facts unveiled clearly reflect that there had been a 'system' of criminal activities and a 'course of conduct' at the Razakar camp and the cruelties and stern mistreatment were caused to the detainees in pursuance of a common design and the system and it was practiced with the knowledge of the accused persons affiliated with the camp.

195. It is suffice to show the general system of cruelties and mistreatment of detainees and the system was practiced at the camp within knowledge of all the accused persons. In the case in hand, it stands proved that the Razakar camp at Ahmedabad High School was engaged as 'criminal enterprise' to which the accused persons indicted were concerned in furtherance of common plan and purpose and as such they incur liability under the doctrine of '**JCE**', for all the criminal activities carried out at the camp.

196. In view of deliberation as made above, based on integrated evaluation of evidence we are convinced arrive at decision that prosecution has been able to prove the charge beyond any reasonable doubt. Therefore, accused (1) Md. Mokhlesur Rahman Mukul (2) Md. Saidur Rahman Ratan (3) Shamsul Haque Fakir (4) Nurul Haque fakir (5) Md. Sultan Mahmud

Fakir and (6) Nakib Hossain Adil Sarker are held responsible for participating, aiding and substantially contributing to the commission of offences of ‘**abduction**’, ‘**confinement**’, ‘**torture**’ and ‘**murder**’ directing an un-armed freedom-fighter constituting the offences of crimes against humanity as enshrined in section 3(2)(a)(g)(h) of the Act of 1973 and thus the above six accused incurred criminal liability under section 4(1) of the Act of 1973.

Adjudication of Charge No.02

[09 accused indicted of whom 03 died during trial]

[Abduction, confinement and torture caused to 02 civilians]

197. Charge: That on 23.08.1971, at dawn a group formed of the accused (1) Md. Anisur Rahman Manik(died during trial) (2) Md. Mokhlesur Rahman Mukul (3) Md. Saidur Rahman Ratan (4) Md. Shamsul Haque Bachchu (died during trial) (5) Shamsul Haque Fakir (6) Nurul Haque Fakir (7) Md. Sultan Mahmud Fakir (8) Abul Basar Md. Mofazzal Hossain @ Moulavi Mofazzal (died during trial)and (9) Nakib Hossain Adil Sarker by launching attack at village Biyarta under police station Trishal, District-Mymensingh unlawfully detained Niyamat Ali Dhak [now dead], Azizur Rahman and Abdul Matin and took them away to Razakar camp at Ahmadabad High School where

they were subjected to brutal torture in captivity. On 25.08.1971 the victims got conditional release in exchange of ransom money.

Therefore, the accused (1) Md. Anisur Rahman Manik (died during trial) ,(2) Md. Mokhlesur Rahman Mukul, (3) Md. Saidur Rahman Ratan (4) Md. Shamsul Haque Bachchu(died during trial) , (5) Shamsul Haque Fakir (6) Nurul Haque Fakir (7) Md. Sultan Mahmud Fakir (8) Abul Basar Md. Mofazzal Hossain @ Moulavi Mofazzal (died during trial) and (9) Nakib Hossain Adil Sarker by their act forming part of attack jointly participated, facilitated, abetted and substantially contributed to the commission of the offences of **‘abduction’**, **‘confinement’** and **‘torture’** as crimes against humanity as specified in section 3(2)(a)(g)(h) read with section 4(1) of the International Crimes (Tribunals) Act, 1973 which are punishable under section 20(2) of the Act.

Evidence of Witnesses Examined

198. In support of this count of charge prosecution adduced two witnesses of whom one has been examined as P.W.01. Another witness P.W.02 has been tendered. Both the witnesses are

victims of the event arraigned in this count of charge. Now let us see what has been narrated by P.W.01 in Tribunal.

199. P.W.01 MdAzizur Rahman (69) is a resident of village-Biarta Kanihari under police station Trishal of District Mymensingh. He is a direct witness to the event arraigned as he is a victim of the violent attack arraigned.

200. Before recounting the facts related to the event arraigned P.W.01 stated that during the war of liberation in 1971 Muslim League leader Abdul Khalek Sarker (now dead) formed Razakar camp at Ahmedabad High School and Razakars Anisur Rahman (died during trial), Bachchu(died during trial), Mukul, Ratan, Shamsul Haque, Nurul Haque, Sultan, Mofazzal Moulavi (died during trial), Adil and others used to cause torture to followers of the war of liberation taking them at this camp.

201. In respect of the event of attack conducted P.W.01 recounted that on 22 August, 1971 in early morning a group formed of Razakars Sultan Fakir, Nurul Fakir Shamsul Haque Fakir, Anisur Rahman (died during trial) Ratan, Adil, Mofazzal (died during trial), Bachchu(died during trial) and their cohorts besieging their house forcibly captured him, his brother Abdul

Matin and uncle Neamat Ali (now dead) and tying them up with rope took to Ahmedabad High School Razakar camp. He saw freedom-fighter Abdul Hamid (victim of the event arraigned in charge no.1) detained at the camp and they all were subjected to torture in captivity.

202. P.W.01 continued stating that three days after his captivity at the camp his (P.W.01) father got him and two others released by providing ransom money of Taka 1,100 through Razakar Asmat Ali, the father of Razakar Sultan Fakir, on condition of maintaining daily attendance at the camp. According to such condition he used to secure his attendance at Razakar camp for one week. Afterward, he fled to maternal uncle's home at Balipara. Later on, he heard that dead body of freedom fighter Abdul Hamid @ Hamon was buried on its recovery.

203. In respect of reason of knowing the accused persons P.W.01 stated that the accused persons were the residents of their neighbouring localities and thus he knew them beforehand.

204. In cross-examination done on part of accused Mofazzal Hossain(died during trial) in reply to defence question put to

him P.W.01 stated that Ahmedabad High School camp was about one and half mile far from their home; that in 1971 this Razakar camp was established in July, 1971; that prior to establishing the camp Pakistani army used to conduct operations around their neighbouring localities; that the school remained closed after the Razakar camp was formed there; that persons involved with local peace committee were Razakars; that 40/50 Razakars were attached to Ahmedabad School Razakar camp; that he did not know all those Razakars; that brother of Razakar Mofazzal used to study with him in Ahmedabad High School.

205. In cross-examination on part of rest accused persons P.W.01 stated in reply to defence question that he did not initiate any case over the event he narrated; after independence the accused persons did not stay in the locality till 1975; that he could not say whether any case was initiated against these accused for any offence committed in 1971.

206. P.W.01 denied defence suggestions that he did not know the accused persons; that they were not concerned with the event alleged; that they were not Razakars; that there was no Razakar camp at Ahmedabad High School and that what he testified was untrue, tutored and out of rivalry.

207. P.W.02 Abdul Matin (67) is a resident of village-Biarta Kanihari under police station Trishal of District Mymensingh. He is the brother of P.W.01 who already narrated how he and his brother Abdul Matin (P.W.02) were forcibly captured and kept confined at Ahmedabad Razakar camp. Prosecution tendered P.W.02 with P.W.01.

208. In cross-examination done on part of accused persons P.W.02 stated in reply to defence question that there is no litigation between him and the accused persons; the accused persons used to stay in locality after independence; that he or any of his family did not initiate any case against these accused. P.W.02 denied defence suggestions that the accused persons were not Razakars or that they were not associated with the crimes alleged and that out of family conflict he testified falsely implicating the accused persons.

Finding with Reasoning on Evaluation of Evidence

209. In course of summing up it has been advanced on part of prosecution that it has been proved that the accused persons being active part of the gang and in exercise of their culpable affiliation with the Razakar camp committed the act of abduction of P.W.01, his brother (P.W.02) and uncle and they

were kept confined at the camp where they were subjected to mistreatment and torture.

210. Mr. Tapas Kanti Baul, the learned prosecutor submitted that all these criminal acts done are found proved from ocular testimony of P.W.01, one victim. Defence could not refute his narrative. It has been proved too that all the accused persons were engaged in carrying out the activities of the camp and thus they all incurred liability under the doctrine of JCE.

211. On contrary, the learned state defence counsel **Mr. Gazi M.H. Tamim** argued that the sole witness P.W.01 relied upon by the prosecution does not implicate all the accused indicted with the event arraigned. It creates doubt as to truthfulness of what he narrated. Testimony of P.W.01 has not been corroborated by examining any other witness. Testimony of P.W.01 thus is not reliable.

212. Tribunal notes that in all nine (09) accused were indicted in this count of charge. Of them three accused Md. Anisur Rahman Manik, Md. Shamsul Haque Bachchu and Abul Basar Md. Mofazzal Hossain @ Moulavi Mofazzal already died during trial and proceeding so far as it related to them stood abated.

Therefore, now prosecution requires proving involvement and complicity of the rest six accused (1) Md. Mokhlesur Rahman Mukul (2) Md. Saidur Rahman Ratan (3) Shamsul Haque Fakir (4) Nurul Haque Fakir (5) Md. Sultan Mahmud Fakir and (6) Nakib Hossain Adil Sarker with the commission of the offences arraigned in this count of charge.

213. It stands proved from evidence of P.W.01, one of victims that on 22 August, 1971 in early morning a group formed of Razakars Md. Sultan Mahmud Fakir, Shamsul Haque Fakir, Anisur Rahman (died during trial), Md. Saidur Rahman Ratan, Nakib Hossain Adil Sarker Adil, Mofazzal (died during trial), Bachchu (died during trial) and their cohorts besieging their house forcibly captured him, his brother Abdul Matin (P.W.02) and uncle Neamat Ali (now dead) and tied them up with rope and took them away to Ahmedabad High School Razakar camp. This piece of ocular narrative of a victim in respect of the first phase of attack remained unimpeached.

214. In view of above narrative of one victim P.W.01 it depicts that seven accused formed part of the gang in accomplishing the attack leading to unlawful abduction of civilians. Of these seven already three accused died during trial.

215. That is to say, according to testimony of P.W.01 apart from the three accused already died four (04) accused Shamsul Haque Fakir, Md. Sultan Mahmud Fakir, Md. Saidur Rahman Ratan and Nakib Hossain Adil Sarker forming part of the group conducted that attack and apprehending the P.W.01 and two others took them away to the Razakar camp. P.W.01 does not claim presence of two other accused Md. Mokhlesur Rahman Mukul and Nurul Haque Fakir with the gang when it got him (P.W.01) and two others apprehended.

216. P.W.01 also stated in reply to defence question that he could recognise the accused persons when they were taking him away on forcible capture from their house; that he knew the detained freedom-fighter Abdul Hamid @ Haman (victim of the event arraigned in charge no.01) since boyhood as he used to live at the house adjacent to the camp, nearer to Bazar. Thus, knowing the accused persons he implicated beforehand stands affirmed in cross-examination.

217. Besides, in respect of reason of knowing the accused persons P.W.01 stated that the accused persons were the residents of their neighbouring localities and thus he knew them beforehand. It could not be shaken. P.W.02 Abdul Matin is

another victim. Prosecution tendered him. In his cross-examination it has been affirmed too that the accused persons were the residents of their nearer localities. Thus, naturally, P.W.01 and P.W.02 had fair reason of recognizing the accused persons accompanying the gang when it forcibly captured them.

218. What happened next to keeping the victims in captivity? It transpires that P.W.01 saw freedom-fighter Abdul Hamid, victim of the event arraigned in charge no.01 detained at the Ahmedabad High School Razakar camp and they all were subjected to torture in captivity. It appears that forming Razakar camp at Ahmedabad High School has been affirmed in cross-examination of P.W.01 who in reply to defence question stated that Ahmedabad High School camp was about one and half mile far from their home and that this Razakar camp was established in July, 1971.

219. Keeping defenceless civilians in unlawful confinement itself causes mental harm which amounted to torture to the detainees. Torture in times of armed conflict is specifically prohibited by international treaty law, in particular by the Geneva Conventions of 1949. The prohibition of torture laid down in human rights treaties enshrines an absolute right of civilians, which can never be derogated. Willfully causing

suffering and mistreatment encompasses more than just physical suffering and may extend to include moral suffering.

220. It has been revealed too from ocular testimony of P.W.01 that on the following day at about 08:00/09:30 P.M. the said Razakars he named brought the detainee freedom-fighter Abdul Hamid to down stair of the Razakar camp and then moved toward Bazar. One hour later he heard gun firing from the end of Bazar. This fact reflects the extent of aggressive criminal acts carried out at the Razakar camp.

221. The above unimpeached fact was rather part of system criminal scheme which related to the event arraigned in charge no.01. Already we have adjudicated this charge and found that six accused including these four accused persons and their cohorts in exercise of their culpable affiliation got explicitly attached with criminal activities carried out in systematic manner at the Razakar camp.

222. The above fact leads to suggest that the Razakar camp was rather a concentration camp and the accused persons are found to have had participation in accomplishing the first phase of attack leading to forcible capture of P.W.01, his brother

(P.W.02) and uncle, by virtue of their conscious and culpable attachment with Razakar Bahini, a militia auxiliary force and having association with the camp.

223. It appears that of two witnesses, the victims one P.W.01 has been examined by the prosecution and another victim P.W.02 has been tendered. It does not weaken the prosecution. It is to be noted that testimony even of a single witness on a material fact does not, as a matter of law, require corroboration. The established jurisprudence is clear that corroboration is not a legal requirement for a finding to be made.

224. It is now settled jurisprudence that the testimony of a single witness on a material fact does not, as a matter of law, require corroboration and in such situation, the Tribunal has carefully scrutinized the evidence before relying upon it to a decisive extent. It has been observed by the ICTR Trial Chamber that--

“..... corroboration of evidence is not necessarily required: a Chamber may rely on a single witness’ testimony as proof of a material fact. A Chamber also has a broad discretion to admit hearsay evidence, even when it cannot be examined at its source and when it is not corroborated by direct evidence

**[RWAMAKUBA ICTR Trial Chamber
para 34]**

225. P.W.01 stated that they the detainees were subjected to torture in captivity at the camp. It remained unimpeached. He does not state which accused carried out such criminal acts. But it does not make the accused persons who were engaged in accomplishing the first phase of attack absolved of liability even of causing torture and mistreatment to the detainees in captivity.

226. Tribunal notes that keeping protected civilians in unlawful confinement in violation of international humanitarian law by itself amounts to mistreatment and mental pain or suffering. Besides, there is nothing to infer even that the detainees were fairly treated in captivity.

227. Proved fact of keeping the P.W.01 and two other civilians unlawfully confined constituted the prohibited act of mental harm and mistreatment. It happened after getting P.W.01 and two others apprehended by launching systematic attack at their house and then they were brought to the Razakar camp with which the four accused persons had explicit concern.

228. It does not depict from testimony of P.W.01 that two other accused Md. Mokhlesur Rahman Mukul and Nurul Haque Fakir were present with the gang when it forcibly captured the victims including P.W.01. Thus in absence of any evidence they cannot be held liable for the offences committed.

229. In adjudicating the charge no.01 we already got it proved that the four accused (1) Shamsul Haque Fakir, (2) Md. Sultan Mahmud Fakir, (3)Md. Saidur Rahman Ratan and (4) Nakib Hossain Adil Sarker along with their cohort Razakars had active participation in accomplishing criminal acts including mistreatment and torture in systematic manner, being part of the Razakar camp. Testimony of P.W.01 depicts that he, his brother (P.W.02) and uncle were subjected to torture in captivity at the camp and it remained unimpeached. That is to say, these four accused were explicitly engaged and concerned even in causing torture to the detainees as the systematic criminal scheme of the camp.

230 It depicts from testimony of P.W.01 that three days after their captivity at the camp his (P.W.01) father got him and two others released in exchange of ransom money of Taka 1,100 through Razakar Asmat Ali, the father of Razakar Md. Sultan

Mahmud Fakir, on condition of maintaining daily attendance at the camp. P.W.01 stated that according to such condition he used to secure his attendance at Razakar camp for one week. Afterward, he fled to maternal uncle's home at Balipara.

231. Act of coercing the detainees in securing daily attendance at the camp too was an unlawful act which rather caused suffering and mental harm to detainees. Besides, releasing the detainees in exchange of ransom money was a kind of patent intimidation which eventually compelled the relative of victims to provide such ransom money. Such prohibited intimidating act too caused mental suffering to the victims and their relatives. This piece of fact was chained to the fact of keeping the P.W.01 and two others confined in protracted captivity at the Razakar camp. Defence does not seem to have made any effort to refute this fact by cross-examining the P.W.01.

232. In cross-examination on part of four accused persons P.W.01 stated in reply to defence question that the accused persons did not stay in the locality till 1975; that he could not say whether any case was initiated against these accused for any offence committed in 1971.

233. Remaining absent in the locality till 1975 as unveiled in cross-examination of P.W.01 adds assurance as to complicity and involvement of the accused persons with the atrocious activities. Why the accused persons opted to go into hiding quitting the locality? Presumably, this fact together with other evidence and circumstances indicates that the accused persons intending to keep them absolved of liability of atrocious acts they carried out opted to quit the locality. Next, non initiation of any case over the event after independence does create any doubt to prosecution case. Delay does not create any clog in prosecuting the crimes enumerated in the Act of 1973.

234. P.W.01 denied defence suggestions that what he testified was untrue, tutored and out of rivalry. But mere putting such suggestion to the witness does not make his testimony untrustworthy. Suggested 'rivalry' is a specific defence plea the burden to prove which lies upon the defence. But we do not find any manner of indication in support of such plea.

235. Torture in times of armed conflict is specifically prohibited by international treaty law, in particular by the Geneva Conventions of 1949. The prohibition of torture laid down in

human rights treaties enshrines an absolute right of civilians, which can never be derogated.

236. Tribunal notes that willfully causing suffering and mistreatment encompasses more than just physical suffering and may extend to include moral suffering. Obtaining ransom money by way of intimidation naturally caused deliberate mental suffering to the victims and their relatives.

237. Facts unveiled suggest concluding irresistibly that being aware of the nature of that system the four accused (1) Shamsul Haque Fakir, (2) Md. Sultan Mahmud Fakir, (3) Md. Saidur Rahman Ratan and (4) Nakib Hossain Adil Sarker had active participation in the enforcement of the system criminal acts of the Razakar camp.

238. In the case in hand, it stands proved that confinement and causing torture and mistreatment to victims at Razakar camp was the outcome of the first phase of attack in accomplishing which the four accused (1) Shamsul Haque Fakir, (2) Md. Sultan Mahmud Fakir, (3) Md. Saidur Rahman Ratan and (4) Nakib Hossain Adil Sarker had played culpable and active role

which had substantial contribution even to unlawful confinement and torture of victims, we deduce.

239. Based on facts revealed in testimony of P.W.01 that in exercise of membership capacity in an auxiliary force the four accused (1) Shamsul Haque Fakir, (2) Md. Sultan Mahmud Fakir, (3) Md. Saidur Rahman Ratan and (4) Nakib Hossain Adil Sarker were concerned also in inflicting severe physical or mental pain or suffering intentionally to civilians keeping them in captivity at the Razakar camp which was rather a 'concentration camp'. Finally, the victims were set at liberty in exchange of ransom money obtained by way of intimidation. Such prohibited acts constituted the crime of mistreatment and torture, committed in violation of Geneva Conventions of 1949.

240. In the case in hand facts and circumstances unveiled from testimony of P.W.01 lead to the conclusion that the accused (1) Shamsul Haque Fakir, (2) Md. Sultan Mahmud Fakir, (3) Md. Saidur Rahman Ratan and (4) Nakib Hossain Adil Sarker being culpable part of the criminal scheme of the Razakar camp incurred liability based on doctrine of Joint Criminal Enterprise, for the offences proved.

241. On evaluation of evidence presented it has been found proved beyond reasonable doubt that the accused (1) Shamsul Haque Fakir, (2) Md. Sultan Mahmud Fakir, (3)Md. Saidur Rahman Ratan and (4) Nakib Hossain Adil Sarker and their cohorts initiating the systematic attack forcibly took away three unarmed civilians including the P.W.01 and P.W.02, caused torture and mental harm to them in captivity at the Razakar camp and finally set them free in exchange of ransom money , degrading the fundamental rights of civilians. By such prohibited act and activities accused (1) Shamsul Haque Fakir, (2) Md. Sultan Mahmud Fakir, (3)Md. Saidur Rahman Ratan and (4) Nakib Hossain Adil Sarker participated, aided and facilitated the commission of offences of ‘**abduction**’, ‘**confinement**’ and ‘**torture**’ as crimes against humanity as specified in section 3(2) (a) (g)(h) of the Act which are punishable under section 20(2) read with section 3(1) of the Act and thus they incurred liability under section 4(1) of the Act, for the above offences.

Adjudication of Charge No.03

[Abduction, confinement, torture and other inhumane act caused to a civilian Yunus Ali @ Inu who was eventually killed]

242. Charge: That on 25.08.1971, at 01:00 P.M. a group formed of the accused (1) Md. Anisur Rahman Manik(died during trial) (2) Md. Mokhlesur Rahman Mukul (3) Md. Saidur Rahman Ratan (4) Md. Shamsul Haque Bachchu(died during trial) (5) Shamsul Haque Fakir (6) Nurul Haque Fakir (7) Md. Sultan Mahmud Fakir (8) Abul Basar Md. Mofazzal Hossain @ Moulavi Mofazzal(died during trial) and (9) Nakib Hossain Adil Sarker by launching attack at Kalirbazar under police station-Trishal, District-Mymensingh forcibly captured an unarmed pro-liberation civilian Yunus Ali @ Inu who used to provide assistance to freedom-fighters and keeping him in captivity at Razakar camp of Ahmadabad High School caused torture to him.

On 26.08.1971 when the relatives of the victim including his wife had been waiting outside the camp with the hope of getting victim's release the detained victim Yunus Ali @ Inu was brought outside the camp. The accused started beating him with rifle and stick and at one stage, accused Anisur Rahman Manik(died during trial) shot him to death and forced the relatives of victim to quit the site and buried the dead body under the bamboo orchard adjacent to the Razakar camp.

Therefore, the accused (1) Md. Anisur Rahman Manik (died during trial) (2) Md. Mokhlesur Rahman Mukul (3) Md. Saidur Rahman Ratan (4) Md. Shamsul Haque Bachchu(died during trial) (5) Shamsul Haque Fakir (6) Nurul Haque Fakir (7) Md. Sultan Mahmud Fakir (8) Abul Basar Md. Mofazzal Hossain @ Moulavi Mofazzal (died during trial) and (9) Nakib Hossain Adil Sarker by their act forming part of attack jointly participated, facilitated, abetted and substantially contributed to the commission of the offences of **‘abduction’**, **‘confinement’**, **‘torture’** other **‘inhumane act’**and **‘murder’** as crimes against humanity as specified in section 3(2)(a)(g)(h) read with section 4(1) of the International Crimes (Tribunals) Act, 1973 which are punishable under section 20(2) of the Act.

Evidence of Witnesses Examined

243. This count of charge involves the offences of abduction, confinement, torture, other inhumane act and murder of unarmed civilian Yunus Ali @ Inu, by launching systematic attack .Three witnesses i.e. P.W.05, P.W.06 and P.W.12 have been relied upon by prosecution to substantiate the arraignment brought. Of them P.W.06 and P.W.12 have been tendered with P.W.05. Let us see what has been stated by P.W.05.

244. P.W.05 Rashida Khatun (63) is a resident of village-Kakchar under police station Trishal of District Mymensingh. In 1971 she was 15 years old. She is the daughter of victim martyr Yunus Ali@ Inu. She experienced the event of attack leading to taking away her father by launching attack.

245. P.W.05 stated that her father used to help freedom-fighters to cross river by boat and provided assistance to them in various ways. In recounting the event of attack stated that on 08th day of Bangla month Bhadra in 1971 at about 01:00 P.M. her father was on the way to home when Razakars Bachchu, Ratan, Manik, Mukul, Nurul Fakir, Shamsul Fakir, Adil and their cohort Razakars forcibly captured her father from Senbari road and took him away to Razakar camp set up at Ahmedabad school where he was subjected to brutal torture.

246. P.W.05 stated that she heard the above event from her uncle Abdul Jabbar who witnessed it. On hearing it she and family inmates then moved to the road adjacent to the Razakar camp with continued crying and saw the Razakars brutally beating and torturing her father in the field of the camp. Being frightened they returned back home. Her grand-father Ahad Ali

Master (now dead) requested Gedu chairman, the father of Adil Razakar to set her father at liberty.

247. P.W.05 continued stating that on the following day at about 10:00/11:00 A.M. they moved to the front road of the Razakar camp and then at about 01:00 P.M. they saw Razakar Manik taking her injured father out of the camp. Then her father slowly moved to the nearer bamboo bush, outside of the camp when Razakar Manik gunned down her father to death there. Then the Razakars dumped her father's dead body inside the bamboo bush, digging a ditch. P.W.05 finally stated that the Razakars she named were from their neighbouring locality and thus she knew them beforehand.

248. In cross-examination, P.W.05 stated in reply to defence question that the accused persons fled away quitting the locality after independence; that they did not initiate any case over the alleged event, after independence.

249. P.W.05 denied defence suggestions that she did not know the accused persons; that they were not Razakars; that she did not see or hear what she narrated; that they were not involved

with the event she testified and that what she testified was untrue and tutored.

250. P.W.06 Md. Ruhul Amin (58/59) is a resident of village-Kakchar under police station Trishal of District Mymensingh. He is the son of victim martyr Yunus Ali and brother of P.W.05 Rashida Khatun.

251. P.W. 06 has been tendered by the prosecution. Defence cross-examined simply on one matter. In reply to defence question P.W.06 stated that his sister Rashida Khatun(P.W.05) is about 2/3 years elder than him and his brother Golam Mostafa is 2/3 years younger than him.

252. P.W. 12 Shahida Khatun (57/58) is resident of village Kakchar Kanihari under police station Trishal of District-Mymensingh. P.W.12 is another daughter of martyr Yunus Ali alias Inu. P.W. 12 too has been tendered by the prosecution and defence declined to cross-examine her.

Finding with Reasoning on Evaluation of Evidence

253. The learned prosecutor **Mr. Tapas Kanti Baul** argued that all the phases of the event are found to have been proved from

uncontroverted evidence of P.W.05, the daughter of the victim, an ocular witness. P.W.05 experienced how and when her father was gunned down to death taking him to place nearer to the bush adjacent to Razakar camp. Killing the victim was the outcome of the event. Forcible capture of victim was chained to his killing and thus who being part of the first phase of attack cannot absolve of liability of annihilation of detained victim.

254. It has been further argued that the accused persons formed part of the criminal enterprise and they consciously and knowing the consequence and sharing the intent of the gang accompanied the group of perpetrators to the crime site in effecting forcible capture of the victim. Therefore, they incurred liability under section 4(1) of the Act of 1973 and under the theory of JCE [basic form] as well. Defence could not refute the commission of act of abduction, confinement, torture and killing of victim in any manner. The accused persons indicted incurred liability for the crimes committed.

255. **Mr. Gazi M.H. Tamim** argued that testimony of sole witness P.W.05 remained uncorroborated and she is a hearsay witness in respect of first phase of attack alleged. P.W.05 does not implicate the accused Md. Sultan Mahmud Fakir with any

phase of the event arraigned. Besides, alleged participation of other five accused in committing the alleged killing of the victim could not be proved. All these collectively create reasonable doubt as to involvement of the six accused with the event of killing alleged and thus they deserve acquittal.

256. Tribunal notes that in order to prove the arraignment brought in this count of charge prosecution relied upon solely on one witness i.e. P.W.05 Rashida Khatun, the daughter of martyr victim Yunus Ali@ Inu. She is a hearsay witness in respect of the act of taking away her father to Razakar camp on unlawful abduction. Two other witnesses i.e. P.W.06 and P.W.12, son and daughter respectively of the victim have been tendered.

257. P.W.06 Md. Ruhul Amin is the son of victim martyr Yunus Ali. P.W. 12 Shahida Khatun is another daughter of martyr Yunus Ali alias Inu. They two have been tendered with P.W.05. Defence declined to cross-examine them. Presumably, they would state what they heard about the event arraigned after they grew up and would echo what the P.W.05 narrated and thus prosecution tendered them with the P.W.05.

258. Thus this count of charge rests upon single witness's testimony. In this regard we reiterate that the testimony of a single witness on a material fact does not, as a matter of law, require corroboration and in such situations, the Tribunal requires to carefully scrutinize the evidence before relying upon it to a decisive extent. **ICTR Trial Chamber** in its judgment in the case of **Nchamihigo** has observed that--

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

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

259. In view of above, we reiterate too that corroboration of evidence is not required and even single witness's testimony, if found sufficient and if it inspires credence Tribunal can justifiably act upon it.

260. It stands proved from the above ocular narrative of P.W.05, the daughter of victim that the event of first phase of attack happened in day time. It is evinced from her uncontroverted testimony that at the relevant time the victim was on the way to

home when Razakars Bachchu (died during trial), Ratan, Manik(died during trial) Mukul, Nurul Fakir, Shamsul Fakir, Adil and their cohort Razakars forcibly captured her father from Senbari road and took him away to Razakar camp set up at Ahmedabad school where he was subjected to brutal torture.

261. P.W.05 heard this first phase of the event from her uncle Abdul Jabbar who witnessed it. Such hearsay testimony of P.W.05 could not be controverted and denied even in cross-examination. According to settled jurisprudence of International Law 'hearsay evidence' is not inadmissible *per se*, even when it is not corroborated by direct evidence.

262. Unimpeached evidence of P.W.05 demonstrates that five accused (1) Md. Mokhlesur Rahman Mukul (2) Md. Saidur Rahman Ratan (3) Shamsul Haque Fakir (4) Nurul Haque Fakir and (5) Nakib Hossain Adil Sarker and their cohorts forming part of group accomplished the first phase of systematic attack, being part of criminal enterprise.

263. According to above version of P.W.05 it appears that five accused participated in accomplishing the first phase of the event of attack. P.W.05 does not implicate the accused Md.

Sultan Mahmud Fakir with the event she testified. But mere non implication of a single accused does not turn down the testimony of P.W.05 in its entirety. We are to see the role of other five accused persons indicted.

264. What happened next to taking away the victim on forcible capture? On hearing the first phase of attack leading to taking away her father to Razakar camp on forcible P.W.05 and family inmates moved to the road adjacent to the Razakar camp where they found the Razakars brutally beating and torturing her father in the field of the camp. But being frightened horrified they returned back home. Naturally such terrorizing act caused severe mental harm to relatives of victim that constitutes the offence of **‘other inhumane act’**.

265. The above piece of unimpeached ocular narrative proves that the victim was subjected to brutal physical torture at the camp and such criminal act naturally made the P.W.05 and others frightened and traumatized and thus finding no other way they returned back home. P.W.05 does not state names of Razakars who were engaged in causing such torture to the detained victim.

266. But since such severe torture was the upshot of forcible capture of the victim and since the seven accused of them two already died during trial who being part of the gang had acted to effect forcible capture of the victim they all were concerned even with the act of causing such brutal torture to detained victim, we deduce.

267. In respect of the ending phase of the event P.W.05 is a direct witness. We got it proved from her evidence that on the following day at about 10:00/11:00 A.M. they again moved to the front road of the Razakar camp and then at about 01:00 P.M they saw Razakar Manik (died during trial) bringing her injured father out of the camp when her father was slowly moving to the bamboo bush, outside of the camp and then Razakar Manik gunned down her father to death there. Then the Razakars dumped her father's dead body inside the bamboo bush, digging a ditch.

268. It appears that in no way defence could impeach the above piece of crucial fact related to the ending phase of the attack. Defence simply denied that the P.W.05 did not see or hear what she narrated and that the accused she named were not involved with the event she testified.

269. The above uncontroverted ocular pertinent narrative of P.W.05 irresistibly demonstrates that Razakar accused Anisur Rahman Manik (died during trial) was the key perpetrator who physically participated in annihilating the detained victim by gun shot. Taking the facts and circumstances into consideration we conclude that Anisur Rahman Manik (died during trial) on having substantial assistance and contribution of six other accused who are found to have had physical participation in effecting unlawful detention of the victim eventually activated the object of the criminal design.

270. The act of ‘assistance’ and providing ‘encouragement’ and ‘moral support’ to the principals in committing the killing a detained civilian arraigned is to be inferred from relevant facts and acts of accused persons indicted either before or at the time of commission of crime or even after the commission thereof. Proof of all forms of criminal responsibility can be given by direct or circumstantial evidence.

271. In the case in hand, the telling evidence adduced suggests that act and presence of seven accused, of them two died during trial, with the criminal gang in conducting first phase of attack assisted or provided encouragement or moral support also in

activating the object of the criminal enterprise and the same had substantial effect even to the actual commission of the killing the victim.

272. It depicts that after gunning down the victim to death outside of the camp his dead body was dumped inside the bamboo bush, digging a ditch. Indisputably it caused immense untold trauma to dear ones of the victim. Finally, we deduce based on facts divulged that the object of the attack was to liquidate the victim who used to assist the freedom-fighters.

273. By conducting the systematic attack leading to killing the victim the perpetrators intended to spread coercion and terror among the pro-liberation civilians of the locality, to further policy and plan of Pakistani occupation army.

274. It appears that in no way defence could impeach the crucial facts related to the ending phase of the attack. Defence simply denied that the P.W.05 did not see or hear what she narrated and that the accused she named were not involved with the event she testified.

275. But the uncontroverted ocular narrative of P.W.05 irresistibly demonstrates that Razakar Anisur Rahman Manik

(died during trial) was the key perpetrator who physical participated in annihilating the detained victim by gunshot and it happened on having substantial support and assistance of the six accused (1) Md. Mokhlesur Rahman Mukul (2) Md. Saidur Rahman Ratan (3) Shamsul Haque Bachchu(died during trial) (4) Shamsul Haque Fakir (5) Nurul Haque Fakir and (6) Nakib Hossain Adil Sarker who being part of the enterprise activated the act of forcible capture of the victim.

276. Killing the detained victim was the upshot of the attack. In activating this object the victim was unlawfully captured by launching attack to which the seven accused of whom two died during trial were active part. Tribunal notes that even a single act or conduct may form part of attack in substantially facilitating and abetting the actual commission of a crime. Section 4(1) refers to Joint Criminal Enterprise [JCE]. Being part of joint criminal enterprise [JCE-form I] an accused may be held as co-participant in a joint criminal enterprise by passive, rather than active conduct.

277. 'Participation' may occur in different ways. Not necessarily that the accused is to be shown to have had participation in all aspects of the criminal acts. Presence with a

group in course of first phase of attack is sufficient to conclude that the seven accused of who two died during trial , as found proved from testimony of the P.W.05 were consciously concerned even with the commission of the killing the detained victim.

278. It stands proved that the victim Yunus Ali @ Inu used to provide assistance to freedom-fighters. This was the reason of conducting designed attack directing him. The means and design the group of perpetrators used in effecting the forcible capture of the victim, the identity of the victim, the pattern of phases of attack, the nature of the crimes committed in its course and the status of the five accused persons indicted and their attachment with a militia force and the Razakar camp, as unveiled are sufficient to conclude unerringly that the attack was **‘directed against civilian population’** and (1) Md. Mokhlesur Rahman Mukul (2) Md. Saidur Rahman Ratan (3) Shamsul Haque Fakir (4) Nurul Haque Fakir and (5) Nakib Hossain Adil Sarker were knowingly *‘connected’* with plan and object of the criminal enterprise. However, accused Md. Sultan Mahmud Fakir cannot be held liable as prosecution failed to connect him with the offences committed by adducing evidence.

279. It is to be noted that the notion ‘civilian populating’ does not mean a large segment of population. Criminal and prohibited act directing even a single defenceless civilian denotes ‘civilian population’. There is no basis of saying that the killing a single victim did not constitute the offence of crime against humanity. The event leading to killing a pro-liberation civilian happened in context of war of liberation. It is not required to show killing of numerous civilians to constitute the offence of murder as crime against humanity.

280. Tribunal notes that killing even of a single civilian on discriminatory grounds occurred in such context thus constituted the offence of crime against humanity. It is now well settled proposition. ICTR Trial Chamber in the case of **Seromba** observed that --

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

281. In view of above settled legal proposition evolved in adhoc Tribunal and since the killing arraigned happened in context of the war of liberation, in systematic manner we are forced to

conclude that the barbaric murder of the victim, an unarmed civilian who was apprehended by launching designed attack constituted the offence of ‘crime against humanity’.

282. On intrinsic evaluation of evidence presented the Tribunal is convinced to record its finding that prosecution has been able to prove beyond reasonable doubt that the accused (1) Md. Mokhlesur Rahman Mukul (2) Md. Saidur Rahman Ratan (3) Shamsul Haque Fakir (4) Nurul Haque Fakir and (5) Nakib Hossain Adil Sarker being part of the designed criminal scheme participated, aided, abetted and substantially facilitated the commission of offences of ‘abduction’, ‘confinement’ ‘torture’ ‘other inhumane act’ and ‘murder’ as crimes against humanity as specified in section 3(2) (a) (g) (h) of the Act which are punishable under section 20(2) read with section 3(1) of the Act and thus they incurred liability under section 4(1) of the Act, for the above offences.

Adjudication of Charge No.04

[09 accused indicted of whom 03 died during trial]

[Abduction, confinement, torture and other inhumane act caused a non-combatant freedom-fighter who was eventually murdered]

283. Charge: That freedom-fighter Abdur Rashid alias Rasul of village-Dholaiman under police station Trishal, District-Mymensingh came to his house, being unarmed. On 16.09.1971, at 11:30 A.M. he moved to Dr. Wajed Ali of Kalirbazar to have medical treatment, along with his 03 years old son and elder daughter. On receiving this information a group formed of the accused (1) Md. Anisur Rahman Manik (died during trial) (2) Md. Mokhlesur Rahman Mukul (3) Md. Saidur Rahman Ratan (4) Md. Shamsul Haque Bachchu(died during trial) (5) Shamsul Haque Fakir (6) Nurul Haque Fakir (7) Md. Sultan Mahmud Fakir (8) Abul Basar Md. Mofazzal Hossain @ Moulavi Mofazzal (died during trial) and (9) Nakib Hossain Adil Sarker by launching attack at Kalirbazar forcibly captured him dragging him out from the hiding place and caused inhumane torture to his son throwing him to the nearby paddy field. The detained victim was then taken away to Razakar camp at Ahmadabad High School where he was subjected to inhumane torture.

Relatives including wife of the detained victim Abdur Rashid @ Rasul made frequent effort to get victim's release but the accused persons did not pay heed to it. On 19.09.1971 at about 10:00 A.M. victim's wife and family members moved again to

Razakar camp to secure victim's release when they saw the accused persons and some other Razakars taking the victim to a nearby ditch where he was shot to death. Victim's dead body was buried at an unknown place.

Therefore, the accused (1) Md. Anisur Rahman Manik(died during trial) (2) Md. Mokhlesur Rahman Mukul (3) Md. Saidur Rahman Ratan (4) Md. Shamsul Haque Bachchu (died during trial) (5) Shamsul Haque Fakir (6) Nurul Haque Fakir (7) Md. Sultan Mahmud Fakir (8) Abul Basar Md. Mofazzal Hossain @ Moulavi Mofazzal (died during trial) and (9) Nakib Hossain Adil Sarker by their act forming part of attack jointly participated, facilitated, abetted and substantially contributed to the commission of the offences of '**abduction**', '**confinement**', '**torture**' other '**inhumane act**'and '**murder**' as crimes against humanity as specified in section 3(2)(a)(g)(h) read with section 4(1) of the International Crimes (Tribunals) Act, 1973 which are punishable under section 20(2) of the Act.

Evidence of Witnesses Examined

284. Tribunal notes that in order to substantiate the attack arraigned in this count of charge leading to killing an unarmed freedom-fighter Abdur Rashid@ Rasul prosecution adduced

three witnesses of whom P.W.07 and P.W.08 have been examined and P.W.09 has been tendered. Before we weigh the evidence first let us see what they have testified.

285. P.W.07 Rukiya Begum (65/66) is a resident of village-Dholaiman under police station Trishal of District Mymensingh. She is the daughter of victim martyr Abdur Rashid @ Rasul. She is a direct witness to the facts related to the event arraigned leading to forcible capture of her father, the victim.

286. P.W.07 stated that two years prior to war of liberation ensued she got married and in 1971 at the relevant time she had a baby of 7 days old and at that time she had been at her paternal home. Her father Abdur Rashid @ Rasul was a freedom-fighter.

287. P.W.07 next stated that on the last day of Bangla month Bhadra in 1971 her 3-4 months old younger brother Insan Ali became sick and then her father took him to doctor at Kalirbazar. She too accompanied her father. When they remained stayed in front of doctor's chamber Razakars Khalek Sarker (now dead) and his 7/8 cohort Razakars besieged them. With this father taking Insan on lap attempted to flee under the fence of the club when Razakar Bachchu (died during trial) fired

gunshot and snatched away Insan from her father's lap and threw him to the paddy field. She then collected Insan there from. Razakars **Shamsul Haque (died during trial), Nurul Haque**, Khalek Sarker (now dead), Manik (died during trial), **Ratan, Mukul** were with the group. Razakars took away her father to Razakar camp set up at Ahmedabad high school. She started following them.

288. P.W.07 continued stating that on being informed her step mother, Fufu and other relatives moved to camp and appealed to Razakars seeking release of her father but they continued beating her father there. At a stage, being frightened they returned back. Her father was subjected to brutal torture in captivity for three days. They remaining stayed nearer to Razakar camp saw the Razakars torturing her father.

289. P.W.07 also stated that three days later they going to near the camp came to know from people that in night her father was shot to death and his body was dumped near the camp (at this stage P.W.07 burst into tears). Finally, P.W.07 stated that she heard the name of Razakars from the people of the locality.

290. In cross-examination in reply to defence question P.W.07 stated that at the time of the event happened her kid was only

seven days old; that they did not initiate any case over the event alleged against any of the accused persons; that her brother Insan is now alive. P.W.07 denied defence suggestions that she did not hear the name of Razakars; that the accused were not Razakars; that she did not see the accused persons present at the site when the event happened; that the event she narrated did not happen; and that what she testified implicating the accused was untrue and tutored.

291. P.W.08 Maleka is a resident of village- Dholaiman under police station Trishal of District Mymensingh. She is the sister of the victim. In 1971 she had been staying at her paternal home and she was the mother of two children. Her elder brother Abdur Rashid @ Rasul (victim) was a freedom-fighter. She narrated the facts happened prior to taking away her brother, the victim on forcible capture.

292. P.W.08 stated that at the end of Bangla month Bhadra in 1971 he brother Abdur Rashid @ Rasul came to his paternal home to see his child son Insan (P.W.09). Her brother at the end of Bangla month Bhadra was on way to Kalibazar to consult doctor taking his son Insan suffering from fever. His daughter Rukiya (P.W.07) accompanied him. Few times later she

(P.W.08) heard gun firing from the end of Kalibazar and the people informed that the Razakars took away her brother Abdur Rashid @ Rasul to Razakar camp on forcible capture. Then she (P.W.08) moved to the place nearer to Razakar camp when she saw that her brother was subjected to torture keeping him inside a ditch and Razakars Khalek Sarker (now dead), his son Razakar Shamsul Haque Bachchu (died during trial), **Ratan, Manik and their cohorts** were present there. Razakars caused torture to her brother keeping in captivity at the camp for three days.

293. P.W.08 next stated that three days later they heard from the people that Razakars had killed her brother. Finally, P.W.08 stated that she heard the name of Razakars she stated from the surrounding people.

294. In cross-examination, P.W.08 stated in reply to defence question that they did not initiate any case over the alleged event against the accused persons; that during the war of liberation her elder child was about 2/2.5 years old; that during the war of liberation she used to stay at her paternal home along with her kids.

295. P.W.08 denied defence suggestions that she did not hear the name of Razakars from people; that the accused were not involved with the event she testified; that the accused were not Razakars; that the event she narrated did not happen and that what she testified implicating the accused was untrue and tutored.

296. P.W.09 Insan Ali (49) is the son of victim Abdur Rashid @ Rasul. In 1971 he was a kid. Presumably, he heard the tragic event of his father's annihilation from relatives, when he grew up. Prosecution tendered him with P.W.07 and P.W.08. Defence declined to cross-examine P.W.09

Finding with Reasoning on Evaluation of Evidence

297. The learned prosecutor **Mr. Tapas Kanti Baul** drawing attention to testimony of P.W.07 and P.W.08 argued that it has been proved that the victim an unarmed freedom-fighter was unlawfully captured, taken away to Razakar camp where he was subjected to torture in captivity and finally three days later he was shot to death. Facts related to first phase of attack combined with the fact of brutal mistreatment caused to victim were chained to the act of killing. Thus, the accused who were engaged in conducting the first phase of attack were knowingly

concerned even with the act of killing. Defence could not impeach all these facts leading to the commission of the crimes arraigned.

298. On contrary, **Mr. Gazi M.H. Tamim**, the learned state defence counsel argued that the P.W.07 and P.W.08 heard the name of Razakars allegedly engaged in committing the criminal acts arraigned; their hearsay testimony in this regard is not consistent. It has been further submitted that testimony of P.W.07 implicated five accused indicted and hearsay testimony of P.W.08 discloses complicity of one accused. Thus, what these two witnesses narrated was untrue and out of rivalry. There is no evidence as to how and which accused were concerned with alleged killing. Thus, and due to reasonable doubt occurred the accused persons indicted deserve acquittal.

299. It transpires from the charge framed that the act of abduction, confinement and killing the victim were chained to each other. First, we require seeing how the victim was forcibly captured, where he was kept unlawful confined. Finally, it is to be determined what the upshot of these criminal acts and also we need to asses which accused got them engaged in accomplishing the phases of the event of attack directing an unarmed freedom-fighter.

300. This count of charge arraigns that an unarmed freedom-fighter Abdur Rashid @ Rasul was forcibly captured by the gang formed of accused persons indicted when he was on the way to doctor taking his sick son. P.W.07 the daughter of the victim was with him. The detained victim was then taken away to Ahmedabad School Razakar camp where he was subjected to torture and eventually he was annihilated. P.W.07, the daughter and P.W.08, the sister of the victim being the key witnesses recounted this phase of the event.

301. It appears that the event happened in day time and in phases. In course of first phase of attack the victim was taken away to camp on unlawful capture. Second, the victim was subjected to brutal torture in captivity and finally he was killed. Now, let us see how the phases of attack happened and how the accused persons participated in accomplishing those criminal acts.

302. It is not disputed that the victim Abdur Rashid @ Rasul was a freedom-fighter. It depicts from narrative of P.W.07, the daughter of victim that the victim came to home to see his ailing kid. At the relevant time the victim was unarmed. It is evinced from ocular testimony of P.W.07 that she accompanied his father in moving to doctor at Kalirbazar taking her 3-4 months

old sick brother Insan Ali. Thus P.W.07 had opportunity of seeing the act of forcible capture of her father.

303. Presumably, presence of the victim, an unarmed freedom-fighter in the locality got leaked to the perpetrators who conducted the designed attack. It stands proved from ocular narrative of P.W.07 that when they remained stayed in front of doctor's chamber Razakars Khalek Sarker (now dead) and his 7/8 cohort Razakars besieged them and with this the victim taking his kid Insan on lap attempted to flee under the fence of the club when Razakar Bachchu (Shamsul Haque Bachchu, died during trial) fired gunshot and snatched away Insan from her father's lap and threw him to the paddy field. What a brutality! It was rather a patent reflection of aggression the Razakars had against the pro-liberation civilians and it was detrimental to human rights.

304. What happened next? It depicts from unimpeached testimony of P.W.07 who was with the victim at the relevant time that the group formed of Razakars Md. Shamsul Haque (died during trial), Nurul Haque Fakir, Khalek Sarker (now dead), Md. Anisur Rahman Manik (died during trial), Md. Saidur Rahman Ratan, Md. Mokhlesur Rahman Mukul and their

cohorts took away her father to Razakar camp set up at Ahmedabad high school. She (P.W.07) then started following them. Defence could not impeach such criminal acts conducted in course of first phase of attack, as experienced by the P.W.07.

305. Based on above uncontroverted ocular narrative of P.W.07, a direct witness already it stands proved that Khalek Sarker (now dead), five accused indicted Md. Shamsul Haque Bachchu(died during trial), Nurul Haque Fakir, Md. Anisur Rahman Manik (died during trial),Md. Saidur Rahman Ratanand Md. Mokhlesur Rahman Mukul accompanied the gang in accomplishing the first phase of attack. Of these five accused two accused Md. Anisur Rahman Manik and Md. Shamsul Haque Bachchu already died during trial.

306. In view of above, it stands proved that the rest three accused (1) Md. Mokhlesur Rahman Mukul (2) Md. Saidur Rahman Ratan and (3) Nurul Haque Fakir as testified by P.W.07 being part of the criminal enterprise had acted in perpetrating the act of forcible capture of victim and taking him away to Razakar camp. It could not be refuted in any manner. We do not find any reason to disbelieve the P.W.07, a direct

witness who had natural occasion of seeing the attack leading to taking away her father on unlawful capture.

307. P.W.07 stated that she heard the name of Razakars from the people of the locality. It was natural. Other people might have seen the event as it happened in day time in a Bazar locality. We do not find any untruthfulness in testimony of P.W.07 made in this regard

308. What happened next to taking away the victim to Razakar camp? It depicts from testimony of P.W.07 that on moving to the place nearer to the Razakar camp she saw the Razakars causing torture to her father. It stands proved that the victim was kept confined at the camp for three days. None had opportunity of seeing whether the victim was subjected to continued torture and by which accused.

309. But presumably the victim was subjected to torture in protracted captivity. He was kept confined at the camp not for any pious purpose. The accused (1) Md. Mokhlesur Rahman Mukul (2) Md. Saidur Rahman Ratan and (3) Nurul Haque Fakir who are found to have had participation in course of the first phase of the attack and their cohort Razakars collectively

got engaged also in causing such system torture to victim, we deduce.

310. It thus stands proved that the victim the father of P.W.07 was subjected to brutal torture in captivity for three days. P.W.07 and P.W.08 remaining stayed nearer to Razakar camp saw such brutality done to the detained victim. Three days later they going to the place near the camp came to know from people that in night victim Abdur Rashid @ Rasul was shot to death and his body was dumped near the camp (at this stage P.W.07 burst into tears).

311. P.W.08 is the younger sister of victim Abdur Rashid @ Rasul. It could not be impeached that during the war of liberation P.W.08 used to stay at her paternal home along with her child. Thus, it was quite natural of knowing the event of taking away her brother to Razakar camp on forcible capture when he was on the way to Kalibazar to have consultation of doctor for his sick child. It happened in day time.

312. It depicts that on hearing the fact of taking away her brother P.W.08 too moved to Razakar camp and there she saw the Razakars causing torture to her brother. It could not be

denied even by the defence. This unimpeached fact adds assurance to the fact of forcible capture of Abdur Rashid @ Rasul when he was on the way to Kalirbazar, as testified by P.W.07. Seeing own freedom-fighter brother tortured by the Razakars demonstrates that the Razakars had aggressively conducted such criminal act intending to further the policy and plan of the Pakistani occupation army.

313. It has been divulged that even P.W.08, the sister of the victim on moving to place nearer to Razakar camp saw that her brother was subjected to torture keeping him inside a ditch and Razakars Khalek Sarker (now dead), his son Razakar Shamsul Haque Bachchu(died during trial), Ratan, Manik (died during trial) and their cohorts were present there.

314. It appears that P.W.08 in narrating the above fact does not implicate all the accused indicted. But it stands proved from ocular testimony of P.W.07 that accused Nurul Haque Fakir, Md. Saidur Rahman Ratan, Md. Mokhlesur Rahman Mukul and also accusedMd. Shamsul Haque Bachchu (died during trial)and Md. Anisur Rahman Manik(died during trial) were present when the victim was subjected to torture.

315. It appears that P.W.08 heard the name of Razakars from the surrounding people. She might have naturally failed to recall the name of other accused Razakars indicted. But it does not turn down her testimony relating to crucial fact she narrated, particularly when it stands proved from ocular testimony of P.W.07 that **threeaccused** (1) Md. Mokhlesur Rahman Mukul (2) Md. Saidur Rahman Ratan and (3) Nurul Haque Fakir being part of the criminal gang participated in effecting unlawful capture of the victim and in taking him away to the Razakar camp. Thus non-disclosure of name of other accused indicted by P.W.08 does not make the testimony of PW.07 on this matter untrue.

316. Eventually, what fate the victim had to face? He was annihilated by gunshot and his dead body was dumped near the camp. Unimpeached testimony of P.W.07 demonstrates that three days later they going to near the camp came to know from people that in preceding night her father was shot to death and his body was dumped at the place near the camp.

317. Relatives of victim did not have occasion of seeing the brutal annihilation of victim which took place pursuant to system criminal scheme of the Razakar camp. Thus, hearing the

ending phase of the event was likely. Defence does not seem to have been able to refute the act of killing the victim, the upshot of the systematic attack. Tribunal notes that in narrating the upshot of the event, the killing of her father P.W.07 burst into tears. Such demeanor filled of pain and trauma makes her testimony credible.

318. Victim Abdur Rashid @ Rasul was a freedom-fighter and he was unarmed at the time of the event happened. The accused (1) Nurul Haque Fakir (2) Md. Saidur Rahman Ratan and (3) Md. Mokhlesur Rahman Mukul are found to have had participation in accomplishing the attack in getting the victim forcibly captured. This proved fact combined with the fact that the victim was kept in protracted captivity at the Ahmedabad Razakar camp leads to the unerring conclusion that in exercise of their affiliation in locally formed Razakar Bahini and its camp they had explicit concern even in accomplishing the criminal act of torture and killing the victim.

319. Defence could not refute the event in any manner. It simply denied that no such event happened. But such mere denial does not negate the truthfulness of version the P.W.08 stated in relation to the event she experienced.

320. It stands proved from hearsay evidence of P.W.07 and P.W.08 that three days later they heard from the neighbouring people of the Razakar camp that the victim Abdur Rashid @ Rasul was annihilated by gunshot. Defence could not taint this hearsay version. Tribunal notes that even hearsay evidence is not inadmissible per se if it carries probative value and gets corroboration from other facts and circumstances.

321. In the case in hand, it is evinced that the victim was subjected to inhuman torture taking him at the camp, after causing his forcible capture which was witnessed by P.W.07. The victim was kept confined at the camp for three days. We got it stands proved from unimpeached testimony of P.W.07 and P.W.08 that they and relatives moved to camp and appealed to Razakars seeking release of victim but defying the appeal they continued beating the victim. At a stage being frightened they returned back.

322. Experiencing such brutal treatment naturally caused severe mental harm and pain to relatives of the victim that constituted the offence of '**other inhumane act**'. In this way the accused persons being part of the group of attackers had acted as the infamous loyalists of the Pakistani occupation army intending to resist the war of liberation.

323. Presumably, due to notoriety of Razakars the relatives of the victim did not take frequent effort to get the victim released. Rather, they became gravely frightened with the criminal activities carried out at the camp directing the detained victim. It depicts too that the victim could not be traced since his confinement at the camp. Three days later P.W.07 and P.W.08 heard that the Razakars had killed the victim Abdur Rashid @ Rasul, an unarmed freedom-fighter.

324. It is true that there is no evidence of perpetrating the killing. Even victim's dead body could not be traced. However, it depicts from testimony of P.W.07, the daughter of the victim that her father's dead body was made dumped at the place nearer to the camp. Defence could not impeach it. Besides, recovery of dead body of victim is not required to prove the killing as it happened in war time situation. Relevant facts and circumstances unveiled are sufficient to prove it.

325. In the case in hand, the facts and circumstances indubitably suggest concluding that the detained victim Abdur Rashid @ Rasul was killed and the accused Razakars who were engaged in effecting victim's forcible capture and confinement at the Razakar camp were actively and culpably concerned even in

accomplishing the killing of detained unarmed freedom-fighter Abdur Rashid @ Rasul.

326. It is evinced that the deliberate culpable acts of three accused (1) Nurul Haque Fakir (2) Md. Saidur Rahman Ratan and (3) Md. Mokhlesur Rahman Mukul who are found to have had participation in accomplishing the systematic attack agreeing with its object of annihilating an unarmed civilian was indeed a grave violation of the principles of international humanitarian law arising from the Geneva Conventions. Pattern and magnitude of attack and mode of participation of these three accused persons in perpetrating the crimes in question together tells explicitly what extent of antagonism they used to carry in their mind, to further policy and plan of resisting the war of liberation and the pro-liberation civilians.

327. It is now well settled that the accused's participation in the criminal enterprise need not involve actual commission of a specific crime, such as murder, torture, mistreatment etc., but may take the form of assistance to the execution of the common purpose. Testimony combined with the fact demonstrates that the three accused (1) Nurul Haque Fakir (2) Md. Saidur Rahman Ratan and (3) Md. Mokhlesur Rahman Mukul in exercise of their explicit and culpable association with the Razakar camp

had acted and substantially facilitated in effecting unlawful capture of the victim that ended in victim's brutal killing.

328. In the case in hand on cumulative evaluation of evidence we are constrained to deduce that the three accused **(1) Md. Mokhlesur Rahman Mukul (2) Md. Saidur Rahman Ratan and (3) Nurul Haque Fakir** having potential nexus with the Razakar camp and its designed operation are responsible for all crimes committed within the framework of the system of criminal activities forming part of the designed violent attack leading to torture, ill-treatment and killing an unarmed freedom-fighter Abdur Rashid @ Rasul.

329. On cumulative and rational evaluation of evidence and circumstances revealed and pursuant to reasoned finding made herein above we arrive at decision that prosecution has been able to prove it beyond reasonable doubt that the three accused (1) Nurul Haque Fakir (2) Md. Saidur Rahman Ratan and (3) Md. Mokhlesur Rahman Mukul by their culpable act and conduct forming part of systematic attack pursuant to common design and in materializing the object of the criminal mission participated, aided, abetted and substantially contributed to the commission of **'confinement', torture 'other inhumane act'**

and ‘**murder**’ of an unarmed civilians constituting the offences as crimes against humanity enumerated in section 3(2)(a)(g)(h) of the Act of 1973 and thus all the three accused persons incurred criminal liability under section 4(1) of the Act of 1973.

Adjudication of Charge No. 05

[09 accused indicted of whom 03 died during trial]

[Abduction, confinement, torture and other inhumane act caused to 08 civilians of villages- Kanihari, Biyarta, Sultanpur, Baroi Gao under police station-Trishal, District-Mymensingh]

330. Charge: That on 10.11.1971, at 10:00 A.M a group formed of the accused (1) Md. Anisur Rahman Manik (2) Md. Mokhlesur Rahman Mukul (3) Md. Saidur Rahman Ratan (4) Md. Shamsul Haque Bachchu (5) Shamsul Haque Fakir (6) Nurul Haque Fakir (7) Md. Sultan Mahmud Fakir (8) Abul Basar Md. Mofazzal Hossain @ Moulavi Mofazzal and (9) Nakib Hossain Adil Sarker and some other armed Razakars by launching attack at the house of **Golam Sobhan and Md. Hafiz Uddin**, supporters of war of liberation of village-Baroi Goa under police station-Trishal, District-Mymensingh **looted households and valuables.**

In conjunction with the attack, at about 12:00 P.M the accused persons also carried out looting households by launching attack

at the house of **Afaz Uddin[now dead]** and forced **Ruhul Amin** to carry the looted valuables towards the Razakar camp. Later on in exchange of ransom money Ruhul Amin got released.

In conjunction with the attack and leaving the looted goods at the camp the accused persons and their cohorts unlawfully **detained 07 civilians** by launching attack at villages- Kanihari, Biyarta, Sultanpur, Baroi Gao and took them away to the Razakar camp where they were kept confined. Eventually the detained victims got released in exchange of ransom money, on 25.11.1971.

Therefore, the accused (1) Md. Anisur Rahman Manik (died during trial) (2) Md. Mokhlesur Rahman Mukul (3) Md. Saidur Rahman Ratan (4) Md. Shamsul Haque Bachchu (died during trial) (5) Shamsul Haque Fakir (6) Nurul Haque Fakir (7) Md. Sultan Mahmud Fakir (8) Abul Basar Md. Mofazzal Hossain @ Moulavi Mofazzal(died during trial) and (9) Nakib Hossain Adil Sarker by their act forming part of attack jointly participated, facilitated, abetted and substantially contributed to the commission of the offences of **‘abduction’, ‘confinement’, ‘torture’ and ‘other inhumane act’** as **crimes against**

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

Evidence of Witnesses Examined

331. Prosecution relied upon four witnesses who have been examined as P.W.10, P.W.15, P.W.17 and P.W.18 in support of this count of charge. Prosecution contends that of these witnesses three are victims. Before we weigh their testimony first let us see what they narrated.

332. P.W.10 Jahanara Begum (67) is a resident of village-Sultanpur under police station Trishal of District Mymensingh. She is the wife of one of victims of prohibited acts leading to abduction, confinement, torture, as arraigned in this count of charge. She is a direct witness to the event of attack arraigned.

333. P.W.10 stated that she got married 5/6 years prior to war of liberation ensued and she had been staying at her conjugal home during the war of liberation. In narrating the event arraigned P.W.10 stated that during the first part of November in 1971 at the time of dusk Razakar Khalek Sarker and his son Razakar Bachchu (died during trial), Razakar Manik (died during trial),

Razakar Mukul, Razakar Ratan, Razakar Shamsul Haque Fakir, Razakar Nurul Fakir, Razakar Sultan Fakir, Razakar Mofazzal Moulana (died during trial), Razakar **Adil Sarker** and their cohorts besieged their home and unlawfully detained her husband, husband's elder brother Fazlul Haque Khondoker who were subjected to beating. With this inmates of the family managed to flee but she remained stayed at home and witnessed it. Razakars then took away her husband and husband's elder brother to Ahmadabad High School Razakar camp, tying them up.

334. P.W.10 also stated that on the following day she moved to Razakar camp and requested Razakar Manik and Sultan to set her husband and husband's elder brother at liberty. She then provided Taka 500 and three and half maund rice to the Razakar camp as asked by the Razakars. Then in night of the same day her husband and husband's elder brother returned back home and she found them in injured condition. Finally, P.W.10 stated that the Razakars she named were from their neighbouring localities and thus she knew them beforehand.

335. On cross-examination P.W.10 stated that they did not initiate any case earlier over the event and that she could not say

the political affiliation of the accused persons. P.W.10 denied defence suggestions that she did not know the accused persons she implicated; that she did not see the accused persons present at the time of the event she testified; that what she testified was untrue and tutored.

336. P.W. 15 Shawkat Alam (62) is resident of village Biarta under police station Trishal of District-Mymensingh. P.W.15 stated that during the time of liberation war in 1971, he was about 14/15 years old and he was an SSC candidate. He is one of victims of the event arraigned in this count of charge.

337. In recounting the horrific event P.W.15 stated that on 10th November, 1971 at around 10:00 A.M he had been at home. At that time under the leadership of Razakar Anisur Rahman Manik(died during trial) of Ahmedabad High School Razakar camp being accompanied by Bihari Police and some unknown armed Razakars came to their house and took him away on forcible capture to the said Razakar camp where he was kept confined in a room of the ground floor. Moments after the above mentioned Razakars also brought Fazlul Haque Khandakar Chunnu (now dead), Abdul Mannan Khandakar (now dead) and Bashir Uddin Khan (now dead) to the camp and

kept them too confined in the same room. The above mentioned Razakars started causing torture and beating them inhumanly and mercilessly.

338. P.W.15 continued stating that three days later excepting him other Muslim detainee was set released from the camp by taking ransom money. Some Hindu detainees too were set at liberty with condition to get converted to Muslim religion. He (P.W.15) was subjected to torture in captivity and after 15 days on receiving Tk. 3,000/- as ransom money he was set released. Detainee Mahatab Uddin also got release in exchange of Tk. 1400/- as ransom money. P.W.15 finally stated that Razakar Anisur Rahman Manik (died during trial) was 03 years senior to him and studied in the same school and as such he knew him beforehand.

339. On cross-examination done only on part of absconding accused Anisur Rahman Manik(died during trial) P.W.15 stated in reply to defence question put to him that after independence of Bangladesh Anisur Rahman Manik contested in the local Union Parishad Election and National Parliament Election as a candidate of Jatio Parity and he was elected; that Accused Anisur Rahman (died during trial) was involved with politics

staying at his own house; that after liberation he(P.W.15) did not initiate any case over the event he narrated against this accused or anybody else.

340. P.W.15 denied the defense suggestions that this accused was not Razakar and no event he testified took place; that the accused was not involved with the alleged event; that what he testified implicating the accused was untrue and out of political rivalry.

341. P.W. 17 Mahatab Uddin (82/83) is resident of village-Kanihari under police station Trishal of District-Mymensingh. He stated that he passed SSC in the year 1963 and HSC in the year 1966. He too is one of victims of the event arraigned.

342. Before narrating the event arraigned P.W.17 testified in respect of formation of Razakar Bahini in Trishal. P.W.17 stated that in 1971 during the war of liberation, Chairman of Piece Committee Abdul Khaleque Sarker of their locality set up a Razakar Camp at Ahmedabad High School under Trishal Police Station. Four sons of Abdul Khaleque Sarker namely Anisur Rahman Manik (died during trial), Mokhlesur Rahman Mukul, Saidur Rahman Ratan, Shamsul Haque Bachchu (died during

trial) and Shamsul Haque Fakir, Sultan Mahmud Fakir, Nurul Haque Fakir, Nakib Hossain Adil and Mofazzal Hossain (died during trial) joined in Razakar Bahini.

343. Next, P.W. 17 in recounting the event stated that on 10th November in 1971 at about 03.00/03.30 P.M. the Razakars he named above (accused persons indicted) being accompanied by cohort armed Razakars encircling their house forcibly captured him, his brother Altaf Ali and Suruj Ali and tied them up. The said Razakars after plundering vandalized their house took them away to the Ahmedabad Razakar Camp. The said Razakars tortured them keeping in activity at the camp and one day later on receiving ransom money his two brothers were set released. 14/15 days after his (P.W.17) detention he was set released in exchange of ransom money.

344. On cross-examination done on part of all the 07 absconding accused P.W.17 stated in reply to defense question put to him that after independence of Bangladesh he did not see the above mentioned accused in the locality; that either he or any member of his family did not initiate any complaint before anywhere against them over the event arraigned.

345. P.W.17 denied the defense suggestions that the accused he implicated were not Razakars and they were not involved with the alleged incident; that the event arraigned did not take place; that what he testified implicating the accused was untrue and tutored and out of local rivalry over land dispute.

346. P.W. 18 Md. Hafiz Uddin (65) is resident of village Baraigaon under police station Trishal of District-Mymensingh. He is a direct witness to the devastating activities and forcible capture of civilian.

347. Before narrating the event he experienced P.W.18 stated that in 1971 after starting the war of liberation, Chairman of Peach Committee Abdul Khaleque Sarker of his locality set up a Razakar Camp at Ahmedabad High School. Four sons of Abdul Khaleque Sarker namely Anisur Rahman Manik (died during trial), Mokhlesur Rahman Mukul, Saidur Rahman Ratan, Shamsul Haque Bachchu (dead during trial) and Shamsul Haque Fakir, Sultan Fakir, Nurul Fakir, Mowlana Mofazzal Hossain and Adil along with many others of his locality joined in local Razakar Bahini.

348. P.W. 18 next stated that on 10th November at about 10.00 A.M. in 1971 the above mentioned (accused persons indicted) Razakars along with their cohort armed Razakars encircled and plundered their house, set the house on fire and burnt to death 08 cows setting fire to the cowshed. At the time of encirclement of their house, he (P.W.18) and his elder brother Golam Sobhan fled away. He went into hiding inside an adjacent ditch under water hyacinth and his brother Golam Sobhan took shelter inside the toilet and there from they saw the event.

349. P.W.18 stated that the above mentioned Razakars (accused persons indicted) after taking away the looted goods from their house moved to the house of their neighbor Afaz Uddin (now dead) and also looted his house and set fire three houses on fire. They also captured Ruhul Amin from that house and took him away to the Razakar Camp. Father of Ruhul Amin Ainuddin (now dead) and Afaz Uddin (now dead) moved to the said Razakar Camp and got Ruhul Amin released in exchange of Tk. 3,700/- as ransom money. Finally, P.W.18 stated that he knew the above mentioned Razakars (the accused persons indicted) beforehand as they were from their neighboring localities.

350. On cross-examination P.W.18 stated in reply to defense question put to him that in 1971 he was a student of class six of Ahmedabad High School. He studied up to class eight in the said school; that in 1971 Ahmedabad High School was two storied building; that after independence of Bangladesh he did not see the above mentioned accused in the locality; that either he or any member of his family did not initiate any complaint over the event he testified against the accused persons. In reply to question put to him by Tribunal P.W.18 stated that in 1971 accused Md. Sultan Mahmud Fakir was a student of class seven in his school.

351. P.W.18 denied the defense suggestions that the accused persons were not Razakars and they were not involved with the incident he testified; that the event arraigned did not take place; that being influenced by the local and political rivals of the accused persons and for enmity over land dispute he testified untruly implicating the accused; that he did not know the accused persons; and that what he testified in respect of formation of Razakar Bahini with affiliation of accused persons was untrue and tutored.

Finding with Reasoning on Evaluation of Evidence

352. **Mr. Tapas Kanti Baul**, the learned prosecutor drawing attention to testimony of witnesses relied upon in support of this count of charge submitted that it has been proved that the accused persons indicted forming active part of the criminal enterprise by launching attack at the house of civilians had carried out looting and devastating activities by setting houses on fire and they took away civilians to Razakar camp on forcible capture where they were subjected to torture. P.W.15, P.W.17 and P.W.18, the direct witnesses have proved such criminal acts and of them P.W.15 and P.W.17 were kept confined at the camp. Defence by cross-examining them could not impeach all these criminal acts constituting the offences of abduction confinement, torture and inhumane act.

353. It has been further argued that the accused persons indicted being part of the Razakar camp and having affiliation with local Razakar Bahini committed the criminal acts arraigned to further policy of the Pakistani occupation army and the same happened in context of the war of liberation.

354. Per contra, Mr. Gazi M.H Tamim the learned state defence counsel argued that P.W.15 does not implicate the accused Md. Sultan Mahmud Fakir and any other accused with the event

arraigned; that it depicts from testimony of P.W.18 that in 1971 accused Md. Sultan Mahmud Fakir was a minor boy. Thus, he was not a Razakar and did not commit any offence alleged. P.W.17 stated that he did not initiate any case over the alleged event after independence and thus the alleged event testified by him suffers from doubt.

355. It appears that this count of charge involves the act of forcible capture of unarmed civilians, keeping them confined in captivity at Razakar camp, causing torture to them and finally releasing them in exchange of ransom money. P.W.15 and P.W.17 are the victims who were kept confined at the camp. P.W.18 is a direct witness to the devastating activities carried by launching attack at the houses of civilians, the charge framed arraigns. P.W.10 is the wife of one victim who narrated how her husband, husband's elder brother Fazlul Haque Khondoker were subjected to beating in course of attack.

356. P.W.10 is the wife of one victim. It depicts from testimony of P.W.10 that accused Razakar Khalek Sarker and his son Razakar Bachchu (died during trial), Razakars Manik (died during trial), Mukul, Ratan, Shamsul Fakir, Nurul Fakir, Sultan Fakir, Razakar Mofazzal Moulana (died during trial), Razakar

Adil Sarker and their cohorts by conducting attack at their house and unlawfully detained her (P.W.10) husband, husband's elder brother Fazlul Haque Khondoker who were subjected to beating and were taken away to Razakar camp.

357. In view of above unimpeached narrative of P.W.10 Razakar Khalek Sarker was the key player in accomplishing the attack. Nine accused as have been implicated by P.W.10 of whom three Razakars Bachchu, Manik and Mofazzal Moulana already died during trial. Testimony of P.W.10 thus demonstrates that the accused Mukul, Ratan, Shamsul Fakir, Nurul Fakir, Sultan Fakir and Adil Sarker (absconding) being members of the criminal enterprise were with the gang when it carried out attack.

358. It is evinced from testimony of P.W.10, the wife of one victim that the gang after getting her husband and husband's elder brother apprehended took them away to the Razakar camp at Ahmedabad High School. Act of abduction of husband of P.W.10 was chained to the act of keeping the detainees confined at the Razakar camp.

359. It transpires that afterward, P.W.10 moved to Razakar camp and made request to Razakar **Manik (died during**

trial)and Md. **Sultan Mahmud Fakir** to set her husband and husband's elder brother at liberty. Defence could not refute it. At the same time it may be indubitably concluded that accuserd **Nakib Hossain Adil Sarker** was with the gang when it took away the husband of P.W.10 on unlawful, capture.

360. Thus, such appeal, made to accused Md. Anisur Rahman Manik(died during trial) and Md. Sultan Mahmud Fakir indicates it unerringly that accused Md. Sultan Mahmud Fakir and Md. Anisur Rahman Manik (died during trial) were culpably affiliated with the camp and its activities. Seeing the accused Md. Sultan Mahmud Fakir at the camp as unveiled in testimony of P.W.10, after the civilians were made unlawfully confined at the camp sufficiently proves that this accused too was concerned with the object of the attack.

361. It appears too from testimony of P.W.10 that her husband and husband's brother got released in night of the same day in exchange of ransom money of taka 500 and three and half maund rice and P.W.10 found them in injured condition. It remained uncontroverted. Retuning back home in injured condition from captivity at the Razakar camp unerringly

demonstrates that in captivity they were subjected to ill-treatment and physical torture.

362. Presence of accused Nakib Hossain Adil Sarker with the gang in effecting unlawful capture of civilians and presence of accused Md. Sultan Mahmud Fakir at the Razakar camp when the P.W.10 made request for release of her husband and husband's elder brother are sufficient to deduce it indubitably that these two accused Md. Sultan Mahmud Fakir and Nakib Hossain Adil Sarker were culpably concerned even with the act of causing torture to these two detainees in captivity.

363. It depicts that the Razakars P.W.10 named were from their neighbouring localities and thus naturally she knew them beforehand and thus her ocular narrative related to the event arraigned implicating these two accused is credible. P.W.10 does not seem to have made any exaggeration.

364. Now, let us assess what has been narrated by the victims i.e. P.W.15, P.W.17 and one direct witness P.W.18. It is evinced from ocular testimony of P.W.15 that he along with many other civilians was kept confined at the Razakar camp and they were tortured there. It also depicts that P.W.15 was kept in captivity for 15 days and eventually he was set at liberty in exchange of

ransom money. Such prolonged confinement naturally caused severe mental harm to P.W.15.

365. It also stands proved from ocular evidence of P.W.15 that other civilians kept confined at the same camp too were subjected to continuing and brutal torture in captivity at the Ahmedabad High School Razakar camp. It gets corroboration from testimony of P.W. 17 and P.W.18. We are thus constrained to view that the Razakar camp was rather a concentration camp or torture cell.

366. The charge framed arraigns that in conjunction with the successive attack all the nine accused of whom three already died during trial being active part of the criminal enterprise had conducted criminal acts which resulted in unlawful capture of civilians, confinement and torture in captivity.

367. It transpires from ocular testimony of P.W.15, one of victims that under the leadership of Razakar Md. Anisur Rahman Manik(died during trial) of Ahmedabad High School Razakar camp being accompanied by Bihari Police and some unknown armed Razakars came to their house and took him away on forcible capture to the said Razakar camp.

368. That is to say, testimony of P.W.15 proves the attack leading to his and others forcible capture and keeping them confined at the camp. But according to P.W.15 he could see only one accused Anisur Rahman (died during trial) accompanying the gang when it got him forcibly captured. Testimony of P.W.15 does not disclose the presence and complicity of other accused indicted with the commission of criminal acts arraigned.

369. Of four witnesses examined P.W.15 and P.W.17 are victims. They were kept in unlawful confinement at the Razakar camp on getting them forcibly captured by launching successive attack on the same day. It stands proved. Excepting ocular testimony of P.W.10, P.W.17 and P.W.18 the narrative made by P.W.15 does not implicate all the accused indicted with the event.

370. It transpires that the P.W.15 and P.W.17 and other civilians were forcibly captured not from a single site. By launching successive attack at their respective house they were unlawfully captured and were taken away to Razakar camp. Discrepancy as to presence of accused persons indicted with the gang when it conducted systematic attack may occur, as the P.W.15 might not have equal opportunity of seeing and knowing all the

perpetrators accompanying the gang. But we require assessing their narrative cumulatively in arriving at decision as to complicity and involvement of the accused persons indicted with the event.

371. It appears that excepting ocular testimony of P.W.15, in narrating the event P.W.10, P.W.17 and P.W.18 implicated all the accused indicted with the event. It stands proved that by launching successive attack at their house P.W.15 and P.W.17 were unlawfully captured and were taken away to Razakar camp.

372. The learned state defence counsel argued that accused Md. Sultan Mahmud Fakir was admittedly a student of class VII in 1971 and thus being a minor boy he did not have any form of culpability in committing the crimes arraigned. Prosecution in reply to it submitted that merely being a student of class VII does not prove conclusively that he was a minor boy at the relevant time, particularly when it has been proved that he too in exercise of his culpable affiliation with the Razakar camp was concerned with the criminal activities.

373. We are not agreed with above defence contention. Already we have rendered our reasoned finding as to age of this accused, in adjudicating the charge no.01. This accused might not have enrolled in Razakar Bahini formally. But it already stands proved that he being a quite able individual got consciously and culpably involved with the system criminal scheme of the Razakar camp. Presumably, being imbued by pro-Pakistan political ideology the accused Md. Sultan Mahmud Fakir too opted to keep him engaged with activities of Razakar Bahini, sharing intent of the group of attackers.

374. It stands proved that bringing defenceless civilians at the Razakar camp on unlawful capture and causing torture and harm to them in captivity was of course aimed to execute the common design. Accused persons indicted were part of the such criminal design as the evidence of victimized detainees cumulatively demonstrates that the accused persons indicted were consciously engaged in organizing the course of events of 'system cruelties'. Three accused indicted already died during trial. Thus, the rest six accused (1) Md. Mokhlesur Rahman Mukul (2) Md. Saidur Rahman Ratan (3) Shamsul Haque Fakir (4) Nurul Haque Fakir (5) Md. Sultan Mahmud Fakir and (6)

Nakib Hossain Adil Sarker are held criminally liable for the crimes arraigned.

375. We got it proved from unimpeached testimony of P.W.17, one victim and P.W.18, a direct witness who testified that in 1971 during the war of liberation, Chairman of Piece Committee Abdul Khaleque Sarker of their locality formed the Razakar Camp at Ahmedabad High School under Trishal Police Station and all the accused persons indicted joined in Razakar Bahini and got affiliated with its camp. Defence could not controvert this pertinent fact.

376. Ocular testimony of P.W.15 and P.W.17 indubitably demonstrates that those accused Razakars they mentioned forming part of criminal enterprise carried out attacks and committed criminal acts keeping the unarmed civilians confined in captivity at the said camp, on forcible capture. It remained unimpeached.

377. Defence simply denied what the P.Ws testified. But it could not bring anything, by cross-examining the P.W.s to taint the truthfulness of their version. In the case in hand, the accused persons not only aided and facilitated substantially but they

contributed to the perpetration of the crimes, by their act and conduct, as co-perpetrators.

378. It is evinced from ocular testimony of P.W.18 that the gang encircled and plundered their house, set the house on fire and burnt down 08 cows to death by setting fire to the cowshed. It also transpires that the accused Razakars after taking away the looted goods from their house moved to the house of their neighbor Afaz Uddin (now dead) and also looted his house and set fire three houses on fire.

379. Pattern of attack suggests concluding that malicious intent behind such appropriation of civilians' property and destructive activities was to spread terror and intimidation amongst the pro-liberation civilians. Devastating activities conducted by arson caused serious detriment to the 'normal livelihood' of civilians including relatives of victims.

380. Such aggravated devastating activities were gravely detrimental to normal livelihood of civilians and was indeed express great contempt for the people and their normal livelihood which caused immense harm, horror and intimidation constituting the offence of **'other inhumane act'**.

381. Crimes arraigned in this count of charge did not result from the criminal propensity of single individual[s] forming part of the group but constituted manifestations of ‘collective criminality’ to which the accused persons were active part.

382. On cumulative and rational evaluation of evidence and circumstances revealed and pursuant to reasoned finding made herein above we arrive at decision that prosecution has been able to prove it beyond reasonable doubt that the accused (1) Md. Mokhlesur Rahman Mukul (2) Md. Saidur Rahman Ratan (3) Shamsul Haque Fakir (4) Nurul Haque Fakir (5) Md. Sultan Mahmud Fakir and (6) Nakib Hossain Adil Sarker, by their act and conduct forming part of systematic attack pursuant to common design participated, aided, abetted and substantially contributed to the actual commission of the offences of **‘abduction’, ‘confinement’, ‘torture’ and ‘other inhumane act’** as crimes against humanity enumerated in section 3(2)(a)(g)(h) of the Act of 1973 and thus all the six accused persons incurred criminal liability under section 4(1) of the Act of 1973.

Adjudication of Charge No.06

[09 accused indicted of whom 03 died during trial]

[Abduction, confinement, torture and other inhumane act caused upon 04 Hindu civilians of villages-Kushtia

Prothamkhnada and Kali bazar under police station-Trishal, District-Mymensingh]

383. Charge: That on 10.11.1971, at 07:00 P.M , in continuation of the attack as narrated in charge no.05 a group formed of the accused (1) Md. Anisur Rahman Manik (2) Md. Mokhlesur Rahman Mukul (3) Md. Saidur Rahman Ratan (4) Md. Shamsul Haque Bachchu (5) Shamsul Haque Fakir (6) Nurul Haque Fakir (7) Md. Sultan Mahmud Fakir (8) Abul Basar Md. Mofazzal Hossain @ Moulavi Mofazzal and (9) Nakib Hossain Adil Sarker and some other armed Razakars by launching attack at villages-Kushtia, Prothamkhnada and Kali bazar under police station-Trishal, District-Mymensingh forcibly captured Dharendra Chakraborty [now dead], Birendra Chakraborty, Dinesh Chandra Ghosh [now dead] and Harakumar Ghosh [now dead] and took them away to Razakar camp where they were subjected to torture in captivity. Few days later, the detained victims were set at liberty on condition of being converted to Islam religion.

Therefore, the accused (1) Md. Anisur Rahman Manik (2) Md. Mokhlesur Rahman Mukul (3) Md. Saidur Rahman Ratan (4) Md. Shamsul Haque Bachchu (5) Shamsul Haque Fakir (6) Nurul Haque fakir (7) Md. Sultan Mahmud Fakir (8) Abul Basar Md. Mofazzal Hossain @ Moulavi Mofazzal and (9) Nakib

Hossain Adil Sarker by their act forming part of attack jointly participated, facilitated, abetted and substantially contributed to the commission of the offences of '**abduction**', '**confinement**', '**torture**' and '**other inhumane act**' as crimes against humanity as specified in section 3(2)(a)(g)(h) read with section 4(1) of the of the International Crimes (Tribunals) Act, 1973 which are punishable under section 20(2) of the Act.

Evidence of Witnesses Examined

384. Prosecution relies upon three witnesses i.e. P.W.15, P.W.17 and P.W.18 in support of this count of charge. Of them P.W.15 and P.W.17 are the victims of the event arraigned in charge no.05 which involves the offences of abduction, confinement and torture to them in captivity. They claim to have seen when and how the four Hindu civilians were kept confined at the Razakar camp and subjected to torture as arraigned in charge no.06. Before weighing their testimony first let us see what they have testified.

385. P.W. 15 Shawkat Alam (62) is resident of village Biarta under police station Trishal of District-Mymensingh. P.W.15 stated that during the time of liberation war in 1971, he was about 14/15 years old and he was an SSC candidate. He is a victim of the event arraigned in charge no.05.

386. Before narrating the facts related to the event arraigned in this count of charge P.W.15 stated how he was kept confined at the Ahmedabad Razakar camp on abduction. We have already found in determining the charge no.05 that a group formed of Razakars of Razakar camp set up at Ahmedabad High School forcibly captured him (P.W.15) and took him away to the said Razakar camp and kept him confined in a room of the ground floor.

387. In respect of fact related to the event arraigned in this charge no.06 P.W.15 stated that on the same day in the evening the Razakars and Bihari Police abducted Dhiren Chakraborty (now dead) from village Kushtia, Dinesh Chandra Gosh (now dead) and Haro Kumar Gosh (now dead) from village Baroi, the adjacent village of the camp and brought them to the said Razakar camp and kept them confined in the same room along with him (P.W.15) and caused torture to them.

388. P.W.15 continued stating that three days later excepting him other Muslims were set released from the camp in exchange of money. Some Hindu detainees too were set at liberty on condition of being converted to Muslim religion. He (P.W.15)

was tortured in captivity and he was released after 15 days later in exchange of Tk. 3,000/- as ransom.

389. On cross-examination done on part of absconding accused Anisur Rahman Manik P.W.15 stated in reply to defence question put to him that after independence of Bangladesh accused Anisur Rahman Manik contested in the local Union Parishad Election and National Parliament Election as a candidate of Jatio Party and he was elected.

390. P.W.15 denied the defence suggestions that the accused he named was not Razakars and no incident as he testified took place; that the accused he named was not involved with the alleged event; and that what he testified implicating the accused Anisur Rahman Manik (died during trial) was untrue and out of rivalry.

391. P.W. 17 Mahatab Uddin (83) is resident of village Kanihari under police station Trishal of District-Mymensingh. P.W.17 stated that he passed SSC in the year 1963 and HSC in the year 1966. He is one of victims of the event arraigned in charge no.05. He stated what happened to him in captivity and

what he experienced during his confinement at the Razakar camp.

392. Already in determining the charge no.05 it has been found proved that accused persons indicted namely Anisur Rahman Manik(died during trial), Mokhlesur Rahman Mukul, Saidur Rahman Ratan, Shamsul Haque Bachchu (died during trial), Shamsul Haque Fakir, Md. Sultan Mahmud Fakir, Nurul Haque Fakir, Nakib Hossain Adil and Mofazzal Hossain(died during trial) joined in local Razakar Bahini formed on initiation of Abdul Khaleque Sarker, Chairman of local Piece Committee.

393. In addition to the event arraigned in charge no.05 P.W.17 in recounting what he experienced after the Hindu civilians were brought to the camp and kept confined. P.W. 17 stated that during his captivity (fact related to the event arraigned in charge no.05) at the Ahmedabad Razakar camp he found Dharendra Chakraborty, Birendra Chakraborty, Dinesh Chandra Gosh, Harakumar Chandra Gosh, Abdus Sobhan Bepari, Mannan Khandakar, and Shamsul Alam along with others were brought at the camp by the Razakars he named (accused persons indicted) and they were kept detained in captivity.

394. P.W.17 also stated that four Hindu detainees (victims of the event arraigned in charge no.06) were forced to get converted to Muslim religion and putting cap on their heads they were then released. Finally, P.W.17 stated that he knew the Razakars he named beforehand as they were from their neighboring localities.

395. On cross-examination done on part of all the 07 absconding accused P.W.17 stated in reply to defense question put to him that after independence of Bangladesh he did not see the accused persons he named in the locality; that Ahmedabad High School is about half mile to the east-south side from their house and that in 1971 Ahmedabad High School was a two storied building.

396. P.W.17 denied the defense suggestions that the accused persons were not Razakars and they were not involved with the incident; that the event arraigned did not take place; that he testified implicating the accused persons being tutored by others; that being influenced by the local and political rivalry and due to enmity regarding the land he testified untruly implicating the accused persons; and that he did not know the accused persons.

397. P.W.17 also denied the core defence suggestions that the accused persons were not Razakars; they did not commit any criminal act alleged; that he did not see what he testified and that what he narrated was untrue and tutored.

398. P.W. 18 Md. Hafiz Uddin (65) is resident of village Baraigaon under police station Trishal of District-Mymensingh. He is a direct witness to the facts related to the event arraigned in charge no.05. He also narrated facts related to act of confinement of Hindu civilians and causing torture to them in captivity at the Ahmedabad Razakar camp as arraigned in charge no.06.

399. Already in adjudicating the charge no.05 it has been found proved that all the accused persons indicted having affiliation with the Razakar camp set up at Ahmedabad High School participated in accomplishing abduction, confinement of P.W.15, P.W.17 who were subjected to inhuman torture there.

400. P.W. 18 stated that he heard from the people of his locality that the Razakars he named (accused persons indicted in charge no.05) forcibly captured Dhirendra Chakraborty, Birendra Chakraborty, Dinesh Chandra Gosh and Harakumar Gosh and

took them away to the Ahmedabad Razakar Camp. P.W.18 also stated that the above mentioned Razakars tortured them in captivity and thereafter released those detained Hindu civilians after making them forcefully converted to Muslim religion.

401. On cross-examination done on part of all the absconding accused P.W.18 stated in reply to defence question put to him that in 1971 he was a student of class six of Ahmedabad High School; that in 1971 Ahmedabad High School was two storied building.

402. In cross-examination P.W.18 denied the core defense suggestions that the accused were not Razakars and they were not involved with the incident he testified ; that the event arraigned did not take place; that what he testified implicating the accused persons was untrue and out of political rivalry and that he did not know the above accused in 1971.

Finding with Reasoning on Evaluation of Evidence Presented.

403. The learned Prosecutor **Mr. Tapas Kanti Baul** argued that affiliation of accused persons indicted with the event arraigned has been proved. Testimony of P.W.15 and P.W.17 the victims of the event arraigned in charge no.05 proves the fact of keeping

four Hindu civilians unlawfully confined at the same Razakar camp when during their confinement they all were subjected to torture. The detained Hindu civilians eventually got release after getting forcefully converted to Muslim religion which caused immense mental harm to them.

404. It has been also argued that it has been proved too that the detained Hindu civilians were subjected to torture in captivity and in causing such inhuman treatment the accused persons being members of the system scheme of the camp substantially facilitated in committing such prohibited criminal acts which happened in context of war time situation. Defence could not refute that the P.W.15 and P.W.17 were the detainees of the event arraigned in charge no.05 and thus they had natural occasion of seeing the criminal acts done to the Hindu detainees at the same camp.

405. **Mr. Gazi M.H. Tamim** argued that the witnesses relied upon in support of this count of charge are not credible; that they did not see the act of alleged forcible capture of Hindu civilians; that there is no evidence as to which accused and in which manner caused alleged torture and mistreatment to Hindu

civilians. It creates reasonable doubt. Thus, the accused persons indicted deserve acquittal of the charge.

406. It appears that this count of charge involves the criminal acts constituting the offences of forcible capture of numerous civilians belonging to Hindu religion, keeping them unlawfully confined at the Razakar camp and causing torture to them in captivity. The event also includes prohibited act of forceful conversion of Hindu detainees to Muslim religion. Finally, the detainees were set at liberty in exchange of ransom money.

407. P.W.15 is one victim of the event arraigned in charge no.05. In addition to this event he testified what he saw during his captivity at the Razakar camp. It stands proved that during his captivity at the Razakar camp he saw the Hindu civilians detained at the same camp. Forcible capture of the Hindu civilians happened subsequent to forcible capture of the P.W.15, one victim of the event arraigned in charge no.05.

408. Already it stands proved that the P.W.15 was kept confined at the camp and was subjected to torture. Besides, being detained at the camp he had natural occasion of seeing and

experience the inhumane treatment caused even to the Hindu detainees, the victims of the event arraigned in charge no.06.

409. Keeping the Hindu civilians confined at the Razakar camp and causing torture to them chained to the act of their forcible capture are found evinced from testimony of P.W.15 as at the relevant time he too was kept confined at the same camp. Now let us see what we find from ocular narrative of two other witnesses.

410. It transpires too that P.W. 17 was kept in unlawful confinement at the same Razakar camp, as already proved in adjudicating the charge no.05. It stands proved from evidence of P.W.17 that during his captivity at the Ahmedabad Razakar camp he found that four Hindu civilians Dharendra Chakraborty, Birendra Chakraborty, Dinesh Chandra Gosh, Harakumar Chandra Gosh, along with others were brought at the camp by the Razakars he named (accused persons indicted in charge no. 05) and they were kept detained in captivity.

411. Keeping the above four Hindu civilians unlawfully confined was the upshot of their forcible capture by launching attack. Obviously such atrocious event would not have been possible to happen by any single person. Presumably, such

attack was conducted by plurality of persons. It thus adds assurance as to participation of the accused persons being part of the criminal enterprise, in conducting the attack.

412. It is demonstrated from unimpeached testimony of P.W.17 that four Hindu detainees (victims of the event arraigned in charge no.06) were forced to get converted to Muslim religion and putting cap on their heads they were then released. It gets corroboration from P.W.15.

413. Uncontroverted testimony of P.W.18 demonstrates patently that he experienced the criminal activities carried out in course of attack at their house, as arraigned in charge no.05 and narrated how it happened. In addition to it, P.W.18 is a hearsay witness in respect of the event arraigned in charge no.06. According to him he (P.W.18) heard from the people of their locality that the accused Razakars he implicated with the event arraigned in charge no.05 took away four Hindu civilians to Razakar camp on forcible capture where they were subjected to torture and eventually they were released after making them forcefully converted to Muslim religion.

414. Defence could not impeach the hearsay narrative of the P.W.18. The above piece of hearsay evidence of P.W.18 relates

to complicity of the accused persons indicted with the phase of committing unlawful abduction of four Hindu civilians. Hearsay evidence of P.W.18 on this matter inspires credence as it already stands proved that the accused persons indicted forming part of the criminal gang also carried out attack as arraigned in charge no.05.

415. Thus, the above piece of hearsay evidence combined with the unimpeached testimony of P.W.15 and P.W.17 in this regard inspires credence. It is noteworthy to state that even anonymous hearsay evidence can be relied on without any corroboration. Beside, in respect of admissibility of hearsay evidence the **Appellate Division of the Supreme Court of Bangladesh** has observed in the case of **A.T.M. Azharul Islam** that--

“It is the cardinal principle of law of evidence that hearsay evidence is to be considered together with circumstances and the material facts depicted. Hearsay evidence is admissible and the Court can rely on it provided it has probative value.”

[Criminal Appeal N0.12 of 2015; judgment 31st October, 2019. para-129; 14 SCOB [2020] AD]

416. P.W.18 being a resident of the vicinity attacked had likely opportunity of hearing the event of attack leading to

mistreatment caused to Hindu detainees who were kept unlawfully confined and subjected to torture at the Razakar camp. .

417. The crucial fact relating to culpable affiliation of accused persons with the Razakar camp and its activities could not be refuted by defence. P.W.17 in recounting the event leading to his forcible capture and keeping him confined along with other detainees at the Razakar camp has implicated all the accused indicted with the event. It could not be impeached. It provides justifiable assurance also as to involvement of the accused persons even with the act of confinement and torture to Hindu civilians detained at the same camp.

418. It stands proved from uncontroverted testimony of P.W.15 who too was kept in confinement at the same camp that the four Hindu detainees were subjected to torture in captivity and eventually they were released after making them forcefully converted to Muslim religion. Presumably, such forceful conversion to Muslim religion had acted as condition of getting release from captivity. Such prohibited act was gravely detrimental to human rights and dignity that indubitably caused

severe mental harm to the detained Hindu civilians constituting the offence of '**other inhumane act**'.

419. We already got it proved that by launching systematic attack four Hindu civilians were apprehended and kept confined at Ahmedabad Razakar camp where they were subjected to torture. Torture does not always mean physical harm. We reiterate that keeping defenceless Hindu civilians in unlawful confinement itself indisputably resulted in severe mental harm and mistreatment which amounted to '**torture**'. Such criminal acts were committed not for any justified reason. Rather, it happened in context of war time situation directing a particular religious community.

420. Presumably, being imbued by extreme aggressive attitude to the Hindu community and also to further the policy of Pakistani occupation army the accused persons indicted being part of system and collective criminal scheme committed the attack directing Hindu civilians.

421. Tribunal notes that out of nine accused indicted three accused (1) Md. Anisur Rahman Manik(2) Md. Shamsul Haque Bachchu and (3) **Abul Basar Md. Mofazzal Hossain @**

Moulavi Mofazzal died during trial. Thus, decision as to criminal liability is to be rendered in respect of the rest six accused indicted.

422. It is not required to show which accused in which manner and by which act or conduct participated in causing torture and inhuman treatment. Since the act of unlawful capture of Hindu civilians resulted in their unlawful confinement at the Razakar camp and since it already stands proved that the six accused indicted and three other accused who already died during trial it may be unerringly and justifiably concluded that all these six accused indicted being part of the system criminal scheme of the camp aided, facilitated and substantially contributed to the commission of post abduction criminal acts.

423. The learned state defence counsel argued that P.W.15 does not implicate the accused Md. Sultan Mahmud Fakir with the event arraigned and testimony of P.W.17 and P.W.18 in respect of complicity of accused persons suffers from non-specificity and thus P.W.17 and P.W.18 are not credible and what they testified does not carry credence. Accused Md. Sultan Mahmud Fakir was a minor boy in 1971 and thus testimony in respect of his alleged participation as a member of the gang is untrue.

424. We are not agreed with the above defence contention. P.W.15 and P.W.17 are the victims of the event arraigned in charge no.05 and already it has been proved as to how they got forcibly captured and kept confined at the camp. Testimony of P.W.17 and P.W.18 shall demonstrate that the gang formed of all the accused persons indicted had carried out the attack leading to unlawful confinement of captured civilians at the Razakar camp. P.W.15 and the four Hindu civilians were forcibly captured not from the same site and by launching same attack. Thus, P.W.15 might not have seen all the members of the gang that had conducted the attack in apprehending him, prior to the event arraigned in this charge no.06.

425. Besides, due to lapse of long passage of time one may not be able to testify the event with specific and detail precision. Such non specificity in memorizing an event that happened long several decades ago does not taint witness's testimony. The core essence unveiled in testimony is to be assessed.

426. The learned state defence counsel argued too that in 1971 accused Md. Sultan Mahmud Fakir was a minor boy and thus he cannot be held liable. We do not agree with this contention. Already we have resolved this matter, in adjudicating charge no.01. However, there can be no room to deduce that in 1971

this accused was a tender aged boy and thus did not participate to the commission of any crime arraigned, particularly where already it has been proved that he was culpably and actively affiliated in locally formed Razakar Bahini and its camp and knowingly assisted aided and facilitated the criminal enterprise in accomplishing crimes directed against pro-liberation civilians of the localities.

427. It has been further argued by the learned state defence counsel that the version of witnesses implicating the accused persons is untrue as there is rivalry between the accused persons and the witnesses.

428. Tribunal notes that existence of rivalry contended by defence is a specific plea which needs to prove by the defence. All the accused have been absconding. It is not understood how the learned state defence counsel becomes aware of such defence plea in the name of defending fugitive accused. We reiterate that avoiding prosecution by remaining in absconsion the accused persons do not have due opportunity to agitate and prove any such defence plea.

429. However, in deciding the criminal liability for the event arraigned in charge no.05 we have already rendered reasoned

finding that all the accused indicted were engaged in accomplishing forcible capture of the victims of the event arraigned in charge no.05.

430. It already stands proved too that the accused persons indicted in charge no.06 maintained constant and culpable nexus with Razakar camp. Thus, and on cumulative evaluation of testimony of P.W.15, P.W.17 and P.W.18 it may be deduced irresistibly that in perpetrating criminal activities including confinement of four Hindu civilians and causing torture to them in captivity at the camp and forcefully made them converted to Muslim religion the accused (1) Md. Mokhlesur Rahman Mukul (2) Md. Saidur Rahman Ratan (3) Shamsul Haque Fakir and (4) Nurul Haque Fakir, (5) Md. Sultan Mahmud Fakir and (6) Nakib Hossain Adil Sarker were knowingly concerned with the phases of the event arraigned and thus they incurred liability for the offences, being active part of joint criminal enterprise. It is to be noted that three other accused indicted in this count of charge died during trial and thus no finding in respect of their liability is required to be rendered.

431. Tribunal notes that torture and other cruel inhuman or degrading treatment is patent violation of Universal Declaration

of Human Rights adopted in the United Nations General Assembly. Article 5 of the UDHR of 1948 states that: “No one shall be subjected to torture or to cruel, inhuman or degrading punishment or treatment”.

432. ‘Torture’ and ‘inhuman treatment’ to numerous Hindu civilians keeping confined in a concentration camp was rather a form of intimidation or coercion to them. ‘Torture’ is grave breaches of the Geneva Conventions, violations of the laws or customs of war. ‘Torture’ as a criminal offence caused to detainees was aimed through the infliction of severe mental pain, to attain a certain purpose and the propose was to spread terror and intimidation among the pro-liberation civilians of the vicinity attacked.

433. Pattern of criminal acts and activities carried out at the Razakar camp were unquestionably an organised form of joint criminal enterprise to which the accused persons were active and conscious part. Facts and circumstance lead to the conclusion that a concreted system of torture and cruel treatment were accomplished purposefully aiming to subjugate the Hindu detainees and to spread terror among their community.

434. ‘Torture’ includes intentional infliction of severe pain and suffering, physical or mental upon Hindu civilians detained at the Razakar camp which was rather a concentration camp the system of scheme of which intensified the torturous acts to the detainees.

435. ‘Confinement’ combined with forceful conversion to Muslim religion indeed caused severe mental harm to the victims, four Hindu civilians detained at the camp. It is not necessary to show that the detainees were subject to any physical injury. In this regard the **ICTY Trial Chamber** observed in the case of **Limaj** that--

“There [is no] requirement that the act or omission . . . caused a physical injury, as mental harm is a prevalent form of inflicting torture.”

[Limaj et al., (Trial Chamber), November 30, 2005, para. 236]

436. Finally, on rational and intrinsic appraisal of evidence and facts and circumstances unveiled we conclude that prosecution has been able to prove beyond reasonable doubt that the accused (1) Md. Mokhlesur Rahman Mukul (2) Md. Saidur Rahman Ratan (3) Shamsul Haque Fakir (4) Nurul Haque Fakir, (5) Md. Sultan Mahmud Fakir and (6) Nakib Hossain Adil Sarker being active part of criminal enterprise and collective criminality, in

exercise of their affiliation with local Razakar camp participated by providing active and substantial assistance and aid in perpetration of the offences of **‘abduction’**, **‘confinement’**, **‘torture’** and **‘other inhumane act’** as **‘crime 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.

XII. Conclusion

437. In the case in hand, in adjudicating all the six counts of charges it stands proved that the six accused persons are found criminally liable along with three other accused who died during trial for the offences as crimes against humanity. These offences are considered as ‘group crimes’ committed by plurality of persons. The accused persons are found to have had acted being part of criminal enterprise, sharing common purpose.

438. The accused persons incurred liability in committing the crimes proved by virtue their participation and in exercise of culpable attachment with the Razakar camp set up at Ahmedabad High School which was rather a concentration camp. The camp was operated by Abdul Khalek Sarker, the father of four accused. Presumably, such concentration camp

was set up indenting to further policy and plan of Pakistani occupation force.

439. The crimes for which the accused persons have been found criminally responsible were not isolated crimes. Those were part of ‘*systematic*’ and ‘*planned*’ ‘*attack*’ intended to the accomplishment of offences of crimes against humanity directing unarmed pro-liberation civilian population. In the case in hand, it is quite evident that the atrocious criminal acts proved were ‘committed against civilian population’ within a context forming part of ‘systematic attack’. The facts and circumstances unveiled before us unambiguously have proved the ‘contextual requirement’ to qualify the offences as crimes against humanity for which the six accused persons incurred liability.

440. Despite lapse of long more than four decades it appears from the testimony of key witnesses that they had fair occasion of seeing and experiencing crucial phases of the events arraigned leading to confinement, torture and murder of three civilians including two unarmed freedom-fighters, and the prohibited activities carried out at the Razakar camp.

441. We have found that the testimony of witnesses on material particular does not appear to have been suffered from any infirmity that may smash their credibility. All the six accused persons have been absconding. It may be considered as an incriminating fact which adds assurance to their criminal liability.

442. It has been found proved that pattern of attacks was the patent reflection of grave aggression and hatred to the unarmed freedom-fighters and pro-liberation civilians. By committing atrocious criminal acts the accused persons intended to spread coercion and horror among the pro-liberation civilians of the localities. In conducting such horrific attacks the accused persons exercised their ascendancy over the Razakar camp, to further the system criminal scheme.

443. Accused persons' active and visible culpable association with the Razakar Camp was the fair indicia of their substantial and potential level of culpability in committing the crimes proved. Their conscious and culpable conduct---antecedent, contemporaneous and subsequent, as have been found---all point to their unerring guilt which is well consistent with their 'concern' and 'participation' in the commission of the crimes proved.

444. In the case in hand, it stands proved that appalling atrocities were committed on innocent pro-liberation people which offers an inevitable portrayal as to antagonistic and notorious role of people who deliberately sided with the policy of Pakistani occupation army, in the name of preserving Pakistan.

445. It has been proved that local leaders and followers of peace committee belonging to pro-Pakistan political party, particularly Jamat E Islami had contributed in forming the Razakar camp at Ahmedabad High School and the accused persons associated with it substantially colluded as the architects of the crimes against humanity committed in 1971 directing civilians, in violation of customary international law.

446. All the six accused persons have been absconding since initiation of the trial. They could not be arrested in execution of warrant issued by Tribunal and they even did not opt to surrender in response to the notification published as required under law, to face the accusation.

447. Presumably, they are on the run to evade responsibility of committing the offences perpetrated by them and such conduct increases their culpability. Such act of deliberate absconding has

been considered to be relevant even in proving their complicity with the crimes arraignments. The convicted accused persons deliberately waived their right to be present at trial. This conduct adds further to their culpability.

448. The nation will be failing to recognize the untold sacrifices of millions of people who laid their lives and supreme honour for the cause of our long cherished independence if individuals like the present accused persons are not brought to book for their notorious role and active contribution and endorsement for committing the systematic atrocities in 1971, in the territory of Bangladesh.

XIII. Verdict on Conviction

449. The standard of the settled norm that burden of establishing the guilt or criminal responsibility of the persons accused of crimes arraigned squarely lies upon the prosecution has been found to be reasonably met as the accused (1) Md. Mokhlesur Rahman Mukul (2) Md. Saidur Rahman Ratan (3) Shamsul Haque Fakir (4) Nurul Haque Fakir, (5) Md. Sultan Mahmud Fakir and (6) Nakib Hossain Adil Sarker are found to have incurred liability for the atrocious crimes which have been proved beyond reasonable doubt, as already determined.

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

Six(06) accused (1) Md. Mokhlesur Rahman Mukul (2) Md. Saidur Rahman Ratan (3) Shamsul Haque Fakir (4) Nurul Haque Fakir, (5) Md. Sultan Mahmud Fakir and (6) Nakib Hossain Adil Sarker

Charge No.01: GUILTY of aiding, abetting, assisting and 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 they be convicted and sentenced under section 20(2) of the said Act.

Four (04) accused (1) Md. Saidur Rahman Ratan, (2) Shamsul Haque Fakir, (3) Md. Sultan Mahmud Fakir and (4) Nakib Hossain Adil Sarker

Charge No.02: GUILTY of participating, aiding, abetting and substantially contributing to the accomplishment of **abduction**’, ‘**confinement**’ and ‘**torture**’ as ‘**crimes**

against humanity' as enumerated in section 3(2)(a)(g)(h) of the Act of 1973 and they be convicted and sentenced under section 20(2) of the said Act.

Five (05) accused (1) Md. Mokhlesur Rahman Mukul, (2) Md. Saidur Rahman Ratan, (3) Shamsul Haque Fakir, (4) Nurul Haque Fakir and (5) Nakib Hossain Adil Sarker

Charge No.03: GUILTY of participating, substantially abetting, facilitating and contributing in committing the criminal acts constituting the offences of **'abduction', 'confinement', 'torture', 'other inhumane act'and 'murder'** as enumerated in section 3(2) (a) (g)(h) of the Act of 1973 they be convicted and sentenced under section 20(2) of the said Act.

Three (03) accused (1) Md. Mokhlesur Rahman Mukul, (2) Md. Saidur Rahman Ratan and (3) Nurul Haque Fakir

Charge No.04: GUILTY of participating by providing active, substantial and practical assistance in perpetration of **'abduction', 'confinement', 'torture', other 'inhumane act'and 'murder'** as enumerated in section 3(2)(a)(g)(h) of the Act of 1973 and they be

convicted and sentenced under section 20(2) of the said Act.

Six(06) accused (1) Md. Mokhlesur Rahman Mukul, (2) Md. Saidur Rahman Ratan, (3) Shamsul Haque Fakir ,(4) Nurul Haque Fakir, (5) Md. Sultan Mahmud Fakir and (6) Nakib Hossain Adil Sarker

Charge No.05: GUILTY of participating, aiding, facilitating and substantially contributing to the commission of the offences of ‘abduction’, ‘confinement’, ‘torture’ and ‘other inhumane act’ as crimes against humanity as specified in section 3(2) (a) (g)(h) of the Act of 1973 and they be convicted and sentenced under section 20(2) of the said Act.

Six(06) accused (1) Md. Mokhlesur Rahman Mukul, (2) Md. Saidur Rahman Ratan, (3) Shamsul Haque Fakir, (4) Nurul Haque Fakir, (5) Md. Sultan Mahmud Fakir and (6) Nakib Hossain Adil Sarker

Charge No.06: GUILTY of participating, aiding, facilitating and substantially contributing to the commission of the offences of ‘abduction’, ‘confinement’, ‘torture’ and ‘other inhumane act’ as crimes against humanity as specified in section 3(2) (a) (g)(h) of the Act of 1973 and they be convicted and sentenced under section 20(2) of the said Act.

XIV. Verdict on Sentencing

451. Mr. Tapas Kanti Baul, the learned prosecutor concluded the summing up by placing jurisprudential justification on awarding highest punishment to the convicted accused, particularly for the offence of killing of unarmed freedom-fighters and pro-liberation civilians(as listed in charge nos.1,3 and 4). It has been submitted that the punishment to be awarded should be commensurate to the gravity and magnitude of offences proved and mode of participation of convicted accused therewith. The convicted persons had carried out horrendous criminal acts knowingly, being part of the criminal enterprise, in exercise of their culpable affiliation in local Razakar Bahini and its camp.

452. The learned prosecutor drew attention to the barbarity the convicted accused persons had shown by participating to the commission of the crimes proved. Number of victims, pattern and magnitude of the crimes proved together deserve to be taken into account as aggravating factor in awarding just and highest punishment although it will not be enough to lessen the pain and trauma of victims and relatives of victims, the learned prosecutor added.

453. On contrary, **Mr. Gazi M.H. Tamim**, the learned state defence counsel simply submitted that since the prosecution could not prove the arraignments brought by credible evidence and since the accused persons have been prosecuted simply out of rivalry and conflict they deserve acquittal. It has not been opted to focus on any mitigating factor, if any.

454. Tribunal reiterates that awarding appropriate punishment is the manner which responses to the nation's cry for justice for the horrendous criminal acts committed by the convicted accused persons. Justice demands that imposing punishment must be proportionate to the gravity of the crimes proved so that it reflects public abhorrence of the horrific crimes.

455. The sentence to be awarded must reflect the inherent gravity of the criminal conduct of the convicted accused persons. In the case in hand, it stands proved that the accused persons being culpable part of the Razakar camp set up at Ahmedabad High School deliberately and knowingly participated in committing crimes proved with extreme aggression and it deserves to be considered as aggravating factor in assessing the gravity of offences proved.

456. It stands proved that the criminal conduct of the convicted accused persons in accomplishing abduction, confinement, torture and murder of unarmed freedom-fighters and pro-liberation civilian (as listed in charge nos. 1,3 and 4] was incontestably heinous.

457. It has been found proved that the convicted accused persons, being part of the criminal enterprise knowingly and consciously contributed and assisted in accomplishing the diabolical offences of murder of numerous unarmed civilians. Tribunal is thus obliged to have regard to it and the gravity of the crimes for which the accused persons have been convicted for the crimes arraigned in these three counts of charges.

458. It is apt to state that there remains no scintilla of doubt that the convicted accused persons had acted the brutal and heinous crimes including the killing of unarmed civilians (**as listed in charge nos. 1, 3 and 4**). Such crimes caused untold pain and trauma even to the relatives of victims.

459. It has been proved that the convicted accused persons in exercise of their dominant and culpable association with the Razakar camp which was operated as a concentration camp

consciously contributed, aided and facilitated unlawful capture of civilians who were kept confined there and eventually they were annihilated and thus the convicted accused persons have been found guilty of the ‘system form of criminal scheme’ [**as listed in charge nos. 1, 3 and 4**]. Such mode of participation of convicted accused persons to the commission of crimes proved is considered as an aggravating factor.

460. The above is the apparent portrayal of intense notoriety of Razakar Bahini directing the unarmed civilians in 1971 during the war of liberation. Despite being Bangalee the convicted accused persons opted to remain engaged with barbaric and monstrous acts, in exercise of their membership in said paramilitia auxiliary force.

461. The victims of the vicious atrocities constituting the offences as crimes against humanity as found proved in this case form fraction of three millions of martyrs. The nation is now going ahead just in exchange of the myriad sacrifice of three millions martyrs and hundreds of thousands of our mothers and sisters who laid their supreme worth for the cause of our independence. It should not be forgotten. The nation pays gleaming tribute and salute to them for the sacrifice they laid,

462. Thus, awarding sentence must commensurate to severity and level of barbarity of crimes proved in committing which the convicted accused persons consciously participated, aided, abetted and substantially contributed. In this regard we recall the observation made by the Appellate Division of Supreme Court of Bangladesh in the **Nizami Appeal Judgment** which is as below:

“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” [Nizami Appeal Judgment, p.152]

463. The inherent nature and pattern of the violence and aggression conducted as found proved [as arraigned in charge nos.1,3 and 4] indisputably makes the issue of awarding just punishment extremely imperative. 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. The barbaric wrongs found proved had rather painted the notion of humanity with countless shame and untold shock. **Punishment** to be awarded does not restore to the victims and sufferers anything comparable to what they lost.

464. Tribunal notes that the gravity of the offence proved is considered as ‘the litmus test’ in awarding an appropriate sentence. In the case of **Jelusic**, it has been observed by the **ICTY Appeal Chamber** that--

“Consideration of the gravity of the conduct of the accused is normally the starting point for consideration of an appropriate sentence.”

[ICTY Appeals Chamber in the case of Jelusic, July 5, 2001, para. 94]

465. In view of reasoned discussion made herein above and considering the nature of crimes proved and proportion to the gravity of offences and also keeping the factors as discussed 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 offences as crimes against humanity proved are condemned and sentenced as below, under the provision of section 20(2) of the Act of 1973:

Hence it is
ORDERED

Six (06) accused **(1)** Md. Mokhlesur Rahman Mukul, son of late Abdul Khaleque Sarkar and Most. Sufia Khatun of village-

Dewpara under Police Station-Trishal, District-Mymensingh(2) Md. Saidur Rahman Ratan, son of late Abdul Khaleque Sarkar and late Most. Sufia Khatun of village- Dewpara under police station-Trishal, District-Mymensingh(3) Shamsul Haque Fakir, son of late Achhmat Ali Fakir and late Most. Achhia Khatun of village-Biarta under Police Station-Trishal, District-Mymensingh(4) Nurul Haque Fakir, son of late Achhmat Ali Fakir and late Most. Achhia Khatun, of village-Biarta under Police Station- Trishal, District-Mymensingh(5) Md. Sultan Mahmud Fakir, son of late Achhmat Ali Fakir and late Most. Achhia Khatun, of village-Biarta, Police Station-Trishal, District-Mymensingh and (6) Nakib Hossain Adil Sarkar, son of late Mahatab Uddin Sarkar alias Gedu Chairman and late Fazilatunnesa Nesa, of village-Hadder Bhita, Police Station-Trishal, District-Mymensingh--

are found **UNANIMOUSLY guilty** of the offences of ‘abduction’, ‘confinement’, ‘torture’, ‘other inhumane act’ and ‘murder’, as ‘**crimes against humanity**’ as enumerated in section 3(2) of The International Crimes (Tribunals) Act, 1973 in respect of **charge no.01** .

Accordingly, they be **UNANIMOUSLY** convicted and condemned to the **sentence as below**, under section 20(2) of the Act of 1973:

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

Four(04) accused (1) Md. Saidur Rahman Ratan, (2) Shamsul Haque Fakir, (3) Md. Sultan Mahmud Fakir and (4) Nakib Hossain Adil Sarker are found **UNANIMOUSLY guilty** of the offences of ‘abduction’, ‘confinement’ and ‘torture’ as ‘**crimes against humanity**’ as enumerated in section 3(2) of the International Crimes (Tribunals) Act, 1973 in respect of **charge no.02**. Accordingly, they be **UNANIMOUSLY** convicted and condemned to the **sentence as below**, under section 20(2) of the Act of 1973:

‘Sentence of imprisonment’ for seven (07) years for the crimes as listed in **charge no.02**, under section 20(2) of The International Crimes (Tribunals) Act, 1973.

Five (05) accused (1) Md. Mokhlesur Rahman Mukul, (2) Md. Saidur Rahman Ratan, (3) Shamsul Haque Fakir, (4) Nurul

Haque Fakir and (5) Nakib Hossain Adil Sarker are found **UNANIMOUSLY guilty** of the offences of ‘abduction’, ‘confinement’, ‘torture’, and ‘murder’, as ‘**crimes against humanity**’ as enumerated in section 3(2) of the International Crimes (Tribunals) Act, 1973 in respect of **charge no.03**. Accordingly, they be **UNANIMOUSLY** convicted and condemned to the **sentence as below**, 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;

Three(03) accused (1) Md. Mokhlesur Rahman Mukul (2) Md. Saidur Rahman Ratan and (3) Nurul Haque Fakir are found **UNANIMOUSLY guilty** of the offences of ‘abduction’, ‘confinement’, ‘torture’, and ‘murder’, as ‘**crimes against humanity**’ as enumerated in section 3(2) of the International Crimes (Tribunals) Act, 1973 in respect of **charge no.04**. Accordingly, they be **UNANIMOUSLY** convicted and condemned to the **sentence as below**, under section 20(2) of the Act of 1973:

‘Sentence of death’ for the crimes as listed in **charge no.04** and they be

hanged by the neck till they are dead, under section 20(2) of The International Crimes (Tribunals) Act, 1973;

Six(06) accused (1) Md. Mokhlesur Rahman Mukul, (2) Md. Saidur Rahman Ratan, (3) Shamsul Haque Fakir, (4) Nurul Haque Fakir, (5)Md. Sultan Mahmud Fakir and (6) Nakib Hossain Adil Sarker are found **UNANIMOUSLY guilty** of the offences of ‘abduction’, ‘confinement’ ,‘torture’ and ‘other inhumane act’ as ‘**crimes against humanity**’ as enumerated in section 3(2) of the International Crimes (Tribunals)Act, 1973 in respect of **charge no.05**. Accordingly, they be **UNANIMOUSLY** convicted and condemned to the **sentence as below**, under section 20(2) of the Act of 1973:

‘Sentence of imprisonment’ for seven (07) years for the crimes as listed in **charge no.05** under section 20(2) of The International Crimes (Tribunals) Act, 1973.

Six(06) accused (1) Md. Mokhlesur Rahman Mukul, (2) Md. Saidur Rahman Ratan, (3) Shamsul Haque Fakir, (4) Nurul Haque Fakir, (5)Md. Sultan Mahmud Fakir and (6) Nakib Hossain Adil Sarker are found**UNANIMOUSLY guilty** of the offences of ‘abduction’, ‘confinement’ ,‘torture’ and ‘other inhumane act’ as ‘**crimes against humanity**’ as enumerated in

section 3(2) of the International Crimes (Tribunals) Act, 1973 in respect of **charge no.06**. Accordingly, they be **UNANIMOUSLY** convicted and condemned to the **sentence as below**, under section 20(2) of the Act of 1973:

‘Sentence of imprisonment’ for seven (07) years for the crimes as listed in **charge no.06** under section 20(2) of The International Crimes (Tribunals) Act, 1973.

The **‘sentences of death’** as awarded above to six convicts, in respect of **charge nos. 01, 03 and 04** shall get merged. **‘Sentence of imprisonment’** as awarded above shall run concurrently.

Since all the six convicted accused 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 ‘**sentence of imprisonment**’ as awarded (**in respect of charge nos.02,05 and 06**) against the convicted accused shall commence from the date of their arrest or surrender as required under Rule 46(2) of the Rules of Procedure, 2010(ROP) of the Tribunal-1.

Let **conviction warrant** be issued accordingly. Let a copy of the Judgment be transmitted together with the conviction warrant to **(1) the Secretary, Ministry of Home Affairs, (2) the Inspector General of Police, Bangladesh Police, Police Head Quarters, Dhaka** 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 six convicted absconding accused.

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

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

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

Justice Md. Shahinur Islam, Chairman

Justice Md. Abu Ahmed Jamadar, Member

Justice K.M. Hafizul Alam, Member